Spring Training for Lawyers
March 31, 2017

Chris Nakamura
Judicial Appointment Workshop

Arizona Supreme Court
Commission on Minorities in the Judiciary

State Bar of Arizona

COMMISSION ON MINORITIES IN THE JUDICIARY

The Commission on Minorities in the Judiciary (COM), a standing committee of the Arizona Judicial Council (AJC), seeks to address disproportionate minority contact in the justice system; enrich the diversity of the judiciary to reflect the communities it serves, while maintaining the highest level of qualifications; promote cultural competency in its judicial officers and employees; and enhance communication with minority communities through education and collaboration with public and private sector programs that aspire to similar purposes.

The work of COM is given direction by the Strategic Agenda for Arizona Courts and Arizona Code of Judicial Administration (ACJA) § 1-107: Commission on Minorities.

CHRIS B. NAKAMURA

Chris was born in Honolulu, Hawaii, on November 28, 1964, and passed away unexpectedly on May 10, 2002. A respected attorney, educator, civic leader, friend, brother and son, Chris is deeply missed by all those he touched with his wisdom, advice, wit, insight and passion.

Chris was born and raised in Honolulu, Hawaii, where his family has resided for three generations. He received a B.S., *cum laude,* in Economics from the University of Pennsylvania, The Wharton School of Economics, in 1986, and a J.D. from The University of Pennsylvania in 1989.

After practicing law in Philadelphia for several years, Chris came to Tucson in 1992 and began a distinguished local legal career. He initially joined the law firm of O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears (later known as O'Connor, Cavanagh, Molloy, Jones), and in 1998 joined in forming the business law firm Gibson, Nakamura & Decker, P.L.L.C. In 1995, Chris began teaching part-time at the University of Arizona College of Law as Adjunct Professor of Legal Analysis and Reasoning, and he continued in that position, as a favorite of the students, until his death.

Chris will be remembered most, however, for his selfless volunteer commitment to his profession, the community, the arts, and to minorities of every race, sex, creed, and orientation. In 10 very short years as a resident of Tucson, Chris served as a member of the Arizona Supreme Court Commission on Minorities, secretary of the Arizona State Bar Commission on Minorities and Women in the Law, president of the Arizona Minority Bar Association, board member of the Arizona Community Legal Assistance program, member of the Arizona Asian Bar Association, board member of the Arizona Volunteer Lawyers for the Arts, and as an active participant and donor of countless hours of volunteer time to those in need of free legal services in conjunction with the Volunteers Lawyers Program of Southern Arizona.

PROGRAM CHAIRS AND MODERATORS

Honorable Roxanne K. Song Ong (Retired)

Chief Presiding Judge - Phoenix Municipal Court

Judge Roxanne K. Song Ong was appointed the Chief Presiding Judge of the Phoenix Municipal Court in 2005 and served in that position until her retirement in 2014. She is recognized as the first Asian woman lawyer and judge in the State of Arizona and is the first woman and minority to be named as the City's Chief Judge. She has served as a judge for Phoenix since 1991 and was appointed the Assistant Presiding Judge in 2000. Prior to that, she served as a judge for the Scottsdale City Court from 1986-1991. Prior to judging, Judge Song Ong practiced in the areas of criminal prosecution, defense, and immigration law. Offices Held: 2016 UA College of Law Board of Visitors; 2016 Board Member of the ABA Center for Racial and Ethnic Diversity; 2014 President of the National Conference of Metropolitan Courts (NCMC); Chair of the Arizona Supreme Court's Commission on Minorities (COM); Chair of the Arizona Supreme Court Committee on Judicial Education and Training (COJET); Member Arizona Judicial Council (AJC); Member Supreme Court Commission on Technology (COT); 2012 President of the Arizona Foundation for Legal Services and Education; Board Member and faculty for the State Bar of Arizona's Leadership Institute; Faculty for the Arizona Supreme Court's New Judge Orientation Program and the Arizona Judicial College. Honors and Awards: 2016 UA Law College Public Service Award; 2014 YWCA Tribute to Leadership Award for Public Service; 2013 Maricopa County Bar Association's Hall of Fame Inductee; 2013 Arizona Supreme Court Judge of the Year; 2013 Asian Pacific Community in Action Award; One of "48 Most Intriguing Women in Arizona 2012" by the Arizona Historical Society; 2010 recipient of the Arizona State Bar's Judicial Award of Excellence; 2009 National Asian American Bar Association's Trailblazer Award; One of "100 Outstanding Women and Minorities for the State of Arizona 2000" by the State and County Bar Associations; and, the 1999 Arizona Bar Foundation's Attorney Law-Related Education Award.

Frankie Y. Jones

Bureau Chief Maricopa County Attorney's Office
Probation Violation Bureau

Frankie Jones graduated from Creighton University College of Arts and Sciences, with a Bachelor of Arts in 1990 where she majored in Political Science and minored in business. In 1993 she earned her Juris Doctorate from Creighton University School of Law. In 1994 she was admitted to the State Bar of Arizona.

From January 1998 to the present, she has been a deputy county attorney at the Maricopa County Attorney's Office. She has worked in Preliminary Hearing, Trial, Charging and Special Crimes bureaus. Since 2005, she has served as the bureau chief of the Probation Violation Bureau. Prior to coming to the Maricopa County Attorney's Office, she worked for Stender and Larkin practicing immigration, family and criminal law and at the Arizona Department of Revenue practicing tax law.

She currently serves as the Chairperson on the State Bar of Arizona Unauthorized Practice of Law (UPL) Committee. She is a current member of Commission on Minorities in the Judiciary, a standing committee of the Arizona Judicial Council (AJC), the Arizona Supreme Court Committee on Examinations, and currently serving on the Task Force on Lawyer Ethics, Professionalism, and the Unauthorized Practice of Law. She is also a board member and secretary for the Arizona Black Bar. She previously served on the State Bar of Arizona Conflict Case Committee and the Peer Review Committee.

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THE FACES OF OUR JUDICIARY

THE FACES OF OUR JUDICIARY
March 31, 2017
1:30 - 2:30 p.m.

I. WELCOME AND INTRODUCTIONS

Honorable Roxanne K. Song Ong (Retired)
Chief Presiding Judge - Phoenix Municipal Court

Frankie Y. Jones
Bureau Chief Maricopa County Attorney's Office
Probation Violation Bureau

II. THE GAVEL GAP

Honorable Maurice Portley (Retired)
Judge, Arizona Court of Appeals, Division I
Chair, Commission on Minorities in the Judiciary

III. FINAL REPORT OF THE 1ST BENCH DIVERSITY PROJECT

Professor Paul Bennett
University of Arizona, James E. Rogers College of Law

FACULTY

Honorable Maurice Portley (Retired)

Judge, Arizona Court of Appeals

Judge Maurice Portley served as a state court judge for more than twenty-five years. He was appointed to the Maricopa County Superior Court by Gov. Rose Mofford in February 1991, and served in all the departments (civil, probate, criminal, juvenile and family), including serving as the Presiding Judge of the Southeast Judicial District from 1992-1996, and the Presiding Judge of the Maricopa County Juvenile Court from 1998-2001. Governor Janet Napolitano appointed him to the Arizona Court of Appeals in April 2003, and he served until his retirement in August 31, 2016.

Judge Portley graduated from Arizona State University in 1975, *cum laude*, with a B.S. in Political Science, and from the University of Michigan Law School in 1978, with a J.D., where, amongst other activities, he published an article and was the Articles Editor for the *Journal of Law Reform*. He then served as a Captain in the U.S. Army Judge Advocate General's Corps from 1979 to 1984, moved to Phoenix and joined the law firm of Jennings, Strouss, & Salmon, where he became a partner before being appointed to the bench.

Judge Portley is currently the Editor of the *Journal of Juvenile and Family Court Judges*, a publication of the National Council of Juvenile & Family Court Judges. He also tries to stay active in community organizations, including A Stepping Stone Foundation, Arizona Foundation for Legal Services & Education, Great Arizona Puppet Theater, the Phoenix College Community Orchestra, and Valley Leadership.

Professor Paul Bennett

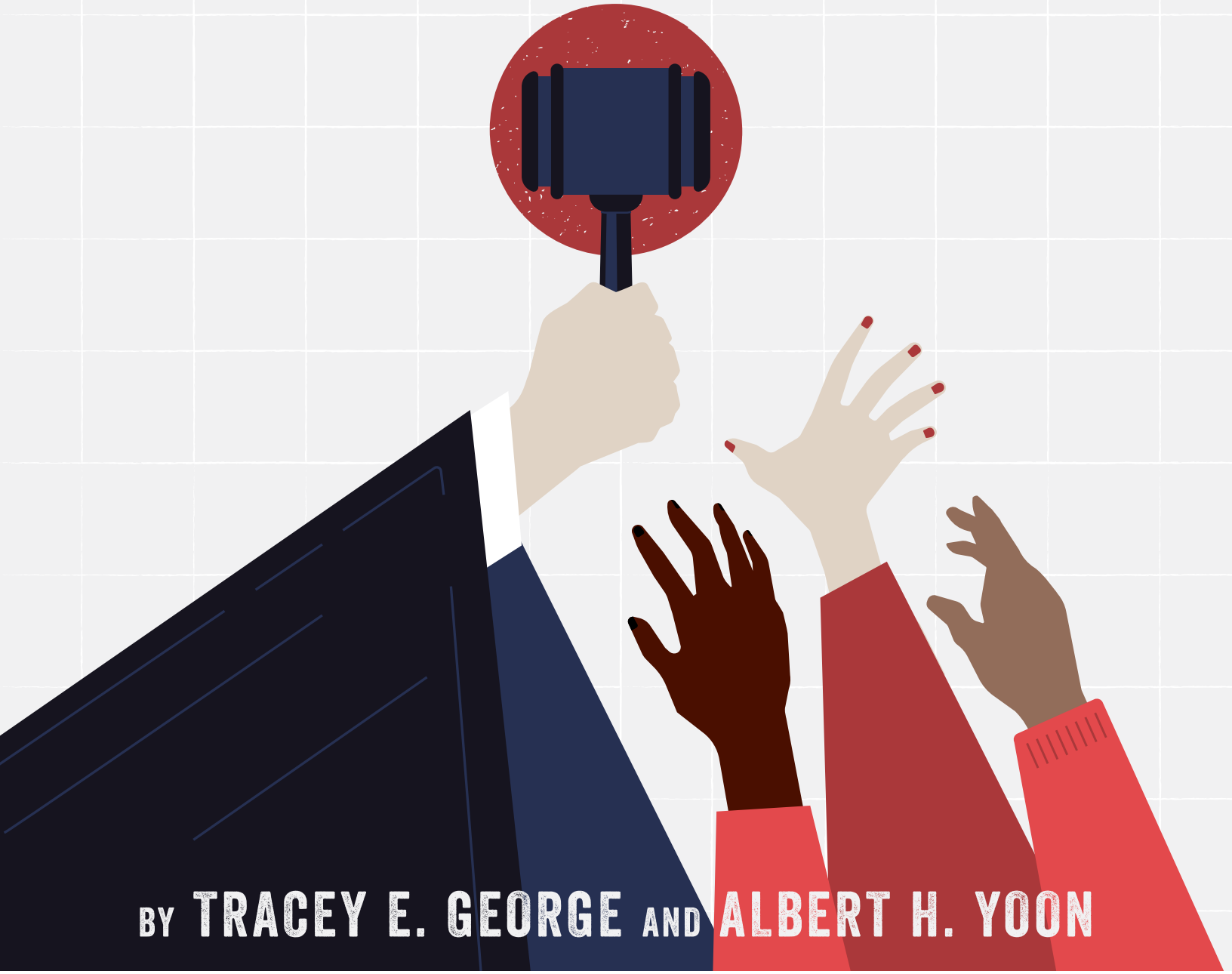
University of Arizona, James E. Rogers College of Law

Paul Bennett is a Clinical Professor of Law and the Director of Clinical Programs at the University of Arizona, James E. Rogers College of Law. In addition to clinical legal education, Professor Bennett regularly teaches courses in Professional Responsibility, Juvenile Law, and Law and Humanities at the College of Law and has also taught Legal Ethics at the University of Washington and the University of San Diego. From 2004-2006, Professor Bennett was the Co-Chair of the Arizona State Bar Task Force on Professionalism. He is currently a member of the Supreme Court Commission on Minorities in the Judiciary and the Chair of the University Committee on Ethics and Commitment at the U of A.

Professor Bennett joined the Arizona Law faculty in 1996 after teaching for several years at Cornell Law School. He graduated from Bates College in Lewiston, Maine in 1973 and the Cornell Law School in 1976. After receiving his law degree, he practiced with the Orleans Legal Aid Bureau in Albion, NY and then with Chemung County Neighborhood Legal Services in Ithaca, NY. From 1983 – 1988, he was an Assistant City Attorney in Ithaca, NY. From 1988 to 1993, he was a partner in the law firm of Holmberg, Galbraith, Holmberg, Orkin and Bennett in Ithaca until he began teaching full-time. Along with Professor Kenney Hegland, Bennett is the author of "*A Short and Happy Guide to Being a Lawyer*," West Publishing. 2012.

THE GAVEL GAP

WHO SITS IN JUDGMENT ON STATE COURTS?



BY TRACEY E. GEORGE AND ALBERT H. YOON

AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY

"FOR MOST INDIVIDUALS AND ORGANIZATIONS, STATE COURTS ARE THE "LAW" FOR ALL EFFECTIVE PURPOSES."

For most individuals and organizations, state courts are the "law" for all effective purposes. State courts are America's courts. But, we know surprisingly little about who serves on state courts—i.e., state judges—despite their central and powerful role. This lack of information is especially significant because judges' backgrounds have important implications for the work of courts. The characteristics of those who sit in judgment can affect the internal workings of courts as well as the external perception of courts and judges. The background of judges can influence how they make decisions and impact the public's acceptance of those decisions. We need to know more about state judges.

In order to address this serious shortcoming in our understanding of America's courts, we have constructed an unprecedented database of state judicial biographies. Our dataset—the State Bench Database—includes more than 10,000 current sitting judges on state courts of general jurisdiction. Although state judges are public servants, little is known about them. Unlike their counterparts on the federal courts, much of the information is non-public, and in many instances, not even collected in a systematic way.

Using the State Bench Database, we examine the gender, racial, and ethnic composition of state courts. We then compare the composition of state courts to the composition of the general population in each state. We find that courts are not representative of the people whom they serve—that is, a gap exists between the bench and the citizens. We call this gap the Gavel Gap.

This study's principal findings are:
Women have entered law schools and the legal profession in large numbers for the last forty years, but are underrepresented on state courts. Women comprise roughly one-half of the U.S. population and one-half of American law students. But, less than one-third of state judges are women. In some states, women are underrepresented on the bench by a ratio of one woman on the bench for every four women in the state. Not a single state has as many women judges as it does men.

"ALTHOUGH STATE JUDGES ARE PUBLIC SERVANTS, LITTLE IS KNOWN ABOUT THEM."

"WE FIND THAT COURTS ARE NOT REPRESENTATIVE OF THE PEOPLE WHOM THEY SERVE—THAT IS, A GAP EXISTS BETWEEN THE BENCH AND THE CITIZENS."

People of color make up roughly four in ten people in the country but fewer than two in ten judges; and, in sixteen states, judges of color account for fewer than one in ten state judges. The story of racial diversity in state courts is one of sharp contrasts. In the five states with the best representation, minorities are represented at roughly the same rate on state courts as they are in the general population (and in a few states, they are even better represented). But, in the five states with the worst representation, minorities appear to be nearly absent from the judiciary.

This study is based on the work of a team of independent researchers at Vanderbilt University and the University of Toronto. With support from the American Constitution Society, the researchers collected and coded biographical data on over 10,000 judges serving on state supreme courts, state intermediate appellate courts, and state general jurisdiction trial courts. A complete explanation of this study's methodology is below.

The findings from this study have several important implications. First, they should inform the current method of identifying and selecting judges. Second, they demonstrate that we need a better process for developing a pipeline of women and minorities to serve as judges.

Our courts must be representative in order to fulfill their purposes. Our laws are premised in part on the idea that our courts will be staffed by judges who can understand the circumstances of the communities which they serve. Our judicial system depends on the general public's faith in its legitimacy. Both of these foundational principles require a bench that is representative of the people whom the courts serve.

"STATE COURTS HANDLE MORE THAN 90% OF THE JUDICIAL BUSINESS IN AMERICA."

BACKGROUND

STATE COURTS AS AMERICA'S COURTS

The United States Supreme Court is undoubtedly the most visible and well-known court in America. Its decisions, including Brown v. Board of Education, Roe v. Wade, and Obergefell v. Hodges, have had a tremendous impact on the civil rights and liberties of all Americans. But the U.S. Supreme Court's reach is limited. The Supreme Court decides fewer than 100 cases per year. Moreover, it addresses only questions of federal law. While we often hear a person say that she will take her case "all the way to the Supreme Court," the reality is that the justices decide few cases and only a subset of legal issues. Accordingly, in nearly every case and for any legal issue, when we think of judges making these decisions in America, we are usually thinking of state judges.

Americans are primarily concerned with matters such as finances, family, health, and safety. State courts have authority over these basic matters of daily life. If a tenant refuses to pay rent and her landlord threatens to evict her, a state court would hear the dispute. If divorced parents fight over the custody of a child, a state court will resolve the matter. If a car accident leaves a passenger badly injured, the victim will likely go to state court to seek recovery. If a suspect is arrested for assault, a state judge will hold the arraignment and eventually preside over the trial (or more likely take the plea bargain). The work of courts in America is the work of state courts.

What cases do state courts hear?
State courts handle more than 90% of the judicial business in America. According to the Court Statistics Project, a joint effort of the National Center for State Courts and the Conference of State Court Administrators, approximately 94 million cases were brought in American state trial courts in 2013.[1] In a single year, nearly one case was filed for every three people in the United States. Roughly one billion cases entered the state judicial system over the past decade.

"THE MOST SIGNIFICANT PART OF STATE COURT DOCKETS IS COMPRISED OF CRIMINAL PROSECUTIONS AND CIVIL ACTIONS."

State courts are open to the full range of disputes that arise in this country. State judicial systems are courts of "general jurisdiction" which means they can hear questions of state and federal law. By contrast, federal courts are courts of "limited" jurisdiction which means that they can only hear subjects assigned to them by the U.S. Constitution or federal statute.

The single largest category of state court cases is traffic violations, making up more than half of the courts' caseloads. Traffic violations are in many ways minor matters, requiring limited time and relatively few court resources. Nevertheless, they can have meaningful implications for individuals who face the possibility of fines and loss of their right to drive. Family law and juvenile matters, both of which have obvious and profound effects on those involved, make up the smallest part of state court dockets. Traffic, domestic, and juvenile cases are usually heard by specialized courts, which hear only those types of cases.

The most significant part of state court dockets is comprised of criminal prosecutions and civil actions. Together, civil and criminal cases account for nearly all non-traffic cases in state court. Civil and criminal litigation also are more likely to have effects beyond the parties to the case. Judicial decisions in civil and criminal cases interpret law, create precedent, and even make law. Civil lawsuits involve the distribution of resources and recognition of rights that can have both direct and indirect effects throughout the economy and society. Criminal prosecutions bring the power of the state to bear on individuals, acknowledge serious harms suffered by victims, punish wrongdoers, and deter future criminal behavior.

How do state courts handle their cases?
Each state judicial system is unique, yet certain patterns emerge. All states have a trial level and at least one appellate level. Trial courts include any court that handles cases when they are first filed. An appellate court reviews decisions of lower courts. Forty-five states have more than one type of trial court (a "divided" trial court structure): a trial court of general jurisdiction and one or more trial courts of limited jurisdiction. Specialized entry-level courts include family courts, juvenile courts, municipal courts, small claims courts, traffic courts, and other courts whose authority is similarly limited to a defined, narrow subject area. In those states, trial courts of general jurisdiction handle civil lawsuits (usually above a minimum-dollar amount threshold) and criminal prosecutions for felonies or other serious crimes. Five states use a single (or "unified") trial court to handle all matters, although unified court systems may handle the work through divisional sittings, which hear particular types of claims.

State judicial systems handle review of lower courts in a number of ways. Two general features are common. First, every state has at least one appellate court of last resort—the final word on state law—which we will call a "supreme court" for ease of reference. Two states—Oklahoma and Texas—have two such courts, one for civil appeals and one for criminal appeals. Second, 42 states, like the federal courts, have an intermediate appellate court situated between general jurisdiction trial courts and the high court(s). An intermediate appellate court enables the state supreme court to hear fewer cases and to choose which cases to review.

Figure 1. Total Incoming Cases in State Courts, 2013
(Court Statistics Project, National Center for State Courts)

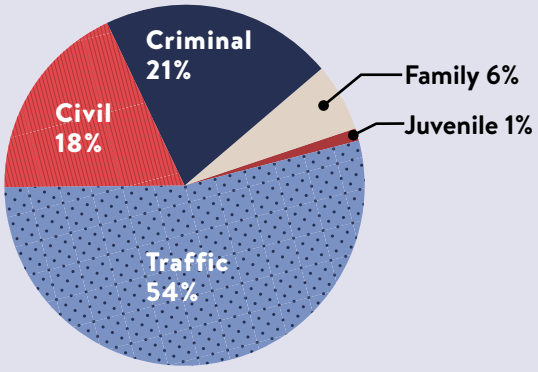
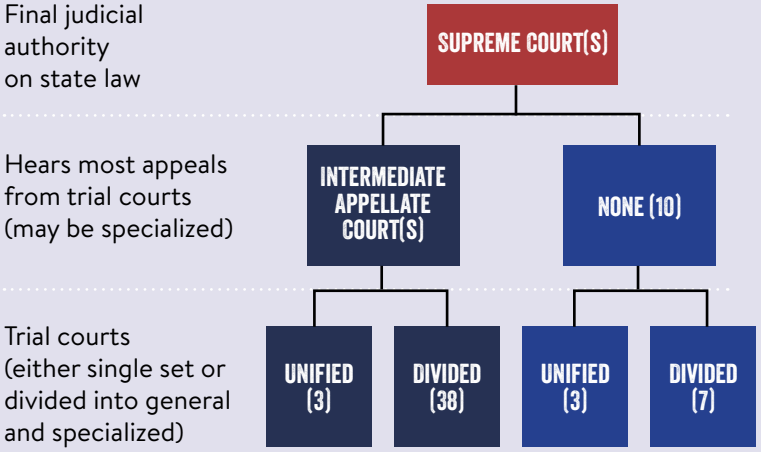


Figure 2. State Court Structures



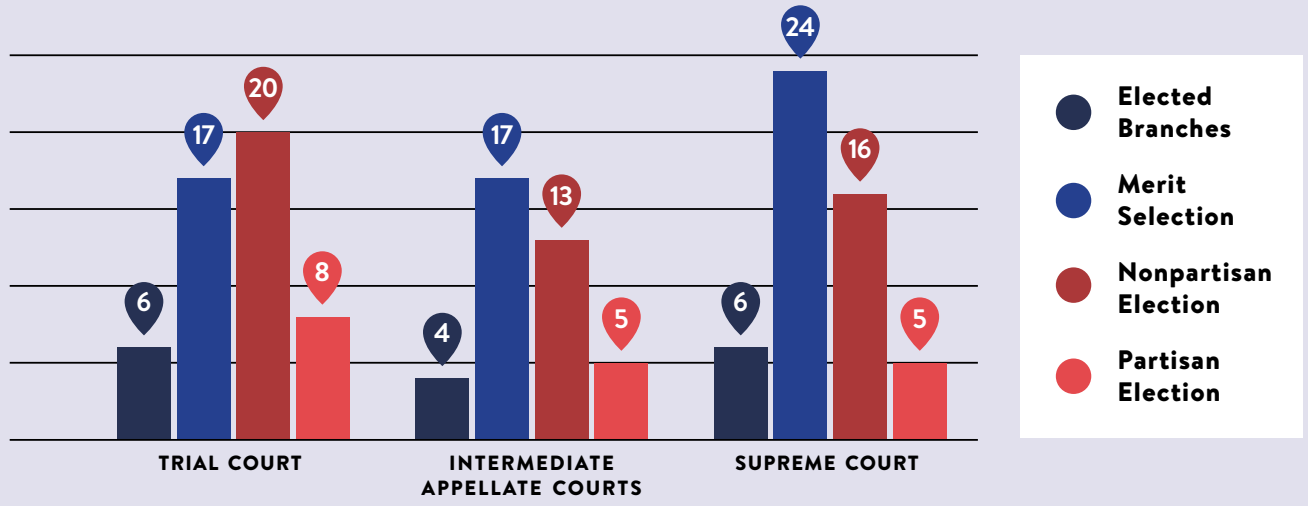
STATE JUDGES AS AMERICA'S JUDGES

State trial and appellate judges do the work of America's courts. Thus, it is important to understand the process by which states choose the people who will resolve disputes, enforce law, and make law on our behalf. Any process of selection will inevitably have an impact on who is selected. Each state has a distinct selection process for its judicial system. By focusing on the most salient features of those selection systems, however, the states can be grouped into helpful categories.

A state judge may first gain a seat through election (nonpartisan or partisan), appointment by an elected branch (governor and/or legislature), or recommendation by a merit commission. Most states (43) and the District of Columbia use the same method for selecting trial judges and appellate judges. All but two states use the same method for all appellate judges. The majority of states use elections to staff their trial courts. By contrast, the majority of state appellate courts are filled using some type of appointment process, which can involve a merit commission controlling the slate of nominees or allow the appointing body (either or both elected branches) to select anyone whom they choose.

As reflected in the maps, the American heartland favors choosing judges through a merit process, while the North and the South generally favor election, either partisan or non-partisan.[2] The Northeast and the West lack a clear pattern of selection. The key distinction between merit selection and election is citizen participation. The merit process usually requires that the governor, with or without consent of a legislature, pick from a panel of nominees. Election may require party nomination before a vote in a general election.

Figure 3. Selection Method By Court Level



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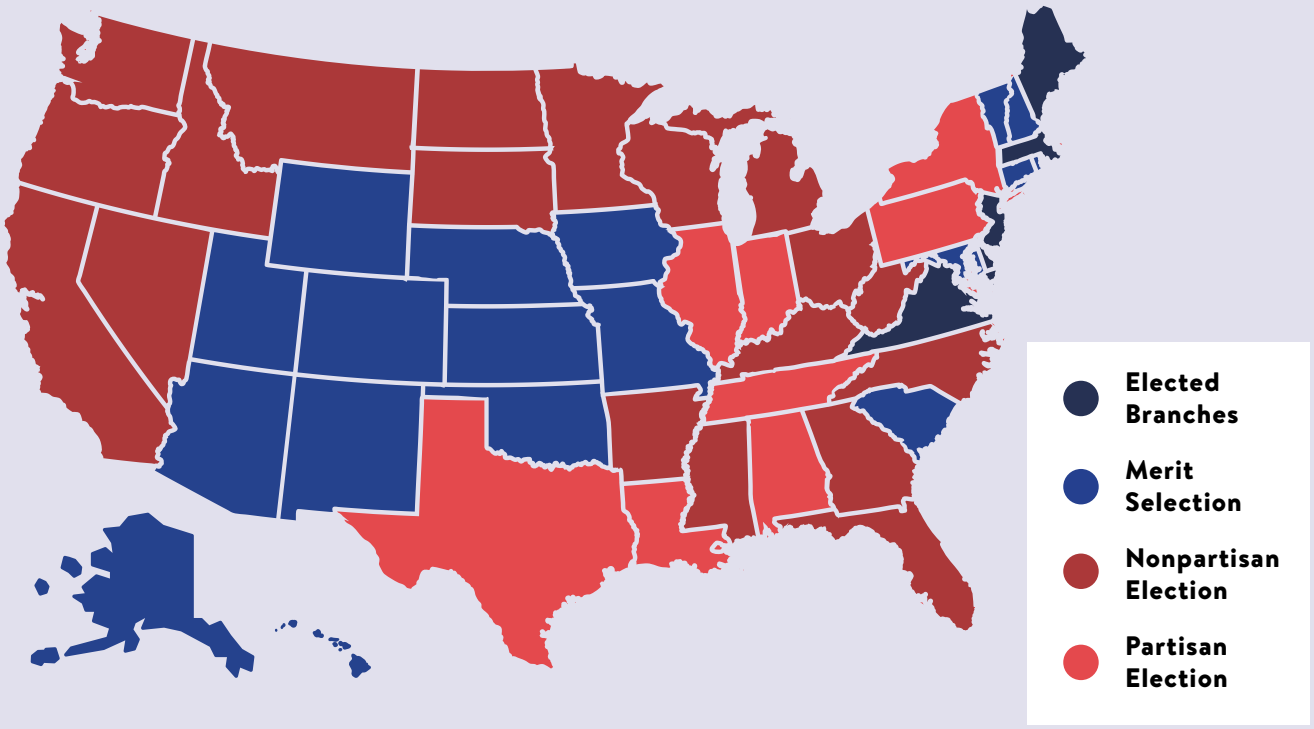
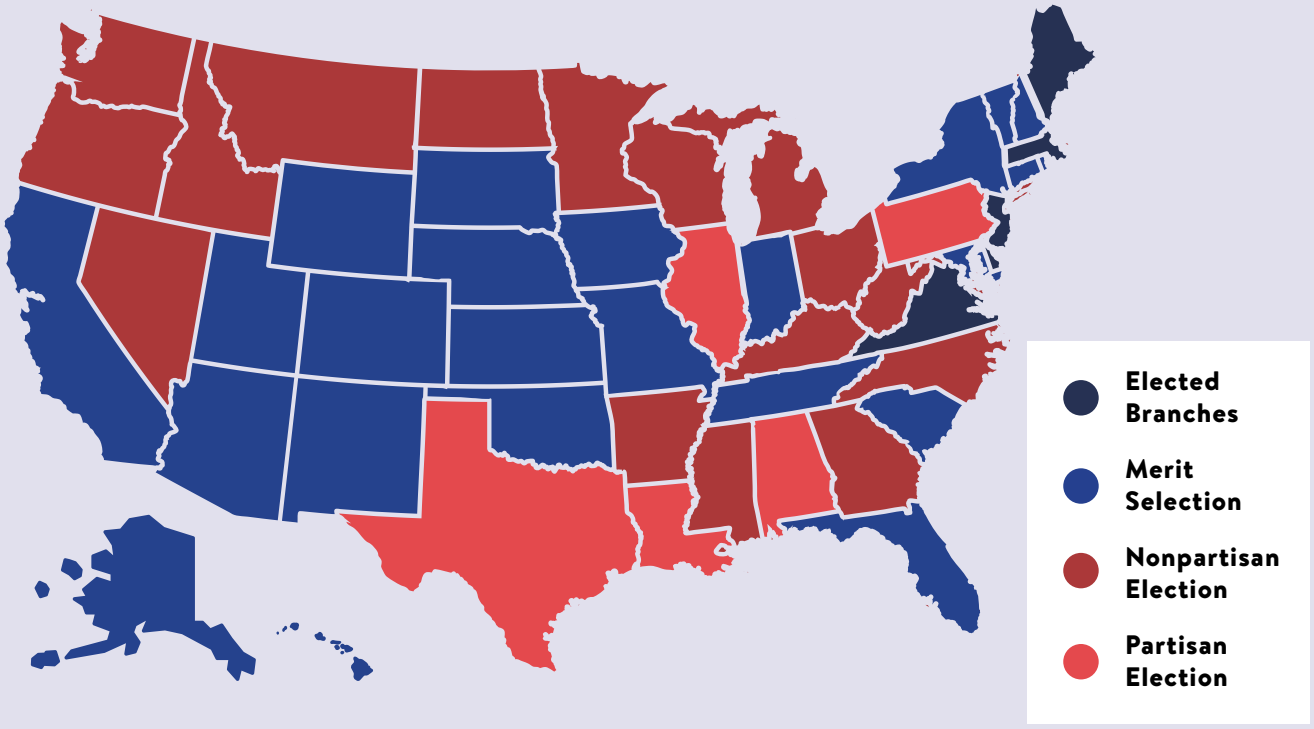


Figure 5. Method of Selecting State Appellate Court Judges



"MORE THAN HALF OF STATE TRIAL JUDGES AND STATE APPELLATE JUDGES ARE WHITE MEN ACCORDING TO THE STATE BENCH DATABASE FIGURES."

RESULTS

State courts are America's courts. State judges are powerful public officials. But, we know surprisingly little about the men and women who serve as state judges. Few states release detailed biographical information about their judges. Existing non-government sources generally rely on incomplete or unreliable information. We seek to remedy this shortcoming through the construction of the State Bench Database.

We collected biographical data for every judge sitting on a state appellate court or a state trial court of general jurisdiction as of December 2014. When constructing our dataset, we used only sources that had the hallmarks of credibility and reliability. The sources included state government webpages, press releases, and printed directories; professional association, practitioner, and university publications; academic journals; newspapers; judges' official campaign websites; judicial directories; and confidential telephone interviews with judges and lawyers.

A note about our calculation on the numbers of women and minorities on the bench. First, our figures are estimates. We are not directly observing these characteristics of the judges but rather collecting it from secondary sources. Second, even after exhausting available sources, we are missing race and ethnicity data on roughly five percent of the judges. We were able to identify gender for nearly all of the judges in the database. Our estimates are based on available data. Third, the database includes only judges who were listed as serving on the court in December 2014. If a state experienced significant turnover in its composition of judges in the interim, our figures may contrast with the state's current judicial composition.

More than half of state trial judges and state appellate judges are white men according to the State Bench Database figures. We compare our estimates to the U.S. Census Bureau estimates of the representation of all four groups in the U.S. population in 2014.[3] Women of color are the most underrepresented group (only 40% of their relative numbers in the general population) while white men are overrepresented (nearly double their relative numbers).

Figure 6. Race & Gender on State Trial Courts

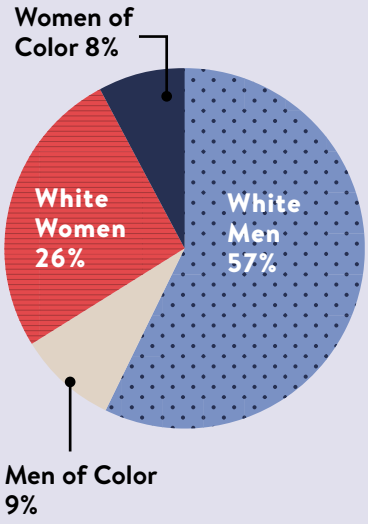


Figure 7. Race & Gender on State Appellate Courts

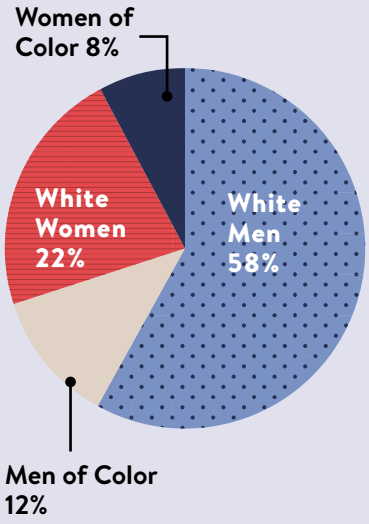
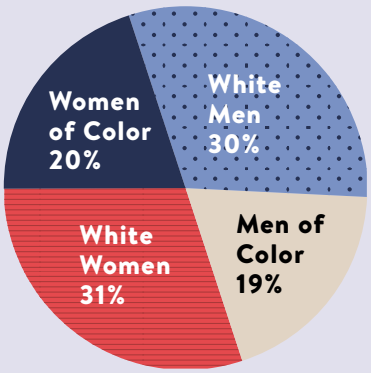


Figure 8. Race & Gender in the United States



REPRESENTATIVENESS OF STATE JUDICIARIES

For every state, we calculated the gap between the representation of women or minorities on the bench and the representation of each group in the general population. A truly representative judiciary would have the same ratio of women and minorities on the bench as it does in the general population. The Gavel Gap is how much the state falls short of that forecast.

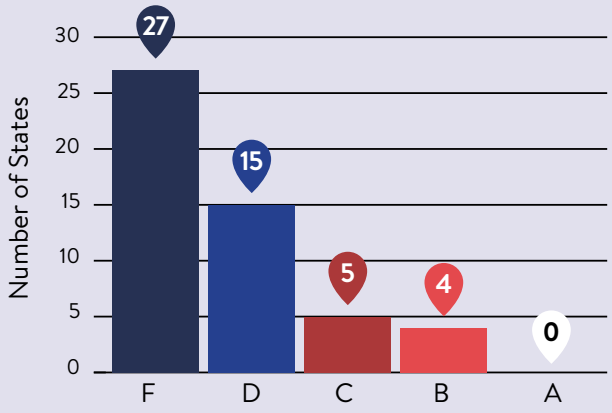
We calculate the Gavel Gap by dividing the difference between the proportion of women and/or minorities on the bench and women and/or minorities in the general population by the proportion of women and/or minorities in the general population. The formula for the Gender Gavel Gap is ((fraction of judges who are women – fraction of general population who are women) ÷ fraction of general population who are women). Thus, if half of a state's judges were women and half of its general population were women, the state would have no gap ((.50-.50)/.50=0). If ten percent of a state's judges were women and half of its general population were women, the state would have a gap of -.80 ((.10-.50)/.50=-.80). That is, the state has 80% fewer women on the bench than we would have predicted based on its general population. Stated differently, the state has only 20% of the number of women on the bench as we would expect.

The representativeness score is a positive presentation of where a state stands on achieving the proportion of women and/or minorities on the bench as it has in its general population. We rank each state based on the level of representation that it appears to have achieved based on the State Bench Database estimates.

We grade a state as follows:

- A if the state is close to parity (at least 90%),
- B for states that have achieved 80 to 89%,
- C for states that have achieved 70 to 79%,
- D for states that have achieved 60 to 69%, and
- F for states that are below 60%.

Figure 9. Gender Representativeness of State Courts



"THE VERY LOW GENDER REPRESENTATIVENESS SCORES DEMONSTRATE THAT THE STEADY GENDER BALANCE IN LAW SCHOOLS HAS YET TO TRANSLATE TO EQUALITY ON STATE COURTS."

The very low gender representativeness scores demonstrate that the steady gender balance in law schools has yet to translate to equality on state courts. Women have been attending law school in large numbers for the past forty years. In 1985, the percentage of first year law students who were women crossed the 40% threshold and has been around 50% since 1996. Nevertheless, not a single state has women on the bench in the numbers commensurate with their representation in the general population. In most states, men are overrepresented by a factor of two to one. That is, for nearly half of the states, women comprise fewer than one-half of the forecasted number of state judges. For example, Mississippi has a majority female population, but less than 18% of its state judges are women. Gender representativeness scores for individual states are reported in our Appendix. New England states generally exhibited higher proportional representation than elsewhere, although individual states in other regions – e.g., Nevada, where women comprise 50% of the general population and 41% of state judges, and Oregon, where women comprise 51% of the general population and 44% of state judges – ranked relatively high.

"NOT A SINGLE STATE HAS WOMEN ON THE BENCH IN THE NUMBERS COMMENSURATE WITH THEIR REPRESENTATION IN THE GENERAL POPULATION."

The racial and ethnic representativeness of state courts data reveals a flatter distribution for ethnic representation on state courts. In a near majority of states (24), minority judges fell below 50% of proportional representation of the general population. Many of the states which fared poorly on the gender score also performed poorly on ethnic representation. For example, Oklahoma ranked 41st out of 51 on the gender score (with 50% female population but only 21% women judges), and 46th out of 51 on the race and ethnic minority representation score (with 33% minority population but only 8% minority judges).

The general representativeness of state courts is reflected in an overall Gavel Gap index which considers the representation of both women and minorities on state courts. Two small jurisdictions—Hawaii (ranked 1st) and the District of Columbia (2nd)—lead the group. Twenty-six states earn failing scores.

"IN A NEAR MAJORITY OF STATES (24), MINORITY JUDGES FELL BELOW 50% OF PROPORTIONAL REPRESENTATION OF THE GENERAL POPULATION."

Figure 10. Racial and Ethnic Representativeness of State Courts

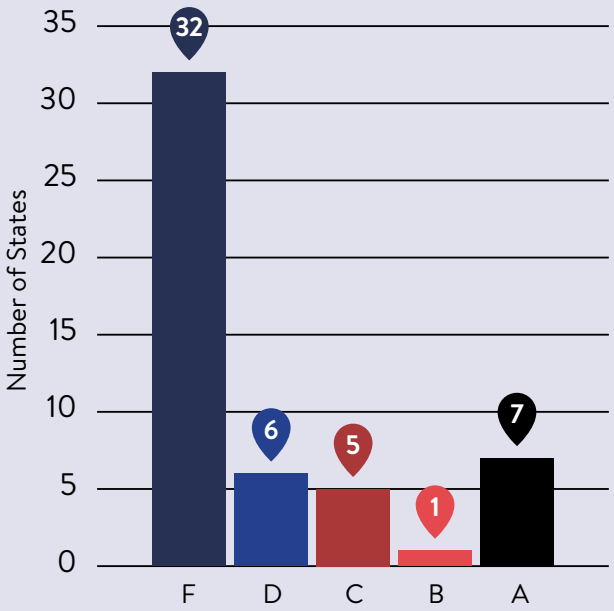
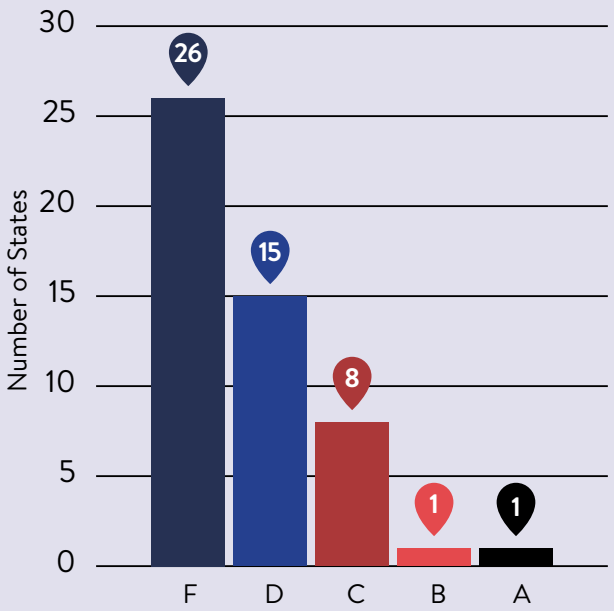


Figure 11. Overall Representativeness of State Courts



"REGIONS VARY DRAMATICALLY IN THE RACIAL AND ETHNIC COMPOSITION OF THEIR COURTS BUT NOT IN THE GENDER COMPOSITION OF THEIR COURTS."

REGIONAL VARIATION

We can better understand the gap between who lives in the United States and who sits in judgment by focusing on different regions of the country. The U.S. Census divides the country into four regions: Northeast, Midwest, South, and West. We use those regions as they allow comparison to other data collected on a regional basis.

Regions vary dramatically in the racial and ethnic composition of their courts but not in the gender composition of their courts. The estimated percentage of women on state courts is relatively constant across the four regions: only two percentage points above or below a mean of 30% of state judges are women. We find only a weak regional effect, after controlling for general population, where the Northeast is less likely than other regions to select women judges.

We find stronger regional effects for race and ethnicity of judges. The South and the West, which have higher numbers of racial and ethnic minorities than the Northeast and Midwest, do not have comparably higher numbers of minority judges. In fact, white, non-Hispanics in the general population outnumber white, non-Hispanic judges by about two to one.

Figure 12. United States Census Geographic Regions

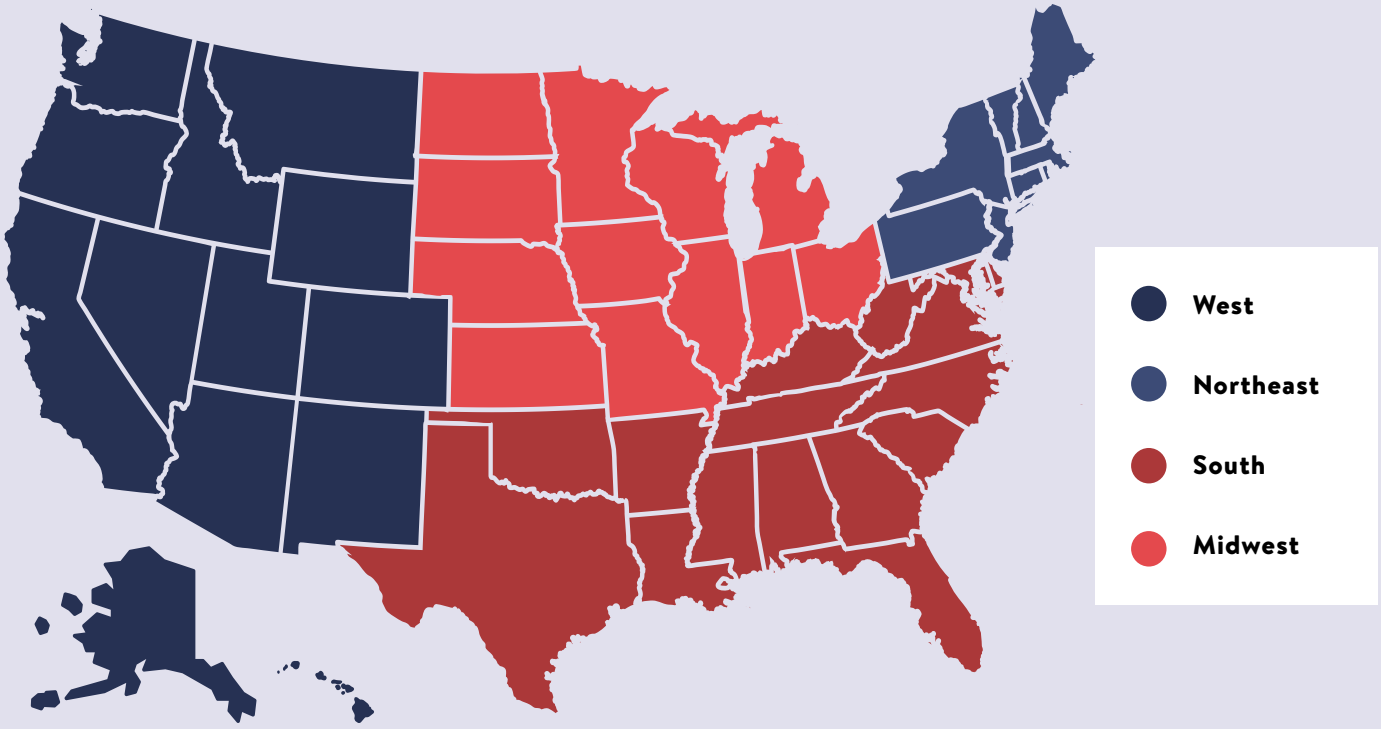


Figure 13. Women as a Percentage of the General Population and of of State Courts by Census Region

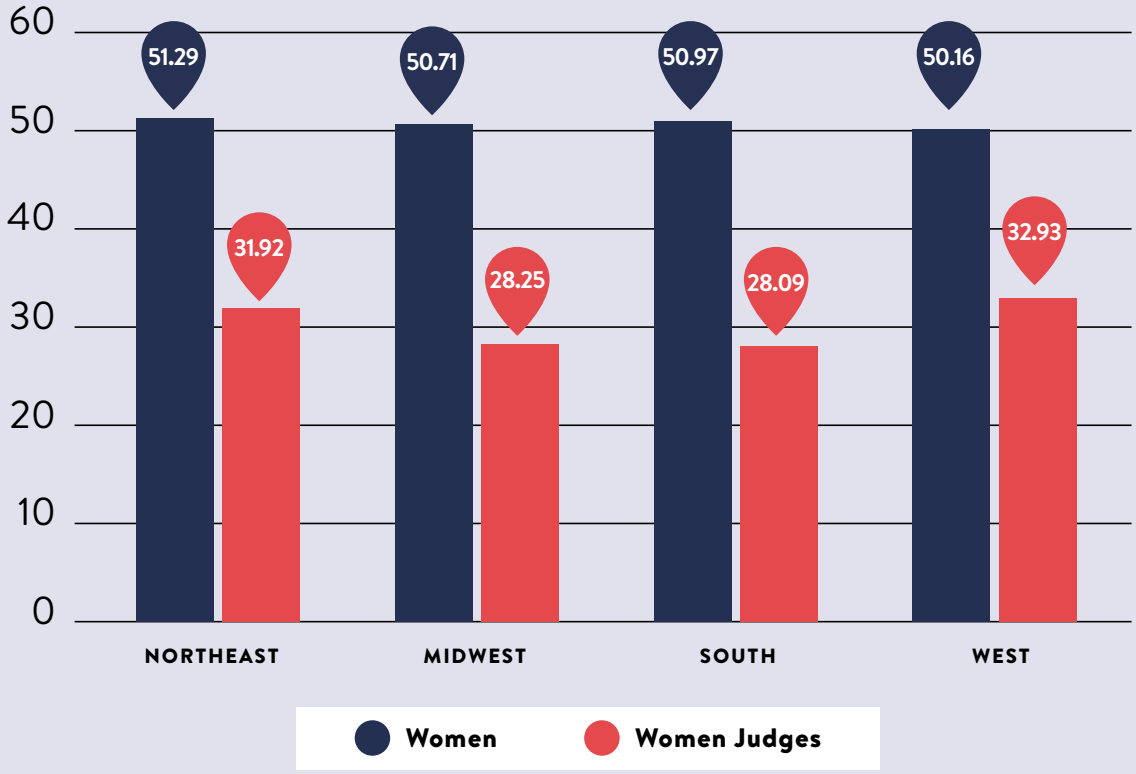
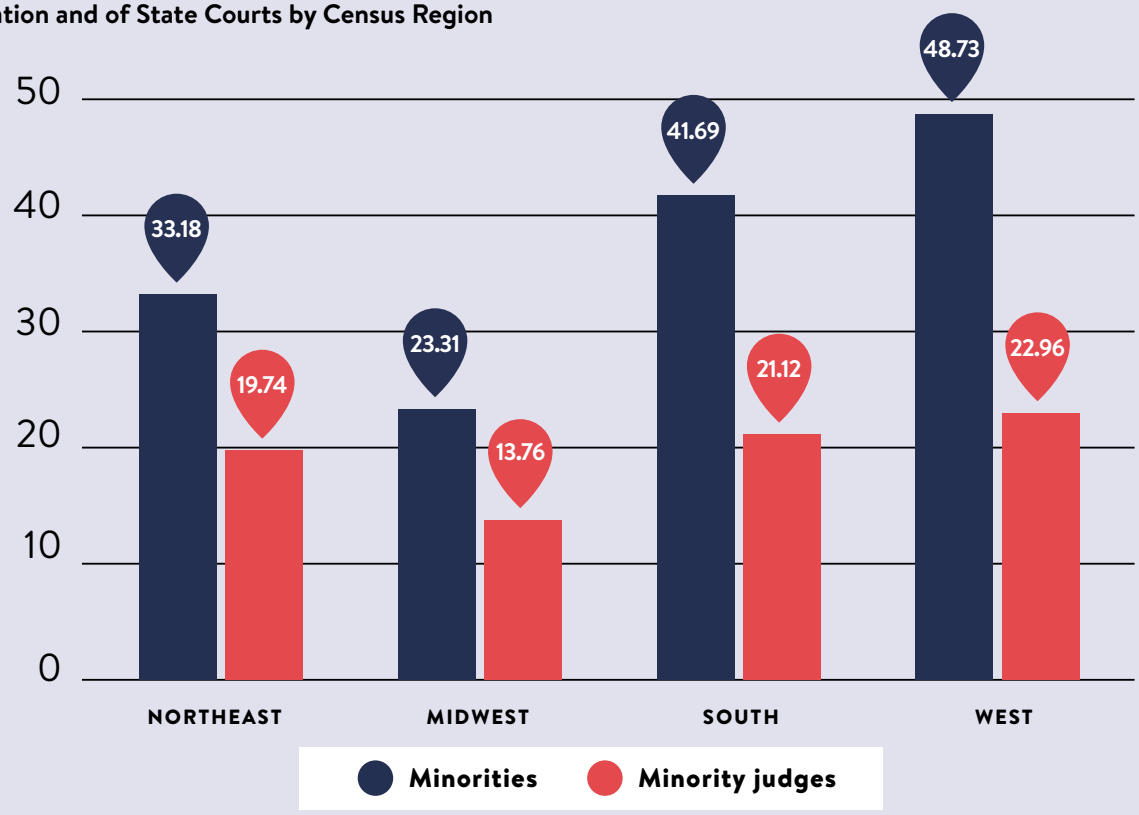


Figure 14. Racial and Ethnic Minorities as a Percentage of the General Population and of State Courts by Census Region



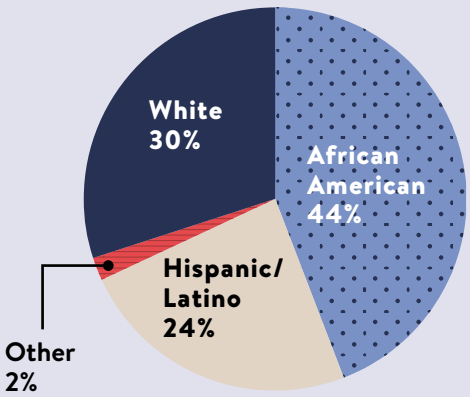
"STATE TRIAL JUDGES HAVE A GREAT DEAL OF AUTHORITY AND DISCRETION OVER CRIMINAL PROSECUTIONS."

CRIMINAL JUSTICE AND RACE

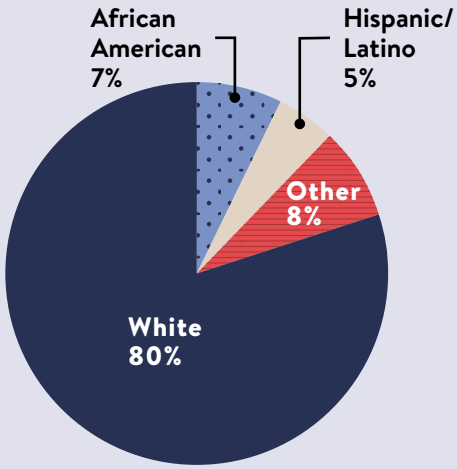
State trial judges have a great deal of authority and discretion over criminal prosecutions. State appellate courts review only a fraction of criminal convictions, and much of that oversight is limited by design and by necessity. Legal doctrines which govern evidentiary, procedural, and substantive rulings require or result in substantial deference to trial judges by using standards of review such as clearly erroneous and abuse of discretion and by limiting reversal to errors which were likely to affect the outcome. Trial judges play central roles in both plea bargaining and sentencing; however, plea bargaining and sentencing are subject to little appellate oversight. Finally, appellate courts lack the capacity to review the large numbers of criminal rulings made by trial judges on a daily basis. Thus, even if appellate courts could closely audit a criminal conviction, they are highly likely to affirm it.

Trial judges are the ultimate authority for almost all criminal defendants. And, those defendants are disproportionately minorities. The Bureau of Justice Statistics estimated that in 2009 in the 75 largest counties, nearly half (44%) of felony defendants were non-Hispanic African Americans and nearly one-quarter (24%) were Hispanic/Latino.[4] We estimate that more than three-quarters of trial judges are white. As recently as May 2016, the U.S. Supreme Court has found unconstitutional jury-selection practices that produce an all-white jury.[5] Yet, the reality is that minority defendants face a nearly all-white trial bench in many states.

DEFENDANTS



TRIAL JUDGES



CONCLUSION

President Barack Obama has emphasized the diversity of his appointments to the federal judiciary, including landmark appointments of people of color and LGBT people. As Christopher Kang, who was in charge of the judicial nomination process for President Obama, explained "when the men and women who deliver justice look more like the communities they serve, there is greater confidence in our justice system overall."[6] We find that state courts do not look like the communities they serve, which has ramifications for the functioning of our judicial system and the rule of law. Our findings are particularly important given the vital role state courts play in our democracy, in our economy, and in our daily lives.

ATTRIBUTION

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ACKNOWLEDGEMENTS

The authors thank our outstanding team of research assistants: Timo Vink and Elizabeth White at the University of Toronto and David Adams, Cyle Catlett, Tracee Clements, David Creasy, Julia Gillespie, Dan Metzger, and Erik Peterson at Vanderbilt University. We also thank Greg Goelzhauser, Lisa Hall, Michael Kang, Eric Lesh, Joanna Shepherd, Jennifer Bennett Shinall, Jason Sowards, and the numerous judges who were willing to provide valuable advice and assistance on this project.

APPENDIX

TABLE A-1. State Trial Court Structure

Single Set of Trial Courts (Unified)	*California, District of Columbia, Illinois, Maine, Minnesota, Vermont*
General and Specialized Trial Courts (Divided)	*Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming*

TABLE A-2. Appellate Court Structure

Two Supreme Courts	*Oklahoma, Texas*
Two Intermediate Appellate Courts	*Alabama, Tennessee*
No intermediate appellate court	*Delaware, District of Columbia, Maine, Montana, New Hampshire, Rhode Island, South Dakota, Vermont, West Virginia, Wyoming*

TABLE A-3. Method of Selection of Trial Judges

One (or both) elected branches select (gubernatorial appointment with legislative confirmation or legislative appointment)	*Delaware, District of Columbia, Maine, Massachusetts, New Jersey, Virginia*
Merit selection (typically a merit commission nominates a panel of judges from which the Governor and/or the legislature selects one)	*Alaska, Arizona*, Colorado, Connecticut, Hawaii, Iowa, Kansas*, Missouri*, Nebraska, New Hampshire, New Mexico, Oklahoma, Rhode Island, South Carolina, Utah, Vermont, Wyoming*
Nonpartisan election	*Arkansas,* ***California, Florida,*** *Georgia, Idaho, Kentucky,* ***Maryland,*** *Michigan, Minnesota, Mississippi, Montana, Nevada, North Carolina, North Dakota, Ohio, Oregon,* ***South Dakota,*** *Washington, West Virginia, Wisconsin*
Partisan election	*Alabama, Illinois,* ***Indiana,*** *Louisiana,* ***New York,*** *Pennsylvania,* ***Tennessee,*** *Texas*

***These states are categorized as merit selection, but elect a minority of their judges (Arizona: non-partisan elections in counties with a general population less than 250,000; Kansas: partisan elections in counties which have not approved merit; Missouri: smaller, non-urban circuits use partisan elections).**

Bolded states choose trial judges using a different method than used for appellate judges.
All categories are based on formal method of initial selection. States vary on how they handle vacancies that occur before a sitting judge completes her term.

TABLE A-4. Method of Selection of Intermediate Appellate Judges*

One (or both) elected branches select	*Massachusetts, New Jersey,* ***New York,***[7] *Virginia*
Merit selection	*Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Indiana, Iowa, Kansas, Maryland, Missouri, Nebraska, New Mexico, Oklahoma, South Carolina, Tennessee**, Utah*
Nonpartisan election	*Arkansas, Georgia, Idaho, Kentucky, Michigan, Minnesota, Mississippi, Nevada, North Carolina, Ohio, Oregon, Washington, Wisconsin*
Partisan election	*Alabama, Illinois, Louisiana, Pennsylvania, Texas*
No intermediate appellate court	*Delaware, District of Columbia, Maine, Montana, New Hampshire, Rhode Island, South Dakota, Vermont, West Virginia, Wyoming*

***North Dakota's intermediate appellate court does not have permanent judges. The state supreme court selects three active or retired judges (or attorneys) to serve on the intermediate appellate court for a term not to exceed one year.**

****Tennessee changed its method of appellate judge selection in January 2015 from merit selection (a nominating commission submitted a list of three nominees to the governor who picked one) to elected branch selection (gubernatorial nomination with legislative confirmation). None of the judges in the State Bench Database were selected under the new method.**

Bolded states **choose intermediate appellate judges by a different method than they use for supreme court judges.**

All categories are based on formal method of initial selection. States vary on how they handle vacancies that occur during a judicial term.

TABLE A-5. Method of Selection of Supreme Court Judges

One (or both) elected branches select	*Delaware, District of Columbia, Maine, Massachusetts, New Jersey, Virginia*
Merit selection	*Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Indiana, Iowa, Kansas, Maryland, Missouri, Nebraska, New Hampshire, New Mexico, New York, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee*, Utah, Vermont, Wyoming*
Nonpartisan election	*Arkansas, Georgia, Idaho, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nevada, North Carolina, North Dakota, Ohio, Oregon, Washington, West Virginia, Wisconsin*
Partisan election	*Alabama, Illinois, Louisiana, Pennsylvania, Texas*

*** Tennessee changed its method of appellate judge selection in January 2015 from merit selection (a nominating commission submitted a list of three nominees to the governor who picked one) to elected branch selection (gubernatorial nomination with legislative confirmation). None of the judges in the State Bench Database were selected under the new method.**

All categories are based on formal method of initial selection. States vary on how they handle vacancies that occur before a sitting judge completes her term.

TABLE A-6. Gender Breakdown of All State Courts (2014)

	Percentage Male	Percentage Female	Total Number
State Appellate Judges	.6659	.3341	1,688
State Trial Judges	.7041	.2959	8,607
All State Court Judges	.6978	.3022	10,295
U.S. Population	.4927	.5073	321,000,000

TABLE A-7. Race/ Ethnicity Breakdown of All State Courts (2014)

	Percentage White Non-Hispanic	Percentage African-American	Percentage Hispanic	Percentage Other Race
State Appellate Judges	.8270	.0794	.0515	.0421
State Trial Judges	.7990	.0708	.0550	.0753
All State Court Judges	.8036	.0722	.0544	.0698
U.S. Population	.6172	.1238	.1766	.0824

TABLE A-8. Race and Gender Breakdown of All State Courts (2014)

	Percentage White Men	Percentage Men of Color	Percentage White Women	Percentage Women of Color
State Appellate Judges	.5705	.0954	.2565	.0776
State Trial Judges	.5804	.1237	.2186	.0773
All State Court Judges	.5787	.1191	.2249	.0773
U.S. Population	.3041	.1886	.3131	.1942

TABLE A-9. Population by Census Regions in the United States[8]

REGION States in region	Population	Percentage of U.S. Population
NORTHEAST *Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont*	56,283,891	17.5%
MIDWEST *Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin*	67,907,403	21.1%
SOUTH *Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia*	121,182,847	37.7%
WEST *Arizona, Alaska, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming*	76,044,679	23.7%

TABLE A-10. Estimated Gender Breakdown of State Court Judges By Region

	Female Judges as a Percentage of All Judges	Women as Percentage of Population	Gavel Gap
Northeast	.3192	.5129	-0.3777
Midwest	.2825	.5071	-0.4429
South	.2809	.5097	-0.4489
West	.3293	.5016	-0.3435

TABLE A-11. Estimated Race and Ethnicity Breakdown of State Court Judges By Region

	Judges of Color as a Percentage of All Judges	People of Color as Percentage of Population	Gavel Gap
Northeast	.1974	.3318	-0.4051
Midwest	.1376	.2331	-.4097
South	.2112	.4169	-.4934
West	.2296	.4873	-0.5288

TABLE A-12. Estimated Gender Representativeness Rank of State Courts

State	Female Judges as a Percentage of All State Judges	Women as a Percentage of State Population	Gavel Gap	Represent-ativeness Rank
Alabama	0.2179	0.5154	-0.5771	37
Alaska	0.2200	0.4743	-0.5362	32
Arizona	0.3141	0.5033	-0.3758	16
Arkansas	0.2407	0.5087	-0.5268	30
California	0.3257	0.5034	-0.3531	13
Colorado	0.3000	0.4975	-0.3970	22
Connecticut	0.3056	0.5122	-0.4034	24
Delaware	0.2500	0.5162	-0.5157	28
District of Columbia	0.4308	0.5256	-0.1804	3
Florida	0.3124	0.5112	-0.3889	21
Georgia	0.2297	0.5121	-0.5514	34
Hawaii	0.3590	0.4941	-0.2735	8

TABLE A-12. Estimated Gender Representativeness Rank of State Courts

State	Female Judges as a Percentage of All State Judges	Women as a Percentage of State Population	Gavel Gap	Represent-ativeness Rank
Idaho	0.1698	0.4992	-0.6599	50
Illinois	0.3050	0.5093	-0.4010	23
Indiana	0.2093	0.5074	-0.5875	40
Iowa	0.2362	0.5034	-0.5307	31
Kansas	0.1818	0.5016	-0.6375	47
Kentucky	0.2778	0.5076	-0.4528	26
Louisiana	0.2883	0.5109	-0.4357	25
Maine	0.3182	0.5104	-0.3765	18
Maryland	0.3966	0.5154	-0.2303	6
Massachusetts	0.3704	0.5151	-0.2810	9
Michigan	0.3307	0.5087	-0.3499	12
Minnesota	0.3946	0.5030	-0.2155	5
Mississippi	0.1765	0.5142	-0.6568	49
Missouri	0.2414	0.5095	-0.5262	29
Montana	0.2449	0.4977	-0.5080	27
Nebraska	0.2239	0.5021	-0.5541	35
Nevada	0.4138	0.4974	-0.1682	2
New Hampshire	0.3333	0.5060	-0.3412	11
New Jersey	0.3199	0.5120	-0.3752	15
New Mexico	0.4078	0.5047	-0.1921	4
New York	0.3219	0.5148	-0.3746	14
North Carolina	0.2155	0.5128	-0.5797	38

TABLE A-12. Estimated Gender Representativeness Rank of State Courts

State	Female Judges as a Percentage of All State Judges	Women as a Percentage of State Population	Gavel Gap	Represent-ativeness Rank
North Dakota	0.2157	0.4875	-0.5575	36
Ohio	0.3149	0.5105	-0.3832	19
Oklahoma	0.2065	0.5049	-0.5909	41
Oregon	0.4432	0.5053	-0.1228	1
Pennsylvania	0.3145	0.5109	-0.3844	20
Rhode Island	0.3214	0.5154	-0.3763	17
South Carolina	0.2131	0.5138	-0.5852	39
South Dakota	0.1957	0.4968	-0.6062	44
Tennessee	0.2037	0.5126	-0.6026	43
Texas	0.3476	0.5036	-0.3097	10
Utah	0.1733	0.4972	-0.6514	48
Vermont	0.2308	0.5071	-0.5449	33
Virginia	0.1895	0.5082	-0.6270	46
Washington	0.3791	0.5001	-0.2419	7
West Virginia	0.1127	0.5061	-0.7774	51
Wisconsin	0.2008	0.5033	-0.6012	42
Wyoming	0.1923	0.4898	-0.6074	45

*The Gender Gavel Gap reflects how closely the estimated percentage of women on the state bench matches the predicted percentage. We predict that each state will have the same percentage of women on the state bench as it has women in its general population. The Gavel Gap is the difference between the predicted percentage and the estimated percentage.

TABLE A-13. Estimated Race and Ethnicity Representativeness Rank of State Courts

State	Judges of Color as a Percentage of All State Judges	People of Color as a Percentage of State Population	Gavel Gap*	Represent-ativeness Rank
Alabama	0.1987	0.3381	-0.4123	21
Alaska	0.0200	0.3806	-0.9475	47
Arizona	0.3194	0.4379	-0.2706	12
Arkansas	0.1204	0.2661	-0.5477	32
California	0.2632	0.6155	-0.5724	33
Colorado	0.1100	0.3101	-0.6453	39
Connecticut	0.2698	0.3118	-0.1345	7
Delaware	0.1071	0.3631	-0.7049	43
District of Columbia	0.5385	0.6416	-0.1607	8
Florida	0.1790	0.4419	-0.5950	35
Georgia	0.1532	0.4566	-0.6646	41
Hawaii	0.7949	0.7703	0.0319	4
Idaho	0.1321	0.1719	-0.2318	11
Illinois	0.2683	0.3771	-0.2884	13
Indiana	0.1163	0.1970	-0.4097	20
Iowa	0.0630	0.1290	-0.5119	28
Kansas	0.1080	0.2324	-0.5355	30
Kentucky	0.0926	0.1463	-0.3673	16
Louisiana	0.2774	0.4067	-0.3180	15
Maine	0.0000	0.0624	-1.0000	48
Maryland	0.3240	0.4738	-0.3161	14
Massachusetts	0.1481	0.2572	-0.4239	23
Michigan	0.1518	0.2419	-0.3727	17

TABLE A-13. Estimated Race and Ethnicity Representativeness Rank of State Courts

State	Judges of Color as a Percentage of All State Judges	People of Color as a Percentage of State Population	Gavel Gap*	Represent-ativeness Rank
Minnesota	0.1472	0.1856	-0.2073	9
Mississippi	0.2647	0.4274	-0.3807	18
Missouri	0.1092	0.1988	-0.4508	25
Montana	0.2041	0.1327	0.5374	1
Nebraska	0.1791	0.1951	-0.0821	6
Nevada	0.1954	0.4850	-0.5971	36
New Hampshire	0.0000	0.0872	-1.0000	39
New Jersey	0.2343	0.4315	-0.4571	27
New Mexico	0.3689	0.6109	-0.3961	19
New York	0.2414	0.4347	-0.4446	24
North Carolina	0.2069	0.3591	-0.4238	22
North Dakota	0.0000	0.1340	-1.0000	50
Ohio	0.0938	0.1989	-0.5286	29
Oklahoma	0.0761	0.3298	-0.7693	46
Oregon	0.0973	0.2296	-0.5763	34
Pennsylvania	0.1215	0.2212	-0.4509	26
Rhode Island	0.0714	0.2546	-0.7194	44
South Carolina	0.1148	0.3615	-0.6825	42
South Dakota	0.2391	0.1696	0.4097	2
Tennessee	0.0926	0.2536	-0.6349	38
Texas	0.2568	0.5647	-0.5451	31
Utah	0.0800	0.2066	-0.6127	37
Vermont	0.0000	0.0647	-1.0000	51

TABLE A-13. Estimated Race and Ethnicity Representativeness Rank of State Courts

State	Judges of Color as a Percentage of All State Judges	People of Color as a Percentage of State Population	Gavel Gap*	Represent-ativeness Rank
Virginia	0.2876	0.3686	-0.2198	10
Washington	0.0995	0.2961	-0.6639	40
West Virginia	0.0845	0.0751	0.1259	3
Wisconsin	0.0492	0.1779	-0.7232	45
Wyoming	0.1538	0.1590	-0.0323	5

*The Race and Ethnicity Gavel Gap reflects how closely the estimated percentage of racial and ethnic minorities on the state bench matches the predicted percentage. We predict that each state will have the same percentage of racial and ethnicity minorities on the state bench as it has racial and ethnic minorities in its general population. The Gavel Gap is the difference between the predicted percentage and the estimated percentage.

TABLE A-14. Combined Race and Ethnicity Representativeness Rank of State Courts

State	Women or Minorities as a Percentage of State Judges	Women or Minorities as a Percentage of State Population	OVERALL Gavel Gap*	Represent-ativeness Rank
Alabama	36%	68%	-47%	32
Alaska	24%	67%	-64%	50
Arizona	54%	73%	-26%	6
Arkansas	33%	64%	-48%	34
California	49%	81%	-39%	23
Colorado	37%	67%	-45%	30
Connecticut	46%	65%	-29%	9
Delaware	29%	70%	-59%	43
District of Columbia	72%	84%	-14%	2

TABLE A-14. Combined Race and Ethnicity Representativeness Rank of State Courts

State	Women or Minorities as a Percentage of State Judges	Women or Minorities as a Percentage of State Population	OVERALL Gavel Gap*	Represent-ativeness Rank
Florida	40%	73%	-45%	29
Georgia	32%	74%	-56%	40
Hawaii	85%	88%	-4%	1
Idaho	28%	60%	-53%	38
Illinois	47%	69%	-31%	12
Indiana	32%	61%	-48%	33
Iowa	29%	57%	-49%	36
Kansas	27%	62%	-57%	42
Kentucky	35%	58%	-40%	25
Louisiana	45%	71%	-37%	17
Maine	32%	54%	-41%	26
Maryland	55%	74%	-26%	7
Massachusetts	44%	64%	-30%	11
Michigan	41%	62%	-34%	15
Minnesota	47%	60%	-21%	5
Mississippi	34%	72%	-53%	39
Missouri	31%	61%	-49%	35
Montana	41%	57%	-29%	8
Nebraska	36%	61%	-41%	27
Nevada	52%	74%	-30%	10
New Hampshire	33%	55%	-39%	24
New Jersey	45%	72%	-37%	18
New Mexico	63%	80%	-21%	4

TABLE A-14. Combined Race and Ethnicity Representativeness Rank of State Courts

State	Women or Minorities as a Percentage of State Judges	Women or Minorities as a Percentage of State Population	OVERALL Gavel Gap*	Represent-ativeness Rank
New York	46%	72%	-37%	16
North Carolina	34%	69%	-52%	37
North Dakota	22%	59%	-64%	48
Ohio	36%	60%	-41%	28
Oklahoma	27%	67%	-60%	46
Oregon	50%	63%	-21%	3
Pennsylvania	39%	61%	-37%	19
Rhode Island	39%	63%	-38%	20
South Carolina	28%	70%	-60%	47
South Dakota	39%	60%	-34%	14
Tennessee	26%	64%	-60%	45
Texas	48%	79%	-39%	22
Utah	21%	62%	-66%	51
Vermont	23%	54%	-57%	41
Virginia	42%	69%	-39%	21
Washington	44%	66%	-33%	13
West Virginia	20%	54%	-64%	49
Wisconsin	24%	59%	-59%	44
Wyoming	31%	58%	-47%	31

SOURCES

[1] Court Statistics Project, Examining the Work of State Courts: An Overview of 2013 State Court Caseloads, http://www.courtstatistics.org/~/media/Microsites/Files/CSP/EWSC_CSP_2015.ashx (a joint project of the Conference of State Court Administrators and the National Center for State Courts).

[2] If a state uses a different method for selecting supreme court judges and intermediate appellate court judges, the appellate judge map reflects the state's method of selecting supreme court judges.

[3] United States Census Bureau, American Community Survey, https://www.census.gov/programs-surveys/acs/news/data-releases.html.

[4] Bureau of Justice Statistics, Felony Defendants in Large Urban Counties, 2009 Statistical Tables http://www.bjs.gov/content/pub/pdf/fdluc09.pdf

[5] ***Foster v. Chatman***, No. 14-8349 (May 23, 2016).

[6] Christopher Kang, "Editorial: President Obama, Nominate the First Asian-American Supreme Court Justice," NBC News, Feb. 14, 2016, http://www.nbcnews.com/news/asian-america/editorial-president-obama-nominate-first-asian-american-supreme-court-justice-n518496.

[7] The governor of New York appoints judges to its intermediate appellate court (Appellate Division) from the general jurisdiction trial courts (supreme court). The governor appoints judges to the state court of last resort (Court of Appeals) from a nominating commission's list and with the consent of the state senate.

[8] United States Census Bureau, Regions and Divisions, http://www.census.gov/econ/census/help/geography/regions_and_divisions.html; United States Census Bureau, United States Population Growth by Region, https://www.census.gov/popclock/data_tables.php?component=growth.

FINAL REPORT OF THE 1ST BENCH DIVERSITY PROJECT

Final Report of the 1st Bench Diversity Project

The public's trust and confidence in the justice system is enhanced when they see that the judges deciding their cases resembles the vast racial, ethnic, and cultural groups that make up American society. Likewise, a diverse judicial branch expands an individual judge's perspective in making decisions that impact a diverse population.[1]

Introduction

The 1st Bench Diversity Project was joint effort of the Arizona Supreme Court Commission on Minorities in the Judiciary and the Administrative Offices of the Courts. The Commission is a standing committee of the Arizona Judicial Council. One of the mandates of the Commission on Minorities is to "*enrich the diversity of the judiciary to reflect the communities it serves*." In order to move forward with that goal, the Commission determined that, as a starting point, it needed more comprehensive data to assess the current status of the Arizona judiciary in terms of reflecting the rich diversity of our state's population.

As the project began, it quickly became clear that comprehensive data about judicial diversity of our state courts (or any state court) was not readily available or collected in a systematized fashion. The lack of comprehensive data is certainly not unique to Arizona.

Although state judges are public servants, little is known about them. Unlike their counterparts on the federal courts, much of the information is non-public, and in many instances, not even collected in a systematic way…

This lack of information is especially significant because judges' backgrounds have important implications for the work of courts. The characteristics of those who sit in judgment can affect the internal workings of courts as well as the external perception of courts and judges. The background of judges can influence how they make decisions and impact the public's acceptance of those decisions. We need to know more about state judges.[2]

Nor was the lack of easily accessible data that surprising. The Arizona judiciary covers a wide spectrum of courts whose judicial officers are selected in a variety of ways. At the community level, we have Municipal Courts and Justice Courts. The administration

[1] American Bar Association Standing Committee on Diversity in the Judiciary

[2] George, Tracy E. and Yoon, Albert H., The Gavel Gap: Who Sits in Judgment on State Courts, American Constitutional Society, 2016

of those courts varies from jurisdiction to jurisdiction. Depending on the particular community, some judicial officers are elected; others are appointed. All Justices of the Peace are elected. All municipal judges are appointed except Yuma City which elects its judge. In some local courts, the selection of judicial officers requires consideration of diversity. In others, consideration of diversity is prohibited.

The Superior Court is Arizona's trial court of general jurisdiction. Cases are presided over by Superior Court Judges and Superior Court Commissioners. Superior Court Judges in Maricopa, Pima and Pinal Counties are appointed by what we call "merit selection." In those counties, the Governor appoints Superior Court Judges from a list provided by a Judicial Nominating Commission.[3] Judges in the remaining counties are elected by direct vote of the people. Commissioners, who also serve as trial judges, are selected locally by the Presiding Judge of that county.

Judges in Appellate Courts are appointed by the Governor from a list provided by a Judicial Nominating Commission. These Courts include the Arizona Court of Appeals Division I and Division II as well as the Arizona Supreme Court.

The Project decided that the best way of gathering comprehensive data was a direct survey of the judges themselves. That way the Project could gather standardized and reliable information relating directly to the Project's needs. The Project was also able to ask for information not otherwise be available from public sources.

The Supreme Court Administrative Office of the Court (AOC) was extremely cooperative and agreed to help create and administer the survey. The survey was designed to be a snapshot of the diversity of the Arizona Judiciary. The survey also looked for some correlations that might be useful for future Commission or AOC needs.

As with any snapshot, the survey has its limitations. The membership of Arizona's judiciary is not static. Judges enter and judges leave the judicial system over the course of any given year for a variety of reasons – term expiration, retirement, promotion, and creation of new positions. Thus, the survey represents the diversity of the judiciary at a given point in time only. As would be expected, some data has changed since the survey was taken.[4]

As far as we know, this survey began the first comprehensive look at the Arizona Judiciary for diversity purposes. It may well be the first such look for any state court

[3] Judges appointed by the Governor serve fixed terms. Judges are later subject to a retention election. In a retention election judges face a straight up or down "yes"/"no" vote. There are opposing candidates. Article VI, Section 42 Arizona Constitution.

[4] See, e.g. FN 20 below.

system.[5] The ten question survey was designed by University of Arizona law students[6] with the help of Commission members Paul Bennett, John Vivian and Hon. Penny Willrich. The survey was revised and administered by the Administrative Offices of the Courts under the supervision of Deputy Director and Commission member Mike Baumstark and with the help of Court Services Specialist Susan Pickard. Chief Justice Bales approved the survey and encouraged judges to complete it.

The survey was sent by email to all judges of record in the State of Arizona at the end of August, 2015. AOC collected and collated responses to ensure anonymity. AOC received 412 valid responses out of 506 verified emails for a return rate of 81.4%.

The comparison data was compiled by Deputy Director Baumstark, law students Briar Martin and Samantha Sanchez, Susan Pickard and Paul Bennett. This report consists of the following:

1. Selected results of the survey;
2. Data comparisons of the Arizona judiciary with other relevant populations with analysis;
3. Conclusions and suggestions for further steps.

[5] At the time, the only other published source of information was a far less comprehensive survey conducted by the former American Judicature Society in 2009. The AJS survey was narrower in scope and did not cover the full spectrum of judicial officers. It was also taken from a relatively small sample. The 2009 data is now housed in the National Center for State Courts and can be viewed at website http://www.judicialselection.us/judicial_selection/bench_diversity/index.cfm?state=AZ

Since then, researchers from Vanderbilt University and University of Toronto gathered information concerning over 10,000 judges nationwide. They collected data from a variety of secondary sources such as state government webpages, press releases, and printed directories; professional association publications; academic journals; newspapers; judges' official campaign websites; judicial directories; and confidential telephone interviews with judges and lawyers. Their study looked at 191 Arizona Superior Court and Appellate Judges but did not appear to include Commissioners and lower courts. They did not seek any correlating information.
See George, Tracy E. and Yoon, Albert H., *The Gavel Gap: Who Sits in Judgment on State Courts*, American Constitutional Society, 2016

[6] The law students were Briar Martin, Joe Baker and Junjuan Song.

The Bench Diversity Survey

The Bench diversity survey was sent to over 500 Arizona judges at all levels of court – municipal, county, state and appellate. The survey asked about diversity in two ways: First, the survey used a forced answer format asking respondents to place themselves within the U.S. Department of Labor categories that are also used by the State of Arizona. That question allows for direct comparison with census data and State Bar data which use very similar categories. For the remainder of this report, the USDOL categories will be called categorical diversity. Survey takers were asked the following USDOL question:

> ***"4. Please select the one category that most closely applies to you.***
>
> *White (Not Hispanic or Latino)*
> *Hispanic or Latino*
> *Black or African American*
> *Asian*
> *American Indian/Native Alaskan*
> *Native Hawaiian/Pacific Islander*[7]
> *Two or more races (Not Hispanic or Latino)*
> *Unknown*
> *Decline to Answer*

2. Participants were also asked the open ended question:

> ***"5. Irrespective of the categories in question 4, how would you describe yourself for diversity purposes?"***

The remaining questions relevant to this report were designed for comparison purposes and asked about:

Level of Court
Age (within 5 year ranges)
Gender
Age when first became a judicial officer
Prior Judicial experience
Selection Process – e.g. appointed, elected

[7] For analysis purposes, the report combines Asian and Native Hawaiian/Pacific Islander into one category as the numbers are so small.

Executive Summary

Below is a summary of the Project's analysis:

1. **The report makes no assumptions about the 18.6 percent of judges who did not complete the survey. Nor does it make any assumptions about the small number of judges who chose not to answer the specific categorical diversity question.**

Some of the responses of the latter group suggest that the choice not to answer is not a random choice. For example, more than nine out of ten judges who declined to answer categorical diversity questions are male. Similarly 70.7% percent of lawyers who decline to answer similar State Bar membership diversity questions are male.

Therefore, this report does not attempt to extrapolate anything from the non-answering group. All of the data and conclusions should be evaluated as if they contain the prefatory language: ***"For the judges who responded . . . "***

2. **The traditional federal diversity categories do not necessarily correspond to a judge's personal conceptions of diversity**.

When asked the open ended question, many judges answered with a very different sense of identity than the U.S. Department of Labor categories.

Irish-Catholic
Grandmother
Gay/lesbian
Jewish
Hair challenged
Elderly
Low socio-economic status

For these judges, diversity does not necessarily equate with pre-determined USDOL categories. That is important information for both the Commission and state diversity mandates. In Arizona, diversity is consistently defined broadly in terms of "reflecting the community" served by the courts without regard to particular categories.

3. **The Arizona State Court Judiciary does not reflect the categorical diversity of the state's population.**

Whites are significantly over-represented on the bench. Traditional minorities are significantly under-represented.

4. **Compared to the state's population, Hispanics, in particular, are under-represented in the judiciary.**

5. **Instead of reflecting the population as a whole, the diversity of the judiciary more closely mirrors the diversity of the State Bar.**

Selection of white judges slightly under-represents the proportion of white lawyers. The same applies to Native American judges. The proportion of Hispanics and African Americans in the judiciary actually exceeds their proportion within the community of licensed lawyers. Asians and persons of two or more races are under-represented.

6. **Different levels of court have demonstratively different diversity. Local appointment plays a significant role in diversity outcomes.**

7. **There is more diversity in judicial offices that do not require a law degree.**

8. **When adjusted for population, merit selection of Superior Court Judges produces slightly better diversity outcomes for categorical diversity than selection by local election.**

9. **Women are under-represented across the judiciary**. **However, among locally appointed Superior Court Commissioners, women are over-represented.**

10. **The population of women in the judiciary is more diverse than that of men.**

11. **However, whites are significantly over-represented among locally appointed female Superior Court Commissioners.**

12. **Diversity prohibitions and diversity mandates do not necessarily change diversity outcomes.**

13. There is much more data to be gathered and analyzed. This data includes:

a. more data over time. Are there meaningful differences over time?
b. more information about the selection process. Does it matter who is on selection commissions or who is making appointments.
c. more information about the prior experience of our judges. What are the pathways to becoming a judicial officer?
d. what can be done to increase the categorical diversity of the State Bar?
e. can data give us a better understanding of what we mean by diversity?

Full Report

I. Introduction

Judicial diversity has long been an Arizona value. The Arizona Constitution and the Code of Judicial Administration formally recognize that judges should reflect the diversity of the communities they serve.[8] [9] The State Constitution specifically mandate that appointed judges reflect the diversity of the state's population. This process, called *merit selection*, requires that diversity be considered not only for the judges themselves but for the committees that recommend nominees to the Governor.[10]

The current version of merit selection was the result of a statewide constitutional referendum in 1992. One of the specific justifications for merit selection was increased diversity. The Secretary of State's voter description for the 1992 referendum states:

> *Now, 18 years after merit selection was enacted, members of the public, the judiciary, the bar and the legislature have concluded that improvements need to be made in order to ensure that the judiciary more accurately reflects the diversity of each county's population.*[11]

Nearly twenty-five years later, Chief Justice Bales reiterated merit selection's commitment to diversity when he said:

> *[M]erit selection has resulted in the appointment of competent, impartial judges who are diverse in their personal and professional backgrounds*.[12]

However, not all of Arizona' judges are chosen by merit selection. Nor is the same consideration for diversity uniform throughout the state. For example, until June, 2016, the Phoenix Municipal Court Selection Advisory Board was mandated:

> *To submit its recommendations for candidates for appointment or reappointment to the office of judge of the City Court or Chief Presiding Judge,* ***without regard for race, religion, political affiliation or sex of the candidate*** *(emphasis added).*[13]

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[8] Article VI, Section 37, Arizona Constitution *"In making the appointment, the governor shall consider the diversity of the state's population"*

[9] Section 1-107, Arizona Code of Judicial Administration

[10] Article VI, Sections 36, 37, Arizona Constitution

[11] Voter pamphlet from Secretary of State, October, 1992

[12] Arizona Republic, September 14, 2014

[13] Phoenix City Code 2-96 Judicial Selection Advisory Board in effect at the time of the survey. The City of Phoenix has since reversed itself. The code now reads similarly to the Arizona Constitution: "*When making*

II. The Survey

The Project's survey provides a first look at assessing how the Arizona Judiciary reflects the population it serves. The survey was sent by email to all judges of record in the State of Arizona at the end of August, 2015. AOC collected and collated responses to ensure anonymity. AOC received 412 valid responses out of 506 verified emails for a return rate of 81.4%.

Table 1 shows the distribution of responses by level of court.

Table 1 Judicial Position N=412	Percent
Superior Court Judge	37.6
Municipal Court Judge	18.8
Superior Court Commissioner	16.9
Justice of the Peace	15.2
Appellate Judge or Justice	6.3
Full-time Judge Pro Tempore	4.6
Hearing Officer	0.2
No answer	0.5
Total	100

Throughout the report, we will use tables such as Table 1 above.

The survey information was then disseminated to the Project in a collated format that enabled questions to be correlated to other questions. The collated format also protected the confidentiality of participating judges. The Project chose to focus on correlations between diversity and level of court, gender, and selection process. The format of the categorical diversity question also allowed the Project to compare data with the US Census, the State Bar, and the diversity of the State's law schools.

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recommendations for judicial office, the Board shall consider the diversity of the City's population; however, the primary consideration shall be merit." Ordinance No. G-6163, eff. 6-17-2016

As with any data collection, the survey has its limitations. It is a snapshot of a given point in time. As with any snapshot, the results of the survey may be different than if it were taken a month later. The Arizona's judiciary is not static. Judges enter and judges leave the judicial system over the course of any given year for a variety of reasons – term expiration, retirement, promotion, and creation of new positions. Thus, the survey represents the diversity of the judiciary only at the point in which it was given. Nonetheless, given the high response rate and the large number of responders, the survey provides useful information.

This report makes no assumptions about the 18.6 percent of judges who did not complete the survey. Nor does the report make any assumptions about the 12 judges who chose not to answer the categorical diversity question.[14] Some of the answers of the latter group suggest that the choice not to answer is not a random choice. For example, more than 90% of judges who declined to answer categorical diversity questions identified themselves as male. Similarly 70.7% percent of lawyers who decline to answer State Bar membership diversity questions are male.

The survey used a forced answer format asking respondents to place themselves within the U.S. Department of Labor categories that are also used by the State of Arizona. That question allows for direct comparison with census data which uses very similar categories. For the remainder of this report, the USDOL categories will be called categorical diversity. Survey takers were asked the USDOL question:

> ***"4. Please select the one category that most closely applies to you.***
>
> *White (Not Hispanic or Latino)*
> *Hispanic or Latino*
> *Black or African American*
> *Asian*
> *American Indian/Native Alaskan*
> *Native Hawaiian/Pacific Islander*[15]
> *Two or more races (Not Hispanic or Latino)*
> *Unknown*
> *Decline to Answer*

[14] We made no assumptions except for a single judge who declined to answer the categorical question but then identified with a category in the open-ended diversity question.

[15] Because the numbers are relatively small, the report combines Asian and Native Hawaiian/Pacific Islander into one category.

2. Participants were also asked the open ended question:

> ***"5. Irrespective of the categories in question 4, how would you describe yourself for diversity purposes?"***

The remaining questions relevant to this report were designed for comparison purposes and asked about:

Level of Court
Age (within 5 year ranges)
Length of time admitted to practice
Gender
Age when first became a judicial officer
Prior Judicial experience
Selection Process – e.g. appointed, elected

This report focusses most of the analysis on three correlations with categorical diversity: level of court, gender, and selection process. We also compared categorical diversity responses to U.S. Census data for Arizona, to diversity information from the State Bar of Arizona, and to diversity information from the State's law schools. Lastly, we did a limited correlation to prior judicial experience only as it relates to the selection process.

III. What do we mean by diversity?

There is no universal definition of diversity. When we use the term diversity, we are often not referring to the same concepts. In our survey, the traditional federal diversity categories did not necessarily correspond to a judge's personal conception of diversity. When asked the open ended question, many judges answered with a very different sense of identity than the U.S. Department of Labor categories.

Irish-Catholic
Grandmother
Gay/lesbian
Jewish
Hair challenged
Elderly
Low socio-economic status

Especially with respect to judicial selection, diversity can also mean ideological diversity, geographic diversity, or type of law experience.

For many of the survey judges, diversity did not necessarily equate with pre-determined categories. Those other conceptions of diversity mattered enough to those judges to answer the two survey diversity questions differently. The difference in perspective raises an important question of whether our own diverse constructions of diversity influence any qualitative assessments about whether or not the judiciary reflects the community it serves. Nonetheless, for survey purposes, categorical diversity allows us to speak a common language when comparing the judiciary to specific populations.

The Phoenix Municipal Code also raises the question of whether another kind of diversity should be reflected in the judicial diversity discussions – that is, political party diversity. Prior to June, 2016, the Phoenix municipal judicial selection process prohibited consideration of party affiliation.[16] Yet the statewide merit selection application specifically asks for party affiliations. And nominating commissions must reflect partisan diversity when submitting names to the Governor.[17] The instant survey did not gather data on political affiliation. The different selection processes raise a question of whether political diversity should be part of any discussion.[18]

Then, there is a simple matter of perception. Does the word *diversity* equate with the notion of *minority*? In a 2011 report, *Improving Judicial Diversity*, from the Brennan Center for Justice at New York University School of Law, a member of the Arizona Appellate Nominating Commission was quoted as saying:

> *. . . in Arizona, Latinos are not really considered to be a minority group. He said that Latinos have always been a part of Arizona's history, and as such, are fully integrated into all of its communities.*[19]

This report addresses Arizona's Hispanic communities as an important category and documents significant disparities as set forth below.

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[16] Former Phoenix City Code 2-96 since amended by City Ordinance G-6163

[17] ARS 12-3151. For both trial and appellate judges, the same rule applies: "If the commission submits five or more nominees, not more than sixty per cent of the nominees shall be from the same political party. If the commission submits fewer than five nominees, no more than two nominees may be from the same political party."

[18] To be clear, this Project's analysis is limited to categorical and gender diversity.

[19] Torres-Spelliscy, Chase, Greenman, *Improving Judicial Diversity*, Brennan Center for Justice (2010) 13

IV. The Arizona State Court Judiciary does not reflect the categorical diversity of the state's population. Whites are significantly over-represented on the bench. Minorities are under-represented. African-American Judges follow a unique pattern.

Table 2 below summarizes the categorical diversity of Arizona Judges as compared to the state population and to the diversity of the State Bar.

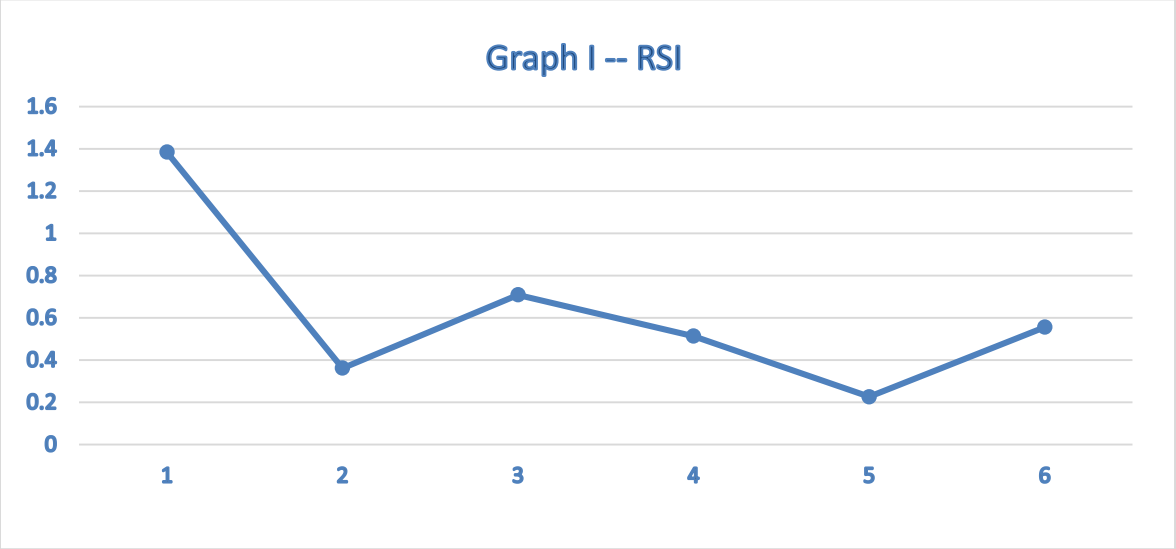
Table 2 Diversity Comparisons	White	Hispanic	Black/AA	Asian/PI	American Indian	Two or More Races
State of Arizona[1] [1] 2015 US Census Estimate N=6,828,065	55.8%	30.7%	4.8%	3.7%	5.3%	2.7%
State Bar of Arizona[2] [2] As of 11/15/15 N=10,422 59.2% of the Bar	82.3%	7.8%	2.4%	3.0%	1.3%	3.1%
Judiciary N=412	77.2%	11.1%	3.4%	1.9%	1.2%	1.5%

In order to better illustrate the significance of different percentages, the project uses a ratio that we call a Relative Selection Index or RSI. The RSI assigns a numerical value to the difference between the expected occurrence of judicial selection for a particular group based on population and the actual occurrence. The RSI is computed by dividing the actual percentage by the expected percentage. An RSI of 1.0 would indicate that the actual selection of judges from a population matches the expected percentage. An RSI of greater than 1.0 means that the group is over-represented. An RSI of less than 1.0 means that the group is under-represented.

Table 3 illustrates the RSI comparing the overall judiciary to the population it serves.

Table 3 RSI Diversity Comparisons	White	Hispanic	Black/AA	Asian/PI	American Indian	Two or More Races
State of Arizona[1] [1] 2015 US Census Estimate N=6,828,065	55.8%	30.7%	4.8%	3.7%	5.3%	2.7%
Judiciary RSI N=412	1.38	.361	.708	.513	.226	.555

The RSI indicates that whites are demonstratively over-represented in the overall judiciary and that all other groups are under-represented. The greatest under-representation within the judiciary occurs with the state's two largest minority groups: Hispanics and American Indians. Graph I illustrates the RSI differences:



Whites Hispanic Black/AA Asian/PI Am. Indian Two or More

Table 4 breaks down judicial diversity by level of court.

Table 4 Diversity By Level of Court	White	Hispanic	Black/AA	American Indian	Asian/PI	Two or More
State of Arizona [20] N= 6,828,065	55.8%	30.7%	4.8%	5.3%	3.7%	2.7%
Lower Courts/Pro Tem N=160	68.8%	19.4%	5%	2.5%	0.6%	2.5%
Superior Court Commissioners N=67	94%	0	4.5%	0	1.5%	0
Superior Court Judges N=147	84.3%	8.1%	1.4%	0.68%	4.1%	0.68%
Appellate Courts N=25	84%	12%	4%	0	0	0

Table 4 shows two indicators. First, generally speaking, local community courts are more diverse than the higher courts of record. Second, at all levels of court, whites are over-represented and most other groups are under-represented. Table 5 and Graph 2 confirm using the RSI.

Again, the RSI illustrates the disparities. At all levels of court, the RSI for white judges is significantly higher and the RSI for Hispanics is significantly lower. It is striking that at the time of this survey, the RSI for Superior Court Commissioners was zero. At the time

[20] United State Census Bureau at http://www.census.gov/quickfacts/table/RHI725215/04

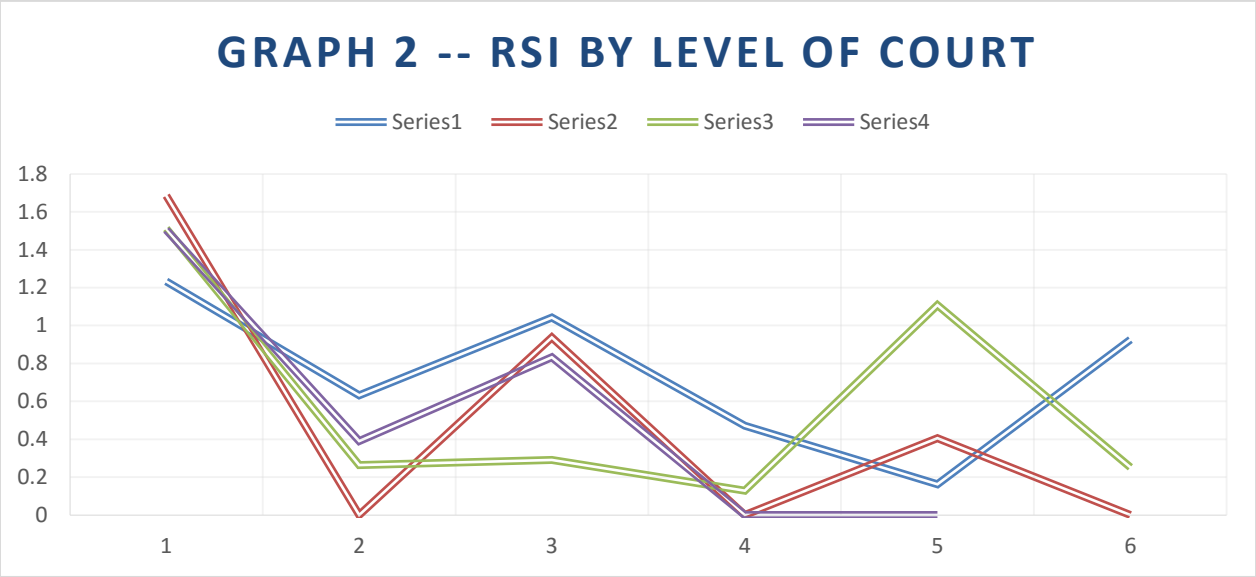
of the survey, there were no Hispanic judges among the 67 locally appointed commissioners in the entire State of Arizona.

Table 5 shows the RSI values for the respective courts.

Table 5 **RSI Diversity By Level of Court**	**White**	**Hispanic**	**Black/AA**	**American Indian**	**Asian/PI**	**Two or More**
Lower Courts/Pro Tem N=160	1.23	.632	1.04	.471	.162	.925
Superior Court Commissioners N=67	1.68	0	.935	0	.405	0
Superior Court Judges N=147	1.51	.263	.291	.128	1.11	.251
Appellate Courts N=25	1.50	.390	.833	0	0	0

The RSI shows the anomaly that African Americans are close to proportionally represented on all benches –except as Superior Court Judges where they are significantly under-represented. In nearly every court, the RSI for African-Americans is closer to the expected 1.0 than that for every other minority. The RSI is nearly 1.0 for Superior Court Commissioner and closer to 1 than all other minorities at the Appellate level. Yet among Superior Court Judges, the RSI for African Americans is among the lowest of any group.

Graph 2 illustrates the RSI values in graphic comparison.



Whites *Hispanic* *Black/AA* *Asian/PI* *Am. Indian* *Two or More*

Series 1 Lower Courts Series 2 Commissioners Series 3 Superior Court Series 4 Appellate Courts

V. At all levels of court, Hispanics are significantly under-represented in the Arizona Judiciary.

According to U.S. Census estimates for 2015, Hispanics or Latinos make up 30.7% of the Arizona population or over two million people.[21] Despite being Arizona's largest minority, the RSI values for Hispanics is significantly under 1.0 at every level of court no matter how judges are selected.

Perhaps most disturbing is that the RSI values are lowest across the Superior Court bench. The Superior Court is the trial court for all felonies, divorces, child custody disputes and child support. The Superior Court is also the court of general civil and equity jurisdiction throughout the state.

As seen in Table 6, the RSI for Hispanic judges is extremely low within the Superior Court – especially as compared to the RSI for white judges. The combined RSI for white judges is 1.56 – significantly above the 1.0 expected value. The combined RSI for Hispanic Judges is 0.182 – significantly below the 1.0 value.

[21] United State Census Bureau at http://www.census.gov/quickfacts/table/RHI725215/04

Table 6 RSI in Superior Court	White	Hispanic
Superior Court Commissioners N=67	1.68	0
Superior Court Judges N=147	1.51	.263
Combined Superior Court Judicial Officers N=214	1.56	.182

VI. The diversity of the bench much more closely tracks the diversity of the State Bar than the diversity of the general population.

Compared to the diversity of the State Bar, the selection of judges is closer to the population of lawyers than to the State's population**.** Selection of white judges slightly under-represents the overall proportion of white lawyers. The same applies to Native American judges. The proportion of Hispanics and African Americans in the judiciary actually exceeds their proportion within the community of licensed lawyers – although not the community at large. Asians and persons of two or more races are under-represented.

The State Bar is not overly diverse. Comparing the State Bar to the general population produces RSI numbers that do not reflect the diversity of the population served by lawyers.

Table 7 compares the State judiciary to the population of the State Bar of Arizona at the time of the survey by percentage of populations:

Table 7 Comparison to State Bar Membership	White	Hispanic	Black/AA	Asian/PI	American Indian	Two or More
State Bar of Arizona[2] [2] As of 11/15/15 N=10,422 (59.2% of the Bar)	82.3%	7.8%	2.4%	3.0%	1.3%	3.1%
Overall Judiciary N=412	77.2%	11.1%	3.4%	1.9%	1.2%	1.5%
Lower Courts N=160	68.8%	19.4%	5%	2.5%	0.6%	2.5%
Superior Court Commissioners N=57	94%	0	4.5%	0	1.5%	
Superior Court Judges N=167	84.3%	8.1%	1.4%	0.68%	4.1%	0.68%
Appellate Court Judges N=25	84%	12%	4%	0	0	0

Table 8 shows the RSI values of the Judiciary when compared to the State Bar.

Table 8 RSI Comparison of Judiciary to State Bar Membership	White	Hispanic	Black/AA	Asian/PI	American Indian	Two or More
Overall Judiciary N=412	.938	1.42	1.41	.633	.923	.484
Lower Courts N=160	.836	2.487	2.083	.833	.461	.806
Superior Court Commissioners N= 57	1.14	0	1.875	0	1.15	0
Superior Court Judges N=167	1.02	1.04	.583	.227	3.15	.219
Appellate Court Judges N=25	1.02	1.54	1.67	0	0	0

A look at RSI shows numbers more consistently approaching the expected value of 1.0. The numbers also show that several minorities are actually over-represented in a few categories as compared to the Bar as a whole --although the numbers are so small that it would be hard to draw conclusions.

Nonetheless, the State Bar is not representative of the categorical diversity of the State's population

Table 9 compares the State Bar to the population of Arizona

Table 9 RSI Diversity of the State Bar	White	Hispanic	Black/AA	American Indian	Asian/PI	Two or More
State of Arizona [22] N= 6,828,065	55.8%	30.7%	4.8%	5.3%	3.7%	2.7%
State Bar of Arizona	82.3%	7.8%	2.4%	3.0%	1.3%	3.1%
RSI	1.47	.254	.500	.566	.351	1.15

The diversity of the judiciary, on the whole, aligns with the diversity of the State Bar. That alignment signals that the pool of potential candidates may be a most important factor in judicial diversity. For most courts, the judiciary is chosen from the pool of licensed lawyers. Since the population of lawyers does not reflect the community at large, the pool of candidates does not reflect the community. True judicial diversity becomes a broader challenge than improving the selection process alone. The challenge may be to increase the diversity of those eligible for selection.

That is not to say that the selection process itself cannot be improved – especially in places where disparities are more pronounced. The survey identified two such areas – the selection of Commissioners and African-American Superior Court judges. In those categories, the data demonstrates that the selection process can influence diversity. Those two areas will be examined below.

In a similar vein, the survey shows that there is more diversity in courts where judges are not required to be lawyers. Not requiring a law degree broadens the pool of

[22] United State Census Bureau http://www.census.gov/quickfacts/table/RHI725215/04

available candidates. The net effect of the more diverse pool may be one explanation why lower courts are more diverse.

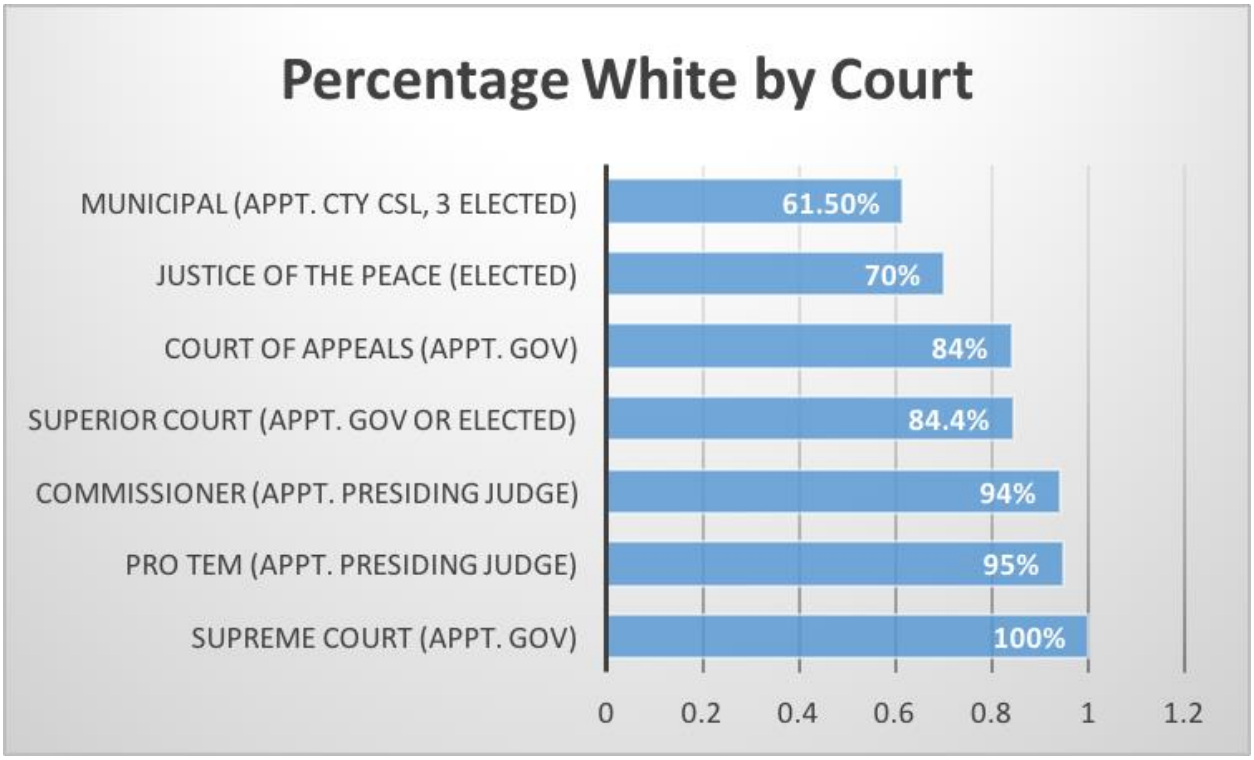
VII. Different courts have demonstratively different diversity.

a. Local appointment by a presiding judge resulted in less diversity.

b. Lower courts are more diverse.

A look back at Tables 4, 5 and 7 shows significant differences in diversity among different courts. This is more apparent when the data is looked at strictly from the percentage of white judges as opposed to the larger category of minority judges.

Table 10 shows the percentage of white judges by court.[23]



[23] For the first 104 years since statehood, no minority judge had been appointed to the Arizona Supreme Court. That drought ended on November 28, 2017 when Governor Ducey appointed John R. Lopez as the state's first Hispanic Justice.

One anomaly is that the RSI for white judges is the highest in locally appointed courts. The RSI for locally appointed white commissioners and locally appointed pro tem judges is the highest for any judicial group.

Table 11 below shows the RSI for locally appointed white judges compared to minority judges by level of court.

Table 11 **RSI for locally appointed judges**	**White RSI**	**Minority RSI**
Superior Court Commissioners (Locally appointed)	1.68	.063
Locally appointed Pro Tem	1.70	.052
Locally appointed lower Courts	1.16	.791

In one sense, the locally appointed data is somewhat surprising. Local appointments are most likely the place where the appointing authority has both the flexibility and the continuity of appointments that might be expected to enhance diversity. As will be discussed in Section IX and X, local appointment of commissioners has established gender equality but a rather extreme disparity in categorical diversity.

Courts in which judicial officers are not required to have a law degree are the most diverse. The RSI of minority judges in Justice Courts – where a law degree is not required -- is higher than in courts requiring a law degree. While there are a number of factors that might contribute to the greater diversity, it is hard to ignore that a potentially more diverse pool of candidates plays a noticeable role in increased diversity.

VIII. When adjusted for population, merit selection of Superior Court Judges produces slightly better diversity outcomes for categorical diversity than selection by local election.

Merit selection of judges has resulted in slightly better diversity than in counties in which judges are elected. Table 12 compares the diversity percentages and RSI for merit selection and election of Superior Court Judges. The RSI is adjusted for population differences among the counties.

Table 12 Diversity of Superior Court Judges	White	Hispanic	Black/AA	Asian/PI	American Indian	Two or More races
% Appointed Judges	82 %	8.5 %	1.7 %	5.1 %	.09 %	.09 %
RSI Appointed Judges	1.47	.369	.309	1.24	.272	.303
% Elected	90 %	6.7 &	3.3 %	0 %	0 %	3.3 %
RSI Elected Judges	1.63	.246	0	0 %	0 %	1.51

The RSI for white judges is slightly closer to the 1.0 value under merit selection than when judges are elected. Merit selection also shows somewhat broader diversity across the board. Hispanics, however, are under-represented under both systems as are all other non-whites – except the "two or more" category in the rural counties.

What Table 12 does not show is that Native Americans make up 14% of the rural counties where Superior Court judges are elected.[24] Despite the fact that Native Americans make up one out of every seven persons in the election counties, there are no Native American judges. Similarly, African-Americans make up 5.5 % of the urban counties. Yet only two African-Americans have been appointed Superior Court Judges.

[24] United State Census Bureau http://www.census.gov/quickfacts/table/RHI725215/04

There are several systemic reasons why greater diversity may be more likely under the current merit selection system. First, under the merit selection system, the Nominating Commissions and the Governor are constitutionally required to consider diversity. In an election county, while the voters are free to consider whatever they want, there is no similar mandate.

Another difference is that both the merit selection Nominating Commissions and the Governor recommend and appoint a number of judges over a given time period. Both the Governor and Commission are free to compare current applicants to recent appointments. They each have the ability to look back to recent past appointments and choose the next applicant based on considerations of diversity or balance. For example, the governor might choose an attorney with a family law background when the last three selections had criminal law credentials. Similarly, the governor could choose diversity from among the categorical groups.

The electorate has no such option. In election counties, voters choose judges by judicial divisions. The voter may choose one candidate only in each division rather than select from a group of candidates or have a second or third choice later in the year.

The election process limits diversity choice in one other way. In the most recent Arizona Superior Court elections in November, 2016, there were 17 different Superior Court divisions on the ballot.[25] In each division, the candidate ran unopposed. The electorate had no diversity choice.

Political scientists have long noted that winner-take-all single elections tend to favor majorities – although the research focuses mainly on political majorities.

> *"Single-member districts produce a winner-takes all allocation of seats, and the electoral rules display dramatic majoritarian biases."* [26]
>
> *"By design, a winner-take-all voting system represents majority constituencies to the detriment of minority constituencies"* [27]

Of course, merit selection does not guarantee diversity nor do elections negate diversity.

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[25] There was a primary election in Graham County in September, 2016. But there was no opposition on the general election ballot. https://ballotpedia.org/Arizona_local_judicial_elections,_2016#Candidates

[26] Calvo, Ernesto and Rodden, Jonathan, *The Achilles Heel of Plurality Systems: Geography and Representation in Multiparty Democracies, Vol. 59* American Journal of Political Science, p. 789, 2015

[27] Hill, Stephen, *Fixing Elections: The Failure of America's Winner-Take-All Politics,* Vol. 91 National Civic Review, p. 193, Summer 2002

IX. Women are under-represented in the overall judiciary and in nearly every category. However, among locally appointed Superior Court Commissioners, there are more women than men.

Women make up approximately one-half of the state's population. However, women have been selected for only 37.2 % of all judges. Similar to categorical diversity, the percentages do not represent the community served by judges but correspond, instead, to the percentage of women lawyers.

However, among locally appointed Commissioners in the Superior Court, women judges outnumber men 60.8 % to 39.2 %.

Table 13 shows the percentage of judges in each category by gender.

Table 13 Judges by Gender	Male	Female
State Bar	64.8	35.2
Overall	62.8 %	37.2
Lower Courts/Pro Tem	64 %	36 %
Commissioners	39.2%	60.8%
Superior Court Judges	69.5	30.5
Appellate	76..9	23.1

Gender is one area in which we have some additional information over time for Superior Court judges. This information is based on studies by The American Bench.[28]

[28] The American Bench: Judges of the Nation, 15th Edition, 2006

Table 14 shows the percentage of female Superior Court judges over the last 10 years.

Table 14 **Gender of Superior Court Judges**	**2006*** ***Source: The American Bench**	**2015**** ****Source: Survey**	**2016** ***** Source Administrative Offices of the Courts**
Male	72.7%	69.2%	68.4%
Female	27.3%	30.8%	31.6%

The data suggests some improvement in gender equality over the last decade. The big anomaly is the appointment of female commissioners. Commissioners are locally appointed to Superior Court by the Presiding Judge in each county. The Presiding Judges appear to have made a concerted effort to appoint female judges.

X. Superior Court Commissioners are disproportionately white.

Tables 15 shows that Presiding Judges are appointing mostly whites to the bench – male and female – in larger proportions than in any other part of the judiciary. At the time of the survey, over 9 out of 10 Commissioners were white; there were no Hispanic Commissioners. While there is progress towards gender equality for Commissioners, there has been a step backwards in categorical diversity.

Table 15 illustrates the diversity of Commissioners

Table 15 Commissioners	White	Hispanic	Black/AA	Asian	American Indian	Two or more Races
Female	90 %	0 %	7.3 %	2.4 %	0 %	0 %
Male	100 %	0 %	0 %	0 %	0 %	0 %
All Commissioners	93.8 %	0 %	4.6 %	1.5 %	0 %	0 %

XI. The population of women judges is more diverse than that of men.

Even with the over-representation of white women Commissioners, women in the judiciary are more diverse than men.

Table 16 illustrates diversity by gender.

Table 16 Judiciary By Gender	White	Hispanic	Black/AA	Asian/PI	Native American	Two or more races
Overall	77.25 %	11.10%	3.4 %	2.0 %	1.2 %	1.5 %
Female	74.3 %	15.8 %	3.9 %	1.9 %	1.9 %	1.9 %
Male	82.9 %	9 %	3.3 %	2 %	.4 %	1.2 %

XII. Diversity prohibitions and diversity mandates do not necessarily change diversity outcomes.

At the time of the survey, the Phoenix City Code prohibited consideration of both categorical diversity and political party. At the same time, the Arizona Constitution mandated consideration of both diversity and political parties. One might assume that the City Code prohibition would make diversity more difficult and that the Constitutional mandate would make diversity easier.

The data suggests otherwise. The Phoenix Municipal Court was more diverse than the judiciary under merit selection despite the opposite legal requirements.

Table 17 compares diversity for under the respective prohibition and mandate for Phoenix and Merit Selection.

Table 17 **Comparison** Merit Selection and Phoenix Municipal Court	**White**	**Hispanic**	**Black/AA**	**Native American**	**Asian/PI**	**Two or More**
Merit Selection Superior Court	82 %	8.5 %	1.7 %	5.1 %	.09 %	.09 %
RSI Merit Selection Superior Court	1.51	.263	.291	.128	1.11	.251
Merit Selection Appellate	84 %	12 %	4%	0	0	0
RSI Appellate	1.50	.390	.833	0	0	0
Phoenix Municipal Court	63.6 %	22.7 %	13.6 %	0	0	0
RSI Phoenix Municipal Court	1.13	.744	2.20	0	0	0

XIII. Conclusions and next steps

1. The data suggests that one way to increase diversity is to increase the diversity of the pool of potential applicants. The most obvious way to increase the pool is to increase the diversity of the State Bar. We need to study ways in which the State Bar can be more reflective of the community it serves.

   One interesting observation is that the three Arizona Law Schools have more diverse student bodies than the State Bar. Note that the law schools have an additional category identifying foreign students.

Table 18 shows diversity of each law school as reported to the American Bar Association.

Table 18 Arizona Law Schools[29]	White	Hispanic	Black/AA	Asian/PI	Native American	Two or More Races	Non-Resident Aliens
U of A	63.2%	9.1%	3.3%	2.2%	3%	6.6%	11.1%
ASU	68.4%	11.1%	1.6%	4.0%	3.2%	3.5%	5.0%
Arizona Summit	48.9%	17%	18.7%	5.8%	2.9%	0.3%	1%

[29] As disclosed on the law schools' websites.

The two state law schools are under a Constitutional prohibition from considering categorical diversity in both admissions and in hiring.

> "This state **shall not** grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting."[30]

The Constitutional prohibition directly contradicts the Constitutional diversity mandate for selection of judges. Apparently, the State wants a diverse judiciary but makes it more difficult to have a diverse pipeline to the State Bar through its State law schools. Arizona Summit is not restricted by the prohibition as it is a private school.

One positive note to the pipeline is that the University of Arizona's new undergraduate law degree may result in increased applications to law schools in the state. The undergraduate degree program has over 400 students. Less than one-half of the undergraduate law students are white (47.8%) and more than 35% are Hispanic. There is also some hope that the new availability of the GRE test in lieu of the LSAT may promote diversity as it is a more accessible entrance exam.[31]

In any event, we need to further study and implement actions designed to increase the diversity of the Bar if we want to increase the diversity of the judiciary.

2. Increasing the potential pool is only one step. The anomaly of Superior Court Commissioners' diversity demonstrates that the selection process needs to be further studied. We need to understand why Commissioners are the only group with gender equality but with exceptionally low categorical diversity. Something in the selection process is skewing categorical diversity.

Similarly, we need to study the lack of African-American Judges in the Superior Court. Why are there so few African-Americans in Superior Court but not in the other courts? Again, is there something in the process that we should try to understand?

3. We need to repeat the survey (with some adjustments) so that we have data over time. Snapshots are useful. But they are not as useful as data that can show trends.

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[30] Arizona Constitution, Article 2, Section 36 A

[31] *Without LSAT Requirement, U. of Arizona Trains Nontraditional Law Students*, Law.com, October 10, 2016 at http://www.law.com/sites/almstaff/2016/10/10/without-lsat-requirement-u-of-arizona-trains-nontraditional-law-students/?cmp=share_email&slreturn=20170209183622

4. We need to gather information about the people who choose nominees – especially Nominating Committees and Selection Advisory Boards. The current survey did not address those people.

5. Lastly we need to better understand the immediate pipeline. The survey showed that nearly 60% of judges had no prior judicial experience. Only one in five Superior Court judges had been a Superior Court Commissioner. The initial survey did not identify the type of non-judicial experience. The next survey needs to modify those questions to provide better information about the pipeline.

ARIZONA MERIT SELECTION
CURRENT BENCH STATISTICS

Supreme Court

% Female	% Democrat	% Republican	% Other	% Minority
14%	14%	71%	14%	14%

Court of Appeals

% Female	% Democrat	% Republican	% Other	% Minority
15%	40%	60%	0%	20%

Maricopa County

% Female	% Democrat	% Republican	% Other	% Minority
39%	30%	60%	9%	11%

Pima County

% Female	% Democrat	% Republican	% Other	% Minority
33%	27%	70%	3%	17%

Pinal County

% Female	% Democrat	% Republican	% Other	% Minority
20%	Unknown	Unknown	Unknown	0%

Updated 1-18-17

CURRENT BENCH STATISTICS

COURT	# OF JUDGES	FEMALE	MALE	DEMOCRAT	REPUBLICAN	OTHER	MINORITY
Supreme	7	1	6	1	5	1	1
COA Div I	14	3	11	6	8	0	1
COA Div II	6	0	6	2	4	0	3
Maricopa County	96	37	59	29	58	9	11
Pima County	30	10	20	9	20	1	5
Pinal County	10	2	8	Unknown	Unknown	Unknown	0

Updated 11-18-17

ALLIANCE FOR JUSTICE

BROADENING THE BENCH:
Professional Diversity and Judicial Nominations

March 18, 2016

A report by
Alliance for Justice
11 Dupont Circle NW, Second Floor
Washington, DC 20036 | www.afj.org

About Alliance for Justice

Alliance for Justice is a national association of over 100 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society. AFJ works to ensure that the federal judiciary advances core constitutional values, preserves human rights and unfettered access to the courts, and adheres to the even-handed administration of justice for all Americans. It is the leading expert on the legal framework for nonprofit advocacy efforts, providing definitive information, resources, and technical assistance that encourages organizations and their funding partners to fully exercise their right to be active participants in the democratic process.

For more information on this report, contact AFJ's Washington headquarters.

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I. Introduction: Professional Diversity and the Federal Judiciary

Through his first seven years in office, President Obama has dramatically improved the demographic diversity of the federal judiciary. He has already nominated more than twice as many women (164) than did President George W. Bush in his entire eight years (71). Forty-two percent of Obama's judicial nominees have been women, while the president with the next best record, President Bill Clinton, nominated just 29% women. Obama has also nominated more than twice as many non-white judges than President George W. Bush, and has named 14 LGBT nominees—far more than any other president. Only one openly gay nominee had been confirmed to a lifetime judgeship before President Obama took office. Without question, this historic effort to make the judiciary reflect the diversity of the American people has been essential to creating fair courts.

But a truly diverse judiciary is one that not only reflects the personal demographic diversity of the nation, but is also comprised of judges who have been advocates for clients across the socio-economic spectrum, seeking justice on behalf of everyday Americans. As this report details, the federal judiciary is currently lacking in judges with experience (a) working for public interest organizations; (b) as public defenders or indigent criminal defense attorneys; and (c) representing individual clients—like employees, consumers, or personal injury plaintiffs—in private practice. While President Obama has prioritized the issue of professional diversity in the federal courts of late, more work still needs to be done. The gains achieved under the current administration must be furthered by future presidents. A failure to do so would risk losing important voices of justice on the federal bench.

***

Before he became the first African American Supreme Court Justice, Thurgood Marshall had a groundbreaking legal career—one spent fighting for civil rights, racial equality, and fairness in the criminal justice system. When he retired from the Court, his colleagues reflected on his remarkable experience as an advocate at the height of the civil rights movement, and how his unique perspective influenced the Justices' deliberations. According to Justice Byron White,

> *Thurgood brought to the conference table years of experience in an area that was of vital importance to our work, experience that none of us could claim to match. . . . He characteristically would tell us things that we knew but would rather forget; and he told us much that we did not know due to the limitations of our own experience.*[1]

Similarly, Justice Sandra Day O'Connor explained that:

> *Although all of us come to the Court with our own personal histories and experiences, Justice Marshall brought a specific perspective. His was the eye of a lawyer who saw the deepest wounds in the social fabric and used the law to heal them. His was the ear of a counselor who understood the vulnerabilities of the accused and established safeguards for their protection. . . . At oral arguments and conference meetings, in opinions and dissents, Justice Marshall imparted not only his legal acumen but also his life experiences. . . .* [2]

[1] Byron White, *A Tribute to Thurgood Marshall*, 44 STAN. L. REV. 1215, 1215-16 (1992).
[2] Sandra Day O'Connor, *A Tribute to Thurgood Marshall*, 44 STAN. L. REV. 1215, 1217 (1992).

Each recognized that Justice Marshall brought valuable diversity to the Supreme Court not just because of his race or his personal life experiences, but specifically because of his unique *professional* background as a practicing lawyer. The insights he acquired in the course of representing the poorest, least powerful, and most marginalized members of society were often essential to the other Justices' ability to understand all angles of the cases before them.

More broadly, these observations speak to the importance of professional diversity among all our federal judges. First, increasing professional diversity enhances judicial decision making. Like all human beings, judges are the product of their background and experiences, including their professional lives before taking the bench. When a judge decides whether a claim is "plausible,"[3] or whether a witness is "credible," or whether police officers, when they stopped and searched a pedestrian, acted "reasonably,"[4] her determination is necessarily influenced by the nature of her work as a lawyer up to that point. Thus, when judges come from all corners of the legal profession—and particularly when they've worked in the public interest, representing those whose voices are otherwise rarely heard—they are equipped to understand the views of each litigant before them, and to render more informed, thorough decisions.

Professional diversity is also essential to maintain the public trust in our justice system. When individuals suffer injustice—when pay is less because of gender, or a manufacturing plant contaminates an entire town's drinking water, or police systematically use excessive and lethal force against racial minorities—they turn to the federal courts to protect their rights. And when they walk through the courthouse doors, they need to feel like they'll get a fair shake—that their arguments will be seriously considered and understood, and their claims resolved without bias or favor. But if the judiciary is devoid of judges with prior experience representing civil rights plaintiffs or otherwise advocating for the public interest, it will appear as though the deck is stacked in advance, and public confidence in the courts—the belief that all litigants truly can have their day in court—will erode.[5]

Of course, broadening the bench must begin with judicial nominations. Throughout President Obama's administration, the rampant obstruction of judicial nominees has narrowed the field of potential candidates who could reasonably expect to be confirmed, and disfavored lawyers with public interest backgrounds. This obstruction has only increased since the Republicans took control of the Senate in January. The result is that, of President Obama's judicial nominees:[6]

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[3] *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (holding that civil complaints must set forth a "plausible" claim to relief to survive a motion to dismiss, and recognizing that, "[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense").

[4] *See Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) ("the ultimate touchstone of the Fourth Amendment is 'reasonableness'").

[5] *See* Sherrilyn A. Ifill, *Judicial Diversity*, 13 GREEN BAG 2D 45, 48-49 (2009) (arguing that diversity is important both to ensure the "public's confidence in the judiciary," and because it "enriches judicial decisionmaking"), *available at* http://www.greenbag.org/v13n1/v13n1_ifill.pdf.

[6] The professional history used in this report is taken from Senate Judiciary Committee questionnaires, *available at* http://www.judiciary.senate.gov/nominations/judicial. The data compiled includes those judges whose questionnaires were posted as of March 14, 2016, for a total of 364 nominees (64 circuit court and 300 district court nominees). Additionally, while work done *pro bono* may be instructive and commendable, our report does not consider *pro bono* work done in the course of employment in its analysis, unless a nominee was employed specifically as a volunteer attorney.

- Only 11—fewer than four percent—have worked as lawyers at public interest organizations;
- Only 17 have significant experience representing workers in labor and employment disputes;
- Prosecutors outnumber public defenders (state or federal) by three to one;
- Only five out of 64 circuit nominees have worked as a public defender (state or federal), compared to 24 who have worked as prosecutors;
- Approximately 86% have been either corporate attorneys or prosecutors (or both).

This consequence of increasingly hostile confirmation proceedings was recently noted by Supreme Court Justice Ruth Bader Ginsburg, whose own background adds to the professional diversity of the Supreme Court. Before taking the bench, Justice Ginsburg was a tenured law professor and fought for gender equality as director of the Women's Rights Project at the American Civil Liberties Union. At the ACLU, she argued six gender equality cases before the Supreme Court, winning five. Justice Ginsburg was confirmed to the Court in 1993, and in 2011 she told a group of law students that, "[t]oday, my ACLU connection would probably disqualify me."[7]

Consider the implications if Justice Ginsburg is right. On the Court, Justice Ginsburg's professional experience as an advocate for equal rights is reflected in several landmark decisions. For example, she wrote the majority opinion in *United States v. Virginia*,[8] which opened the doors of the Virginia Military Institute to female students. She also dissented in *Ledbetter v. Goodyear Tire & Rubber Co.*,[9] which rejected a Title VII claim of gender pay inequity because the plaintiff, Lilly Ledbetter, brought her claim too late. Justice Ginsburg chastised the Court for being out of "tune with the realities of the workplace," and asked Congress to clarify the statute so that future victims of workplace gender discrimination would have a reasonable opportunity to seek justice. In response, Congress passed the Lilly Ledbetter Fair Pay Act of 2009, the first bill signed into law by President Obama.

As with Justice Marshall, then, Justice Ginsburg's experience as a public interest advocate has proved invaluable to the work of the Supreme Court.

All those interested in nominations should be more focused on filling judicial vacancies with nominees who—like Justices Marshall and Ginsburg—have professional experience using the law to seek justice for those most in need.

II. Current Statistics: Professional Diversity and President Obama's Judicial Nominees

This section sets forth comprehensive professional diversity statistics for President Obama's judicial nominations, divided into five parts: (A) civil public interest and public service advocacy; (B) criminal law; (C) private practice; (D) state and federal judges; and (E) overall professional diversity statistics.

In preparing this report, Alliance for Justice exhaustively compiled the professional backgrounds of each of President Obama's Article III nominees. While other studies have focused on a nominee's

[7] Jamie Stengle, *Ruth Bader Ginsburg Speaks at SMU*, Deseret News (Aug. 29, 2011), *available at* http://www.deseretnews.com/article/700174796/Ruth-Bader-Ginsburg-speaks-at-SMU.html.
[8] 518 U.S. 515 (1996).
[9] 550 U.S. 618 (2007).

employment immediately prior to nomination, AFJ has counted the entire professional history of each nominee. Therefore, a nominee may be counted several times: as a corporate and non-corporate lawyer, as a public defender and as a prosecutor, as a government lawyer and as a corporate lawyer, and so on. This methodology gives the fullest, most accurate portrait of the professional experience each nominee brings to the federal judiciary.

A. Civil Public Interest and Public Service Advocacy

Lawyers with experience as public interest attorneys, public servants, and educators bring valuable perspectives to the bench.

Only eleven of President Obama's district court nominees have worked at public interest organizations, and of those, five worked at organizations that were primarily international in focus. Three district court nominees—Ed Chen with the American Civil Liberties Union (ACLU), Fernando Olguin with the Mexican American Legal Defense and Educational Fund (MALDEF), and Victor Bolden with the NAACP Legal Defense and Educational Fund—have worked at civil rights organizations that litigate to protect the constitutional and legal rights of clients. Two circuit court nominees have been public interest attorneys, one of whom is Cornelia "Nina" Pillard, confirmed in December 2013 to the U.S. Court of Appeals for the D.C. Circuit.

Spotlight on Diversity

Cornelia "Nina" Pillard
D.C. Circuit Court of Appeals

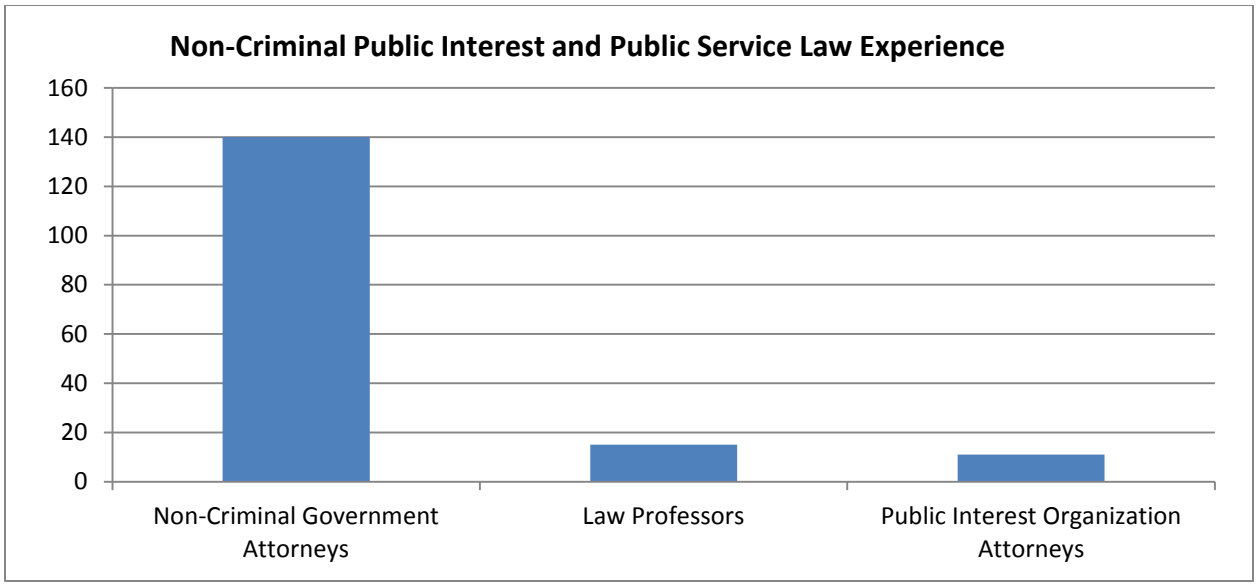
Nina Pillard's career exemplifies a long record as a public interest and public service attorney. After a one-year fellowship with the American Civil Liberties Union, she joined the NAACP Legal Defense and Education Fund, representing victims of discrimination and other civil rights abuses. Since 1994, Pillard has been a professor at Georgetown University Law Center, an Assistant to the Solicitor General, and Deputy Assistant Attorney General in the Office of Legal Counsel.

The American Bar Association rated Pillard unanimously well qualified—its highest possible rating.

Additionally, relatively few legal academics or full professors (excluding adjuncts) have been nominated to district or circuit courts. More of President Obama's nominees have had experience as non-criminal state and federal government attorneys.

In sum, President Obama has nominated:

- 9 (3.0%) district court and 2 (3.1%) circuit court judges who have worked for public interest organizations, for an overall total of 3.0% of all nominees.
- 110 (36.7%) district court and 30 (46.9%) circuit court judges who have served as civil government attorneys, for an overall total of 38.5% of all nominees.
- 5 (1.7%) district court and 10 (15.6%) circuit court judges who have been law professors, for an overall total of 4.1% of all nominees.



B. Criminal Law

Of President Obama's nominees who have practiced criminal law, far more have been prosecutors than criminal defense attorneys, including private lawyers and public defenders.

126 district court nominees have served as federal or state prosecutors, while 89 have been private criminal defense attorneys (including white collar, indigent, and mixed-income clients) or public defenders. Furthermore, prosecutors outnumber public defenders by a margin of more than two and a half to one among district court nominees, and more than four to one among circuit court nominees.

Private practice attorneys also include attorneys who specialize in or practice criminal defense, with clients ranging from indigent individuals to white collar defendants. President Obama has nominated judges like L. Felipe Restrepo and Rosemary Marquez—both public defenders before entering private practice as civil rights and criminal defense lawyers—who have a long record of advocating for indigent clients in public and private practice.

Spotlight on Diversity

Judge L. Felipe "Phil" Restrepo

Third Circuit Court of Appeals

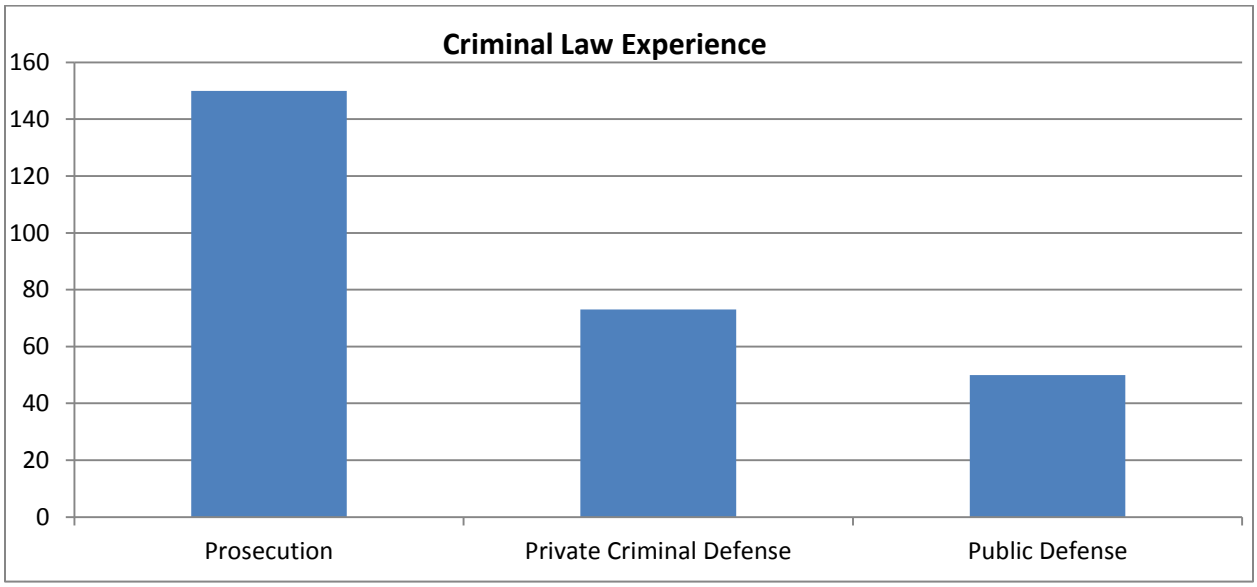
Phil Restrepo's legal career before joining the federal bench as a magistrate judge focused on representing indigent clients, first as a Philadelphia public defender, then as a Federal Defender, and finally as a private litigator.

Judge Restrepo's commitment to indigent criminal defense continued when he entered private practice, and expanded to include plaintiff civil rights litigation on behalf of indigent Philadelphians who were victims of police and government misconduct.

Among President Obama's judicial nominees:

- 126 out of 300 district court nominees (42.0%) have been state or federal prosecutors. Forty-five (15.0%) have been state or federal public defenders, while 62 (20.7%) have been private criminal defense attorneys.

- 24 out of 64 circuit court nominees (37.5%) have been prosecutors. Eleven (17.2%) have been private criminal defense attorneys, and five (7.8%) have been public defenders. Only two nominees, Jane Kelly and L. Felipe Restrepo, have been federal defenders.



C. Private Practice

"Private practice" is a broad category that includes different types of law and clientele. In compiling this data, AFJ separated private practice litigators into those attorneys who have had primarily corporate client practices and those who have had either mixed client practices or primarily non-corporate clients. A nominee may be counted in each category, if the practice changed over his or her career.

Notable private practice statistics:

- 70% of President Obama's district court nominees have practiced with primarily corporate or business clients, while 30% have practiced with either primarily non-corporate clients, or a mix of corporate and non-corporate clients.
- 73% of President Obama's circuit court nominees have practiced with primarily corporate or business clients, while 13% have practiced on behalf of non-corporate or a mix of clients.
- Overall, this imbalance between corporate and non-corporate lawyers is 72% versus 28%, in favor of corporate attorneys.

Spotlight on Diversity

Judge John "Jack" McConnell

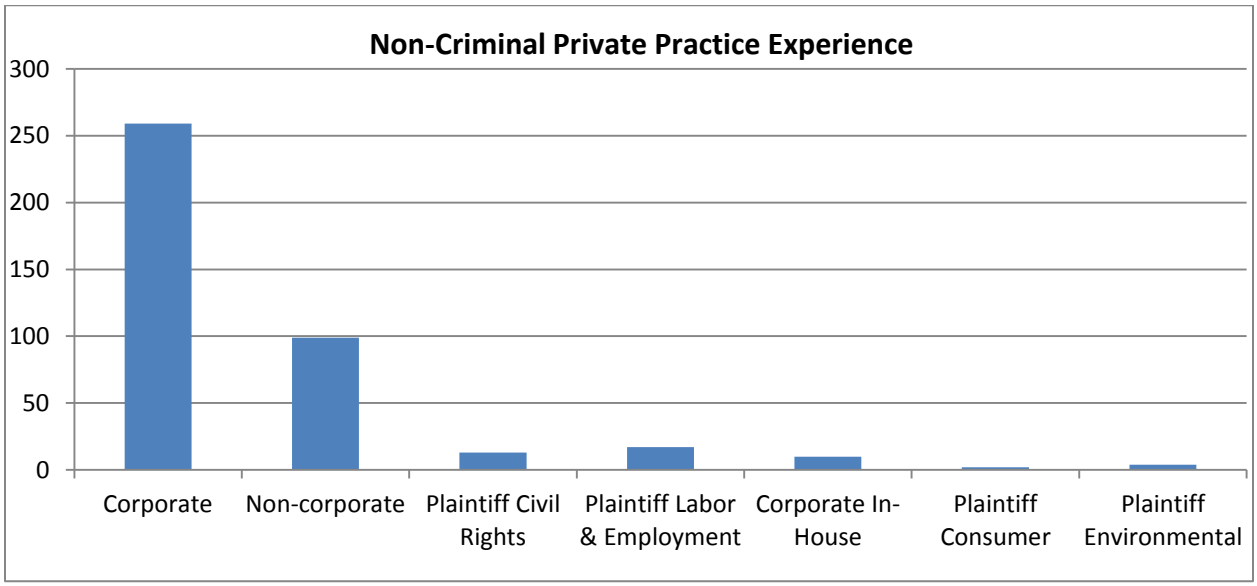
District of Rhode Island

Following a judicial clerkship, Jack McConnell spent his entire legal career as an advocate for victims of corporate malfeasance. He practiced consumer protection and environmental law, heading the Environmental Practice of Motley Rice LLC and leading historic litigation against the tobacco industry. McConnell drafted and helped negotiate a $264 billion settlement that covered 46 states and ushered in altered marketing practices, funding for victims of tobacco-related diseases, and reimbursed state governments for health expenses of tobacco victims.

McConnell's Senate confirmation vote was a watershed: 11 Republicans joined with Democrats in breaking a Chamber of Commerce-backed filibuster, reaffirming the standard that district court nominees with support from both home-state senators are entitled to a yes-or-no vote on the Senate floor.

- Of all 364 circuit and district court nominees included in this report, 17 have significant experience or specialization representing workers in labor and employment disputes. Five have experience representing environmental plaintiffs, while 34 have practiced in plaintiff tort or personal injury litigation.

In the chart below, plaintiff categories are a subset of non-corporate private practice, while in-house corporate attorneys are a subset of corporate attorneys—all are included in the overall numbers for the respective larger categories, but are also shown separately to give a more detailed view of nominees' backgrounds.



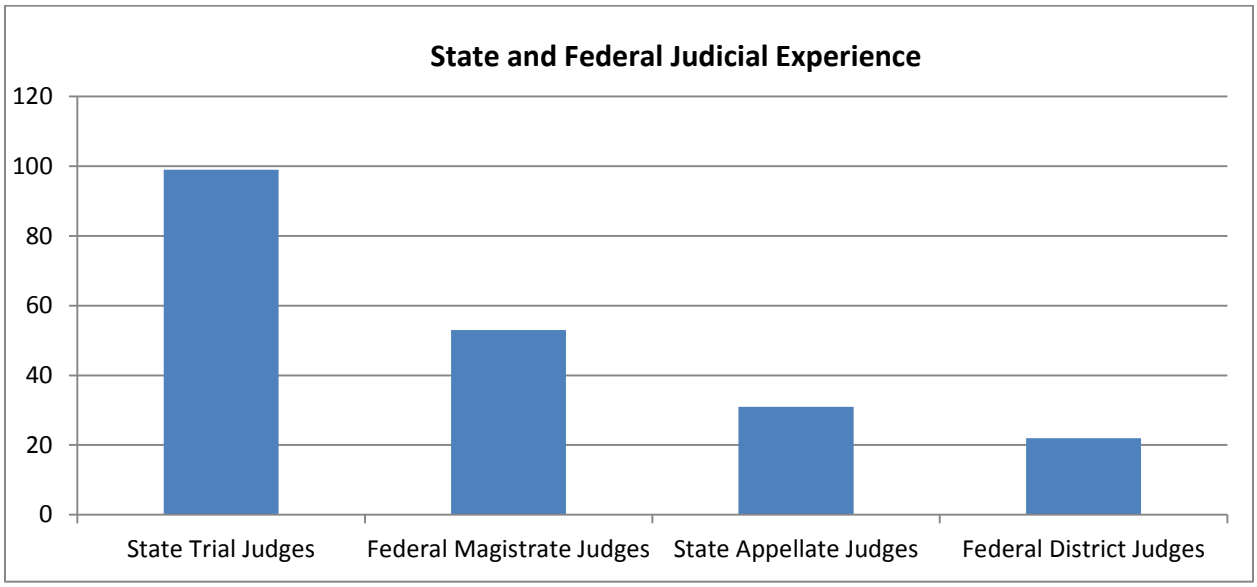
D. State and Federal Judges

State and federal judiciaries have been a major source of President Obama's judicial nominees. These candidates have come from state trial and appellate benches, as well as federal magistrate and district court judgeships. While less numerous than corporate attorneys, the number of President Obama's nominees with judicial experience prior to nomination is slightly higher than those who have been criminal prosecutors, which makes state and federal judges the second most prevalent professional background of President Obama's nominations.

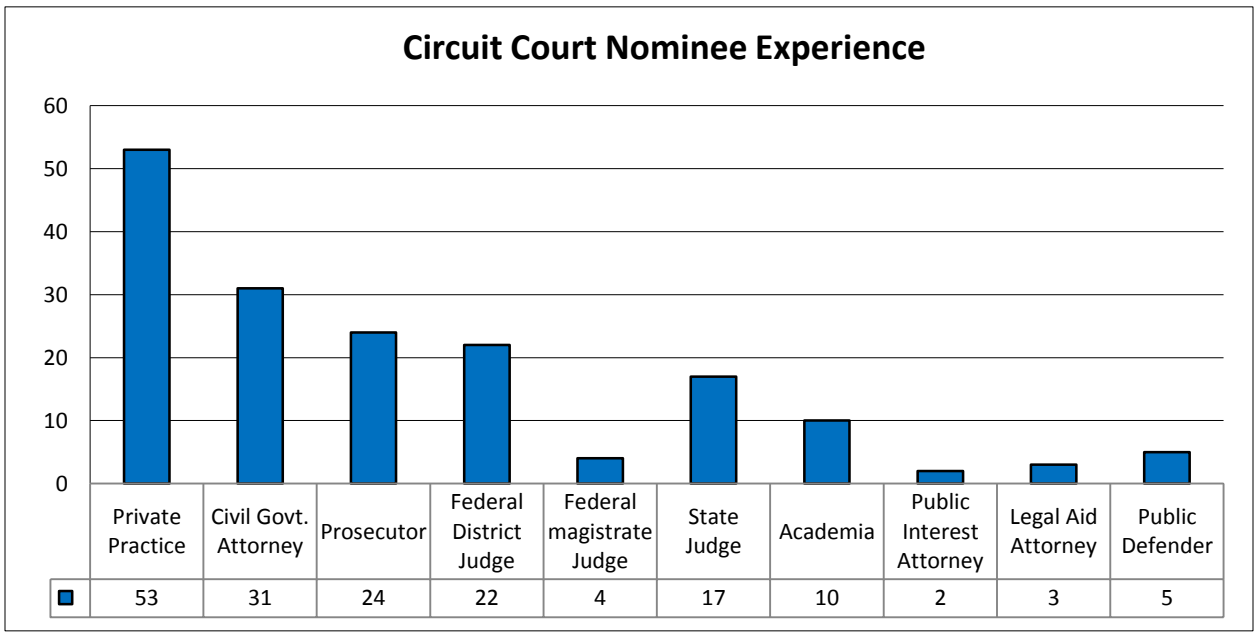
Of President Obama's judicial nominations:

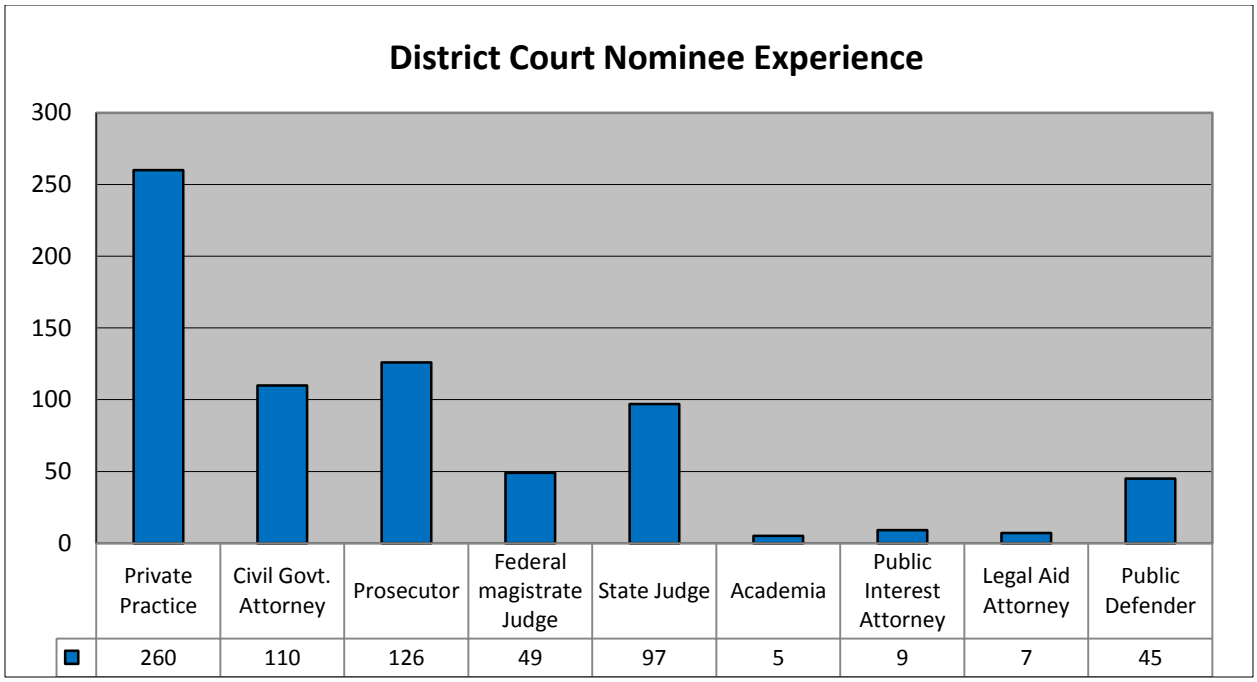
- 49 (16.3%) district court and 4 (6.3%) circuit court nominees have been federal magistrate judges prior to nomination, for a total of 14.6% of all nominees.
- 89 (29.7%) district court and 10 (15.6%) circuit court nominees have been state trial judges prior to nomination, for a total of 27.2% all nominees.
- 24 (8.0%) district court and 7 (10.9%) circuit court nominees have been state appellate judges prior to nomination, for a total of 8.5% all nominees.
- 22 (34.4%) circuit court nominees were federal district court judges prior to elevation to a federal appellate court.

Overall, approximately 46% of President Obama's district court nominees and 53% of circuit court nominees have been state or federal judges prior to nomination.



E. Overall Professional Diversity Statistics





III. Conclusion

Continuing a trend that began after Senate rules reform in November 2013, President Obama's most recent nominees suggest that professional diversity remains a high priority. Three of the President's nominees since our last update in July 2015 have worked in public or private criminal defense. Seven others have experience doing plaintiff-side work.

With about 10 months left in office and more than 30 current vacancies without a nominee, there remains opportunity for President Obama—with the essential cooperation of the Senate—to continue this trend and set the tone for the next president to further "broaden the bench" with more professionally diverse judges.

Washington State
Minority and Justice Commission

BUILDING A DIVERSE COURT:
A Guide to Recruitment and Retention
Second Edition

June 2010

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MESSAGE FROM THE CHAIR

A Smart Court is a Diverse Court

To be successful, the commitment to a comprehensive workforce diversity program must come from the top — from the judges and the court administrator.

The benefits to the courts and the larger justice system of recruiting, training and retaining a diverse workforce are many. A workforce that reflects the communities the courts serve increases the public's trust and confidence in the judicial branch of government and in the overall justice system. The opportunity to observe persons of color working in all areas of the court system also provides role models for young people, graphically demonstrating that career opportunities in the courts are open to everyone. Developing and implementing a comprehensive workforce diversity program creates an educated, culturally competent workforce, reduces unconscious bias and increases employee morale and job satisfaction. It focuses on valuing all employees for the unique contributions each brings to the workforce.

A diverse court is a smart court — one that is more likely to be innovative, productive and efficient in meeting the challenges facing the justice system in the twenty-first century because a diverse court is rich in human resources including a broad range of experience, background and perspective.

A diverse court is a prudent court — by developing a comprehensive diversity program of recruitment, training and retention, a court is far more likely to fully comply with federal and state laws affecting public employment. The court is also far less likely to face costly legal claims that it has violated rights protected by federal and state laws.

Finally, recruiting, training and retaining a diverse workforce is simply the right thing to do in our multicultural society. As you move forward in building a diverse court, I encourage you to utilize this handbook as a resource in whatever way suits your individual court.

Deborah D. Fleck
Chairperson, Workforce Diversity Committee
Washington State Minority and Justice Commission

Judge, Superior Court of Washington for King County

ACKNOWLEDGMENT

The author wishes to thank members of the Washington State Minority and Justice Commission: Justice Charles Z. Smith, founder and past Co-Chairperson; Justice Charles W. Johnson, Chairperson; and Judge Deborah D. Fleck, Chairperson of the Workforce Diversity Committee, for their continuous leadership, inspiration, and commitment to eliminating racial, ethnic, and cultural bias in our state court system. She is particularly grateful to Judge Deborah D. Fleck for launching this project and for her consultation and guidance in preparing this manual: "BUILDING A DIVERSE COURT: A Guide to Recruitment and Retention, Second Edition." The author also wishes to acknowledge the support and assistance of Ms. M. Fernanda Parra, Seattle University School of Law, National Latina/o Law Student Association, Northwest Regional Director and Society for Immigrant and Refugee Justice, Co-founder, and the Minority and Justice Commission's Executive Director, Mr. Monto S. Morton, and the Workforce Diversity Committee members:

Mr. Jeffrey A. Beaver
Ms. Bonnie J. Glenn
Ms. Yemi Fleming Jackson
Dr. Sandra E. Madrid
Judge James M. Murphy
Ms. Karen W. Murray
Ms. Carllene M. Placide
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Mr. Jeffrey C. Sullivan
Ms. Brenda E. Williams

INTRODUCTION

Diversity is a practical decision based on the rapidly evolving U.S. demographics.

Much has been written and said about investing in diversity over the past decade. However, much remains to be done. Demographic studies indicate the American workforce will soon be more heterogeneous by race, ethnicity, gender, age, physical ability, religion, language and educational background than ever. In 1999, the United States Department of Labor projected that nonwhites will represent more than one-third of this nation's population by the year 2010 and close to 50 percent of the population by the year 2050.[1] Immigration will account for almost two-thirds of the nation's population growth and the population of older Americans is expected to more than double.[2] The report also indicates that "[o]ne-quarter of all Americans will be of Hispanic-American origin," and "[a]lmost one in ten Americans will be of Asian-American or Pacific Islander descent. And more women and people with disabilities will be on the job."[3]

The Department further estimates that by the year 2005, the ethnic minority share of the workforce is likely to reach 28%, up from 18% in 1980 and 22% in 1990, and projects that the Hispanic-American population will be the largest group of minorities in the U.S. by 2010.[4] Moreover, by 2005 white males will make up only 30% of the American workforce, as compared to the 42.5% of white males in 1995.[5] These startling facts present powerful opportunities for organizations — large and small — to benefit from a variety of ideas, creativity and potential contributions inherent in a diverse workforce. Judges, court administrators and managers need to understand how this mix will present both opportunities and challenges to courts across the state as users of Washington's judicial system and the workforce in general become increasingly diverse.

Today the challenges and potential opportunities posed by employee diversity in the American workplace are a growing reality. The court, like most businesses, seeks commitment, innovation and productivity from its employees to ensure success. Accordingly, the

court must create a work environment where an employee's unique culture, professional and personal experiences, and skills are drawn upon to ensure that all employees have an opportunity to contribute to the mission and objectives of the court. To properly manage diversity, the impact of personal values, beliefs and actions, group dynamics, and institutional policies, practices and norms must be re-evaluated and altered where it is deemed necessary. "BUILDING A DIVERSE COURT: A Guide to Recruitment and Retention" should assist the court in accomplishing these tasks.

Under the auspices of the Washington State Minority and Justice Commission's Workforce Diversity Sub-Committee, this guide was assembled to offer judges, court administrators, and managers a resource tool for recruiting and retaining a diverse workforce within the framework of existing civil rights laws and in response to an ever-changing workforce. This guide is intended to assist the court's specialists, managers and judges in using available resources to coordinate, develop and implement effective training and education programs for court personnel. It is also a guide to help avoid common problems in planning and implementing diversity recruitment and retention programs, while maximizing the effectiveness of those programs. Finally, this guide will assist in planning and designing diverse recruitment and retention programs in terms of process and content; finding and working with diversity experts; building support for and promoting recruitment and retention programs; and evaluating the success of the programs. Annotated lists of relevant articles, books, training materials, videotapes and other useful resources are provided.

This guide provides courts with general tools and helpful suggestions to increase, manage and maintain diversity in the workplace.

This guide is directed to all courts in the State of Washington: those that have already made a firm commitment to plan and implement diversity recruitment and retention practices, as well as those that have yet to develop and carry out these practices.

This guide will answer such questions as:

- What is workforce diversity?
- Why is it important to actively recruit diverse, highly qualified candidates?
- Why is it critical to implement practices to retain diverse employees?

- What are the pros and cons of developing and conducting diversity recruitment and retention programs?

- What type of planning is involved in implementing diversity recruitment and retention?

- Why is it necessary to conduct training if the court is not visibly or obviously diverse?

This guide:

- explains why "A Smart Court is a Diverse Court;"

- provides courts with general tools and helpful suggestions to increase, manage and maintain diversity in the workplace;

- explains why it is critical that the judges and senior court managers make a commitment to the concept that the court's workforce should be diverse before attempting to build such a workforce;

- will help judges and court managers determine if the court needs to conduct diversity training programs;

- will help a court assess and survey its workforce and includes a recruitment needs assessment instrument to assist the court in designing a recruitment program;

- will help the court determine the focus, content and format of diversity recruitment, training, and retention programs and help the court decide whether to retain outside experts in these efforts; and

- provides extensive lists of resources, including books, articles, videos, websites, catalogs, newspapers, research reports, federal employment law summaries, colleges and universities, training materials, consultants and experts.

This guide can help judges and court managers determine if the court needs to conduct diversity training programs.

CHAPTER 1

WHY IS DIVERSITY A WORTHWHILE GOAL?

The benefits of diversity include effective adjustment to changes in culture and demography, increased productivity based on diverse team composition, new ideas and different problem solving approaches, a wider selection pool, and a multi-dimensional court image.

Workforce diversity is an integral part of an impartial judicial system in the United States. Some view diversity as the latest trend, while others believe it to be a politically correct term for a politically correct society. However, diversity is much more. Diversity represents one fundamental way in which the court can view its environment, while ensuring that it is reflected in its workforce. This is especially important for a judicial system that seeks the trust and confidence of the diverse population it serves. It is a necessary strategy for improving relations with members of the public and enhancing internal innovation and productivity, while driving organizational values, capabilities and strategies.

Individuals often confuse the concept of diversity with equal employment opportunity and affirmative action; however, each is distinct from the others. Below is a discussion of these three concepts to help make the necessary distinction in our exploration to understanding and promoting diversity.

A. EQUAL EMPLOYMENT OPPORTUNITY

Equal employment opportunity (EEO) means that all individuals must be treated equally by private and public entities in hiring, training and promotion. Under this concept, each person has the right to be evaluated as an individual based on merit and qualifications without discrimination based on stereotypic notions of what members of minority groups or any other protected class are like.

Classifications protected under federal or state equal employment laws are those of race, color, sex, national origin, religion, age, veteran status, disability, and marital status. Some local equal employment laws also provide protection for sexual orientation.[6]

1. Federal Government's Adoption of EEO

Federal EEO laws and policies date back to June, 1941, when President Franklin D. Roosevelt used his executive authority to implement Executive Order 8802 (1941),[7] which directed that blacks be accepted into job-training programs in defense plants, forbade discrimination by defense contractors and established a Fair Employment Practices Commission (FEPC).[8] The Order reaffirmed the policy of the United States against "discrimination in the employment of workers in defense industries or government because of race, creed, color, or national origin."[9] Though the Order was technically in effect, President Roosevelt found himself faced with reluctant congressional committees and World War II. All EEO efforts were halted and eventually Congress dismantled the FEPC wartime agency. Similarly, on July 26, 1948, President Harry S. Truman issued Executive Order 9981 (1948).[10] This Order, entitled "Establishing the President's Committee on Equality of Treatment and Opportunity in the Armed Services," abolished segregation in the armed forces and ordered full integration of all the services.

On March 6, 1961, President John F. Kennedy issued Executive Order 10925, declaring "discrimination because of race, creed, color, or national origin is contrary to the Constitutional principles and policies of the United States."[11] It further stated "it is the plain and positive obligation of the United States Government to promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed or seeking employment with the Federal Government and on government contracts."[12] To accomplish these objectives, among others, President Kennedy established the President's Committee on Equal Employment Opportunity.[13] The Committee was authorized to (1) publish the names of noncomplying contractors and unions; (2) recommend suits by the Department of Justice against contractors to compel compliance with contractual obligations not to discriminate; (3) recommend criminal actions against employers supplying false compliance reports; (4) terminate the contract of a noncomplying employer; and (5) forbid contracting agencies to enter into contracts with contractors guilty of discrimination.[14]

However, it was not until President Lyndon B. Johnson issued Executive Order 11246 on September 24, 1965, that equal employment opportunity became more of a reality.[15] This Order made it the policy of the United States to provide equal opportunity in

federal employment for all qualified persons.[16] It further prohibited discrimination in employment because of race, creed, color, or national origin, and promoted "the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency."[17] According to the Order, equal opportunity was to apply to "every aspect of Federal employment policy and practice."[18]

B. STATE GOVERNMENT'S ADOPTION OF EEO

In 1949, the Washington State Legislature adopted legislation "to prevent and eliminate discrimination in employment against persons because of race, creed, color or national origin."[19] Now codified as RCW 49.60, the Washington Law Against Discrimination (WLAD) has been revised over the years to also provide protection for persons based on gender, disability, marital status, families with children and age.[20]

Affirmative action — equality in fact, not in theory.

In addition to the WLAD, Governor Daniel J. Evans issued Executive Order 70-01 on January 30, 1970.[21] The Order provided equal employment opportunity specifically for persons of color, consistent with RCW 49.60 in the awarding of public contracts.[22] According to the Order, RCW 49.60 "would be contravened by awarding public contracts to contractors whose practices do not promote equal employment opportunity."[23]

C. AFFIRMATIVE ACTION

1. Background and Implementation

The ideas underlying affirmative action and equal employment opportunity are similar with respect to hiring, employment and promotion; however, affirmative action and equal employment opportunity embody different concepts. Affirmative action goes further than equal employment opportunity.

Affirmative action requires public entities to seek to overcome the effects of past discrimination against groups such as women and minorities, disabled persons and veterans, by making positive and continuous efforts in recruitment, employment, retention and promotion. Affirmative action requires organizations to actively seek to remove any barriers that artificially limit the professional and personal development of individuals who are members of a protected class. The key objective of affirmative action, therefore, is to take "affirmative steps" to increase the actual numbers of minorities and women in the workplace by offering consideration above and beyond the act of simply ending discrimination. These efforts include recruiting, employing and

advancing qualified minorities, women, people with disabilities and veterans who have historically been excluded from jobs.

a. Federal Affirmative Action

The first federal affirmative action effort occurred by executive order in the 1960s during the Kennedy Administration. On March 6, 1961, President John F. Kennedy issued Executive Order 10925, instructing federal contractors to take "affirmative action to ensure that applicants are treated equally without regard to race, color, religion, sex, or national origin."[24] However, the program did not become widespread until Congress made racial and sexual discrimination illegal by adopting the Civil Rights Act of 1964, Title VII, which prohibits employment discrimination by employers of over 15 employees, regardless of whether they have government contracts.

On September 24, 1965, President Lyndon B. Johnson issued Executive Order 11246, requiring all government contractors and subcontractors to take affirmative action to expand job opportunities for minorities.[25] On October 13, 1967, President Johnson amended Executive Order 11246 to include affirmative action for women.[26] These efforts by Presidents Kennedy and Johnson were the beginning of many federal attempts to incorporate the historically disadvantaged into the workplace.[27]

In 1970, the Department of Labor, under President Richard M. Nixon, issued Order No. 4[28], authorizing flexible goals and timetables to correct the "underutilization" of minorities by federal contractors. It was an attempt by the Department of Labor to hold contractors accountable for instituting affirmative action practices. One year later, the Order was amended to include women.[29] In 1973, the Nixon Administration issued the "Memorandum-Permissible Goals and Timetables in State and Local Government Employment Practices." This memorandum distinguished between proper goals and timetables and impermissible quotas. Affirmative action is not quota-based. Quotas are illegal in the United States. Instead, affirmative action requires that federal employers and contractors set flexible goals that are based on the percentage of qualified minorities and women in the region.

b. State Affirmative Action

Soon after the federal efforts began, Washington State followed suit by establishing statewide affirmative action. The State's programs were modeled on federal laws and, similar to the

federal counterparts, were created by a series of executive orders. For example, on September 21, 1977, Governor Dixie Lee Ray signed into law Executive Order 77-10: Affirmative Action Program for the Disabled and Vietnam-era Veterans.[30] Executive Order 77-10 requires that "affirmative action be taken by all state agencies to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam-era without discrimination based upon their disability or veterans status in all employment practices."[31]

Similarly, on October 15, 1979, Governor Ray issued Executive Order 79-08: Affirmative Action in State Government.[32] The Order directed that corrective action be taken to improve the employment profile of state government to reflect its "diverse society."[33] It also affirmed Governor Ray's "commitment to attain equal employment opportunities for all, to ensure freedom from discrimination based upon race, religion, color, national origin, age, sex, marital status, [disability or veteran status]."[34] This Order was affirmed and reaffirmed by several subsequent governors.[35]

c. Affirmative Action in General

Though the primary focus of affirmative action was to integrate persons of African-American descent into mainstream America, minorities and women in general were also regarded as "different" and inherently "deficient" in their ability to function in and contribute to society. They, too, were thus excluded from exploring certain privileges widely available to white men. Therefore, minorities and women became the main beneficiaries of affirmative action, but not the only individuals or groups to benefit. Vietnam-era veterans, disabled veterans, and persons with disabilities also were included.

Prior to the implementation of affirmative action programs, it was generally accepted in American society that white men would get the best jobs and the biggest salaries. Minorities, on the other hand, would take low paying menial work, and women, if they worked at all, would be limited to a few low-wage occupations. Theoretically, Title VII was to end this disparity; but when minorities and women complained that they continued to face barriers that prevented them from equal treatment in the workplace, then-President Lyndon B. Johnson ordered federal contractors to take "affirmative action not to discriminate" against minorities and women.[36] He sought equality in fact, not in theory. Nevertheless, these problems and others persisted even after implementation of affirmative action programs.

In Washington State, for example, while more than half of the state's government employees were women (higher than their proportion in the labor force) and minority employees were arguably proportionate, the two fastest-growing minority groups, Asian-Americans and Hispanic-Americans, still lagged.[37] White men still held the majority of top jobs as officials and managers, while women dominated only two job categories: professional and clerical.[38] White men also received top pay, which is largely a reflection of the type of positions they held.[39]

Once recruited, recipients of affirmative action programs often discovered there was an innate presumption that they were not selected because they and their skills were valued, but because the employer was more concerned with meeting timetables and objectives. Recipients were often made to feel that they were expected to adjust their differences in order to fit into the organization's culture. This shifted the focus from changing the environment to promote appreciation of diversity to altering the identity of the recruit. In essence, there was less attention to creating an inviting work environment that included practices to address recruitment and retention of diverse talents.

2. Its Partial Repeal in the State of Washington

On November 3, 1998, voters in the State of Washington considered an initiative that would abolish the state's affirmative action program.[40] Although Initiative 200 was hotly contested, polls preceding its passage indicated that the controversial initiative was likely to pass — and it did with approximately 58 percent of the vote.[41] On December 3, 1998, I-200 became law and was enacted as the Civil Rights Act, RCW 49.60.400.[42]

Essentially, RCW 49.60.400 bans state and local governments in Washington from taking affirmative steps to overcome past discrimination against persons based on race, ethnicity, gender and national origin.[43] Other status categories protected under state discrimination laws, including age, disability, veteran status and marital status, were not affected by passage of the initiative.[44] Consequently, the ban has had a significant impact upon government hiring and promotion practices, granting of government contracts and admissions to public colleges.

Prior to passage of the measure, public employees accounted for approximately one-tenth of the 2.8 million workers in the state.[45] Minority and women-owned businesses represented approximately three (3) percent of the state's 175,000 registered state government

contractors.[46] When applicants were admitted with race as a factor, underrepresented minorities such as Native-Americans, African-Americans and Hispanic-Americans accounted for only three (3) percent of the University of Washington and Washington State University attendees.[47] These meager numbers and the people they represent are evidence of an affirmative attempt to level the playing field. That means no longer exists.

Public institutions, such as Washington courts, are now faced with a growing challenge.

D. DIVERSITY IS NOT AFFIRMATIVE ACTION OR EQUAL EMPLOYMENT[48]

Diversity is different from equal employment opportunity and affirmative action. The latter two focus on quantitative change with specific promotional and hiring goals used to correct imbalances in the makeup of an organization's workforce from long-term patterns of employment discrimination. While such programs have led to changes in the composition of the American workforce, they have not had an impact upon organizational culture. Hence, many organizations in compliance with equal employment opportunity and affirmative action laws continue to use the strategy of employee assimilation to manage increased diversity.

Diversity is any collective mixture characterized by similarities — ties that bind — and differences that distinguish.

In contrast, diversity builds on the foundation created by equal employment opportunity laws and affirmative action efforts to hire and promote others. Unlike equal employment opportunity and affirmative action, diversity promotes the concept of differences and emphasizes qualitative, not quantitative, goals. Moreover, diversity embraces the cultural differences employees bring with them into the workplace. Employees are accepted for who they are and appreciated for the unique perspective they may bring.

The concept of diversity first emerged during the 1980s. The driving principle behind diversity is that differences do matter and opportunities lie in the leverage of these differences. Persons advocating diversity frequently analogize the concept to a beautiful tapestry of textures and colors. It is this broader recognition and appreciation of differences that encourage organizations to develop and advance minority and female talent. By appreciating a diverse employee's unique experience and overall background, employers encourage a welcoming environment, which has been proven to offset attrition and enhance recruitment. Diversity also embraces and values every individual's contribution to and perception of the organization.

Based upon demonstrated results, diversity has been proven in a business setting to show that differences create competitive

advantage, drive organizational values, enhance organizational capabilities and improve capacities. These demonstrated benefits can be translated into a court's system through case management, court operations, and responsiveness to court users. And because the focus of diversity is recognition and promotion of differences, it goes beyond race and gender to include sexual orientation, age, religion, work styles, and so forth. By focusing on the quality of the work environment and improved utilization of skills of all employees, diversity moves far beyond affirmative action and equal employment opportunity.

E. DEFINING DIVERSITY

What is Diversity?

"The condition of being different"

"Variety"

"Multiformity"

In the truest sense of the word, all three definitions of diversity, the condition of being different, variety and multiformity, are the ideal the court should strive to achieve. However, diversity may be defined as narrowly or broadly as the court desires. Narrow definitions tend to focus on visible characteristics, such as gender, age, race, ethnicity and disability. Many criticize this approach as exclusive and too closely akin to affirmative action. Moreover, some perceive that the narrow approach may engender resistance from white males (otherwise recognized as "white male backlash") and may hinder long-term cultural changes that focus on using the best talents of everyone, which they argue is the primary objective of diversity. As a result, the trend among most employers leans toward defining their workplace diversity in a broad manner. As articulated by the Society for Human Resource Management:

> A broad definition of diversity ranges from personality and work style to all of the visible dimensions of diversity, to secondary influences such as religion, socioeconomic and education, to work diversities such as management, union, functional level and classification, or proximity/distance to headquarters. While initially these diversities seem much less important than, for example, race or sexual orientation, over time these diversity issues matter a great deal. Among the ones that frequently damage an organization or workgroup are factors around education, socioeconomics and work experience. Such facts are relevant to the assumptions that people make about one another and the collaboration, openness, and trust (or lack thereof) that people feel in working together.[49]

Persons who subscribe to the broader definition of diversity believe it helps all employees find a place to connect with other employees and create relationships that enable them to deal with potentially volatile issues that may arise in the workplace. On the

other hand, opponents criticize the broader definition as irrelevant and meaningless — especially to those who have historically been excluded from career opportunities and advancement. But no matter how an organization defines diversity, it is crucial that its employees relate to and buy into the definition.

The following are examples of how certain organizations define diversity in their workplace:

> Society for Human Resource Management: "To celebrate diversity is to appreciate and value individual differences. SHRM strives to be the leader in promoting workplace diversity. Although the term is often used to refer to differences based on ethnicity, gender, age, religion, disability, national origin and sexual orientation, diversity encompasses an infinite range of individuals' unique characteristics and experiences, including communication styles, physical characteristics such as height and weight, and speed of learning and comprehension."[50]

> Microsoft Corporation: "At Microsoft, we believe that diversity enriches our performance and products, the communities in which we live and work, and the lives of our employees. As our workforce evolves to reflect the growing diversity of our communities and global marketplace, our efforts to understand, value and incorporate differences become increasingly important. At Microsoft, we have established a number of initiatives to promote diversity within our own organization, and to demonstrate this commitment in communities nationwide."[51]

R. Roosevelt Thomas, Jr., an early advocate of diversity and founder of the American Institute for Managing Diversity, describes diversity as the "collective mix of similarities and differences wherever you might find them."[52] This mix presents both opportunities and challenges for management and other staff because each employee will bring a unique set of values, experiences, skills, talents, work styles and interests to the court. If their talents are effectively utilized, employees can contribute to the overall goals and efficiency of the court. On the other hand, this mixture of people, who may look and sound different and have different professional and personal experiences, may adversely affect the workplace if their unique perspectives and skills are not respected and used.

What specifically are "differences?" Employees can differ on many dimensions, from permanent characteristics such as race and

gender, to mutable conditions such as skills, educational level, parental status and socioeconomic status. The important point is that at any particular time, the court's employees should present a rich mixture of backgrounds and characteristics. These differences among employees go well beyond those that are obvious at first glance.

F. SO, WHY IS DIVERSITY A WORTHWHILE GOAL?[53]

Each court must examine its purpose for implementing diversity in its workplace. If a court jumps on the "diversity bandwagon" simply because other courts around the state are actively recruiting diverse candidates, it will discover its recruitment efforts will inevitably fail. Diversity must become an intrinsic part of the court's culture. For this transition to take hold, judges and court administrators must make a firm and earnest commitment to changing the face and fabric of the court. The following list demonstrates why each and every court should endeavor to diversify its workplace.

1. Internal

- *The state demographics are rapidly changing* and diversity is becoming a strong presence in all facets of society, including Washington State Courts.

- *Employees become more motivated* when they see the organization making sincere efforts to value their uniqueness and tap into the full range of skills and experiences they bring to the table.

- *Conflict can be managed more effectively*, which means more time can be spent on accomplishing tasks and achieving goals.

- *Creative problem-solving is fostered* because employees from diverse backgrounds bring with them different experiences, perspectives and skills.

- *Employee morale increases* once people respect one another's perspectives and understand their differences and similarities.

- *Employees become more loyal* once they have an opportunity to contribute and participate in achieving the organization's goals and perceive their contribution is valued.

- *Work teams become more successful* when team members contribute their unique knowledge and experiences to the

team effort.

- *Diversity encourages colorblind performance evaluations* and focuses the court and employees on performance-based criteria.

- *Attrition and absenteeism decline* because employees are more motivated to come to work in an environment that supports their development, which means less time and money are spent on recruitment, training, and grievance procedures.

- *Communication becomes more effective* when sharing of information is encouraged and communication barriers based on perceived differences or lack of acceptance break down.

- *More problems are resolved* when individuals become more receptive to different ideas and alternative solutions.

- *Managers become more effective* as they become more performance-based in their relationship with and evaluation of employees. They may also be more willing to listen to ideas from all employees and to re-evaluate basic assumptions in other operations, such as work teams, communication, decision-making and problem-solving processes.

- *Bilingual staff are fully utilized* to communicate with non-English speaking court users, giving the users an opportunity to understand the judicial system, as well as exposing other employees to different cultures.

Diversity increases the range of choice for all.

2. External

- *Public trust and confidence is enhanced* when persons of diverse backgrounds observe persons that look and sound like themselves in all job categories of the court.

- *The public will be more apt to use court services* when the services they need, such as interpreters, are offered.

- *Better customer services are offered* when employees are encouraged to utilize their diverse experiences and skills to service the needs of diverse court users.

- *The courthouse environment becomes more welcoming* and not as intimidating or threatening to the public when court users observe a diverse workforce.

CHAPTER 2

DIVERSITY IN THE STATE OF WASHINGTON AND YOUR COMMUNITY

The need for a diverse court can no longer be ignored as the demographics of court users and the skills required to serve the public are rapidly changing.

A. DIVERSITY IN YOUR STATE AND COMMUNITY

Understanding the demographics of the community in which the court is located is vital in determining how the court should approach creating and maintaining a diverse workforce. For the most part, the diversity in Washington State varies from county to county. As a result, before a court implements any diversity program—especially recruitment efforts—it must first understand what diversity looks like in its community and how it should be reflected in its workplace.

The United States Census Bureau reported that in the year 2007, Washington's population was estimated at 6,468,424. This population was estimated to grow to 6,549,224[54] in the year 2008—a difference of approximately 80,800 persons in one year's time.[55] However, most startling is the fact that the 2000 census report indicates the total population in this state was approximately 5,894,121, revealing a population growth of over 574,303 in seven years.[56] Washington's population is growing rapidly, and with this rapid growth comes increasing diversity.

For example, in the 1990 census, of the 4,866,692 persons in Washington, approximately 88.5% (4,308,937) were white; 3.1% (149,801) were Black/African-American; 1.7% (81,483) were Native Americans; 4.3% (210,958) were of Asian descent;[57] 4.4% (214,570) were of Hispanic/Latino descent;[58] and 2.4% (115,513) were of another race. Women made up a little over 50% of the population at 2,452,945, and 486,692 of adults 16 years and over were considered disabled.

Compare these numbers to the 2000 census, which reports that of the 5,894,121 persons in Washington, 81.8% (4,821,823) were white; 3.2% (190,267) were Black/African-American; 1.6% (93,301) were Native-American; 5.5% (322,335) were Asian-American; 0.4% (23,953) were Pacific Islander;[59] and 7.5% (441,509) were Hispanic/Latino. Those reporting two or more races were approximately 3.6% (213,519) of the population and those of some other race 3.9% (228,923). While the population of

each category increased at varying levels, Hispanic/Latino persons more than doubled their population growth since 1990.[60] Similar to the 1990 findings, women were still 50.2% of the population at 2,959,821, while the disabled population of those over the age of 18 was approximately 881,000.[61]

Similar patterns emerge from data for 2008 prepared by the State of Washington's Office of Financial Management based on population estimates.[62] Of the 6,587,600 persons in Washington, 84.5% (5,566,607) were white; 3.6% (237,917) were Black/African-American; 1.7% (109,792) were Native-American; 7.1% (470,361) were Asian-American or Pacific Islander; and 9.3% (613,929) were Hispanic/Latino.[63] Those reporting two or more races were approximately 3.1% (202,922) of the population.[64] Women comprised 50.1% of the population at 3,303,082.[65] Based on the data, it appears that all of the groups increased in population since 2000.

To give courts a sense of how these numbers relate to the overall judicial system in this state, as well as in individual counties, the following tables outline census findings for 1990 and 2000 as well as projections based on population estimates for 2008, both statewide and county by county.

1990

State of Washington

***RACE[66]**

RACE AND HISPANIC ORIGIN	
White	4,308,937
Black	149,801
American Indian, Eskimo, or Aleut	81,483
Asian or Pacific Islander	210,958
Other race	115,513
Hispanic origin (of any race)	214,570
Total housing units	2,032,378

* 1990 Census findings of "Race and Age" not available.

1990

State of Washington

SEX & AGE[67]

Subject	Number
Total population	4,866,692
SEX	
Male	2,413,747
Female	2,452,945
AGE	
Under 5 years	366,780
5 to 17 years	894,607
18 to 20 years	210,809
21 to 24 years	277,730
25 to 44 years	1,658,951
45 to 54 years	501,543
55 to 59 years	191,602
60 to 64 years	189,382
65 to 74 years	336,034
75 to 84 years	182,953
85 years and over	56,301
Under 18 years	1,261,387
65 years and over	575,288

State of Washington

RACE & AGE BY COUNTRY[68]

1990

Geographic Area	Total population	White	Black or African-American	American Indian & Alaska Native	Asian-American Native Hawaiian/ Other Pacific Islander	Some Other Race	Hispanic or Latino (of any race)
Washington	4,866,692						
COUNTY							
Adams County	13,603	9,100	31	64	93	4,315	4,467
Asotin County	17,605	17,136	38	260	107	64	278
Benton County	112,560	102,832	1,085	861	2,246	5,536	8,624
Chelan County	52,250	48,333	80	487	378	2,972	4,786
Clallam County	56,464	52,509	321	2,695	614	325	1,150
Clark County	238,053	225,192	2,976	2,296	5,670	1,919	5,872
Columbia County	4,024	3,874	1	27	16	106	463
Cowlitz County	82,119	78,516	288	1,347	1,137	831	1,672
Douglas County	26,205	24,341	45	226	163	1,430	2,721
Ferry County	6,295	5,084	20	1,131	24	36	85
Franklin County	37,473	25,917	1,310	263	869	8,114	11,316
Garfield County	2,248	2,222	0	12	7	7	22
Grant County	54,758	46,976	599	568	641	5,974	9,427
Grays Harbor County	64,175	60,230	119	2,662	712	432	1,173
Island County	60,195	55,034	1,454	480	2,553	674	2,006
Jefferson County	20,146	19,252	84	566	195	49	241
King County	1,507,319	1,278,532	76,289	17,305	118,784	16,409	44,337
Kitsap County	189,731	171,063	5,107	3,211	8,282	2,068	6,169
Kittitas County	26,725	25,529	151	216	477	352	684
Klickitat County	16,616	15,383	26	581	128	498	928
Lewis County	59,358	57,663	189	641	372	493	1,366
Lincoln County	8,864	8,657	15	134	33	25	83
Mason County	38,341	35,769	332	1,430	478	332	883
Okanogan County	33,350	27,615	52	3,597	166	1,920	2,779
Pacific County	18,882	17,683	57	519	480	143	433
Pend Oreille County	8,915	8,640	12	206	25	32	120
Pierce County	586,203	498,642	42,210	5,344	29,035	7,972	20,562
San Juan County	10,035	9,811	23	79	86	36	121
Skagit County	79,555	74,133	280	1,712	782	2,648	4,335
Skamania County	8,289	7,987	5	198	52	47	172
Snohomish County	465,642	434,536	4,767	6,422	16,467	3,450	10,656
Spokane County	361,364	341,874	5,105	5,539	6,569	2,277	6,994
Stevens County	30,948	28,747	65	1,807	179	150	483
Thurston County	161,238	148,221	2,864	2,498	6,101	1,554	4,873
Wahkiakum County	3,327	3,281	3	53	15	36	71
Walla Walla County	48,439	43,290	720	359	625	3,445	4,703
Whatcom County	127,780	119,229	650	4,014	2,363	1,524	3,718
Whitman County	38,775	35,653	490	248	2,112	272	683
Yakima County	188,823	139,514	1,938	8,405	1,922	37,044	45,114

State of Washington

SEX & AGE BY COUNTY[69]

1990

Geographic Area	Total population	Percent of population			18 yrs. & over: males per 100 females	Group quarters population	
		Under 18 years	18 to 64 years	65 years and over		Number	% of total pop.
Washington	4,866,692	25.9	62.3	11.8	96.1	120,531	2.5
COUNTY							
Adams County	13,603	34.1	54.6	11.3	99.8	118	0.9
Asotin County	17,605	27.7	55.7	16.6	86.7	289	1.6
Benton County	112,560	30.0	59.9	10.1	95.3	589	0.5
Chelan County	52,250	26.7	57.6	15.7	94.4	920	1.8
Clallam County	56,464	24.2	55.3	20.4	96.6	1,639	2.9
Clark County	238,053	28.4	60.9	10.7	94.2	2,584	1.1
Columbia County	4,024	24.8	56.1	19.1	94.2	169	4.2
Cowlitz County	82,119	27.3	59.2	13.5	94.9	1,160	1.4
Douglas County	26,205	28.9	59.0	12.1	99.7	274	1.0
Ferry County	6,295	31.5	57.9	10.6	109.7	233	3.7
Franklin County	37,473	34.6	55.5	10.0	104.4	470	1.3
Garfield County	2,248	26.1	51.6	22.2	93.8	40	1.8
Grant County	54,758	31.4	55.9	12.7	100.4	642	1.2
Grays Harbor County	64,175	27.0	57.1	15.9	95.9	866	1.3
Island County	60,195	25.7	60.6	13.8	110.0	3,225	5.4
Jefferson County	20,146	22.6	56.7	20.7	95.4	227	1.1
King County	1,507,319	22.6	66.3	11.1	95.2	30,512	2.0
Kitsap County	189,731	27.9	61.4	10.7	103.7	6,386	3.4
Kittitas County	26,725	21.1	65.6	13.3	97.2	2,404	9.0
Klickitat County	16,616	29.3	57.1	13.6	99.5	216	1.3
Lewis County	59,358	28.4	56.0	15.7	93.3	922	1.6
Lincoln County	8,864	26.6	53.6	19.8	94.8	101	1.1
Mason County	38,341	25.1	58.4	16.4	107.2	1,692	4.4
Okanogan County	33,350	28.7	57.4	13.9	99.0	605	1.8
Pacific County	18,882	24.1	54.4	21.5	93.3	327	1.7
Pend Oreille County	8,915	29.4	56.6	13.9	98.4	78	0.9
Pierce County	586,203	27.2	62.3	10.5	97.8	23,158	4.0
San Juan County	10,035	20.5	58.0	21.4	95.3	158	1.6
Skagit County	79,555	26.2	58.2	15.6	94.9	1,610	2.0
Skamania County	8,289	29.7	59.6	10.7	102.4	35	0.4
Snohomish County	465,642	27.7	62.8	9.5	97.2	5,562	1.2
Spokane County	361,364	26.4	60.4	13.3	90.8	10,897	3.0
Stevens County	30,948	31.5	56.0	12.5	96.7	240	0.8
Thurston County	161,238	26.9	61.4	11.7	90.9	2,568	1.6
Wahkiakum County	3,327	24.8	55.8	19.5	97.6	56	1.7
Walla Walla County	48,439	24.8	59.5	15.7	100.5	4,461	9.2
Whatcom County	127,780	25.1	62.4	12.6	94.0	4,848	3.8
Whitman County	38,775	17.8	72.8	9.5	107.6	6,444	16.6
Yakima County	188,823	30.3	56.7	13.0	95.7	3,806	2.0

State of Washington

RACE & AGE[70]

2000

Subject	All ages		18 years and over	
	Number	Percent	Number	Percent
RACE				
Total population	5,894,121	100.0	4,380,278	100.0
One race	5,680,602	96.4	4,269,475	97.5
White	4,821,823	81.8	3,674,903	83.9
Black or African-American	190,267	3.2	131,323	3.0
American-Indian and Alaska-Native	93,301	1.6	62,084	1.4
Asian-American	322,335	5.5	245,735	5.6
Native-Hawaiian and Other Pacific Islander	23,953	0.4	15,968	0.4
Some other race	228,923	3.9	139,462	3.2
Two or more races	213,519	3.6	110,803	2.5
HISPANIC OR LATINO AND RACE				
Total population	5,894,121	100.0	4,380,278	100.0
Hispanic or Latino (of any race)	441,509	7.5	264,099	6.0
Not Hispanic or Latino	5,452,612	92.5	4,116,179	94.0
One race	5,276,686	89.5	4,022,810	91.8
White	4,652,490	78.9	3,570,441	81.5
Black or African-American	184,631	3.1	128,284	2.9
American Indian and Alaska Native	85,396	1.4	57,677	1.3
Asian-American	319,401	5.4	243,848	5.6
Native Hawaiian and Other Pacific Islander	22,779	0.4	15,276	0.3
Some other race	11,989	0.2	7,284	0.2
Two or more races	175,926	3.0	93,369	2.1

State of Washington

SEX & AGE[71]

2000

Subject	Number	Percent
Total population	5,894,121	100.0
SEX AND AGE		
Male	2,934,300	49.8
Female	2,959,821	50.2
Under 5 years	394,306	6.7
5 to 9 years	425,909	7.2
10 to 14 years	434,836	7.4
15 to 19 years	427,968	7.3
20 to 24 years	390,185	6.6
25 to 34 years	841,130	14.3
35 to 44 years	975,087	16.5
45 to 54 years	845,972	14.4
55 to 59 years	285,505	4.8
60 to 64 years	211,075	3.6
65 to 74 years	337,166	5.7
75 to 84 years	240,897	4.1
85 years and over	84,085	1.4
Median age (years)	35.3	(X)
18 years and over	4,380,278	74.3
Male	2,157,240	36.6
Female	2,223,038	37.7
21 years and over	4,127,976	70.0
62 years and over	782,897	13.3
65 years and over	662,148	11.2
Male	281,985	4.8
Female	380,163	6.4

Understanding the demographics of the community in which the court is located is vital in determining how the court should approach creating and maintaining a diverse workforce.

State of Washington

RACE & AGE BY COUNTY[72]

2000

Geographic Area	Total Population	Race								Hispanic or Latino (of any race)
		One race							Two or More Races	
		Total	White	Black or African-American	American Indian & Alaska	Asian-American	Native Hawaiian/ Other Pacific Native	Some Other Race Islander		
Washington	5,894,121	5,680,602	4,821,823	190,267	93,301	322,335	23,953	228,923	213,519	441,509
COUNTY										
Adams County	16,428	15,977	10,672	46	112	99	6	5,042	451	7,732
Asotin County	20,551	20,188	19,650	39	260	105	5	129	363	401
Benton County	142,475	138,646	122,879	1,319	1,165	3,134	163	9,986	3,829	17,806
Chelan County	66,616	65,193	55,711	172	661	451	77	8,121	1,423	12,831
Clallam County	64,525	62,949	57,505	545	3,303	731	104	761	1,576	2,203
Clark County	345,238	334,597	306,648	5,813	2,910	11,095	1,274	6,857	10,641	16,248
Columbia County	4,064	3,987	3,809	9	39	17	2	111	77	258
Cowlitz County	92,948	90,513	85,326	482	1,417	1,206	124	1,958	2,435	4,231
Douglas County	32,603	31,794	27,599	101	355	178	31	3,530	809	6,433
Ferry County	7,260	7,009	5,480	15	1,327	21	4	162	251	205
Franklin County	49,347	47,302	30,553	1,230	362	800	57	14,300	2,045	23,032
Garfield County	2,397	2,371	2,312	0	9	16	1	33	26	47
Grant County	74,698	72,451	57,174	742	863	652	53	12,967	2,247	22,476
Grays Harbor County	67,194	65,111	59,335	226	3,132	818	73	1,527	2,083	3,258
Island County	71,558	69,098	62,374	1,691	693	3,001	314	1,025	2,460	2,843
Jefferson County	25,953	25,169	23,920	110	599	309	34	197	784	535
King County	1,737,034	1,666,535	1,315,507	93,875	15,922	187,745	9,013	44,473	70,499	95,242
Kitsap County	231,969	221,195	195,481	6,648	3,760	10,192	1,805	3,309	10,774	9,609
Kittitas County	33,362	32,704	30,617	236	303	731	49	768	658	1,668
Klickitat County	19,161	18,635	16,778	51	665	139	41	961	526	1,496
Lewis County	68,600	67,219	63,772	259	840	475	122	1,751	1,381	3,684
Lincoln County	10,184	10,020	9,740	23	166	25	7	59	164	191
Mason County	49,405	47,908	43,705	587	1,840	519	221	1,036	1,497	2,361
Okanogan County	39,564	38,440	29,799	109	4,537	176	28	3,791	1,124	5,688
Pacific County	20,984	20,392	18,998	42	513	436	19	384	592	1,052
Pend Oreille County	11,732	11,493	10,973	17	338	74	24	67	239	241
Pierce County	700,820	664,977	549,369	48,730	9,963	35,583	5,922	15,410	35,843	38,621
San Juan County	14,077	13,790	13,372	36	117	125	12	128	287	338
Skagit County	102,979	100,511	89,070	450	1,909	1,538	163	7,381	2,468	11,536
Skamania County	9,872	9,650	9,093	30	217	53	17	240	222	398
Snohomish County	606,024	585,675	518,948	10,113	8,250	35,030	1,705	11,629	20,349	28,590
Spokane County	417,939	406,386	381,934	6,659	5,847	7,870	666	3,410	11,553	11,561
Stevens County	40,066	38,985	36,078	111	2,266	193	66	271	1,081	739
Thurston County	207,355	199,370	177,617	4,881	3,143	9,145	1,078	3,506	7,985	9,392
Wahkiakum County	3,824	3,728	3,574	10	60	18	3	63	96	98
Walla Walla County	55,180	53,761	47,081	930	465	614	123	4,548	1,419	8,654
Whatcom County	166,814	162,375	147,485	1,150	4,709	4,637	235	4,159	4,439	8,687
Whitman County	40,740	39,668	35,880	623	298	2,260	109	498	1,072	1,219
Yakima County	222,581	214,830	146,005	2,157	9,966	2,124	203	54,375	7,751	79,905

State of Washington

SEX & AGE BY COUNTY[73]

2000

Geographic Area	Total Population	Percent of Total Population					Median Age (years)	Males per 100 females	
		Under 18 Years	18 to 24 Years	25 to 44 Years	45 to 64 Years	65 Years and Over		All Ages	18 Years and Over
Washington	5,894,121	25.7	9.5	30.8	22.8	11.2	35.3	99.1	97.0
COUNTY									
Adams County	16,428	34.2	9.8	26.3	19.4	10.4	29.6	104.5	102.1
Asotin County	20,551	25.5	8.1	26.1	24.0	16.3	38.8	91.1	86.3
Benton County	142,475	29.7	8.6	28.5	22.9	10.3	34.4	98.7	96.3
Chelan County	66,616	28.0	8.3	27.2	22.7	13.9	36.3	99.1	96.8
Clallam County	64,525	22.0	7.1	22.8	26.9	21.3	43.8	98.7	96.6
Clark County	345,238	28.7	8.4	30.8	22.6	9.5	34.2	98.5	95.9
Columbia County	4,064	23.9	7.0	22.8	27.7	18.5	42.4	95.2	94.8
Cowlitz County	92,948	26.8	8.3	27.5	24.1	13.3	36.9	98.2	95.8
Douglas County	32,603	29.5	8.2	27.3	22.4	12.7	35.7	98.2	96.0
Ferry County	7,260	26.9	7.6	23.4	29.5	12.6	40.0	107.7	105.2
Franklin County	49,347	34.6	10.9	28.1	17.9	8.5	28.0	109.1	108.6
Garfield County	2,397	25.9	5.4	21.9	25.9	20.9	43.0	97.9	93.8
Grant County	74,698	32.0	9.8	27.0	19.7	11.5	31.1	104.5	103.4
Grays Harbor County	67,194	25.7	7.9	26.0	25.0	15.4	38.8	98.8	96.2
Island County	71,558	25.5	8.5	28.0	23.7	14.3	37.0	100.4	97.9
Jefferson County	25,953	19.8	5.0	21.6	32.5	21.1	47.1	95.8	94.4
King County	1,737,034	22.5	9.3	34.7	23.1	10.5	35.7	99.1	97.3
Kitsap County	231,969	26.8	9.2	29.6	23.8	10.6	35.8	102.7	101.2
Kittitas County	33,362	20.6	21.6	24.6	21.6	11.6	31.4	98.7	97.2
Klickitat County	19,161	27.1	6.5	25.7	27.0	13.8	39.5	99.5	98.8
Lewis County	68,600	26.5	8.2	25.2	24.5	15.5	38.4	98.3	95.4
Lincoln County	10,184	25.3	5.2	23.2	27.4	19.0	42.8	98.4	94.7
Mason County	49,405	23.5	7.7	26.5	25.8	16.5	40.3	107.0	107.3
Okanogan County	39,564	27.7	7.3	25.5	25.5	14.0	38.2	99.2	98.0
Pacific County	20,984	21.4	6.0	21.2	28.9	22.6	45.8	98.3	95.8
Pend Oreille County	11,732	26.3	5.5	23.8	29.5	14.9	41.9	100.5	99.6
Pierce County	700,820	27.2	9.8	31.3	21.5	10.2	34.1	98.9	96.7
San Juan County	14,077	19.1	4.5	21.7	35.7	19.0	47.4	95.1	93.0
Skagit County	102,979	26.3	8.6	26.9	23.6	14.6	37.2	98.0	95.7
Skamania County	9,872	26.6	6.7	28.6	27.1	11.0	38.7	101.3	99.4
Snohomish County	606,024	27.4	8.5	33.0	22.0	9.1	34.7	100.1	98.2
Spokane County	417,939	25.7	10.6	28.9	22.4	12.4	35.4	96.4	93.6
Stevens County	40,066	28.7	6.4	24.9	27.1	12.9	39.2	99.1	96.6
Thurston County	207,355	25.3	9.3	29.3	24.6	11.4	36.5	96.0	92.7
Wahkiakum County	3,824	23.4	5.3	22.2	30.6	18.5	44.4	100.1	98.1
Walla Walla County	55,180	24.6	13.4	26.5	20.8	14.8	34.9	103.8	102.9
Whatcom County	166,814	24.1	14.2	27.5	22.5	11.6	34.0	97.1	95.0
Whitman County	40,740	18.1	32.6	24.0	16.0	9.2	24.7	102.5	101.9
Yakima County	222,581	31.8	9.8	27.5	19.7	11.2	31.2	99.6	97.1

State of Washington

RACE & AGE[74]

2008

Subject	All ages		20 years and over*	
	Number	Percent	Number	Percent
RACE				
Total population	6,587,600	100.0	4,820,233	100.0
One race	6,384,678	96.9	4,724,490	98.0
White	5,566,607	84.5	4,149,922	86.1
Black or African-American	237,917	3.6	158,526	3.3
American-Indian and Alaska-Native	109,792	1.7	71,097	1.5
Asian-American or Pacific Islander	470,361	7.1	344,945	7.2
Some other race**	Data not available	Data not available	Data not available	Data not available
Two or more races	202,922	3.1	95,744	2.0
HISPANIC OR LATINO AND RACE				
Total population	6,587,600	100.0	4,820,233	100.0
Hispanic or Latino (of any race)	613,929	9.3	342,035	7.1
Not Hispanic or Latino	597,3671	90.7	4,478,198	92.9
One race	5,789,529	87.9	4,390,077	91.1
White	5,017,711	76.2	3,841,592	79.7
Black or African-American	222,453	3.4	150,250	3.1
American Indian and Alaska Native	95,371	1.4	63,695	1.3
Asian-American or Pacific Islander	453,994	6.9	334,539	6.9
Some other race	Data not available	Data not available	Data not available	Data not available
Two or more races	184,142	2.8	88,121	1.8

* Data is unavailable to calculate the numbers and percentages for ages 18 and over as reflected in the 2000 U.S. Census tables above. The Office of Financial Management, State of Washington only provides data with age ranges of 15–19 or 20–24 years.

** The "some other race" category was not included in any of the data provided by the Office of Financial Management, State of Washington.

*** Data is unavailable to calculate the numbers and percentages for 18 years and over, 21 years and over, and 62 years and over as reflected in the 2000 U.S. Census tables above. The Office of Financial Management, State of Washington only provides data with age ranges of 15–19, 20–24, and 60–64 years.

State of Washington

SEX & AGE[75]

2008

Subject	Number	Percent
Total population	6,587,600	100.0
SEX AND AGE		
Male	3,284,518	49.8
Female	3,303,082	50.2
Under 5 years	433,346	6.7
5 to 9 years	427,189	7.2
10 to 14 years	434,710	7.4
15 to 19 years	472,122	7.3
20 to 24 years	474,655	6.6
25 to 34 years	890,586	14.3
35 to 44 years	926,992	16.5
45 to 54 years	990,197	14.4
55 to 59 years	427,636	4.8
60 to 64 years	338,856	3.6
65 to 74 years	406,961	5.7
75 to 84 years	245,876	4.1
85 years and over	118,474	1.4
Median age (years)	36.7	(X)
18 years and over***	Unknown	Unknown
Male	Unknown	Unknown
Female	Unknown	Unknown
21 years and over***	Unknown	Unknown
62 years and over***	Unknown	Unknown
65 years and over	771,311	11.7
Male	336,665	5.1
Female	434,646	6.6

State of Washington

RACE & AGE BY COUNTY[76]

2008

Geographic Area	Total Population	Race							
		One race							Hispanic or Latino (of any race)
		Total	White	Black or African-American	American Indian & Alaska	Asian-American ot Pacific Islander	Some Other Race*	Two or More Races	
Washington	6587600	6384678	5566607	237917	109792	470361	N/A	202922	613929
COUNTY									
Adams County	17,800	17,620	17,222	48	175	175	N/A	180	9,629
Asotin County	21,400	21,057	20,568	56	292	141	N/A	343	491
Benton County	165,500	162,390	154,706	1,784	1,454	4,446	N/A	3,110	26,869
Chelan County	72,100	71,157	69,292	229	772	865	N/A	943	18,073
Clallam County	69,200	67,655	62,297	304	3,827	1,227	N/A	1,545	3,218
Clark County	424,200	412,955	381,990	8,274	3,892	18,799	N/A	11,245	24,914
Columbia County	4,100	4,039	3,965	10	41	23	N/A	61	314
Cowlitz County	99,000	96,635	92,759	603	1,596	1,676	N/A	2,365	6,048
Douglas County	37,000	36,518	35,567	168	469	314	N/A	482	9,030
Ferry County	7,700	7,425	5,905	23	1,459	39	N/A	275	228
Franklin County	70,200	69,292	66,009	1,472	379	1,432	N/A	908	41,628
Garfield County	2,300	2,276	2,249	0	9	18	N/A	24	65
Grant County	84,600	83,394	80,403	892	1,137	962	N/A	1,206	30,951
Grays Harbor County	70,900	69,086	62,890	555	4,070	1,571	N/A	1,814	5,352
Island County	79,300	76,723	68,997	2,266	814	4,647	N/A	2,577	3,840
Jefferson County	28,800	28,060	26,628	208	721	503	N/A	740	780
King County	1,884,200	1,818,891	1,428,353	114,619	17,987	257,932	N/A	65,309	127,933
Kitsap County	246,800	236,110	208,218	8,065	4,253	15,574	N/A	10,690	12,143
Kittitas County	39,400	38,714	36,812	329	408	1,165	N/A	686	2,589
Klickitat County	20,100	19,619	18,604	49	735	231	N/A	481	1,953
Lewis County	74,700	73,439	71,267	241	1,097	834	N/A	1,261	5,443
Lincoln County	10,400	10,232	9,974	25	188	45	N/A	168	248
Mason County	56,300	54,803	51,029	769	2,067	937	N/A	1,497	3,519
Okanogan County	40,100	39,157	34,088	134	4,682	253	N/A	943	7,164
Pacific County	21,800	21,220	19,986	40	585	610	N/A	580	1,457
Pend Oreille County	12,800	12,419	11,825	18	450	125	N/A	381	267
Pierce County	805,400	767,890	635,884	61,286	12,333	58,386	N/A	37,510	54,952
San Juan County	16,100	15,865	15,518	30	131	185	N/A	235	423
Skagit County	117,500	115,436	110,066	620	2,296	2,453	N/A	2,064	17,562
Skamania County	10,700	10,478	10,115	39	265	59	N/A	222	510
Snohomish County	696,600	676,021	599,886	13,626	10,081	52,428	N/A	20,579	41,281
Spokane County	459,000	447,106	419,955	8,180	6,994	11,976	N/A	11,894	15,287
Stevens County	43,700	42,540	39,433	128	2,614	365	N/A	1,160	928
Thurston County	245,300	236,689	210,638	6,592	4,039	15,420	N/A	8,611	13,149
Wahkiakum County	4,100	3,991	3,893	10	66	22	N/A	109	115
Walla Walla County	58,600	57,632	54,942	1,047	603	1,040	N/A	968	11,542
Whatcom County	191,000	186,501	172,384	1,523	5,755	6,838	N/A	4,499	12,230
Whitman County	43,000	42,009	37,864	751	338	3,056	N/A	991	1,455
Yakima County	235,900	231,636	214,427	2,902	10,719	3,589	N/A	4,264	100,348

* The "some other race" category was not included in any of the data provided by the Office of Financial Management, State of Washington.

State of Washington

SEX & AGE BY COUNTY[77]

2008

Geographic Area	Total Population	Percent of Total Population					Median Age (years)**	Males per 100 females	
		Under 20 Years*	20 to 24 Years*	25 to 44 Years	45 to 64 Years	65 Years and Over		All Ages	18 Years and Over
Washington	6,587,600	26.8	7.2	27.6	26.7	11.7	N/A	99.4	97.4
COUNTY									
Adams County	17,800	35.0	7.2	23.8	23.0	11.0	N/A	104.8	102.5
Asotin County	21,400	25.9	5.8	22.9	28.3	17.0	N/A	91.4	86.9
Benton County	165,500	30.4	6.3	25.4	27.0	10.8	N/A	99.5	97.4
Chelan County	72,100	28.6	6.0	24.1	26.7	14.6	N/A	99.7	97.3
Clallam County	69,200	22.4	4.8	19.8	31.4	21.6	N/A	99.0	96.3
Clark County	424,200	29.3	6.4	27.7	26.5	10.0	N/A	99.0	96.6
Columbia County	4,100	24.0	4.9	19.7	32.5	18.9	N/A	95.7	93.9
Cowlitz County	99,000	27.3	6.1	24.3	28.4	13.9	N/A	98.7	96.5
Douglas County	37,000	30.1	5.8	24.2	26.5	13.4	N/A	98.8	96.5
Ferry County	7,700	27.7	4.8	20.3	34.2	13.0	N/A	108.5	105.2
Franklin County	70,200	35.9	8.2	25.6	21.2	9.1	N/A	109.4	108.4
Garfield County	2,300	25.9	3.4	19.0	29.9	21.8	N/A	99.0	95.7
Grant County	84,600	32.9	7.2	24.3	23.4	12.2	N/A	105.2	103.8
Grays Harbor County	70,900	25.7	5.8	23.9	29.3	15.3	N/A	104.8	104.1
Island County	79,300	26.1	6.3	24.9	28.0	14.7	N/A	99.0	95.9
Jefferson County	28,800	19.6	3.3	18.3	37.5	21.3	N/A	96.4	95.1
King County	1,884,200	23.6	7.4	31.2	26.8	10.9	N/A	99.4	97.9
Kitsap County	246,800	27.7	7.0	26.4	27.8	11.1	N/A	102.7	100.8
Kittitas County	39,400	24.4	15.1	22.1	25.9	12.5	N/A	100.0	99.2
Klickitat County	20,100	27.1	4.4	22.4	31.6	14.5	N/A	100.4	99.3
Lewis County	74,700	27.0	5.8	22.1	28.8	16.2	N/A	98.8	95.8
Lincoln County	10,400	24.8	3.3	20.0	32.2	19.7	N/A	98.8	95.4
Mason County	56,300	23.9	5.4	23.2	30.4	17.0	N/A	106.8	106.3
Okanogan County	40,100	28.0	5.0	22.4	29.9	14.7	N/A	100.3	99.3
Pacific County	21,800	21.5	3.9	18.1	33.8	22.7	N/A	98.9	95.9
Pend Oreille County	12,800	26.3	3.6	20.6	34.3	15.2	N/A	102.2	101.9
Pierce County	805,400	28.6	7.2	28.1	25.3	10.8	N/A	98.3	95.8
San Juan County	16,100	18.4	3.1	18.3	41.0	19.2	N/A	96.3	94.8
Skagit County	117,500	27.0	6.2	23.8	27.7	15.2	N/A	98.6	96.1
Skamania County	10,700	27.1	4.5	25.1	31.7	11.6	N/A	102.1	100.9
Snohomish County	696,600	28.3	6.5	29.7	25.8	9.6	N/A	100.3	98.5
Spokane County	459,000	27.1	7.9	25.8	26.2	13.0	N/A	96.6	94.2
Stevens County	43,700	28.8	4.2	21.7	31.8	13.5	N/A	100.0	97.5
Thurston County	245,300	26.4	7.0	26.0	28.7	11.8	N/A	96.3	93.0
Wahkiakum County	4,100	22.7	3.7	18.9	35.9	18.8	N/A	100.6	98.4
Walla Walla County	58,600	26.9	9.5	23.7	24.4	15.5	N/A	103.7	103.0
Whatcom County	191,000	26.4	10.5	24.5	26.3	12.2	N/A	97.9	97.0
Whitman County	43,000	25.8	24.2	21.8	18.5	9.6	N/A	102.7	104.8
Yakima County	235,900	32.5	7.4	24.7	23.4	11.9	N/A	100.0	97.2

* Data is unavailable to calculate the numbers and percentages for under 18 years and 18–24 year as reflected in the 2000 U.S. Census tables above. The Office of Financial Management, State of Washington only provides age ranges of under 20 years and 20 to 24 years.

** Data is unavailable to calculate the median age for years because the data available from the Office of Financial Management, State of Washington provides for age ranges, and not specific ages.

B. DIVERSITY IN THE STATE BAR

In addition to understanding the diversity of cultures in Washington and in individual counties, the court should also be aware of how diversity is reflected in the Washington State Bar Association. As of February of 2009, there are approximately 33,228 active members of the WSBA.[78] Of the 33,228 members, only 28.14% are women and 47.61% are men.[79] Another 398 or approximately 1.20%[80] of WSBA members reported a disability.[81] With respect to ethnicity, approximately 194 or 0.58% are reported to be Native-Americans; 608 or 1.83% Asian-American; 32 or 0.10% of Pacific Islander descent; 487 or 1.47% African-Americans; 419 or 1.26% Latina/ Latino (Hispanic); 412 or 1.24% Multi-racial; and 209 or 0.63% "other."[82] The remaining 21,470 or 64.61% active attorneys are white.[83]

In comparison, as of July of 2001, there were about 22,400 active members of the WSBA, 19,307 of whom were actively practicing in Washington.[84] Of the 22,400 members, only 30.7% were women and 69.3% were men.[85] Another 149 or 1.2%[86] of WSBA members reported a disability.[87] With respect to ethnicity, approximately 93 or 0.7% reported as Native-Americans; 401 or 2.9% Asian-American and/ or Pacific Islander descent; 217 or 1.5% African-Americans; 149 or 1.1% Hispanic-Americans; 92 or 0.7% Multi-racial; and 148 or 1.1% "other."[88] The remaining 12,913 active attorneys were white.[89]

When comparing these statistics, there is some gradual difference. There are slightly more minority attorneys in most of the ethnicity categories though some of the groups have remained static in terms of growth. The number of females attorneys has decreased. Overall, however, the percentages remained consistent even though there are almost 11,000 more attorneys now than in 2001.

So what does this mean for the court? Judges and court administrators will have to work harder to recruit staff attorneys and clerks because of the limited number of minority and disabled attorneys. By doing so, the court will discourage the public perception that diversity is not important to the court and increase the public's trust and confidence in the judicial system.

Individual judges can participate in a variety of efforts to reach out to students of color in middle and high school and in college to expose the students to the opportunities a legal education can provide to them personally as well as to their communities. Courts can also participate in efforts to expose young people to careers in the legal field by participating in programs such as "take your child to work day," as well as by developing internship and externship programs for undergraduate and law school students.

CHAPTER 3

SURVEYING YOUR COURT AND WORKFORCE: ASSESSING YOUR DIVERSITY

What are the challenges and opportunities?

Before implementing recruitment and retention programs, judges, court administrators and managers should assess the court's readiness for a diversity recruitment and retention program and seek to build the proper level of judicial and management support. A successful diversity recruitment and retention strategy will require a commitment of time, energy, and resources, especially from judges and upper-level management. Managerial support includes verbal and behavioral commitment, from participating in the planning process to showing a willingness to review and change organizational policies, practices and procedures. Judges, management and staff should have a realistic expectation for integrating diversity in the workplace. Furthermore, they should be willing and ready to develop an environment that encourages employees to openly discuss any diversity issues that might result from recruitment and retention efforts.

The purpose of assessing the court is to gain a fuller and more detailed understanding of the court's needs. Specific data will help the court assess its recruitment needs and determine whether the retention of certain protected groups is more disparate than others. Assessments also send a message to employees that diversity concerns are important to the court and will further engage employee support in implementing diversity recruitment and retention programs. It is important to note that diversity recruitment and retention issues may vary from court to court, and therefore assessments should be adjusted accordingly.

Before a court undertakes the assessment process, there are a few underlying principles of diversity[90] that judges and court administrators must understand and communicate to court personnel. If these principles are first realized and respected, especially by those responsible for undertaking diversity efforts, the assessment process will likely be more cogent and perhaps more appreciated by all.

- No one should be blamed for the sins of the past or present. Everyone has been socialized to behave in certain ways and, on some level, has perpetrated or been subject to discriminatory treatment or stereotypes.

- Most human beings are ethnocentric[91] — they view the world narrowly and judge it based upon what is familiar to them.

- Most human beings resist change, continually striving for a state of homeostasis.[92] This may make the on-going adaptation required for diversity recruitment and retention efforts laborious for those already overwhelmed by the staggering transitions in today's workforce.

- Human beings are inclined to find consolation and trust in those most similar to themselves. Thus, there is a tendency to seek the company of and support efforts that benefit those who are like us.

- It is difficult for people to share power; history indicates that it is seldom done voluntarily and without a benefit to those who dominate the pool of wealth.

- It is essential that needs assessments be open, fair and honest, and that those charged with the responsibility of analyzing the collected data be willing to accept the results at face value. The results may suggest problems that no one anticipated, or that problems are more serious than anticipated. Conversely, the results may suggest that problems are not as extensive as some might have thought. Whatever the results might be, the truth must first be embraced before the implementation of *any* diversity recruitment and retention program may commence.

A. WHY ASSESS NEEDS FOR DIVERSITY PROGRAMS?

To design concrete recruitment and retention programs, court managers need more than a general sense of the situation. For example, management may believe that African-American clerks feel their low salary is their most serious problem, but those clerks may in fact believe that the biggest hindrance to their effectiveness is a lack of training opportunities or a forum to participate in decisions that affect their work environment. It is these differences — perception versus reality — that diversity assessments attempt to bridge.

If court managers build diversity recruitment and retention programs

based on unexamined assumptions, they may address problems that do not exist and fail to identify problems that do exist.This approach is futile. In assessing the court's needs for recruitment and retention, managers may combine information gained from needs assessments with their own experience and perceptions to structure the right programs for their court.

The following are other important reasons to assess the court's needs before designing recruitment and retention programs:

- Persuasion: Court-specific data will validate and further support a need for diversity recruitment and retention programs.

- Explanation: In the absence of data, how do court administrators or managers respond to the question, "We have two minorities and a bunch of women on staff, so why are we recruiting more?"

- Big Picture: The description of an isolated incident or two will probably not be sufficient to convince court staff and judges that special efforts should be taken to retain diverse employees; often isolated incidents are viewed as aberrations, which they may or may not be. On the other hand, it may reflect an unwelcoming, unhealthy work environment.

- Commitment: The needs assessment process sends a clear message to all employees that diversity concerns are important to judges and management.

- Participation: The assessment process should actively engage court employees in the planning of diversity recruitment and retention programs, thereby encouraging employee support. The development of the assessment tool should also include staff input, providing a sense of ownership in the process and programs.

- Variety: Diversity recruitment and retention issues vary substantially among courts because each has its own culture, often determined by:

  location;

  size;

  management style of the judges and court administrators;

  and

differing characteristics among the staff.

- Uniqueness: Given the range of differences from county to county, judges and court administrators cannot assume that diversity recruitment and retention problems in another court exist in their court.

- Perception: Assessment data may be conflicting. For example, an analysis of hiring, promotion, and separation data may reveal that persons with certain characteristics are in fact being hired less, promoted less or terminated more than others. However, an analysis of employee perception may reveal that some employees do not believe that others are being hired, promoted or terminated at different rates. Both types of information — what is occurring and perceptions of what is occurring — are important in assessing diversity needs and in structuring a response to those needs.

B. ASSESSING READINESS FOR DIVERSITY

Before conducting a needs assessment and designing recruitment and retention programs, judges and court administrators should assess their court's readiness to implement these diversity programs and seek to build the proper level of management support. Here are several questions to answer before planning any diversity program:

Does the court have adequate management support for a diversity program?

- A successful diversity program requires a firm commitment of resources, including time, money and energy, especially from judges and upper-level management.

- Mid-level managers and supervisors championing diversity should not be substituted for judicial and upper-level management support, although the participation of these individuals is also necessary.

Does the court have realistic expectations for a diversity program?

- Before conducting the needs assessment, managers must be open to where the data might lead.

- Candid information should be shared with judges and staff about what they can expect as a result of the needs assessment.

Is the court willing and ready to create a work environment that encourages employees to openly discuss issues that might arise as a result of diversity recruitment and retention efforts?

- Exploring diversity needs is rarely a "feel good" moment because it requires employees to confront their fundamental values and assumptions.
- Diversity programs do not create conflicts, although they may bring conflict or hostility to the surface.
- If issues are not permitted to emerge or become known upon commencement of the program, they will probably surface in unhealthy and less constructive ways later.
- The court must provide a venue for anticipated opportunities and challenges presented by a diverse workplace.

Is the court willing to implement diversity recruitment and retention as a long-term process of change?

- No organizational change occurs overnight. Long-term commitment must be made at all levels of the court and must start with the judges and the court administrator.
- Staff may be more resistant to diversity recruitment efforts during times of downsizing or hiring freezes. Nevertheless, the commitment needs to be maintained over the long term.
- The court must provide creative follow-up activities, both formal and informal, to promote diversity recruitment and retention goals and objectives.
- Education programs and ongoing training are strategies to promote organizational changes that occur as a result of the ongoing recruitment and retention of diverse persons.

Whether the court is realistically prepared to undertake diversity efforts will necessarily depend upon the responses to these questions. As a result, it is critical that responses be candid and based upon realistic expectations.

C. METHODS OF ASSESSING DIVERSITY[93]

There are several methods for assessing diversity, or the absence of diversity, in any court.

Collection of data from existing personnel.

- This method can be accomplished either by verbal interviews or by written questionnaires.

- An advantage of this method is that employees will identify those diversity issues they consider most important and prevalent, which may or may not be consistent with management's beliefs.

Questionnaires are valuable tools for gauging employee sentiment.

- Careful consideration should be given to form (i.e., open-ended questions as opposed to lists of pre-determined answers or a numerical scale).

Interviews are time-intensive; however, issues are more easily explored in this format.

- One variation of the interview method is to conduct group interviews to facilitate discussion.

Group Interview. Depending on the dynamics of the particular group of employees, results from this method may not lead to accurate conclusions about the court overall because an individual may not feel comfortable sharing issues, grievances, or problems with others who may not share the same viewpoints.

- The format for individual or group interviews (again, open-ended versus closed-ended questions) is significant, and consistency is imperative.

Review personnel records (where available), data submitted to regulatory agencies, and court policies and compare the data with demographic information about the regional workforce.

Each of these methods is discussed in more detail below:

1. Questionnaires

- Questionnaires have several advantages over other needs assessment methods because data can be collected from almost everyone in the organization with relatively little expense.

- The proper wording of each question is more complicated and technical than it may appear. Therefore, expert advice may

be particularly valuable when drafting the questionnaire.

- An initial decision regarding questionnaire formats is important. The following factors should be considered:

- Questionnaires can be drafted using closed-ended questions that ask respondents to select one answer from a predetermined list; or

- Questionnaires can be drafted using open-ended questions that ask respondents to write the answers themselves.

- Responses to closed-ended questions are usually collected in frequencies (i.e., a compilation of the number and percentage of respondents selecting each response to a question).

- Narrative or open-ended responses are generally collected verbatim and then grouped together according to the subjects they address.

Although the analysis of large numbers of questionnaires may require special skills and the use of a computer, the end result may significantly outweigh any inconvenience caused by the process.

2. *Interviews/Focus Groups*

- Allowing small groups of employees (5 to 10) to discuss their perceptions of obstacles, workplace issues and conditions is another method to obtain vital information.

- A trained facilitator who is capable of keeping the group focused and on track should lead the discussions.

- Notes should be taken during the individual interview or small group discussions and the information derived should be compiled and used for assessment purposes.

3. *Using Existing Records*

Before designing questionnaires or interview protocols, courts should learn what they can from existing records. For example, if court managers believe there may be problems in recruitment, hiring, promotion and separation, they might seek relevant information in appropriate personnel records and then compare that data with available data from other courts, as well as demographic information about the workforce in the court's region. Having this information may help in the design of questionnaires or interviews that are used to identify problems as perceived by court employees.

Before designing questionnaires or interview protocols, courts should learn what they can from existing records.

After analyzing questionnaires or interview data, court managers can retrieve supplementary information as necessary from existing records. In some instances, personnel information may not be readily available, or access may be difficult. Where this is the case, the court may resort to other forms of information gathering.

Court policies and procedures (including but not limited to the court's EEO plan, leave policies and work schedules) should be reviewed in order to provide a description of how the court views diversity. Because a policy might differ from practice, questionnaires and interviews can probe the manner in which policy is implemented and how implementation is perceived. The important aspect of assessing diversity is to have a clear purpose when beginning any data collection effort. There is little purpose, for example, in reviewing exit interview reports without identifying how the information may reveal a need that a diversity program can meet.

D. COLLECTION OF DATA

The data collected from court personnel (in an oral or written format, and from an individual or group of employees simultaneously) should identify whether specific diversity recruitment and retention problems exist, whether court personnel perceive they exist and how court employees experience or observe these problems in their day-to-day interactions with their peers, supervisors and the public. The following are factors to consider when choosing a specific method or methods:

1. External Factors

- What are the demographics, i.e., ethnicity, gender, age, education, income, etc., of the county and those who utilize the court's services for civil, criminal and domestic matters? [94]

- How many different languages are spoken by persons who are participants in this judicial system and what are they?

- Does our court have interpreter services for non-English speaking court users and if so, for what languages?

- Does our court provide interpreter services for deaf court users?

- How frequently do court users require court interpreter services and for what languages?

- Do certain court users, i.e., African-Americans, for example,

complain of inequitable treatment and if so, who?

- Does our court have a complaint mechanism available to the public?

- How frequently do persons of diverse backgrounds file complaints against court personnel, including judges, managers and supervisors?

2. Internal Factors

- Do interpersonal conflicts frequently arise among certain groups of employees?

- Does the court have an Ombudsman or another conflicts mediator and if so, what is that person's assessment regarding employee conflict and dissatisfaction?

- Do employees feel their talent and skills are appreciated and rewarded?

- Are there general grievance patterns?

- Has there been any specific complaint of discrimination or harassment by current or former employees, and if so, has there been any complaint that resulted in legal fees or settlement costs to the court?

- Is our work environment "welcoming" to diverse candidates?

3. Recruitment

- What are our recruitment numbers and who is being recruited?

- How much does our court spend annually on recruitment?

- If the court uses recruitment materials, do the materials reflect diversity?

- Have specific instructions been given to decision-makers to increase diversity in the workplace and if so, with what frequency?

- Are our court's policies and benefits attractive to applicants and prospective employees of diverse backgrounds?

4. Development and Promotion

- What are our promotion numbers and who is being promoted?
- What are our training and development patterns?
- Who is being trained and why?
- How much does the court spend annually on training and development?
- Does the court offer the possibility of career advancement and development?

5. Retention

- What are our employee retention rates and who is staying?
- What are our employee separation rates and why are they leaving?
- Are members of certain minority groups being terminated more frequently than others?
- Are members of certain minority groups voluntarily leaving employment more frequently than others?
- Is there a high level of turnover among African-Americans, Asian-Americans, Hispanic-Americans, women, disabled persons or persons over the age of 40?
- What are the effects of employee turnover on the courts, such as costs, disruption, etc.?
- Does the court use exit interviews or other data gathering methods to document why an employee is leaving?
- Of the departing employees, have any expressed that they were leaving because they feel devalued, not included or not heard?

E. CONFIDENTIALITY AND USE OF EXPERTS

Whichever method the court chooses to assess its diversity needs and issues, confidentiality should be a primary concern, although it may not always be guaranteed. Employees are more apt to respond

candidly if they believe their responses are confidential. Some courts may want to have an outside entity conduct interviews or review the questionnaire data to better ensure privacy as well as to acquire a professional analysis of the data. A social scientist will certainly fit this bill, because that person can:

- provide expertise in constructing questions or protocols and in interpreting results;
- help ensure confidentiality and objectivity; and
- help ensure at least one person can devote adequate time to the process.

F. EVALUATING DIVERSITY IN THE WORKPLACE

After determining what method or methods the court will utilize, it is time to gather the relevant information. In doing so, the court must understand its current demographic situation. This is done by developing a complete workforce profile and assessing how it reflects diversity at all levels, in all key occupations, and in all organizational components. The court may gather this information by gauging its employees' views on diversity issues.

A useful tool is a survey that documents and measures the court's strengths and weaknesses in promoting diversity. Variously referred to as a "cultural audit" or "organizational assessment," the questionnaire is an organized method to examine diversity conditions. The questions should focus on employee perception of recruitment and retention efforts and provide employees an opportunity to offer suggestions regarding how the court might overcome its lack of diversity. Appendix A contains a recruitment assessment questionnaire reprinted with permission from "The Multicultural Advantage" (http://www.multiculturaladvantage.com). The questionnaire will assist the court in determining whether it is taking the appropriate steps to recruit diverse persons. As with most companies in corporate America, the questionnaire will likely reveal that the court needs to recruit more diverse individuals. Ultimately, the information gathered should reveal the reasons the court should initiate a diversity recruitment program.

In some cases, a personnel officer or another trained person outside the court, such as an Employee Assistance Program counselor, may be able to facilitate focus groups, or conduct interviews, or do both.

CHAPTER 4

BUILDING MANAGEMENT SUPPORT

Having commitment from the top will reinforce desired outcomes and assist in conveying the expectation of cooperation, involvement and commitment from employees.

The key to successfully building a diverse workforce for tomorrow begins with a strong leadership commitment today. Commitment is the very foundation of a successful effort to build and maintain a diverse workforce. This commitment should be clearly stated and communicated from the most senior judges and the court administrator to employees at all levels. Judges and senior managers should be involved in the planning process because they can make valuable contributions and their commitment and support are essential. Commitment from the top sends a clear message to employees about the importance, relevance, value and legitimacy of implementing diversity in the court.

To reflect their commitment, judges and senior managers of the court should demonstrate their interest and involvement in the following ways:

- Judges and senior managers should encourage a leadership that fosters an environment of inclusion and values differences.[95]
- Judges and senior managers should participate in diversity planning.
- At least one senior manager should be a member of the diversity recruitment and retention committee.
- Every judge and court manager should receive status or progress reports on the needs assessment process and methods, selection of a consultant, and other planning

decisions if they cannot or choose not to be directly involved.

- Judges and court managers should provide feedback on the needs assessment methods, questions, selection, consultants and planning, because the process must take into account the expectations of judges and court managers for diversity recruitment and retention programs and must reflect the objectives they believe are important.

- Judges and managers should sincerely convey through action and words a desire to understand what diversity is and why it is important for the court.

- Judges and court managers should communicate legitimate benefits derived from diversity recruitment and retention.

- Judges and court managers must make diversity a part of management's effort to increase productivity, including team building, conflict resolution, quality improvements, coaching and mentoring.

- Judges and court managers should make every effort to ensure that adequate resources are assigned to the court's diversity recruitment and retention programs.

- Judges and senior level managers should encourage employees at various levels of responsibility to be an integral part of the court's diversity efforts.

Above all, it is important that the court judges and senior managers not be surprised by its diversity efforts. If they learn about the programs from subordinates or outside sources, they may be understandably suspicious or baffled by the efforts and may raise unwanted opposition to diversity recruitment and retention efforts. As a result, all endeavors to implement diversity recruitment and retention programs should first be brought to the attention of those who have the influence to make or break these efforts. Also keep in mind that judges and court staff have a right to ask: "Will this help my court function better?" "Can we afford the time to do this?" Questions such as these provide diversity champions the invaluable opportunity to educate their colleagues about the importance of and necessity for diversity recruitment and retention programs.

CHAPTER 5

DIVERSITY INITIATIVES

A. CREATING AND IMPLEMENTING

In light of the passage of I-200, as well as the litigious atmosphere that exists in Washington and around the country regarding the use of quotas such as race and gender in making hiring decisions, the creation of any diversity initiative must clearly reflect the positive contributions that a diverse workforce provides. Many of the positive contributions of a diverse workforce are set forth in Chapter 1 of this manual. Recitation of some or all of these factors in a "diversity mission statement" will clearly demonstrate that the court is committed to diversity for the right reasons.

After Surveying your Court and Workforce, Chapter 3, and Building Management Support, Chapter 4, the third step in establishing and drafting the diversity initiative is to establish specific recruitment and retention objectives. The objectives set should be based on specific demographics of the county's population, demographics of the membership of the bar within that county and demographics of the state. In relying on these factors to establish objectives, the court is more likely to establish achievable objectives.

Once objectives have been established, the most important factor in establishing a diversity initiative is to assign responsibility to a specific individual or individuals to accomplish each task. Although the concept of diversity must be embraced by the group in order for it to take hold, be accepted and be successful, individual responsibility and accountability are far greater motivators and are more likely to lead to the success of the initiative. Individual managers or leaders can create the appropriate motivation among their team members. Individual leaders and managers will be far more motivated not to let down a court's senior leadership that has committed to diversity as a positive objective.

Once individuals have been assigned responsibility for achieving objectives of the diversity initiative, hold them accountable. Failure

to hold accountable those vested with the responsibility to shepherd the diversity initiative is tantamount to paying "lip service" to Outline the broad steps that will be used to achieve the objectives. See Chapter 7, infra.

After creation of the diversity mission statement, the diversity initiative should also include at least two separate timetables to accomplish the objectives in the mission statement and in the statement of objectives. The first timetable should establish a date for short range objectives to be accomplished. The second timetable should establish a specific time for review of the overall diversity initiative to determine in what areas revisions to the diversity initiative might be appropriate. The time frame for meeting short-term goals should be twelve to eighteen months. Setting a time frame of this duration provides a realistic, yet foreseeable, period in which the court should achieve visible change. In addition, a review of the overall diversity initiative should occur every three to five years. When conducting a review of the overall diversity initiative, the analysis should very closely track the analysis that is done in long-term or strategic planning. Those responsible for reviewing diversity programs should carefully evaluate its strengths and weaknesses, and the opportunities to improve as well as any threats to the goals and objectives of the diversity initiative. Once completed, this analysis should be integrated into the court's long-range strategic planning.

B. SETTING OBJECTIVES

Objectives should only be set after the court has adopted its diversity initiative and, evaluated and determined the strengths and weaknesses of its workforce diversity. The objectives should be clear, concise and realistic. Objectives should also be concrete and measurable. This means the court should be able to determine whether it has reached its objectives or fallen short of obtaining them. For example, if the court has high turnover of Hispanic-American employees, it may list "reduce turnover of Hispanic-American employees by 25 percent" as an objective. If questionnaires reveal low morale among certain groups of employees, it may set the objective of "increasing satisfaction of all employees by 10 percent and reducing satisfaction disparities among specified groups by 50 percent." Whatever the case might be, objectives should be specifically tailored to meet the ultimate mission of your court.

The following is a general list of possible areas the court may wish

to consider when setting objectives:

- Recruitment
- Hiring
- Retention
- Development/Training
- Mentorship
- Advancement/Promotion

Objectives should only be set after the court has adopted its diversity initiative and, evaluated and determined the strengths and weaknesses of its workforce diversity. The objectives should be clear, concise and realistic.

CHAPTER 6

OUTREACH AND RECRUITMENT: DEVELOPING A DIVERSE CANDIDATE POOL; CHANGING YOUR RECRUITING HABITS

"Companies spend all this time aggressively recruiting and then their minority hires leave and the employers wonder why. They think, 'Our recruitment program is failing.' No. It's just that they don't have the proper support mechanisms in place."

Lisa Willis-Johnson

Vice Chair of the Society for Human Resource Management's Workplace Diversity Committee

A. RECRUITMENT STRATEGIES

To build a diverse workforce, the court should incorporate tailored approaches to hire diverse individuals into its overall strategies. Therefore, the first step is to find the right candidates.

Acquiring quality and qualified talent is vital to the success of any organization. A well-planned recruiting strategy will maximize the likelihood that the right employee is recruited and hired; however, the plan must be implemented and consistently applied in order to ensure long-term results.

The purpose of effective recruiting is to attract strong candidates who are prepared to meet the court's strategic goals and priorities. Recruitment has two major components: (1) outreach and (2) equal and consistent treatment. Outreach is vital to recruitment. The court's ability to ensure the greatest potential for staffing excellence lies in the pool of candidates from which its selections will be made. All applications for employment and responses to inquiries for information must be handled fairly and consistently to avoid the appearance of favoritism, bias, or inaccessibility. Inconsistency can hamper outreach efforts and, therefore, impact the quality of

the candidate pool. Below is a list of suggestions that should be considered when implementing a recruitment strategy.[96]

- The qualifications sought for an available position should be consistent with job duties and not based upon historical precedent.

- Credentials sought should be based on competence such as volunteerism, knowledge of subject matter, etc., as opposed to only paid employment experience.

- Persons involved in the recruitment and hiring process should:

  - Receive diversity training; otherwise, those individuals might not be capable of offering a fair evaluation of applicants during the hiring process.

  - Cultivate relationships with organizations that cater to the needs and interests of people of color, women, the disabled and other diverse groups.

  - Establish relationships with high schools, colleges and universities that have a diverse population. This will yield a pool of prospective employees in the future.

  - Ensure that the interview panel is culturally diverse. This may minimize potential bias or allegations of bias. It also communicates to prospective applicants that your court promotes and welcomes diversity.

  - Utilize nontraditional networking to produce a diverse applicant pool, such as ethnic bar associations, ethnic community-based organizations, or asking diverse entities to forward job announcements to their e-mail distribution lists.

  - Encourage and seek out diverse employees who work in the court to assist in providing names of prospective recruits. Many minorities continue to maintain close relationships with their respective ethnic communities.

  - Eliminate the concept that "there just aren't many or any qualified minorities" from your thought process and vocabulary. This negative thought process will impede efforts and reinforce the perception of many that diversity deserves only lip service and no action.

Developing a large and diverse candidate pool is one of the most important aspects of conducting any search. It is often stated that the pool of women or minorities in a given discipline is small or practically nonexistent. It may be challenging at first. However, with effort and time, it will become easier to attract qualified diverse applicants. Keep in mind, it is generally accepted that an organization that already has a reputation for having a strong commitment to diversity, exemplified by its diverse workforce, will find it easier to attract more diverse candidates.

B. RECRUITMENT RESOURCES[97]

There are various resources an employer may utilize to build a diverse, qualified candidate pool. Below is a general list of sources courts may wish to explore in search of qualified applicants to develop a diverse workforce.

1. Internal Sourcing

Internal job postings may be a good recruitment source if the court already has a diverse population. E-mailing the announcement to employees and asking them to share it with their networks may enhance the candidate pool. Effective ways to recruit from within include: (1) making job information available internally, which may help identify qualified diverse candidates and avoid claims of discrimination; (2) encouraging decision-makers to consider multiple candidates for all positions; and (3) reviewing policies regarding internal transfers and promotions to eliminate barriers to increase diversity.

2. External Sourcing

External sourcing offers the court a variety of options for recruiting diverse candidates. This process can be as active or passive as the court desires. However, a court should consider an active approach at first. As diversity in the workforce improves, a court may then adopt a passive approach. Listed below are numerous sources the court may utilize in an effort to recruit diverse candidates.

a. Mainstream Newspaper Advertisements

The more common form of advertisement for an available position is the newspaper. Running job announcements in newspapers and other periodicals will continue to be an important method of reaching candidates — whether the source pool is local, statewide or nationwide. There is an added bonus to advertising a position in the newspaper:

many newspapers also run their printed advertisements on the Internet. In such cases, it may be helpful to provide information in the court's advertisement that will direct candidates to its website for additional information and perhaps give candidates an opportunity to apply by filing an electronic application.

Classified ads should contain enticing language that outlines the qualifications for and duties of the position. To avoid any claim of discrimination or an implied contract, the job advertisement should not include any reference to race, sex, color, religion, age, disability, sexual orientation, national origin or any other protected status, except to the extent that the advertisement specifically indicates that the court is an "Equal Opportunity Employer." Advertisements should encourage "diverse" candidates to apply. Doing so is permissibly legal, even in the face of RCW 49.60.400, because there is no promise of special treatment for persons who consider themselves to be diverse. Advertisements should not contain language that suggests employment for a lifetime, i.e., "permanent."

Appendix B contains a list of state and local newspapers throughout Washington State.

b. Minority Media Advertisements

Advertising employment opportunities in local minority newspapers and on local radio stations should not be overlooked. There are numerous advertising mediums that target specific groups of minorities and thus may be an invaluable tool for the court. Most local newspapers and radio stations that cater to minority communities do not charge a fee to advertise job announcements. As a result, using these forms of advertisement is both strategic and cost effective.[98] Appendix B contains a list of local periodicals.

c. Recruitment Firms

A recruitment firm or "headhunter" is a helpful resource, if the court has limited recruitment expertise, time or contacts from which to generate a diverse candidate pool. Generally, recruitment firms may be available as either on a contingent fee or on retainer. A contingency firm typically will focus on the prospective candidate by presenting the candidate to several organizations. Once the candidate begins work, the contingent firm will charge the acquiring organization

a finder's fee. On the other hand, retainer recruitment firms are generally used by organizations seeking employees at the senior manager level, as well as applicants for more specialized positions, such as technical positions, because these positions typically require unique contacts to identify and recruit diverse candidates. In these instances, a retainer recruitment firm will charge a fixed fee that is usually paid before the search begins. The fees assessed by contingent and retainer recruitment firms can run from 20% to 30% of the candidate's first year annual salary. Although the fee is not generally negotiable to newcomers, if the court gives the recruiting firm a significant volume of work and thereby develops a relationship with the firm, it should attempt to negotiate a better fee for new agreements. However, given the lack of public resources available to the court, this method of recruitment may prove to be the least desired. Appendix C provides a list of recruitment and retention firms.

d. Minority Owned Recruitment Firms and/or Recruiters

Minority-owned recruitment firms and recruiters are usually a valuable resource for obtaining a diverse group of candidates because they generally have established networks and a rapport with the community that gives them access to a broad range of qualified candidates. The use of minority-owned recruitment firms or recruiters is also beneficial because they lend credibility to an organization's recruiting efforts. Appendix C provides a list of recruitment and retention firms.

Minority-owned recruitment firms and recruiters are usually a valuable resource for obtaining a diverse group of candidates...

e. Employee Referrals

When seeking to fill available positions, employers should not overlook one of the more inexpensive forms of recruitment: employee referrals. Friends and associates of current employees can be a viable source of applicants because a satisfied employee is an organization's best recruiting source. E-mail job announcements and ask employees to forward them to their personal distribution lists. Employees are generally familiar with the work environment and therefore should be able to assess which of their friends or associates would be a good fit for the court. In order to solicit the assistance of employees, many private employers have implemented incentive programs, in which employees receive some form of reward, such as certificates or merchandise, after the successful placement of the referral. Although the courts must be mindful of the constitutional prohibition on gifts of public funds, other forms of appreciation may be substituted, such as certificate of

appreciation, court-produced merchandise, or acknowledgment in an internal newsletter or publication. The continued internal publication of progress, including the names of those who contribute to the program's success, acknowledges the contributions of employees, tangibly recognizes employees as an asset to the court and fosters goodwill with employee participants.

The continued internal publication of all employee referral programs, as well as prompt follow-up with the prospective applicant, usually will have a direct bearing on the success of the program. The latter is also important in terms of establishing credibility and goodwill with employee participants. However, there is a high risk that this type of referral program may be perceived as discriminatory in practice. Therefore, it is essential that internal referrals are used only in conjunction with the recruitment outreach process.

f. The Internet

The Internet is a fast and inexpensive recruitment tool. Prospective candidates may view detailed information about the court and the job sought. Jobs may be posted on Internet sites at a nominal cost and are usually retained for periods of 30, 60 or more days permitting perspective applicants to view job postings at his/her convenience because the Internet is available to job seekers 24 hours a day. This is especially helpful when websites offer prospective candidates the option to submit applications electronically. The Society for Human Resource Management suggests the following considerations when setting up an Internet recruiting program:

- Jobs should be posted on the top 20 best job search engines to insure that there is adequate publicity about the availability of positions. Those search engines include: Beyond, CareerBuilder, Craigslist, Execu/Search, Hound, Indeed, Job Central, JobServe, Jobster, LinkedIn, Monster, Oodle, OnTargetJobs, SimplyHired, SnagAJob, TheLadders, Trovix, TweetMyJobs, USAJobs and YahooJobs;

- Post Positions on websites that are dedicated to assisting minorities obtain employment. Among those websites are: Online Diversity, WorkplaceDiversity, The Multicultural Advantage, Minority Professional Network, MinorityJobs.net, IMDiversity.com, HireDiversityWorking.com and Diversity Link.

- Post available positions on specialty sites that cater to a regional, technical or functional area of interest, including the Administrative Office of the Courts (AOC);

- Set up an organization profile on a major hub-site that is also linked to the court's website;

- Subscribe to databases that will allow the court to access posted résumés;

- Regularly upgrade the employment section of the court's website;

- Consider utilizing a program, such as Spider or Web crawler, that will perform multiple searches simultaneously;

- Subscribe to a web-based résumé management system; and

- Consider specialized Internet recruitment training for persons responsible for recruiting.

College campuses are a great source for recruiters.

Appendix D contains a list of Recruitment and Retention Websites the court may wish to consult.

g. College/Vocational Recruitment

College campuses are a great source for recruiters. To attract some of the best and brightest candidates, it is important that the court make its career opportunities known to graduating students. Vocational schools train students on a variety of skills, such as secretarial, computers, data-entry, etc., whereas colleges and universities remain a source for entry level professional and administrative employees. After the court has developed a target list of schools, those schools' career placement offices should be contacted regarding their processes for organizations seeking to recruit graduating students. Appendices F through I contain lists of minority colleges and universities from which the court may consider recruiting. Appendices J and L contain tables of diversity statistics related to undergraduate and law school programs at the University of Washington, Seattle University and Gonzaga University for 1999 — 2003.

h. Job Fairs/Career Days

Job fairs and career day opportunities are an obvious

recruitment source. Whether commercial, school or community based, job fairs can draw significant numbers of applicants of diverse backgrounds and experience. However, participation may require an extensive amount of time and money. As a result, the court should determine whether the investment is appropriate for its recruitment efforts. If the court determines attendance at a job fair or career day is appropriate, the representative selected to attend should be a skilled interviewer who can quickly determine whether an individual should be invited back to the court for a more extensive interview. The court can communicate its commitment to diversity by enlisting individuals with diverse backgrounds who have good interviewing and assessment skills to assist in the recruiting process.

i. Co-ops and Interns

Co-ops (a joint enterprise between the court and learning institutions), interns and externs are an often-overlooked resource.Courts should seriously consider establishing one or both of these programs because both offer quality employees at minimal or no cost. Co-ops, internships and externships are usually coordinated with schools and provide students with an opportunity to gain valuable and marketable skills in a work setting and position for which they otherwise would not qualify. Although students may require flexible hours to meet their school schedules, productivity and loyalty are usually the exchange. These students may also develop an interest in future employment with the courts.

j. Specialty Sourcing

Depending upon the court's location, special efforts may be required to ensure that qualified applicants from specific groups are represented in the applicant pool. These include schools, professional organizations, community groups, military placement organizations, state and local labor departments and Internet sites. Local chapters of the NAACP, Hispanic Chamber of Commerce, Black Minority Business Association ("Black MBA"), the Urban League, and organizations such as the YMCA and YWCA post available positions on a regular basis. For an expanded list, refer to the Minority & Justice Commission Workforce Diversity Resource Directory located at www.courts.wa.gov/mjc/directory.

k. Networking

Networking can be a time-consuming effort to gather names,

make contacts and develop relationships with people and institutions. However, once developed, the reward is great with a network of friends and colleagues as well as a source of solid prospective candidates.

C. ATTRACTING DIVERSE TALENT

In order to attract a diverse and talented candidate pool, the court must offer a candidate what the candidate is seeking in an employment relationship. The following is a list of practical measures that the court may adopt and advertise to attract talented candidates from diverse groups:[99]

- Focus on retention;
- Provide training and development opportunities;
- Develop internal candidates for promotional opportunities;
- Build a reputation for being diversity-friendly;
- Build and expand upon networking opportunities with diverse organizations;
- Establish a meaningful mentoring program;
- Adopt an "open door policy" that invites employees to discuss concerns with a manager without repercussions;
- Assign pivotal projects that provide critical experience for all employees;
- Strictly and consistently enforce non-discrimination and anti-harassment policies;
- Provide reasonable accommodations to disabled persons and for religious purposes;
- Pay specific attention to diversity in personnel decisions to ensure more qualified, diverse employees are not overlooked; and
- Create incentives such as certificates and other forms of recognition for employees who actively recruit and mentor less senior diverse employees.

Interviewing diverse candidates is one of the most important stages in the search and selection process.

D. INTERVIEWING DIVERSE CANDIDATES

Interviewing diverse candidates is one of the most important stages in the search and selection process. Two very important things are taking place at this stage: the court is assessing the candidate, and the candidate is assessing the court. Careful planning of the interview is critical to elicit the necessary job-related information.

A list of questions that will be asked of all candidates should be devised. A patterned interview with every candidate permits the committee to make the best comparison. It also ensures that each candidate is treated fairly and minimizes unconscious biases. The questions should be aimed at discovering what the candidate can bring to the position and the court. Questions should also be limited to issues that directly relate to the job to be performed. Certain inquiries should not be permitted because they request or allow for use of information that may lead to unfair and perhaps illegal decisions. The following is a list of basic principles pertaining to non-discriminatory interviewing.

- Matters related to a candidate's race, ancestry or national origin are not open for discussion, except under very limited circumstances.
- It is permissible to ask whether candidates have legal permission to work in the U.S. or whether they are citizens or permanent residents of the U.S.
- Religions preference is not employment-related and should not be discussed.
- Jokes related to race, religion, sexual orientation, disability, sex and other protected status categories must be avoided.
- Marital status and living arrangements are not employment-related topics and should not be discussed.
- It is unwise to make assumptions or to seek information about a candidate's spouse and employment unless the applicant indicates that this is a factor to be considered.
- Candidates should not be questioned about childcare arrangements, birth control practices, plans for family, etc. These issues are not relevant to a prospective employee's candidacy.

- Avoid discussing age. Do not assume that young and vital are synonymous or that stability and good judgment are functions of age.

- Do not ask whether the candidate has ever been engaged in civil rights litigation with former employers.

- Avoid introducing biases into the discussion as a means of testing a candidate's reaction. For example, do not say to a woman, "You would be the only woman in the department. Do you think you can handle teasing or horseplay?"

- Comments about a candidate's physical appearance are inappropriate, even when intended as compliments. It is best to avoid making such remarks at all. However, dress codes should be mentioned to all candidates, if they exist; and, if they exist, they should be non-discriminatory and uniformly applied.

- Do not express value judgments about workplace culture which could operate to discourage unmarried or minority candidates. Provide factual information and leave the appraisal to the candidate.

E. USE OF REFERENCES

Reference information requested by the court or offered by a prospective employee should be job-related. As with interviewing, the same basic questions should be asked about each candidate so that all candidates can be evaluated fairly. When following up with references, references should not be asked any questions that cannot be asked of the candidate.

Some candidates may submit written references, while others may simply offer names, addresses and telephone numbers for contacts following the interview. Every person listed as a reference need not be contacted. Questions directed to the person giving the reference should focus on the candidate's job-related experience, qualifications and accomplishments. Personality issues, unless disruptive or egregious conduct is exemplified during the interview, should not be entertained. However, ability to work well with others should be assessed.

Specific job-related questions should be developed for all references. If the reference is contacted by mail, a copy of the job description for the position sought should be enclosed and the reference asked to provide comments based upon the job description. If references

are contacted by telephone, the interviewer should take written notes of the conversations and those notes should be placed in the candidate's folder. References should be pursued only to gather information regarding job-related skills not necessarily developed at work; they should not be used to gather information on the candidate's religion, race, color, sexual orientation, age, disability, marital status or national origin.

It is best to use references submitted by the candidate; however, if an unsolicited reference makes contact with the search committee or interviewer, it is advisable to ask that the reference restrict his or her remarks to job-related issues only. The names of all references, solicited and unsolicited, should be retained in the candidate's records.

F. HIRING A DIVERSE CANDIDATE

After finding a diverse, highly qualified candidate the court wishes to hire, the court should move expeditiously to make an offer of employment. Before the hiring process begins, it is important to be familiar with internal human resource policies, processes and operations that relate to hiring. This avoids delays in making an employment offer. When an employer is unable to make quick job offers, good candidates are often lost to competitors who move more quickly. However, decision-makers should not circumvent hiring policies in an effort to act expeditiously because doing so can be perceived as discriminatory and illegal.

Successfully attracting and hiring a qualified diverse employee is only the first step to achieving a diverse workforce. Without a strong retention strategy, the court risks wasting time and resources in the recruitment and hiring of an employee.

CHAPTER 7

RETENTION AND ADVANCEMENT

"Career development has been one of our most appealing recruitment tools. Rarely in the first five minutes of an interview do employees ask about money. The first things they want to know is opportunity and how committed the company is to developing employees."

Ron Brown, Capital Management, LLC

Successfully attracting and hiring a qualified diverse employee is only the first step towards achieving a diverse workforce. Without a strong retention strategy, the court risks wasting time and resources in the recruitment and hiring of an employee. Thus, the court's next objective is to ensure that the new employee stays with the court because retention of talented employees is critical to the continuity, and ultimately the success, of any organization.

Failure to retain key talent can lead to poor quality service, failure to meet goals and objectives, lack of organizational knowledge, and a decrease in morale and recruitment. To estimate the organizational costs of turnover, Hewitt Associates suggests that the employer simply multiply 1.5 times the salaries of former employees who have left the organization during the preceding year. The numbers may be stunning. To offset the inherent impact of attrition, courts should implement programs that foster a supportive work environment and encourage open communication and feedback without retaliation. Mentorship and training opportunities should also be explored, as well as other creative morale boosters, such as rewards and recognition. By implementing these types of strategies, the court creates a positive and inclusive work environment.

A. SUPPORTIVE WORK ENVIRONMENT

Creating a supportive environment includes the quality of

Creating a supportive environment includes the quality of supervision and leadership employees receive.

supervision and leadership employees receive. A supportive work environment is one that provides employees with the guidance and resources they need to perform their duties to the best of their ability.

The court should provide regular training for supervisors and managers on topics that include cultural diversity, inclusiveness, leadership and management skills. These attributes can heighten the understanding and awareness of supervisors and managers regarding the necessity and benefits of diversity including providing better service to court users and creating a cohesive working environment. The training also gives them the tools to relay to all employees both the necessity of and benefits derived from a diverse workforce.

In addition, the court should explore programs that would enrich and contribute to the employee's overall quality of life. The following is a list of such programs:[100]

- Alternative work schedules;
- On-site childcare;
- Part-time employment and job sharing;
- Telecommuting;
- Family-friendly leave programs for at-will employees (and perhaps for union employees if provided in collective bargaining agreements);
- Dependent-care support programs;
- Employee Assistance Programs (EAP);
- Social activities, such as softball; and
- Volunteer opportunities, such as blood and toy drives.

The court should develop a process to provide reasonable accommodation to job applicants and employees with disabilities. Employers are required to take steps to reasonably accommodate the physical and mental limitations of an applicant or employee who is a qualified person with a disability, unless the accommodation would impose an undue hardship upon the employer. The court should consider including reasonable accommodation language in its job announcement to inform applicants with disabilities that the court will consider reasonable accommodation requests.

The court should assure employees that the court offers a safe and productive work environment. Employees spend a significant portion of their lives at work. Maintaining a pleasant environment conveys a sense of pride and respect that helps to keep employees on board. Retention is also encouraged when employers foster a community spirit and a sense of belonging by offering employees a vehicle for becoming involved outside the formal workplace. This can be accomplished by court-sponsored events, including a variety of recreational and volunteer activities, such as monthly potlucks, lunch hour book clubs, and annual staff appreciation picnics.

Finally, the court should always promote openness and respect for differences. This is best implemented by training employees to be open to new and differing perspectives, modes of interaction and communication, relational styles and traditions, as well as fair access to resources and pay equity. Being listened to and heard by others is a sign of being respected and valued. There is no better retention tool than the recognition by employees that their employer truly appreciates them and the contributions they bring to the table.

B. DEVELOPMENT AND TRAINING OPPORTUNITIES[101]

Development and training opportunities are important reasons valued employees choose to stay with an organization. Another reason is loyalty to an employer who values the talents of its employees and makes them feel included. The court should anticipate allocating a portion of its budget to staff development similar to that provided for judges. Although this may be difficult especially during cycles of limited budgets, the court should view it as an investment in its employees, with anticipated returns of higher retention rates and reduction in the cost and time associated with continuous recruitment and training of new employees.

The court should encourage and support continuous learning and development by employees. The court may provide information on training opportunities available to staff through the Administrative Office of the Courts, the county, the Washington State Department of Personnel, other state agencies, or local community colleges. Another option is to coordinate internal training sessions. Topics may include skills development, computer skills, and continuing legal education programs. Training should be viewed as an opportunity to build skills to improve productivity and development for the next job opportunity. Another option is to provide full or partial reimbursement for continuing education, higher education or continuing legal education programs.

Development opportunities for employees should be widely publicized to give everyone interested a chance to participate in specific projects and training, especially if there is a possibility that the function will prepare employees for higher level positions. Through investments in leadership and development, the court reflects the value it places on employees and further supports employees in the interest of keeping their skills updated and competitive.

C. REWARDS AND RECOGNITION[102]

Programs that reward and engage employees are key to maintaining a diverse workforce. Everyone desires some form of recognition for their efforts. For example, the court may use awards to recognize significant contributions by employees. These awards can be certificates, employee recognition events, feature articles in Internet publications, and informal departmental potlucks. The court should be vigilant about ensuring that merit and results serve as the driving forces where there are differences in rewards. It should also continually monitor its use of awards, incentives and recognition to ensure that individuals and groups all receive their fair share based on transparent criteria and well-understood processes for nominating and granting awards. If the court wishes to implement this retention strategy, it should monitor the use of such opportunities for any evidence of discrimination and act quickly in the event discrimination is detected. Such internal accountability will help preserve the credibility of this retention tool and its utility in dealing with retention problems.

Mentoring, whether formal or informal, structured or otherwise, is a mainstay of any organization.

D. MENTORING

Mentoring, whether formal or informal, structured or otherwise, is a mainstay of any organization. Employers sometimes overlook important sources of talent and may ultimately lose talent because of underutilization, lack of appreciation, neglect, or competition. This is especially true with respect to skilled minorities and women. Informal and formal mentoring programs are among the most common programs currently in place to cultivate relationship-building, skills development, and pride in the organization, resulting in retention and advancement.

Most senior managers attribute their career success to the benefit of a rewarding relationship with one or more mentors at key stages in their careers. An effective mentor will groom less senior employees for advancement and ensure that the employee has the necessary skills to progress. Mentors generally provide a sounding board for junior level employees and offer insight about the organization,

such as how to avoid certain pitfalls or pursue development opportunities. The mentor may also offer a measure of protection from false complaints or misunderstandings. The mentor often fosters a positive understanding of the mentee's general qualities and skills. More importantly, a mentor is an ally for a mentee, who may not feel accepted by the court and staff.

Many individuals believe that mentoring should be an informal partnership that happens naturally when senior managers take an interest in sharing their insights and guidance with protégés who attract their interest. The problem with this approach is that inhibitions, fears, subtle stereotypes and discomfort with differences may keep senior managers from focusing on diverse candidates for mentorship. Such factors also discourage diverse employees from seeking a mentor. By establishing a few structural supports to a mentoring program, the court can help bridge these potential gaps.

A key element of a mentoring program is that mentoring is a "two-way street." Benefits should flow from the mentor to mentee and vice versa. If mentors concentrate exclusively on teaching mentees how to "fit in," the mentor and the court may lose much of the learning inherent in diversity, including unique knowledge, life experience and other expertise that persons of diverse backgrounds may bring to the workplace. While often overlooked, these attributes can contribute to the court's diversity efforts as well as foster public confidence in the court. Mentors should also expect to learn new ways of thinking and seek to identify ways that the court might change to gain greater access to diverse talents.

CHAPTER 8
DIVERSITY TRAINING

Attracting and obtaining a talented diverse group of employees is only the beginning of a long-term diversity effort. The more important challenge is to create and sustain an environment where individual differences are respected and valued, and where hard work and results are consistently acknowledged and rewarded. One solution is to implement regular training. Diversity training is one step in creating a work culture that is more open to people of different backgrounds. The common goals in diversity training are: (1) to develop employees who interact well with colleagues and court users of diverse backgrounds; (2) to educate employees about and optimize the unique contribution inherent in different cultures; (3) to anticipate the impact of cultural differences; and (4) to remove obstacles to equity and inclusiveness wherever possible.

Diversity classes are conducted all over our nation, as many organizations are now attempting to increase employee sensitivity and awareness to diversity issues. Employers also direct their training efforts to developing employee skills, such as teamwork and conflict resolution as they relate to people from diverse backgrounds. Training for managers and supervisors focused on recruiting and retaining a diverse workforce should be mandatory. Classes may be conducted by internal staff or external consultants, and should include activities and exercises to increase awareness on the state's changing demographics and the value of a diverse workforce.

A. DEVELOPING A TRAINING PROGRAM

Some organizations develop their own diversity training programs. If the court chooses to do so, it must first determine what "diversity" looks like for the court. The court will need to develop measurement instruments that consider the kinds of awareness and training that employees receive and the behavioral modifications expected. Also, the court may wish to incorporate diversity into its performance evaluation system once employee training is completed. Each of these suggestions should increase the effectiveness of the court's diversity training. To this end, the court may want to consider one or more of the following training tools: employee attitude surveys, cultural studies, focus groups, and management and employee evaluations.

B. USE OF EXTERNAL CONSULTANTS

Courts may consider seeking assistance from AOC education staff, the Minority and Justice Commission Education Sub-committee, or the Washington State Department of Personnel, in addition to external private consultants to conduct diversity training. Appendix E lists organizations and individuals that provide leadership, management and professional development training. The referenced organizations have not been independently interviewed and the court is thus encouraged to make its own independent evaluation of any organization it may consider using. The court may also obtain recommendations through referrals from the American Society for Training & Development.[103]

CHAPTER 9

SUSTAINING COMMITMENT

The mark of truly successful diversity recruitment and retention programs is the degree to which they become ingrained in the culture and processes of the workplace. Such programs are likely to be sustained over time. The court can take several steps to facilitate this continuity.

A. MONITOR RESULTS[104]

First, the court should develop systems of measurement to continually monitor the effectiveness of its diversity programs and make adjustments when necessary. This may be accomplished by monitoring the court's workforce profile. Periodic analysis of this data will help determine progress and success. In turn, the same data may be used to adjust recruiting strategies and other workforce planning as needed. Another means to measure results is to periodically distribute a workplace environment questionnaire. Typically, these types of questionnaires provide employees an opportunity to evaluate the workplace and offer suggestions for improvement. Questionnaires also provide the court with an opportunity to evaluate employee satisfaction. They can also be used to solicit court user comments and suggestions. The results will provide the court with concrete evidence of public perception and should be discussed with senior judges, court administrators and managers.

Similarly, the court should evaluate and monitor existing career development programs by reviewing who is being selected for non-routine assignments, special projects, rotational opportunities and training to ensure that cultural or personal bias is not a factor in the participation rates. After evaluating career development and leadership results, the court may need to modify the program to better achieve the court's diversity objectives. Finally, the court should monitor the number of diversity applicants and participants who participate in development opportunities to assess the effectiveness of development publicity and inclusiveness efforts.

B. REQUIRE ACCOUNTABILITY[105]

To succeed in developing and sustaining a diverse workforce, managers and supervisors should be held accountable for achieving results. This may be achieved by building accountability for hiring, retaining and developing a diverse, high-quality workforce into the performance appraisals of managers and supervisors. Moreover, the court should ensure that managers and supervisors have leadership competencies, specifically including cultural awareness training. Persons responsible for hiring should be held accountable to make sure that candidates for these positions are culturally sensitive and demonstrate such competencies. Taking this precautionary measure can avoid unraveling a nascent diversity program.

To succeed in developing and sustaining a diverse workforce, managers and supervisors should be held accountable for achieving results.

C. CELEBRATE SUCCESS[106]

In addition to holding managers and supervisors accountable for building and maintaining a diverse workforce, the court should not overlook its successes. The court should identify and reward champions of diversity by publicizing their accomplishments. Establishing a statewide or countywide diversity award for court personnel is just one example of how the court may celebrate this worthwhile endeavor.

D. COMMUNICATE COMMITMENT TO DIVERSITY AND PROVIDE TRAINING

To sustain the triumph of expanding diversity, the court must continually communicate that diversity is a priority and that the court's judges and senior managers are committed to sustaining it. Training in cultural diversity, including understanding differences, cross-cultural communication, isms,[107] and benefits of diversity, should be mandatory for all staff. Training helps engender greater tolerance of differences and creates an inviting working environmental for all. In addition, managers, supervisors, and judges need additional training in federal and state laws governing equal employment opportunity laws and their responsibilities.

E. AVOID DIVERSITY'S WORST PRACTICES AND PITFALLS

Often, an organization will design its diversity programs and initiatives based upon a "Best Practices" search. "Best Practices" as used here is defined as a set of recommended practices based on an organization's quantitative and qualitative findings. Although these recommendations should be derived from an in-depth and data-driven analysis, some fail to meet this standard by omitting necessary information such as the organization's standard for success, the correlation between results and bottom-line outcomes,

what information, if any, was collected to assess the organization's diversity, whether the information was from all levels of the organization or was merely departmental, etc. Instead of utilizing the "Best Practices" approach alone, the Minority Corporate Counsel Association recommends that organizations such as the court learn from the painful failures of others. The following is a list of diversity "Worst Practices," reprinted with permission from the Minority Corporate Counsel Association at http://www.mcca.com.[108]

- **Broadening the focus to include all individual differences when the real issues are based on innate group identities such as race, gender, sexual orientation, national identity, age and/or ability.** This general language only serves to insult employees and customers and dissipates the focus of energy on measurable outcomes. If a product were being targeted to a particular segment of society, would we call that segment all interested individuals? And could we then measure our success as compared to others?

- **Believing that continued research on and restating of the business case for diversity will convince the dominant group of white men that diversity is the right thing to do.** When dominant group members resist the diversity effort this is a resistance based on emotions — not based on lack of knowledge about the business case. Resistance to diversity efforts by white men is an important dynamic that is necessary for true change. This resistance must be engaged with energy, caring, and thoughtfulness — not deflected by intellectual arguments.

- **Senior leadership delegating the formation of a diversity philosophy and approach to those in staff positions.** True change in the culture of an organization in the area of diversity requires full leadership involvement. Top leaders must both experience and model the personal and business changes necessary for a diversity process to succeed.

- **Focusing the change strategies and actions on the subordinate or excluded groups. Diversity efforts fall short when they target people of color, women, gays and lesbians, the disabled and other excluded groups as the primary focus of change.** While designing strategies to include a previously excluded group is important, the primary change strategies for diversity must engage the dominant organizational culture and those who benefit from the existing practices and policies.

- **Creating a series of activities that have no strategic link to success will only give the appearance of true commitment.** Over time, managers and employees will become discouraged that significant time and energy is not resulting in changes in their day-to-day experience. Diversity strategies must become part of the business purpose and vision.

- **A desire to only see the positive and/or moving to action before the current negative state has been fully understood will generally result in time, money, and energy invested in solving the wrong problem.** Many corporate cultures place such a heavy emphasis upon framing all work in the positive tone that the work needed in diversity efforts to fully describe and understand the current state, which may be blocking the inclusion of employees because of their race, gender, or sexual orientation, is often kept to a surface skin. Leadership fears that the work of the enterprise will *get stuck* in the negative; when in reality, change theory teaches us that exposing the blocking forces fully will ignite the energy needed to address the *real* problems.

- **Failing to see a diversity effort as an understanding that requires knowledge and experience in the content of diversity and systems that change theory can lead an organization into frustration and negative backlash.** All organizational change requires extensive knowledge and experience with planned change strategies — adding the issues of diversity to the work calls for additional depth of experience.

- **Seeing resistance to the diversity issues as failure has stalled many diversity efforts that were on the right track.** Unfortunately, no real change takes place in organizations without significant resistance. Resistance is the source of energy for systems change. If there is no resistance, then nothing significant is changing. Diversity strategies must include major attention to engaging and transforming — not reducing — resistance.

- **Believing that a diversity effort can be implemented without making some employees unhappy — and, worse yet, developing a process and a plan aimed at keeping everyone happy — will surely result in failure.** When did the new accounting system meet with cheers and applause? Did all employees welcome your last change in benefits with enthusiasm? Do companies stop mergers and downsizing because employees are unhappy? Leadership must be

committed to diversity strategies because they are necessary for business prosperity. Leadership must then demonstrate the benefits of this change to employees instead of working to keep them satisfied in an inequitable system.

- **Assuming that training changes behavior is a common worst practice in diversity.** Awareness training to shift perceptions and unarticulated assumptions is critical to change and must be a part of an overall strategy that includes specific goals, measurement, behavior skills training and accountability. Awareness training alone will not change behavior.

- **Leadership being influenced by individual women or people of color who personally fear change and advise the dominant leadership to avoid any controversial issues or approaches is a common worst practice.** Open dialogue on issues of race, gender, racism, sexism, homophobia and other topics on which employees have strong opinions must be a part of any successful diversity effort.

- **Leadership making decisions for others in the organization who will be expected to implement diversity plans is a grave error.** Management and employees at all levels must be involved in diversity planning. Those who are being asked to change know the most about what will help them change.

- **Beginning a diversity effort focused solely on external public relations will lead to false expectations.** Priorities should be initially focused on internal culture and commitment — and once employees trust in the leadership, they will lead the work to the public. Presenting an organization to its public as a leader of diversity before key components of the organization are committed to the change will foster the belief by employees that leadership doesn't *walk the talk*.

CHAPTER 10

JUST FOR JUDGES: WHY DIVERSITY IS IMPORTANT

"The ultimate measure of a man is not where he stands in moments of comfort and convenience but where he stands at times of challenge and controversy."

Dr. Martin Luther King, Jr.

Although our society has firmly moved into the 21st century, concepts of diversity in general and the diversification of the judicial system specifically, continue to be both challenging and controversial. However, if one gains a better understanding of the benefits of diversity and the reasons diversity is necessary for the courts, active promotion of diversity and greater inclusiveness will be received more favorably.

In order to gauge the importance of diversity to those who have the greatest influence on the judicial system, several judges were randomly selected to respond to some very simple questions: "Why is diversity important to the bench and the judicial system as a whole?" and "What changes have you observed regarding issues of diversity during the time that you have served as a judge in Washington?" The responses of each of the selected judges, which included individuals of both genders, different ethnic groups, disparate ages, and differing years of judicial experience, were strikingly similar regarding the importance of diversity in the judicial system and the changes they have had observed over the years. A representative sample of the judges' responses to the questions follows.

A. WHY IS DIVERSITY IMPORTANT TO THE BENCH AND THE JUDICIAL SYSTEM AS A WHOLE?

"People are generally more accepting of a system where they can see that there are others like themselves who are a part

of the established system, thereby creating more confidence in the system."

"Greater confidence in the system creates greater respect for the system and those who are responsible for administering justice."

"A diverse bench presents an opportunity for judges and judicial staff to share concepts and ideas lending a broader perspective to the decision-making process."

"Diversity among the judges and judicial staff helps to dispel stereotypes and misconceptions held not only by other judges who may view articulate people of color or individuals with disabilities as an exception, but also helps to dispel such stereotypes and misconceptions among members of the public."

"The faces of those who are constituents of the judicial system are changing; the more monochromatic the bench, the less likely people will feel that they are on equal footing with all other constituents of the system."

B. WHAT CHANGES HAVE YOU OBSERVED REGARDING ISSUES OF DIVERSITY DURING THE TIME THAT YOU HAVE SERVED AS A JUDGE IN THE STATE OF WASHINGTON?

In response to questions about what had changed over the years with respect to diversity, the judges observed a number of different changes. Here are but a few of the observations that were made:

"Ethnic diversity has changed with increasing representations from Hispanic-American and Asian-American populations."

"Jury panels are increasingly diverse."

"Attorneys of color are no longer presumed to be the defendant when they walk into the courtroom."

"Women are no longer presumed to be the court reporter when they arrive in the courtroom."

"There is no longer a presumption that people with disabilities are unqualified to serve on juries."

"The belief that people of certain age, a certain gender or certain ethnic groups hold specific attitudes has been shattered by jury decisions."

C. WHAT CAN JUDGES DO TO INCREASE AND SHOW RESPECT FOR DIVERSITY AT ALL LEVELS OF THE COURT?

"Actively recruit qualified people with different backgrounds to seek positions in the judicial system."

"Help to educate the public about the true constituents of the judicial system — for example, all criminal defendants are not people of color; all business litigants are not Caucasian."

"Discuss among yourselves the different emotional reactions and perceptions that people from different communities may have about the judicial system — understand cultural differences and apply that understanding to the administration of justice."

"Be willing to mentor within the community and serve as a role model for someone who is different from you both in appearance and in perception."

"Treat all within the courthouse, employees and constituents alike, with dignity and respect — how you treat people makes a difference in not only how you are perceived but in how those with whom you associate are perceived."

"There is a plethora of ethnic groups who use the court's services — if you do not know how to pronounce an individual's name, have the professional courtesy to ask."

"Encourage more frequent training and dialogue on issues of diversity — don't be content with a once-a-year celebration on Martin Luther King, Jr. Day, Cinco de Mayo or Chinese New Year. Make the celebration of diversity a yearlong commitment, if not in the entirety of the courthouse, at least in your courtroom."

"Go into the public schools and into other public forums to assist students at all levels of education to understand the judicial system."

"Listen carefully to responses from jurors during the voir dire panel. If responses evidence discriminatory attitudes, address them head on. Do not take the attitude that you are powerless to facilitate change in those circumstances."

"Do not tolerate bigoted attitudes directed toward any member of the judicial staff, attorneys or others appearing in

your court; otherwise the negative attitude will be assumed permissible."

"Before drawing any conclusions, ask yourself what can each person contribute? Believe that their contributions will raise the bar and enlighten you regardless of their level of education, gender, ethnic background, political orientation, sexual orientation, age, marital status, national origin or religion."

Remember that as judges, each of you sets an example. When you least expect it, someone will be thinking to themselves, "If they can do it, I can do it." If you can make diversity a reality, others will believe that they can achieve the goal as well.

There is no room for bigotry in our judicial system. There is only room to celebrate and respect differences.

There is no room for bigotry in our judicial system. There is only room to celebrate and respect differences.

CHAPTER 11

WORKING WITH YOUR JUDGES

The results of the court's recruitment and retention efforts will necessarily depend upon the court's leadership and commitment to increasing diversity in the workplace. In addition to the suggestions outlined in the preceding chapters, the following is a list of practical ways the court may wish to exemplify its continued support of diversity in its workplace and the community at large. Court administrators and managers should coordinate and take the lead in ensuring that judges and court staff integrate many of these suggestions. The opportunities to reach out to diverse communities are many.

- Include underrepresented diverse persons among the court's leaders and staff.

  Establish a long-term commitment to achieve this goal and regularly monitor the court's progress.

- Regularly provide diverse persons with opportunities to chair or otherwise lead or take part in the court's committees.

  Do not be discouraged if your first efforts fail.

  If someone declines the invitation, ask if they might reconsider for some future committee or if they can refer you to other underutilized speakers of diverse backgrounds.

  Inquire regarding what types of committees the employee might have an interest in being a part of now or in the future.

- Become familiar with specialty and minority bar groups that exist in your county and in the state of Washington.

- Cultivate a meaningful relationship between senior staff members and the leaders — past, present, and future — of local and statewide specialty and minority bars.

- Encourage fellow judges and other court leaders to attend meetings, programs and social events of local specialty and minority bar groups.

- Initiate meetings, joint programs, co-sponsorship opportunities and other social and networking events with leaders and members of local and state specialty and minority bar groups, individually and jointly.

- Raise the court's profile in the local community.

- Encourage court leaders to serve on boards and committees and to support civic, social service, and other efforts in the local minority communities.

- Develop a mentoring program.

  Use senior managers to mentor diverse persons within the court.

  Mentors do not have to be the same race, ethnicity or gender as the mentee.

- Strive to make the court a welcoming and supportive place for people of color, women, the disabled, etc.

- Include art from minority communities among the court artwork and décor. Posters are available from the Minority Justice Commission.

- Include minorities and other diverse persons as panelists, speakers, writers or commentators on programs.

- Include perspectives and experiences of minorities and other diverse persons in court newsletters or other court publications.

- Awards given by the court should include diverse personnel.

  This is an excellent way of making sure that the court honors and gives public recognition to employees of diverse backgrounds for their achievements and accomplishments.

- Learn about the people, issues, causes and concerns that are of particular interest to diverse persons.

- Encourage informal potluck events, brown bag lunch

discussions, book clubs and the like that facilitate socialization among staff.

- Encourage fellow judges and senior managers of the court to subscribe to and read major newspapers, magazines and journals from diverse communities, both locally and nationally.

- Send representatives to national programs where diversity efforts and strategies will be discussed, explained and examined.

  These programs feature some of the best and most experienced speakers on the subject of diversity.

- Support and actively assist in efforts to diversify the composition of your court.

- When the opportunity presents itself, solicit bids for the services of diverse vendors and suppliers.

  This will heighten the court's visibility in various communities.

  Check with city, county and state government agencies that oversee certification of minority business enterprises, and ask for a copy of their directory of minority-owned vendors.

When the opportunity presents itself, solicit bids for the services of diverse vendors and suppliers.

CHAPTER 12

ENFORCEMENT OF NON-DISCRIMINATION LAWS

In order to enforce non-discrimination and anti-harassment laws, the court staff must first be familiar with the laws they are enforcing. Both federal and state statutes provide individual employees with protection from illegal conduct by employers. The following is a brief overview of employment-related laws of which every employer, including the court, should be aware.

A. FEDERAL NON-DISCRIMINATION AND ANTI-HARASSMENT LAWS

Equal Employment Opportunity is a right of all people and it is the responsibility of every employer — public and private. The most important federal laws that provide the legal basis for equal employment opportunity are summarized below.

1. Civil Rights Act of 1866[109]

The Civil Rights Act of 1866 protects persons from discrimination based on race and national origin. It was enacted shortly after the abolition of slavery. This law provides protection in situations not specifically covered by the Civil Rights Act of 1964.

2. Equal Pay Act of 1963[110]

This act is an amendment to the Fair Labor Standards Act of 1938.[111] It prohibits sex discrimination in the payment of wages and fringe benefits. It was amended in 1972 to include executive, administrative and professional employees.[112]

3. Civil Rights Act of 1964[113]

Title VII of the Civil Rights Act states that: "No person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, or be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Title VII of the Civil Rights Act provides that it is unlawful for an employer with 15 or more employees: ". . . to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

Title VII was later amended to empower the Equal Employment Opportunity Commission (EEOC) to administer the law. The amendment also extended the EEOC's jurisdiction to include public employers, as well as private employers.

In total, the Civil Rights Act of 1964 prohibits discrimination in hiring, promotion, salaries, benefits, training, treatment of pregnancy, and other conditions of employment on the basis of race, color, religion, national origin, or sex. These protections are offered regardless of the citizenship status of the applicant or employee. Today, most employment discrimination charges are filed under Title VII.

4. Age Discrimination in Employment Act of 1967[114]

The ADEA prohibits employers from discriminating in advertising, testing, promotions, benefits, and conditions of employment on the basis of age against anyone over the age of 40.[115]

5. Vietnam-Era Veterans' Readjustment Assistance Act of 1974[116]

The Act prohibits discrimination in employment practices on the basis of either disabled veteran status or Vietnam-era veteran status. It also requires that employers take affirmative steps to employ and promote qualified disabled veterans and Vietnam-era veterans.

6. Americans with Disabilities Act of 1990[117]

The ADA prohibits discrimination against individuals with disabilities in private and state and local government employment; public accommodations; public transportation; state and local government services; and telecommunications.[118]

7. Genetic Information Nondiscrimination Act of 2008 (GINA)

This statute prohibits health insurers and employers from denying health coverage or charging higher premiums based on an individual's current genetic state or a predisposition to developing a particular disease in the future. *Pub. L 110-233, 122 Stat. 881 enacted May 21, 2008*

8. Age Discrimination Act of 1975

Although this statute does not implicate employment discrimination, it does implicate and prohibit discrimination in programs that receive federal financial assistance. Therefore, to the extent that the judiciary receives any federal financial assistance to carry out any programs, it is subject to this law. *42 U.S.C. § 6101-6107*.

9. Section 504 of The Rehabilitation Act of 1973

This law prohibits discrimination against any qualified individual who works where the employer receives federal funds. *29 U.S.C. § 794(a) (1973)*.

10. The Immigration Reform and Control Act of 1986 (IRCA)

This statute made it illegal for an employer to hire workers who could not demonstrate through various means a right to work in the United States. The statute imposes monetary penalties for failure to comply with its provisions. It also prohibits employers from making blanket determinations about who can and cannot be employed based on ethnic origin or appearance. *8 U.S.C. 1101, Pub. L. 99-603, 100 Stat. 3359 (Act of 11/6/86)*.

11. The Uniformed Services Employment and Reemployment Rights Act (USERRA)

The Uniformed Services Employment and Reemployment Rights Act of 1994 is intended to ensure that persons who serve or have served in the Armed Forces, Reserves, National Guard or other "uniformed services:" (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present, or future military service. *38 U.S.C. § 4301-4335*.

B. STATE LAWS

Under the Washington Law Against Discrimination, RCW 49.60, it is an unfair practice for an employer to refuse to hire, discharge, or discriminate against in compensation or in other terms or conditions of employment because of a person's age, sex, marital status, race, creed, color, national origin, the presence of any sensory, mental, or physical disability, the use of a trained guide dog or service animal[119] or on the basis of sexual orientation. Discrimination on the basis of sex is also prohibited by Washington Constitution Article 31 and RCW 49.12.175. The state law applies to

all employers except nonprofit religious organizations that employ eight or more persons. It protects independent contractors as well as employees.[120] Specifically excluded from the protection of the law are persons employed by their parents, spouses, or children, and domestic workers.[121]

Because of the similarity of the provisions of federal and state laws, regulations and decisions made pursuant to federal statutes are persuasive to courts in the interpretation of the state law. Appendix M provides a brief and general overview of federal employment laws.

C. ENFORCING EMPLOYMENT LAW

Employment discrimination exists where employees are dismissed or mistreated on account of race, gender, religion, national origin, age, disability or any other status protected under the law. To provide a remedy for victims of employment discrimination and to eliminate unfair and unequal conduct, federal and state governments have enacted employment non-discrimination and anti-harassment legislation and remedial procedures. An employer would benefit by establishing the following practices:

- Adopt and implement policies prohibiting harassment and discrimination.

- Make sure the policy is comprehensive and clearly explains what constitutes discrimination and harassment under state and federal laws.

- The non-discrimination and anti-harassment policies should identify how and to whom to report discrimination or harassment (with several alternatives).

- Policies prohibiting discrimination and harassment should outline how the court will investigate allegations and how it will address violations.

- The court should adopt a non-retaliation policy.

  The non-retaliation policy should assure employees that they will not be subject to retaliation for good faith reporting of policy violations.

  The non-retaliation policy should also state the employer's intention to keep reports of harassment and discrimination as confidential as possible, subject to such disclosure as may

be required to investigate and remedy the situation.

- Distribute non-discrimination and anti-harassment policies to all employees on a periodic basis and have them sign a receipt, acknowledgment form, or sign-off sheet to document distribution.

- Prominently post non-discrimination and anti-harassment policies throughout common areas, i.e., lunch and break rooms, photocopy areas, etc.

- Designate supervisors, other than an employee's direct supervisor, who are to receive reports of harassment and discrimination.

- Monitor work areas regularly.

- Follow up on all suspected discrimination and harassment immediately and aggressively.

- When complaints of discrimination or harassment are made, the court must:

  respond promptly;

  treat the complaint seriously;

  investigate the complaint thoroughly using a trained investigator; and

  take appropriate actions designed to end any discrimination or harassment that is found to have occurred.

- Fully document all actions taken in response to reported or suspected discrimination or harassment.

- Regularly educate managerial, supervisory and non-supervisory employees on harassment and discrimination issues.

- Train managers and supervisors how to identify and report all potentially inappropriate behavior of which they become aware and evaluate that behavior in compliance with discrimination policies.

- Managers and supervisors should be required to know the employer's non-discrimination and anti-harassment policies and complaint procedures.

- Enforcement of non-discrimination and anti-harassment policies should be included as a performance measurement for managers and supervisors.
- Make sure word is out that the court has a zero tolerance policy regarding discrimination and harassment and that managerial, supervisory and non-supervisory employees know this.
- Hold supervisors and employees accountable for any inappropriate behavior that is or could be construed as discrimination or harassment.
- Explicitly state commitment to equal employment opportunity.
- Commit and endeavor to maintain a workplace free of harassment and discrimination.

Fully document all actions taken in response to reported or suspected discrimination or harassment.

CHAPTER 13

RENEWING YOUR PERSONNEL SYSTEM AND UPDATING YOUR POLICIES

"To be effective, company policies must be well structured, carefully drafted in plain language and reflective of the company's current practices and culture."

Betty Sosnin[122]

A. UPDATE YOUR POLICIES

Like cleaning house at springtime, the court should seek to review court policies on an annual basis. Some organizations resolve to disseminate their policies through a series of memoranda, e-mail messages and other miscellaneous documents. The problem with this approach is that there is usually no one place to locate documentation to policy-related questions. Some organizations maintain their policies in an employee handbook or personnel policies manual. While the problem of organizational policies being scattered throughout the organization has been overcome, there still may be another conflict lurking if an organization relies on the same handbook over the course of several years. If the court's handbook or manual has not been revised and major legislation has been passed or practices have changed, then it is time to compile a new or updated handbook or manual.

Even in the court system, there may be judges or managers who imprudently resist creating written documentation of workplace policies. This approach is misguided and will not shield the court or its employees from liability or disciplinary action. Nothing will drive an employee to seek the advice of an attorney more quickly

than arbitrary and capricious enforcement of substandard or ill-defined policies. Each court should carefully draft and review its policies and procedures.

The court should first gather and review multiple samples of employee handbooks and policies from other organizations. This will help determine how its handbook should be structured, as well as the types of policies and procedures that should be included. The following is a list of suggested policies and procedures to be placed in employee handbooks or manuals:

- A statement of respect for all employees.
- Key employment policies, including an equal employment opportunity statement, anti-harassment and non-discrimination policies, policies on drug, alcohol and tobacco use, and a complaint procedure.
- General workplace policies, i.e., dress codes, standard of conduct, discipline procedures, business expense reimbursement, and workplace rules, including e-mail and Internet usage, company vehicle use and workplace violence.
- Hours and attendance, employment classifications, absenteeism and tardiness, severe weather and emergencies, meals and rest periods, and overtime policies.
- Employee development, performance evaluations, promotional opportunities and transfer policies.
- Pay periods and pay checks.
- Leaves of absence and time off, including holidays, vacation, sick and personal leave, funeral and bereavement leave, jury and witness duty, military leave and leave under the Family and Medical Leave Act.
- Benefits, including general benefits policy, health insurance, disability and life insurance, COBRA, retirement and educational assistance.
- A statement regarding reasonable accommodation for the disabled.
- A statement of reasonable accommodation for religious purposes.

- Employment separation, post-employment references and conflict of interest provisions.

- An employee receipt and acknowledgment form.

Each of these subjects should not only be included, where applicable, but strictly and consistently enforced — otherwise, the manual may be deemed invalid and of no use if judicially challenged. Furthermore, any inconsistent enforcement of workplace policies can be construed as discriminatory or unfair.

Keep in mind that an employee handbook containing the court's policies is not an operation manual telling employees how to perform their day-to-day duties. Therefore, there is no need to include a job description or detailed information pertaining to any one position.

Policies should also be modified to reflect the time and culture in which we currently live. Stephen Rubenfeld, Ph.D. and James Laumeyer recommend that organizations pay special attention to the modification of the following policies, if they exist:

- Time Off — Policies outlining when and how an employee may take time off should be modified to include paid time off (PTO), personal leave days and leaves of absence.

- Benefits — Employees should be offered options from which they may choose benefits, including medical and dental, and retirement plans.

- Position — Broadly drafted job descriptions allow employee development opportunities and should be work-oriented, as opposed to task-oriented. Job descriptions should also include explicit behavioral expectations.

- Staffing and Work Schedules — Non-traditional staffing policies are an emerging trend, offering employees and employers multiple alternatives. Such policies focus on part-time employment, job sharing, telecommuting and temporary employment. Flexible hours and work schedules are also an option.

- Training and Development — If possible, the court should consider adopting a training and development policy. Such policies can be broadly or narrowly drafted.

- Review Process – It is currently a widely held belief that

invoking a review process that not only includes feedback from immediate supervisors but also from others with whom an employee interacts will provide a more well rounded view of what is occurring in the work place and aid in retention. Although this belief is not shared by all, if this review process is applied from top to bottom, it will provide an employer with a greater sense of who has and who has not embraced the concept of diversity as opposed to those who are largely paying "lip service" to the concept. Of course, the drawbacks to such a review process include the potential that if the process is carried out anonymously, it provides a shield for those who are unhappy or who have a vendetta to severely damage an employee's career.

Consider conspicuously placing disclaimers within the handbook. The following is a list of disclaimers often implemented by non-union employers:

- This handbook supercedes any preceding handbook or unwritten policies.
- This handbook does not create a contract, express or implied.
- This handbook is not all-inclusive and is only a set of guidelines.
- This handbook does not alter the "at-will" relationship between employer and employee.
- This handbook does not guarantee employment for any definite period of time.
- This handbook applies to the following categories of employees.
- This handbook can only be changed in writing by the [insert position] of the court
- The court may unilaterally change this handbook at any time.
- Violation of the provisions of this handbook is grounds for progressive discipline up to and including termination.

The following is a list of disclaimers often implemented by unionized employers:

- This handbook supercedes any preceding handbook or unwritten policies.
- This handbook does not create a contract, express or implied.
- This handbook is not all-inclusive and is only a set of guidelines.
- This handbook does not alter or replace the terms of the collective bargaining agreement, but is incorporated therein.
- This handbook does not guarantee employment for any definite period of time.
- This handbook applies to the following categories of employees.
- This handbook can only be changed in writing, by the [insert position] of the organization.
- The court may unilaterally change this handbook at any time, unless the collective bargaining agreement provides otherwise.
- Violation of the provisions of this handbook may constitute "for cause," where "for cause" is the ground for termination. "For cause" is defined by management and the Collective Bargaining Agreement ("CBA").

A current employee handbook will prove invaluable in clarifying policies, answering employee questions and integrating employees into the court's culture.

This following is an example of how the court may implement the foregoing disclaimers:

> This Handbook is applicable to employees of [court's/county's name]. The material contained in this Handbook is informational only. It supersedes, revokes and replaces any other handbooks, manuals and policies in place prior to the distribution of this Handbook. It does not apply to any employee with a written employment contract unless specifically incorporated in the contract, nor does it supercede any conflicting provisions already provided within any corresponding collective bargaining agreement. Provisions of this Handbook may be modified, revoked or changed by [court's/county's name] at any time without notice, unless any applicable collective bargaining agreement provides otherwise. You

> are encouraged to read this Handbook periodically and to keep it for future reference.
>
> This Handbook is not intended to create, and is not to be construed to create a contract or a promise of specific treatment in specific situations. This Handbook is designed to provide only general guidelines. It does not create any implication or promise of continued employment or that the provisions herein will apply to all situations. Rather, employment with [court's/ county's name] is on an at-will basis, meaning that [court's county's name] may terminate your employment with the court/county with or without cause, for any reason not expressly forbidden by law. Likewise, you may terminate your employment at your discretion.

The most effective employee handbook will accurately reflect the court's values and culture. Make sure that both existing and new employees receive copies of new or updated handbooks. Employees should sign and return a receipt of acknowledgment, which should be placed in the employee's personnel file. To the extent possible, old handbooks should be collected and destroyed. This will minimize the possibility of outdated information circulating throughout the court.

B. MAKE SURE YOUR POLICIES ARE IN COMPLIANCE WITH THE LAW

As with most areas of law, employment laws are ever-changing on both the federal and state level. Within the past decade there have been significant developments in the laws relevant to most workplaces, such as the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), the Civil Rights Act Amendment of 1991, the Polygraph Protection Act and the Fair Labor Standards Act. For example, regulations issued under the FMLA require the court to include its FMLA policy in *any* applicable handbook. Regulations issued under the ADA do not require inclusion in the handbook, but may require careful scrutiny of earlier handbook versions to ensure that no statement is made in violation of federal (or state) laws against disability discrimination and that attendance policies properly accommodate persons with disabilities. Any handbook or personnel policies manual created more than two years ago probably has also failed to address hundreds of state and federal court cases that tackle handbook related issues.

Moreover, federal and state government agencies have also issued numerous regulations and interpretive decisions in recent years that affect handbook policies. As a result, employers with handbooks and

personnel policies manuals should constantly monitor them, with the assistance of legal counsel, to determine when and whether revisions are needed. Therefore, if the court has an employee handbook addressing any of these issues that is more than five years old, it would be prudent to revisit the policies.

C. POLICIES SHOULD BE EMPLOYEE FRIENDLY

Employee-friendly policies are practical and easy to understand. They should be written using plain language. Disclaimers and reservations of management's rights should never be diluted or hidden to the extent that they lose their effectiveness. The handbook should be written in a positive and friendly manner, and should attempt to foster a feeling of well-being among employees. If the drafter experiences trouble phrasing a policy in natural language, that person should attempt to orally explain the policy to another and use that same language to write that particular policy. A clear, conversational tone will make it easier for all employees to access the information needed. Achieving this tone may require numerous revisions and edits, but is well worth the investment. Finally, when making the finishing touches, delete unnecessary words and phrases and check grammar, spelling and punctuation. The court might even wish to have a professional writer review its final version. policies should be included as a performance measurement for managers and supervisors.

CONCLUSION

From creating a workforce that is more productive and efficient to increasing public trust and confidence, the fruits to be reaped from diverse recruitment and retention efforts are many. Moreover, it simply cannot be ignored; diversity in the State of Washington is a reality. It must also become a reality in Washington's judicial workforce. At first glance this opportunity may seem daunting, but with a firm commitment and a well thought out plan, the diversity represented in the counties and state in which our courts are located can become a reality in our courts.

All it takes is communication from the top down that diversity in the court matters, a knowledge base of the population served by the court, a realistic assessment of the court's current workforce and cultural awareness training to introduce court employees to the court's effort to create a welcoming and open environment to all employees and court users. These steps are necessary to develop and implement diversity recruitment and retention initiatives and goals, which should be drafted, put into practice and thereafter monitored. If these recommendations are adopted, the foundation of a very successful diversity program will be established and the diversity in Washington State will be reflected in the court.

BRENNAN
CENTER
FOR JUSTICE

IMPROVING JUDICIAL DIVERSITY

Ciara Torres-Spelliscy
Monique Chase
Emma Greenman

Foreword by Susan M. Liss

Brennan Center for Justice *at New York University School of Law*

ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at NYU School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. Our work ranges from voting rights to campaign finance reform, from racial justice in criminal law to presidential power in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measureable change in the public sector.

ABOUT THE BRENNAN CENTER'S FAIR COURTS PROJECT

The Brennan Center's Fair Courts Project works to preserve fair and impartial courts and their role as the ultimate guarantors of equal justice in our constitutional democracy. Our research, public education, and advocacy focus on improving selection systems (including elections), increasing diversity on the bench, promoting measures of accountability that are appropriate for judges, and keeping courts in balance with other governmental branches.

ACKNOWLEDGEMENTS

The authors would like to thank Susan Lehman, Jeanine Plant-Chirlin and Maggie Barron from Communications & Strategy for their editorial guidance; and legal interns Julian Yap, Sharon Sprayregen, Erica Coleman, Shuli Karkowsky, Megan Donovan, Orion Danjuma and undergraduate interns Lauren Jones, Karina DeLeon and Nirupama Hegde for their assistance with this project. The Center thanks the Altria Group, Inc., the Joyce Foundation, the Open Society Institute, the Carnegie Corporation of New York, and the Wallace Global Fund for the generous support that made this paper possible. The statements made and the views expressed in this paper are solely the responsibility of the Brennan Center.

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FOREWORD

In 2007-2008, the Brennan Center for Justice at NYU Law School studied how successful those states with appointed judiciaries are at recruiting and appointing women and racial minorities. Our goal was to provide an accurate snap-shot of state courts and a roadmap of how to improve judicial diversity. We published the report in January 2009 a week before President Obama took office. Yet, hopefulness has not yet led to changes that will yield more diversity in all courts across the country.

Nowhere was the sober reality more self-evident than during the nomination process of Second Circuit Judge Sonia Sotomayor to the Supreme Court in 2009. This nomination highlighted the issue of diversity on the bench: of 111 Supreme Court Justices in the Court's history since 1789, 106 have been white men. Justice Sotomayor is the third person of color and the third woman appointed to serve on the Supreme Court in its entire 221 year history. Her nomination and confirmation provided the opportunity for a national conversation about the importance of judicial diversity. Unfortunately, this opportunity was largely missed. The public discussion of race and gender surrounding her nomination was truncated and lacking in substance.

As national attention focused on the diversity of the highest *federal* court, the homogeneity of *state* courts has gone largely unnoticed. According to the latest data available from the American Judicature Society, 27 state Supreme Courts are all white and two are all male. Although recent research by Dr. Malia Reddick published in the *ABA Judges Journal* indicates that merit selection produces slightly more diversity than other selection methods, the homogeneity of these state courts was produced by both judicial elections and nominations. No matter how we choose our state judges, we need to do better at diversifying the bench.

When we completed our study in 2008, four of the ten states we examined had Supreme Courts that were all white and two had only a single female member. Now, according to the most recent data, just two years later, six of the ten are all white and three of the Supreme Courts have a single female member. Clearly, the short term trends are going in the wrong direction.

On the other hand, there has been broad interest in the issue of judicial diversity. Our original report was reprinted in the book *Women and the Law* by Thompson Reuters West. And demands for copies of the report from grassroots groups have prompted this reprinting. This issue is being discussed around the country from Washington, D.C. to Topeka, Kansas and beyond.

We stand by the original findings of our report. As a matter of fairness, the Brennan Center urges states that appoint judges to marshal their resources and tailor their appointment processes in order to attract talented female and minority attorneys to the state bench.

Susan M. Liss
Director of the Democracy Program, Brennan Center for Justice at NYU School of Law

EXECUTIVE SUMMARY

The United States is more diverse than ever, but its state judges are not. While we recognize that citizens are entitled to a jury of their peers who will be drawn from a pool that reflects the surrounding community, Americans who enter the courtroom often face a predictable presence on the bench: a white male. This is the case despite increasing diversity within law school populations and within state bars across the country.

Most of the legal disputes adjudicated in America are heard in state courts.[1] As such, they must serve a broad range of constituencies and an increasingly diverse public. So why are state judiciaries consistently less diverse than the communities they serve? Unfortunately, studies show that both merit selection systems and judicial elections are equally challenged when it comes to creating diversity.[2]

Today, white males are overrepresented on state appellate benches by a margin of nearly two-to-one.[3] Almost every other demographic group is underrepresented when compared to their share of the nation's population. There is also evidence that the number of black male judges is actually *decreasing*. (One study found that there were proportionately fewer black male state appellate judges in 1999 than there were in 1985.[4]) There are still fewer female judges than male, despite the fact that the majority of today's law students are female, as are approximately half of all recent law degree recipients.[5] This pattern is most prevalent in states' highest courts, where women have historically been almost completely absent.[6]

These national trends repeat themselves in the ten states we studied. For example:

- Arizona's population is 40% non-white,[7] but Arizona has no minority Supreme Court justices.[8] Minorities occupy only 18% of its Court of Appeals judgeships and 16% of its Superior Court judgeships.[9] Despite Arizona's constitutional provision directing appointing Commissions to reflect the diversity of the state population,[10] the diversity of the state bench falls short.

- Rhode Island's population is 21% non-white.[11] Not withstanding the statutory requirement that the governor and nominating Commissions encourage diversity on the appointing Commissions,[12] it has no minority Supreme Court justices and minorities hold only two of the 22 judgeships on the Superior Court.[13]

- Utah's population is 18% non-white.[14] Yet Utah has no minority Supreme Court justices.[15] Minorities hold one of seven court of appeals judgeships and only four of 70 district court judgeships.[16] Utah has no specific constitutional or statutory diversity provision.

The problem is clear: even after years of women and minorities making strides in the legal profession, white men continue to hold a disproportionate share of judicial seats compared with their share of the general population. The question of why this pattern persists does not have an easy answer; the dynamic is created by the intersection of a number of complex factors.

But it is a situation we can fix. Fortunately, there are common-sense ways to increase awareness of openings on the judiciary and encourage diversity on the bench.

The Brennan Center for Justice at NYU School of Law undertook this study to determine how successful those states with appointed judiciaries are at recruiting and appointing women and racial minorities to sit on the bench. Our goal is to provide an accurate picture of the diversity in state courts and a roadmap of how to improve diversity on the state bench.

In the course of this study, we interviewed members serving on the judicial nominating Commissions in ten states (Arizona, Colorado, Florida, Maryland, Missouri, New Hampshire, New Mexico, Rhode Island, Tennessee and Utah) to learn if, and how diversity is taken into account during the nominating process. To contextualize our interviews, we reviewed the relevant academic literature on judicial selection as well as academic writings in the field of cognitive science on implicit bias. In addition, we investigated the demographic data and the applicable laws in each state. Based on this research, we offer of a number of best practices to attract talented female and minority attorneys to the bench.

Looking at a sample of ten states with appointive systems, we found that in most states racial and gender diversity on the bench lags behind the diversity of these states' general populations, bar memberships and law students. This is especially true on the highest courts; four of the ten states we examined had Supreme Courts that are all white.

Overall, too few states have systematic recruitment efforts to attract diverse judicial applicants. We identified two particularly interesting trends from our interviews with judicial nominating Commissioners. Commissioners who thought of themselves as "headhunters" took responsibility for recruiting candidates and keeping an eye on the diversity of the applicant pool throughout the nominating process. Commissioners who conceived of their mission as purely "background-checking" spent little time actively recruiting candidates.

Our research found that to effectively increase diversity, all nominating Commissions must add systematic recruitment to their repertoires. Expanding the pool of applicants at the start of the process is a key ingredient to ensuring a diverse "short list" and ultimately a diverse bench. On the other hand, Commissioners should also take seriously their role as background-checkers. Because judges appointed through these systems are subject to little public scrutiny, Commissions must properly vet who is eligible to sit on the bench.

In light of our research, we offer nominating Commissions a set of ten best practices to attract the brightest female and minority candidates to the judiciary, including:

1. **Grapple fully with implicit bias.** Cognitive scientists have focused attention on the widespread tendency to unwittingly harbor implicit bias against disadvantaged groups. Fortunately, these biases are mutable. Thus, by acknowledging that this tendency exists, Commissions can take steps to counteract their biases.
2. **Increase strategic recruitment.** The first step in ensuring a diverse applicant pool is making sure that an open judicial seat is widely advertised and that all candidates are welcomed to apply.

3. **Be clear about the role of diversity in the nominating process in state statutes.** Many Commissioners we interviewed felt that there was no consensus on how diversity should be considered during the nominating process. Commissions should have clear parameters of when and how diversity can come into play. Such clarity can be laid out in a statute.
4. **Keep the application and interviewing process transparent.** Let candidates know what to expect when they submit their applications, and keep interviews consistent among candidates. Outlining the nominating process for all candidates will ensure that each applicant is treated in a similar way.
5. **Train Commissioners to be effective recruiters and nominators.** Commissioners need clear standards and appropriate training.
6. **Appoint a diversity compliance officer or ombudsman.** States should hold someone accountable for a state's success or failure to achieve meaningful diversity on the bench. A diversity ombudsman would be in charge of monitoring diversity levels and improving outreach efforts.
7. **Create diverse Commissions by statute.** A diverse Commission, for various reasons, is more likely to facilitate a more diverse applicant pool. States should adopt statutes that clearly encourage a diverse Commission.
8. **Maintain high standards and quality.** Creating a diverse bench can be done without sacrificing quality. All local law schools have female and minority graduates and these can be the source of many judicial applicants. Recruitment should also expand to candidates who graduated from top national schools, as these schools often have far more diverse alumni than local law schools.
9. **Raise judicial salaries.** State leaders should keep an eye on judicial salaries to assure that they are high enough to attract the best lawyers and lure diverse candidates out of law firms and onto the bench.
10. **Improve record keeping.** Currently, many of the states we studied did not keep rigorous data on judicial applicants. Keeping a record of the racial and gender makeup of the applicant pool and how candidates advanced through the nomination process will make it much easier for Commissions to track their own progress on issues of diversity.

The good news is that law school populations over the past 20 years (from 1986 to 2006) have been steadily growing more diverse. This pipeline of diverse new talent presents a real opportunity for state courts to increase the gender and racial diversity of its judges over the coming years. However, improvements in the appointment process are necessary to avoid missing this opportunity; since diversifying the bench requires more than just the mere existence of more female and minority attorneys; it requires an intentional and systematic approach to ensure that this diversity is reflected on the bench, including leadership by Governors, Chief Justices and other high ranking officials who can set the proper inclusive tone.

As a matter of fairness, the Brennan Center urges states that nominate judges to marshal their resources and rethink their appointment processes in order to attract talented female and minority attorneys to the state bench.

I. INTRODUCTION

A. THE IMPORTANCE OF DIVERSITY ON THE BENCH

Diversity on the bench is intimately linked to the American promise to provide equal justice for all. Judges are the lynchpins of our system of justice. They shoulder a profound responsibility to administer the law with fairness and impartiality.

It is therefore unsurprising that the question of who is appointed or elected to serve as a judge is often a matter of considerable public interest and controversy. As part of the keen public interest, there has been much discussion of whether elective or appointive systems are better for diversity on the bench.

In general, the scholarly literature concerning the impact of judicial selection systems on diversity concludes that there is little difference between the two systems. On the one hand, data from the American Judicature Society indicates that elections do a poorer job of securing judicial diversity, concluding that "merit selection and direct appointment systems select proportionately more women and African Americans to state appellate level judgeships than do competitive elections."[17]

But other studies have found that the difference is negligible. In 2008, Mark Hurwitz and Drew Lanier found through their research that "in examining the 2005 data, there are few significant differences in rates of diversity across the various selection systems for the broad categories, whether NWM [non-white males], women, or minorities, or for most of the more select minority groups, as diversity is not associated with selection system in the vast majority of cases."[18]

BOTH ELECTIVE AND APPOINTIVE SYSTEMS ARE PRODUCING SIMILARLY POOR OUTCOMES IN TERMS OF THE DIVERSITY OF JUDGES.

What the data does show is that both elective and appointive systems are producing similarly poor outcomes in terms of the diversity of judges. While others have studied diversity in judicial elections,[19] this paper focuses particularly on ways to improve diversity in appointive systems.

Diversity on the bench is important, both because a diversity of viewpoints will produce a more robust jurisprudence, and because it will enhance the legitimacy of our system of justice in the eyes of an increasingly diverse public. As Professor Jeffrey Jackson put it,

> Judges are not the exclusive province of any one section of society. Rather they must provide justice for all. In order for a judicial selection to be considered fair and impartial, it must be seen as representative of the community. It is important for a selection system insofar as it is possible, to advance methods that provide for a judicial bench that reflects the diversity of its qualified applicants.[20]

Supreme Court Justices also believe that diversity on the bench improves judicial decision making. For example, Justice Powell noted that, "a member of a previously excluded group can bring insights to the Court that the rest of its members lack." [21] And Justice Ruth Bader Ginsberg has commented that a "system of justice is the richer for the diversity of background and experience of its participants." [22]

States with appointive systems should make a concerted effort to ensure that a diverse applicant pool of candidates applies for each judicial opening, that the list of judicial nominees offered to the Governor is appropriately diverse and that the Governor consider diversity when making appointments.

B. THE NEED TO ATTRACT THE BEST AND THE BRIGHTEST FEMALE AND MINORITY LAWYERS

States that use merit selection to fill judicial vacancies are seeing less diversity on their bench than the demographics of their states, law schools or bars would predict. Our study shows that nominating Commissions in ten states are eager to have more diverse applicants, and they are making some efforts to attract and nominate more diverse candidates. There are women and minority lawyers in these states, and welcoming nominating Commissions; nonetheless, top diverse candidates are not applying for, being nominated for or appointed to judicial openings in proportionate numbers.

Even though state judgeships are prestigious and powerful positions, state nominating Commissions must appreciate that attracting the top women and minority attorneys who have a wealth of other opportunities in other sectors of the economy takes real effort and some structural changes.

Once Commissioners reach a consensus on the goal of encouraging diversity and agree to make this goal a priority, they should be systematic in implementing changes. Below are four of our key recommendations:

- **Improving Pay and Benefits:** One element in making any job attractive is setting a competitive salary and benefits package. This is a challenge, as judicial salaries tend to lag far below comparable private sector salaries. A chart of judicial salaries is available in Appendix E.

- **Creating Logical Application Processes:** The application process for a judicial opening can be daunting for all kinds of applicants. Rationalizing the process would help to attract top applicants from all demographics.

- **Public Education and Outreach:** Outreach is another critical factor in attracting the best candidates. Just as corporate law departments and top law firms pay headhunters to find the best candidates, nominating Commissions need to place institutional resources behind strategic recruitment. Because a judgeship is a niche market with few analogs, educating law students and young lawyers about the career opportunities in the judiciary will also help to create a healthy pool of diverse applicants for each judicial opening.

- **Improved Record Keeping:** Finally, keeping records of the demographics of who applies, who is nominated and who is appointed to judicial openings would help Commissions monitor and celebrate successes, and better adapt to failures.

WHAT ARE APPOINTIVE SYSTEMS?

In the District of Columbia and the 24[23] states where judges are appointed to the bench using a nominating Commission, there are five basic steps in the appointive process: **(1)** advertising the judicial vacancy; **(2)** receiving applications by interested candidates; **(3)** vetting and interviewing prospective candidates by the nominating Commission, **(4)** formulating a "short list" of recommended names to the governor, and **(5)** nomination by the governor of a person from the list to fill the judicial vacancy.[24]

Not every state follows this exact formula. In some states, every applicant is entitled to an interview; in other states, only those applicants who are likely to make it to the final "short list" receive an interview.[25] In some states, the governor's choice is final.[26] In others, the legislature must consent to the appointment.[27] Appointive systems in 16 states use the "Missouri Plan" and require appointed judges to stand for a retention election. In a retention election, judges do not have to run against an opponent. Rather, the only question on ballot in a retention election is whether the judge will keep his or her seat.[28]

II. A REVIEW OF THE LITERATURE ON DIVERSITY IN APPOINTIVE SYSTEMS

A. THE MAGNITUDE OF THE PROBLEM

Just as juries should be pulled from a cross-section of the local community, so, too, should appointed state judges.[29] This report addresses a specific problem posed by appointive systems: how do we design the process so that a diverse bench is a probable result?

One concern raised about appointive systems is that they may tend towards class-based exclusivity or racial or gender homogeneity.[30] As Professor Leo Romero warns, "the possibility exists for an appointive system to be perceived… as a system that works to the disadvantage of outsiders like women and minority lawyers."[31] As Professor Sherrilyn A. Ifill notes, "the Missouri Plan [of appointing judges] has been criticized for entrusting the selection of judges to 'elitist' panels and for producing an unrepresentative judiciary."[32]

The judiciary continues to vastly underrepresent women and people of color, despite gains in law schools and 20 years of policy intended to promote diversity. Ensuring diversity is a perennial issue that policy makers should keep in mind, since by definition an appointive process (with the exception of after-the-fact retention elections) does not contain the same public input as the direct election of judges.[33]

Also, because most appointive systems are used to fill positions on the highest state courts and appellate state courts, there are a very limited number of appointed seats open in any given year. As judicial terms can be lengthy, failing to keep an eye out for diverse candidates for a few years can have lasting and homogenizing effects on the universe of sitting state judges.[34]

The word "diversity" can be a code for a number of different goals, such as including people from different racial, ethnic, gender, geographic, age, economic, educational, political, religious or professional backgrounds.[35] In this paper, we focus on two types of "diversity": race and gender. Unfortunately, in both categories (race and gender) where there is not a dearth of data, there is data that is not always comparable. Using the available data, we describe relevant trends.

We included gender as a consideration because women continue to be underrepresented on the bench. Similar to minority jurists, female jurists may offer unique perspectives.[36] Since gender norms operate differently than racial norms, it is reasonable to infer that there are differences in each group's experiences in the legal community as well as in their access to the bench.[37] If one were to look solely at the numbers, in many cases, women, and particularly white women, are closer to achieving numerical parity than many male minorities. One study found proportionately, that there were fewer black male state appellate judges in 1999 than there were in 1985. In the same period, the percentage of female state appellate judges tripled.[38]

THE PAT ANSWER THAT THERE ARE JUST TOO FEW MINORITY AND WOMEN ATTORNEYS TO FILL JUDICIAL OPENINGS DOES NOT MATCH THE FACTS IN MOST STATES.

One possible explanation for this divergence between women and racial minorities is purely political. Republican women jurists may be appointed by Republican governors, but because there are comparatively fewer Republican minorities, the average Democratic minority jurist is less likely to be nominated by a Republican governor for partisan reasons.[39] Therefore, a Republican governor might suggest that one reason he has never appointed a person of color to the bench has nothing to do with race, but rather is prompted by his desire to have only right-leaning jurists who happen to be white men and women. Over time, a series of Republican governors holding this nominating philosophy would promote more white women than racial minorities.

Still, women as a group can face different barriers than their male minority counterparts. As New York Chief Judge Judith Kaye has written, "[g]ender stereotypes are famously resilient."[40] For example, fewer female attorneys make partner at private law firms.[41] To the extent that Commissioners view being a partner as a mark of quality for judicial nominating Commissions, the apparent discrimination inherent in the partnership track at law firms may stall the careers of more female judicial applicants. Also, female attorneys are more likely to interrupt their careers for child care or other family responsibilities.[42] This type of lull can unfairly impact whether Commissioners deem female applicants "ready" for the bench.

Some argue that there are insufficient numbers of qualified women and minorities in the pipeline to provide meaningful diversity on the bench. It is true that if fewer women and minorities have law degrees, that fact will mean that even fewer of them will become judges. But women and minorities have already reached a critical mass of law school graduates—and in the case of women, now form a majority of recent law school graduates at many schools. Indeed, when the statistics from the Bureau of Labor Statistics are considered, there are at least 325,000 working female attorneys and 110,000 working minority attorneys in the U.S. So the question remains why these groups are poorly represented on state court benches.[43] To get a sense of proportion, consider that in the states examined by the Brennan Center, there are only 58 Supreme Court justiceships and 227 appellate judgeships among all ten states combined. The pat answer that there are just too few minority and women attorneys to fill judicial openings does not appear to match the facts in most states.

There are other structural issues that hinder women and minorities from sitting on the bench. First, those women and minorities with the most widely respected legal credentials can likely receive significantly higher pay in the private sector than in a state judgeship. While the prestige of a judgeship is high, the lower pay may act as a barrier to keep some of the best educated and best qualified women and minorities out of the judicial applicant pool, especially if they have a family. A chart of judicial salaries is available in Appendix E.

Other structural barriers are created by the ways that judges are vetted and appointed. Most appointive judicial positions are for appellate judgeships and Supreme Court justiceships. Consequently, openings on these courts are infrequent and often occur on an irregular schedule. If the openings are not widely advertised, then all potential candidates including diverse candidates are less likely to apply. Furthermore, the less transparent the vetting process is, the less likely candidates of all stripes will subject themselves to it. Moreover, historically, nominating Commissions have tended to have mostly white male members, which led to mostly white male appointments.[44]

Some authors are clearly alarmed by the current problem of a non-diverse bench:

> Indisputably, there is a crying need to diversify the judiciary. The numbers are stark. It is not hyperbole to say that we have a country of white male judges wholly disproportionate to their percentage in the general population. A sound appointive system must be designed to overcome that national travesty…[45]

The national data reflect a severe disparity. White males are approximately 37.5% the general population of the United States, and yet they are, roughly speaking, 66% of judges on state appellate benches.[46] This is nearly a two-to-one overrepresentation.

Attempts to build a diverse bench parallel the attempts by corporations to attract diverse managers and by law firms to attract diverse attorneys. In many cases, these three spheres are competing for the same pool of diverse legal talent. The field of study of diversity in corporations is much more mature that the study of judicial diversity. We draw on corporate experiences about successful diversity enhancing practices throughout this report.

B. NATIONAL DEMOGRAPHICS TRENDS OF THE LEGAL COMMUNITY IN 2008

For most of American history, women and racial minorities were banned from the practice of law and therefore had no opportunity to serve in the judicial branch.[47] In the first half of the twentieth century, despite comprising approximately half of the U.S. population, women made up a very small percentage of matriculating law school classes. Not surprisingly, this led to few women on appellate state courts. One study reported that between 1922 and 1974, a paltry *six* women served on state courts of last resort.[48]

Fortunately, the practice of law has changed dramatically. Since 2001, in fact, in many law schools, women make up the majority of graduates.[49] Yet the most recent data from the Bureau of Labor Statistics (BLS) found that in 2007, of 1,001,000 employed lawyers in the U.S., 32.6% were women.[50] This disparity in the percentage of female attorneys compared to their proportion in the general population, underscores a point made by New York's Chief Judge Judith Kaye: "[i]t [is] clear…that women's advancement in the profession requires 'conspicuous, vocal vigilance.'"[51]

Minority enrollment in law schools started at token levels. But over the past twenty years, several of the most elite private law schools have made a concerted effort to ensure that minority law students are a sizable portion of each incoming class.[52] During the last decade, many state law schools, such as those in California, Washington and Texas have been under statutory or other mandates to totally disregard race and ethnicity in the law school application process. These state schools saw drops in the admission and matriculation of minority students that never rebounded to pre-initiative levels.[53] And at the same time, many schools across the country have been under pressure from the *U.S. News and World Review* rankings to increase their average LSAT scores.[54] This push has reduced the number of minority students at certain schools over recent years.[55]

There are clearly some pipeline issues—by that we mean a lower supply of minority lawyers than white lawyers—since "[m]inorities make up about 30 percent of the U.S. population, according to the 2000 census. Bureau of Labor Statistics data show that in 2003, about…10 percent of lawyers were minorities."[56] In 2007, BLS reported that of 1,001,000 employed lawyers in the U.S., 4.9% were Black, 2.6% were Asian, and 4.3% were Hispanic.[57] The smaller number of minority lawyers means the best qualified ones are in high demand. Consequently, attracting minority lawyers to judicial openings requires active recruitment efforts.

C. INSIGHTS FROM THE LITERATURE ON DIVERSITY

Many academics and experts who study the issue of judicial selection encourage changes that foster a diverse bench.[58] Professor Leonard M. Baynes argues that diversity in the state courts is particularly important because "most litigation takes place in the [s]tate courts given the limited jurisdiction of the federal courts."[59]And diversity is worse in the state courts than it is in federal courts.[60]

The reasons it is critical to create a diverse bench include the following: (1) a more diverse bench will inspire confidence in the judiciary;[61] (2) it will be more representative of the broader community;[62] (3) it will promote justice;[63] (4) it will promote equality of opportunity for historically excluded groups;[64] and (5) it will promote judicial impartiality.[65]

More diverse Commissions end up nominating more diverse slates of candidates than do homogeneous Commissions.[66] Thus, some theorists focus efforts to reform the bench by first establishing diverse nominating Commissions. Diverse nominating Commissions are important for reasons that closely parallel those that support the need for a diverse bench and include the following: (1) the Commission will be more representative and will therefore gain the public's trust;[67] (2) it will promote democratic ideals;[68] and (3) it will foster a more independent judiciary because appointed judges would not be beholden to any particular demographic group.[69]

Suggested changes to ensure diversity on the bench from experts include: (1) creating a provision that mandates the consideration of diversity by the judicial nominating Commission;[72] (2) creating a provision that mandates that the governor take the diversity of the bench into consideration when making appointments;[73] (3) creating a provision that mandates that the nominating Commission's membership reflects the racial, ethnic, and gender diversity of the populations within the jurisdiction;[74] (4) conducting outreach to potential women and minority applicants to increase their numbers in the applicant pool;[75] (5) measuring efforts at achieving a diverse bench on a regular basis;[76] (6) training members of the Commission about diversity issues and interviewing techniques;[77] and (7) appointing an official to monitor compliance with diversity requirements.[78]

Underlying many of these claims about why diversity is desirable is the understanding that the justice system will benefit from having many different types of voices on the bench. As Dean Kevin R. Johnson and Professor Luis Fuentes-Rohwer, put it: "[i]ncreased diversity does not mean appointing judges who have pre-determined positions but instead judges who have different ways of looking at the world." [70] Put another way, diversity is a hedge against the dangerous trap of "groupthink;" helping to ensure that the justice system reaches correct decisions more frequently.

Even though it may seem expedient to reserve slots on nominating Commissions for women or minorities, this can raise equal protection objections. As Professor Leo M. Romero notes:

> [a] provision that goes beyond mandating consideration of diversity by requiring a certain percentage or number of women or minority Commissioners may result in equal protection challenges. Indeed, Florida's attempt to reserve one-third of Commission seats for women or members of a racial or ethic minority group faced such a challenge. A federal court invalidated the Florida law on the grounds that the 1991 statute violated the equal protection clause of the Fourteenth Amendment.[71]

Achieving some meaningful diversity on both the bench and on nominating Commissions can be the start of a virtuous circle. As Professor Frank Wu has written, "an institution can signal its openness."[79] Existing diversity indicates to other potential female and minority applicants that they have a fair chance of success; this can encourage more diverse applicants which, in turn, is likely to result in a higher number of actual diverse members on the bench.[80] Conversely, when diversity numbers hover just above zero, candidates may think that tokenism is at work and are more likely to look for career opportunities elsewhere.[81]

III. THE PROBLEM OF IMPLICIT BIAS

New research from the field of cognitive science on the implicit biases[82] that all humans possess may explain in part why racial and gender disparities on the bench persist even when nominating Commissions believe they are open to all applicants. While we do not fully explore the voluminous literature about implicit bias, this area of study provides one of many reasons why a deliberate and intentional focus on diversity is necessary for real improvement.[83]

This body of research is built on the observation that nearly all humans stereotype others unconsciously even when they profess tolerance consciously since "[i]n sum, as perceivers, we may misperceive, even though we honestly believe we are fair and just."[84] Humans usually pick up these biases in early childhood and they are never fully dislodged.[85]

Furthermore, "[t]he assumption that human behavior is largely under conscious control has taken a theoretical battering in recent years."[86] As Professor Marybeth Hearld explains:

> Recent research indicates that the task of dismantling sex and race discrimination in the workplace is more complicated than originally thought because the way we discriminate is complicated. Principles of psychology and sociology have enlightened us as to what we actually do, rather than what we think we are doing, want to do, or claim to be doing… Our stereotyping mechanism is not easily turned off, even when we want to pull the plug on it, as in the case of gender biases. Merely voicing support for gender equality is not transformative - our brain's deeply-engrained habits do not respond on cue. To exacerbate the situation, we often labor under misleadingly optimistic notions of our decision-making capacity that hide these methodical mistakes. Therefore we need to become aware of our stereotyping mechanism, be motivated to correct it, and have sufficient control over our responses to correct them.[87]

Implicit bias affects women in its activation of gender-based stereotypes as well as racial minorities.[88] Thus, "the failure to consider developments in cognitive science leaves us ignorant of the way stereotyping may silently saturate our thinking, therefore leading to decisions that reinforce a gendered status quo."[89]

AS JUSTICE BRENNAN WROTE, "UNWITTING OR INGRAINED BIAS IS NO LESS INJURIOUS OR WORTHY OF ERADICATION THAN BLATANT OR CALCULATED DISCRIMINATION."

As experts in the field of cognitive science explain, "[b]ecause implicit prejudice arises from ordinary and unconscious tendency to make associations, it is distinct from conscious forms of prejudice, such as overt racism or sexism. This distinction explains why people who are free from conscious prejudice may still harbor biases and act accordingly."[90] And as Justice Brennan wrote

in the plurality opinion in *Price Waterhouse v. Hopkins*, "unwitting or ingrained bias is no less injurious or worthy of eradication than blatant or calculated discrimination."[91]

The prevalent persistence of implicit bias is one reason why nominating Commissions must be proactive and systematic in their attempts to recruit and nominate diverse candidates.[92] Making little or no effort in these areas may reinforce ingrained patterns of behavior which can result in fewer women and minorities being seriously considered for judicial openings.

IV. THE BRENNAN CENTER STUDY

A. INTERVIEWS OF STATE NOMINATING COMMISSIONERS

We examined appointive systems in ten states: Arizona, Colorado, Florida, Maryland, Missouri, New Hampshire, New Mexico, Rhode Island, Tennessee and Utah. In each state, we interviewed between one and three members who serve on its nominating Commission. In total, we interviewed 15 Commissioners. Most of the Commissions we targeted had the responsibility to vet appellate judges or state Supreme Court justices. A smaller number of Commissions also reviewed the selection of trial judges as well.

In choosing these ten states, we sought to capture states with different demographics, ranging from more homogenous to more heterogeneous, and various legal environments. In this cohort, we included some with statutes or rules addressing diversity and some without. Further, we included states that had been successful attracting a diverse bench.

SOME COMMISSIONERS FELT THAT MINORITY CANDIDATES DID NOT HAVE THE SAME NUMBER OF POLITICAL CONNECTIONS TO HELP THEM THROUGH THE PROCESS AS DID WHITE CANDIDATES.

During our interviews, we asked Commissioners about processes employed by their Commissions. Specifically, we asked questions exploring how applicants become jurists, what types of outreach they use, when and if they consider diversity in the process, how diverse the Commission is itself and whether the Commission is statutorily required to take diversity into consideration.

In general, most of the Commissioners we interviewed expressed interest in our research, and were pleased to share their experiences with us. Because most Commissioners believed that what they shared was truthful and important, a majority of what they reported to us remained on the record. Some of the Commissioners were especially excited about our research, and indicated that their respective Commissions were in need of guidance in the area of diversity. Specifically, one Commissioner asked that the report provide substantive recommendations that could be adopted in even the most racially homogenous states.

Delving into the realm of politics, some Commissioners commented, that in their opinion, minority candidates are often politically ill-prepared to secure a judgeship—in other words, they did not

have the same number of political connections who could help them through the process as did white candidates. A number of Commissioners also noted that after appointment, many minority judges failed to keep their seats in subsequent retention elections. One Commissioner attributed the latter problem to the state's historical battle with racism, while most attributed the retention challenge to a lack of fundraising and/or development of political backing by and for minority judges.

Some Commissioners expressed interest in how their own state's numbers fared in comparison to the other ten states in the study, while many were unaware of their own Commission's performance in placing women and minorities on the bench. While some Commissions receive periodic reports from their state administrator's office regarding the demographic makeup of the bench, most do not. This lack of awareness led to less-than-clear responses regarding if and where data on diversity are aggregated and reported. We address data issues later in the paper.

Interestingly enough, when our questions contained the word "minority," the demographics of certain states altered how Commissioners interpreted the word. One of the Commissioners pointed out that in Arizona, Latinos are not really considered to be a minority group. He said that Latinos have always been a part of Arizona's history, and as such, are fully integrated into all of its communities. By contrast, in Tennessee, the word "minority" appears to mean "black" or "African American."

We provided interviewees with an option to remain anonymous. Only two Commissioners opted to remain anonymous. The questionnaire that the Brennan Center used is attached at Appendix A.[93] The names of the Commissioners that we interviewed are listed in Appendix B. We interviewed each Commissioner separately and gave them the opportunity to confirm the statements attributed to them. A few modified their quoted comments slightly upon review.

B. LEGAL FRAMEWORKS AND DEMOGRAPHICS FOR THE TEN STATES

Among the ten states we studied, for many courts, the racial[94] and gender diversity of the state bench lags behind the diversity of the state population, the state's law school student population and state bar.[95] Racial minorities and women are underrepresented on state appellate and district courts when compared with their share of the general population in all ten states except Missouri. While the disparity on the bench reflects a problem in judicial selection, certainly the larger issue of underrepresentation in the legal community is a contributing factor.

Since membership of the state bar and state law school graduates represent the potential judicial candidate applicant pool, comparing bar membership and law school composition with appointment demographics is one way to assess the progress that judicial Commissions are making with recruiting and appointing diverse candidates.

Below are two charts showing the diversity of the students at law schools in the ten states over the past 20 years. The first chart shows gender trends and the second chart shows racial trends. The top line results are that matriculation of women and minorities at law school has increased markedly over the past 20 years (1986-2006) in all ten states, but that even 20 years ago, all of the law schools

CHART A: GENDER TRENDS AT LAW SCHOOLS IN THE TEN STATES STUDIED [96]

School [97]	State	1986 Gender Breakdown	1996 Gender Breakdown	2006 Gender Breakdown
Arizona State University	AZ	Majority Male (58% male)	Parity (50% both genders)	Majority Male (55% male)
Brigham Young University	UT	Majority Male (83% male)	Majority Male (66% male)	Majority Male (64% male)
Florida State University	FL	Majority Male (64% male)	Majority Male (55% male)	Majority Male (60% male)
Franklin Pierce Law Center	NH	Majority Male (60% male)	Majority Male (65% male)	Majority Male (62% male)
Nova University	FL	Majority Male (56% male)	Majority Male (60% male)	Parity (50% both genders)
St. Louis University	MO	Majority Male (70% male)	Majority Male (56% male)	Majority Male (51% male)
Stetson University	FL	Majority Male (55% male)	Majority Female (51% female)	Majority Female (53% female)
The University of Memphis [98]	TN	Majority Male (67% male)	Majority Male (58% male)	Majority Male (56% male)
University of Arizona	AZ	Majority Male (56% male)	Majority Male (51% male)	Majority Male (51% male)
University of Baltimore	MD	Majority Male (61% male)	Majority Male (53% male)	Majority Female (54% female)
University of Colorado	CO	Majority Male (52% male)	Majority Male (57% male)	Majority Female (51% female)
University of Denver	CO	Majority Male (64% male)	Majority Male (55% male)	Majority Male (53% male)
University of Florida	FL	Majority Male (63% male)	Majority Male (59% male)	Majority Male (53% male)
University of Maryland	MD	Majority Male (52% male)	Majority Female (51% female)	Majority Female (58% female)
University of Miami	FL	Majority Male (60% male)	Majority Male (57% male)	Majority Male (57% male)
University of Missouri-Columbia	MO	Majority Male (61% male)	Majority Male (62% male)	Majority Male (63% male)
University of Missouri-Kansas City	MO	Majority Male (56% male)	Majority Male (52% male)	Majority Male (58% male)
University of New Mexico	NM	Majority Female (56% female)	Majority Male (52% male)	Parity (50% both genders)
University of Tennessee	TN	Majority Male (67% male)	Majority Male (53% male)	Parity (50% both genders)
University of Utah	UT	Majority Male (63% male)	Majority Male (62% male)	Majority Male (62% male)
Vanderbilt University	TN	Majority Male (64% male)	Majority Male (62% male)	Majority Male (54% male)
Washington University	MO	Majority Male (56% male)	Majority Male (60% male)	Majority Male (58% male)

CHART B: RACIAL TRENDS AT LAW SCHOOLS IN THE TEN STATES STUDIED[99]

School [100]	**State**	**1986 Racial Breakdown**	**1996 Racial Breakdown**	**2006 Racial Breakdown**
Arizona State University	AZ	86% white	75% white	73% white
Brigham Young University	UT	93% white	87% white	82% white
Florida State University	FL	87% white	74% white	81% white
Franklin Pierce Law Center	NH	98% white	86% white	83% white
Nova University	FL	89% white	76% white	76% white
St. Louis University	MO	93% white	82% white	89% white
Stetson University	FL	93% white	84% white	82% white
The University of Memphis	TN	93% white	91% white	82% white
University of Arizona	AZ	92% white	74% white	72% white
University of Baltimore	MD	93% white	82% white	83% white
University of Colorado	CO	89% white	81% white	77% white
University of Denver	CO	93% white	87% white	81% white
University of Florida	FL	96% white	77% white	81% white
University of Maryland	MD	82% white	71% white	68% white
University of Miami	FL	80% white	67% white	77% white
University of Missouri-Columbia	MO	92% white	92% white	86% white
University of Missouri-Kansas City	MO	94% white	89% white	91% white
University of New Mexico	NM	64% white	61% white	55% white
University of Tennessee	TN	92% white	88% white	84% white
University of Utah	UT	92% white	86% white	90% white
Vanderbilt University	TN	95% white	79% white	82% white
Washington University	MO	95% white	82% white	85% white

in these states contained significant numbers of women and at least some racial minorities. Of course, there is no way of tracking whether these law students remained in the state or continued to practice law in the state. At best, these numbers provide an approximation. Still, it is important to note that several of the Commissioners we interviewed indicated that a majority of their applicants were graduates from law schools in their state. This growing cohort of female and minority attorneys provides an opportunity to diversify the bench, provided that the structural changes we recommend are implemented.

Racial Diversity

Of the ten states surveyed for this report, New Mexico and Florida had the most racially diverse state courts. Both states have highly diverse general populations: New Mexico's general population is 57% non-white[101] and Florida's is 39% non-white.[102] Non-white attorneys represent 21% of New Mexico's bar[103] and 13% of Florida's bar.[104]

The demographic composition of both states' law schools more closely reflects the demographics of the state, although the schools also lag behind the population. New Mexico has two sitting Hispanic judges on its five-judge Supreme Court.[105] Non-white judges make up 15% of New Mexico's Court of Appeals and 19% of the District Court.[106] Similarly, Florida has two minority justices on its seven-member Supreme Court and 16% of its Court of Appeals judges are non-white.[107] On a positive note, Peggy A. Quince became Chief Justice on June 27, 2008. She is the first African-American woman to become Chief Justice of the Florida Supreme Court.

MISSOURI IS ONE OF THE FEW STATES WITH A SPECIFIC PROVISION DIRECTING ITS COMMISSION BOTH TO RECRUIT DIVERSE JUDICIAL APPLICANTS AND TO CONSIDER THE INTERESTS OF A DIVERSE JUDICIARY WHEN EVALUATING JUDICIAL APPLICANTS.

Along with large minority populations, both Florida and New Mexico have specific state constitutional or statutory diversity provisions for the selection of judicial nominating Commissioners. New Mexico's Constitution provides that when appointing Commissioners beyond those specifically enumerated, Commissioners "shall be appointed such that the diverse interests of the state bar are represented" and charges the Dean of the University of New Mexico Law School with deciding if those diverse interests are represented.[108] Florida's diversity provision is more robust; it requires that when making appointments to the Commission, "the Governor shall seek to ensure that, to the extent possible, the membership of the Commission reflects the racial, ethnic, and gender diversity, as well as the geographic distribution, of the population within the territorial jurisdiction of the court for which nominations will be considered."[109]

Of the states surveyed, the racial make-up of Missouri's state bench most closely reflects the demographics of the state's population. Missouri's population is 16% non-white.[110] Minorities make up

5.94% of the state's bar membership.[111] Correspondingly, minorities make up 14% of the Supreme Court and 16% of its Court of Appeals.[112]

Unlike Florida and New Mexico, Missouri does not have a specific provision that encourages diversity on the appointing Commission. But Missouri is one of the few states with a specific provision directing its Commission both to recruit diverse judicial applicants and to consider the interests of a diverse judiciary when evaluating judicial applicants.[113] The Missouri Supreme Court Rules direct that: "[t]he Commission shall actively seek out and encourage qualified individuals, including women and minorities, to apply for judicial office" and that "the Commission shall further take into consideration the desirability of the bench reflecting the racial and gender composition of the community."[114]

The other seven surveyed states paint a less encouraging picture of minority representation on the state bench, and the often sparse applicant pool of potential state judges. By way of example, Arizona's population is 40% non-white,[115] but minorities account for only 8% of the state bar membership.[116] Further, Arizona has no minority Supreme Court justices.[117] Minorities occupy only 18% of its Court of Appeals judgeships[118] and 16% of its Superior Court judgeships.[119] Despite Arizona's constitutional provision directing appointing Commissions to reflect the diversity of the state population,[120] the diversity of the state bench falls short.

Similarly, Maryland's population is 42% non-white,[121] and 14% of its state bar membership is non-white.[122] Two of seven of its Court of Appeals judges are African American,[123] only 26 of its 157 Circuit Court judges[124] and 24 out of 112 District Court judges are minorities.[125] Additionally, Maryland has an Executive Order requiring the appointing Commission to encourage diverse candidates to apply for appointment[126] and to take into account "the importance of having a diverse judiciary" when making appointments.[127]

Likewise, with a minority population of 29%,[128] Colorado's bar is only 6% non-white.[129] But only one of Colorado's seven Supreme Court justices is a person of color.[130] Further, minorities hold only two of sixteen Appellate Court judgeships and 12% of district court judgeships. Colorado has no specific diversity provisions in appointing Commissioners or recruiting and evaluating judicial candidates. Four additional states have a smaller minority population but also struggle with minority representation on the state bench. Tennessee has a minority population of 22%[131] and a minority state bar membership of 6%.[132]

Tennessee law requires that "[e]ach group and each speaker in making lists of nominees and appointments [to state judicial selection Commissions]…shall do so with a conscious intention of selecting a body which reflects a diverse mixture with respect to race, including the dominant ethnic minority population, and gender."[133] When making appointments, "[e]ach speaker…shall appoint persons who approximate the population of the state with respect to race, including the dominant ethnic minority population, and gender," and if the chosen list of "nominees do not reflect the diversity of the state's population, the speaker shall reject the entire list of a group and require the group to resubmit its list of nominees."[134]

Despite its judicial selection Commission diversity provision and the growing non-white popu-

lation at Tennessee law schools, Tennessee has struggled to achieve meaningful diversity on the bench. The state has only one African-American Supreme Court justice, one African-American criminal appeals court judge and eight African-American judges in its 151-seat trial court, while all of the rest of the judges are white.[135]

Rhode Island's population is 21% non-white[136] and its minority bar membership is only 2%.[137] Clearly, having a provision encouraging nominating Commission diversity does not always ensure a diverse bench. For example, despite the fact that Rhode Island has a statutory command that the Governor and nominating authorities encourage diversity on the appointing Commissions,[138] it has no minority Supreme Court justices and only two minorities hold seats among 22 judgeships on the Superior Court.[139]

Utah is 18% non-white.[140] Yet Utah has no minority Supreme Court justices,[141] and minorities only account for one of seven court of appeals seats[142] and four of 70 district court seats.[143] Utah has no specific constitutional or statutory diversity provision.

With a 7% minority population,[144] and a minority bar membership of 4%,[145] New Hampshire has the smallest minority population of the states surveyed. All of New Hampshire's five Supreme Court and twenty-eight superior court judgeships are filled by white jurists.[146] Contrary to other states studied, however, New Hampshire has an Executive Order specifically forbidding race and gender to be considered when appointing judges.[147]

Gender Diversity

Although women make up approximately 50% of the population, they make up far less than half of appointed judges across all levels of state courts in the ten surveyed states. It is difficult to gauge how well the percentage of women being appointed to the state bench reflects the pool from which judicial candidates are drawn because the American Bar Association does not publish the percentage of female bar membership by state.

It may therefore be helpful to compare the percentage of J.D.'s conferred to women as a rough estimate for the available pool of judicial candidates. In 2006, nationally, women made up 48% of the 43,883 J.D.'s conferred,[148] and on average over the last fifteen years, make up 46% of the J.D.'s conferred.[149]

Utah and Tennessee have the highest percentage of female judges across their different levels of courts. Utah does not have any specific statutory or constitutional provision encouraging gender diversity on the appointing Commissions or when selection judicial appointments. Even so, in Utah two of the five Supreme Court members are women[150] and three of the seven members of the court of appeals are women.[151] In its District Court, only 13% of the judges are women.[152]

Tennessee has an aggressive diversity statute with regards to gender. When selecting a pool of candidates for the judicial appointing Commissions and when selecting Commissioners from that pool, Tennessee, by statute requires appointments that "approximate the population of the state with respect to…gender."[153] Likewise, women make up 40% of Tennessee's Supreme Court justices[154] and

25% of its Court of Appeals judges.[155] Only 8% of judges on the Court of Criminal Appeals[156] and 17% of its trial court judges[157] are women.

Of the remaining states with some type of diversity provision, Arizona, Florida and Maryland each have two female judges on their Supreme Court,[158] and Rhode Island has one female Supreme Court justice on its five-justice court.[159] Neither Colorado nor New Hampshire have any diversity provisions on the books. Colorado has three female Supreme Court justices while New Hampshire has one.[160]

Women also are underrepresented on the appellate and trial courts of the surveyed states. At the appellate level,[161] women comprise 31% of Maryland's judges.[162] This gender disparity is particularly noteworthy given that Maryland's Executive Order requires Commissions to encourage diversity when recruiting judicial candidates and to take "the importance of having a diverse judiciary" into account when making appointments.[163]

Additionally, despite the increase in female law students over the last twenty years, women account for only 25% of Missouri's Court of Appeals judges,[164] and only 19% of Colorado's appellate judges.[165] And even though Florida's aggressive diversity provision requires appointments to the judicial Commissions ensure, *inter alia*, representative gender diversity,[166] only 19% of Florida's appellate judges are women.[167]

FOUR OF THE TEN STATES STUDIED HAVE NO MINORITIES SITTING ON THEIR SUPREME COURTS.

Of the states with diversity provisions that have statistics available for their trial courts, women make up 32% of Rhode Island's judges,[168] 31% of Maryland's District Courts,[169] 27% of Arizona's Superior Courts,[170] 26% of Florida's Circuit Court and 36% of Florida's County Courts,[171] and 12% of Missouri's Circuit Court.[172] In the two states without diversity provisions but where statistics are available, 27% of New Hampshire's trial-level judges,[173] and 22% of Colorado's District Court are women.[174]

C. CONCLUSIONS: A TRACK RECORD THAT NEEDS IMPROVEMENT

While the data are imperfect and at times inconclusive, it is strikingly clear that all of the surveyed states have state benches that underrepresent the racial and gender diversity of the state. Of the surveyed states with the most racially diverse state judiciaries, New Mexico, Florida and Missouri tend to have the most diverse potential applicant pools reflecting the states' large minority populations, higher minority bar membership and diverse law school populations. Although Maryland shares these characteristics, the state has been slightly less successful at achieving a racially diverse state bench.

Gender diversity on the bench was just as elusive for the surveyed states. Despite a trend approaching, but not yet reaching, gender parity in bar membership[175] and law school composition, state judiciaries remains predominantly male at almost every level of court.

From this survey of state-appointed judiciaries, two things are clear. First, there is a lack of statistically rigorous efforts to collect and analyze race and gender data of state judicial appointments. Without this type of statistical basis, it is impossible to infer causal relationships about the impact of diversity provisions on the resulting gender and racial make-up of the state judiciaries. Certainly, while they appear to do some good, it is far from enough to merely have such a provision on the books. These provisions need to be become praxis. Secondly, in addition to focusing on the state judicial appointment process, any comprehensive plan to diversify state judiciaries must also incorporate methods to increase the state bar membership of minorities and women.

The results differ from state to state and court to court. For a side-by-side comparison of the ten states, *see* Appendix D. Four of the ten states (Rhode Island, Utah, New Hampshire and Arizona) have no minorities sitting on their respective Supreme Courts. But several state intermediate courts (such as Arizona, Colorado, Florida, Maryland, Tennessee and Utah) have more diversity than the relevant state bar membership, but still less than the diversity in the general population.

This marked difference between the general population and the bar membership raises an interesting question of what a meaningful diversity baseline should be in this context. On one hand, only members of the bar may serve on the bench. On the other hand, judges serve the entire public and the legitimacy of the court may suffer if the public perceives that the bench chronically underrepresents a large portion of the general population (such as Latinos in New Mexico, Arizona or Florida or Blacks in the South.) Relying on the bar membership percentages as the benchmark may unduly depress expectations of how many diverse candidates should be on the bench, since the number of minorities and women in the bar may be disproportionately low. As we pointed out elsewhere, there are only 58 Supreme Court justiceships and 227 appellate judgeships among all ten states combined, thus filling these few slots with more diverse candidates should be possible.

D. FINDINGS FROM INTERVIEWS WITH STATE NOMINATING COMMISSIONERS

In an effort to make our study as comprehensive as possible, we looked beyond statistics and the various statutory frameworks in the ten states studied. Conducting detailed interviews of Commissioners provided us with context for the statistics and grounded our recommendations. More importantly, implementation of our policy recommendations requires working with Commissioners as co-collaborators. As we sought insight into the nominating process through their experiences, the interviewer provided Commissioners with an opportunity to highlight obstacles or innovative ideas in addressing diversity.

Comparing findings across the ten states that we studied is no easy task. Although we reached out to a number of Commissioners in each state, in some states, only one Commissioner granted us an interview. Some of the Commissioners interviewed were not willing to answer all of our questions. Other Commissioners went into great detail on a particular aspect of their experience, but spoke in generalizations for the rest of the interview. Also, on most topics, there was no real consensus among the fifteen Commissioners. Nonetheless, the interviews do offer valuable evidence about

how nominating Commissions function day-to-day, and whether and how diversity is considered during the nominating process.

Diversity of the Nominating Commissions

The Commissions vary from very heterogeneous (FL) to very homogeneous (NH) in terms of race and gender. *See* Appendix C for a description of each Commission. Differences in the level of diversity on each Commission were attributable to a mix of factors including: (1) the racial diversity of the state; (2) the appointment process for the Commissioners;[176] and (3) whether or not the Commission is legally required to be representative of the population of the state. For example, Rhode Island's state law requires that the Governor make reasonable efforts to encourage racial, ethnic, and gender diversity within the Commission. (R.I. Stat. § 8-16. 1-2). Colorado, Maryland, Missouri, New Hampshire, and Utah have no such requirement.

Several interviewees expressed frustration that their nominating Commissions were not more diverse. Commissioner Strain (AZ) believes that the Arizona Commission needs participation from additional Hispanic women. In light of the state's gender demographic, she also believes that half of the Commission should be women.

Commissioner Farmer (TN) echoed this sort of criticism. He highlighted that over a period of 12 years, Tennessee's Commission has become "very male and white." He indicated that he wished the Commission's composition were more diverse. However, he also noted that those Commissioners who are not African American or female can properly consider diversity. He believes Tennessee's bench is "remarkably rich in diversity" and much more so than it was prior to the adoption of the Commission.[177]

The Impact of a Diverse Commission on the Diversity of Nominees

Experts suggest that the more diverse a Commission is, the more likely it is to produce diverse applicants and a more diverse list of judicial nominees. While some Commissioners agreed with this assessment, others were deeply skeptical.

For example, Commissioner Carlotti (RI) believes that the amount of diversity on the Rhode Island Commission indirectly impacts the amount of diversity in the applicant pool. He believes that people who otherwise would not apply, do apply for judicial openings due to the diversity of the Commission.[178]

Commissioner Sachs (MD) related her experience that "[a]s chair of the Commission, I feel sensitive to issues of diversity. If we want to encourage diverse individuals to apply for judgeships, it helps to have people of different backgrounds on the Commission."[179]

Colorado does not have a law requiring that its Commission be representative of the people in its state. Anonymous Colorado Commissioner said that he would endorse a requirement mandating that Colorado's Commission be representative of the people in his state. He believes that having more emphasis put on the creation of a diverse Commission would have a positive impact on the judiciary. He also believes that it would encourage more diverse applicants and help to improve diversity in the courts.[180]

On the other hand, Commissioner Scarnecchia (NM) does not believe that the diversity on New Mexico's Commissions has an effect on applicants. A new Commission is assembled in New Mexico with every new vacancy. As such, applicants are not aware of the makeup of the Commission when they apply. She does believe that the diversity of the Commissions affects the kind of candidate who ends up on the nominating list because, having a diverse Commission with people who are willing to talk about the importance of diversity advances those goals on the state's Commissions.[181]

Racially, there are no minorities on the New Hampshire Commission. Commissioner Waystack (NH) said this is not surprising because "[w]e are such a white state."[182]

FEW COMMISSIONERS COULD OR WOULD ARTICULATE EXACTLY HOW THE RACE OR GENDER OF APPLICANTS IS WEIGHED OR CONSIDERED DURING THE NOMINATING PROCESS.

In states where there is an active effort among law makers to revert to judicial elections, there is resistance to placing any more emphasis on the diversity of the Commissions. Some Commissioners mentioned that doing so may cause a backlash that could lead to a repeal of the merit selection process entirely. Commissioner Scarnecchia (NM) said that putting more emphasis on creating a diverse nominating Commission would either "'not have an effect,' or would have 'a negative effect' because there already is a heavy emphasis put on diversity. Any more emphasis might be negatively viewed as going 'over the top' since the current Governor puts a lot of emphasis on diversity."[183]

Commissioner Nichols (TN) also has this concern, as he believes that any more emphasis on creating a diverse Commission would negatively impact the public's perception of the nominating process. Commissioner Nichols perceived that there are naysayers that want to do away with the nominating Commission altogether.[184] He does not think that putting more emphasis on creating a diverse Commission would go over well with individuals who already feel that the Commission is too "political."[185]

Constitutional, Statutory or Executive Order Authority

Commissioners who work under constitutional or statutory guidance requiring that diversity be taken into account in the nominating process, or that the Commission should be representative of the state, seemed pleased with the effect of these laws.

New Mexico's state law requires that Commission members represent the diverse interests of the state (NM Const. Art. 6, § 35). When asked about the impact of the provision on the makeup of New Mexico's Commissions, Commissioner Scarnecchia (NM) said that the Commissions are definitely more diverse than they would be if the provision did not exist.[186] Meanwhile, Commissioner Leavitt (AZ) believes that Arizona's law[187] has created a "conscious[ness] of diversity" among Commissioners.[188]

Commissioners from states without constitutional or statutory guidance on diversity were skeptical about how such a provision might work. When asked to consider a diversity mandate at both the evaluation and appointing stages, Commissioner Carlotti (RI) wondered, "[w]hat would be the remedy if it were unenforced? I'm not for something that has no code to enforce it. Would you have to put a certain amount of a group on the list? Suppose you leave qualified people off of the list because of a system like this? A constitutional provision during the final appointment decision is problematic as well."[189] Anonymous Florida Commissioner shared this skepticism, saying that a diversity provision is not needed at any stage in the nomination process, and indicated that implementing such a provision would "be scary."[190]

Considering Diversity During the Nominating Process

Few Commissioners we talked to could or would articulate exactly how the race or gender of applicants is weighed or considered during the nominating process. A few viewed a candidate's minority status or gender as a "tie-breaker" between similarly qualified candidates. Others simply looked at it as a "plus" for a candidate that might keep a candidate in the pool for longer. Still other Commissioners described diversity as a factor that they examined after the deliberations. If the "short list" of nominees for presentation to the governor was not diverse, then the Commission would reconsider candidates to see whether they could produce a more diverse short list.

Commissioner Strain (AZ) describes the Arizona Commission as an interactive group that informally discusses diversity. Commissioner Strain noted that specifically, the women on the Commission typically bring up the topic. Commissioner Strain (AZ) said, "[i]f there are women [in the pool], I'm going to make sure that a woman shows up on the [short] list. I mean, if she has reached the level of merit expected, I will send her up. Why not?"[191] Commissioner Briggs (AZ) simply reported that "if two candidates have otherwise substantially similar qualifications, the candidate whose qualities would add diversity to the bench would get my vote."[192]

When asked how the Maryland Commission factored diversity into its deliberations, Commissioner Sachs (MD) said that the Commission does not have numerical weighting, and instead openly

discusses the need to recommend a diverse group of candidates to the Governor.[193] In Maryland, there is an Executive Order which states:

> Each Commission shall encourage qualified candidates, from a diversity of backgrounds, to apply for judicial appointment….In considering a person's application for appointment to fill a vacancy, a Commission shall consider…the importance of having a diverse judiciary.[194]

Commissioner Sachs believes that the text of the Maryland Executive Order places particular emphasis on diversity, but the Governor's appointment of a group of Commissioners who reflect the diversity of the state is a key tool in promoting diversity on the bench and in making the language of the Executive Order something more than mere verbiage. Commissioner Sachs added that "[i]f we don't have enough diversity among anticipated applicants for a particular vacancy, I may suggest to the Commissioners that they reach out to lawyers they know from diverse backgrounds (who are otherwise qualified) to ask them to apply for a particular vacancy."[195]

In Utah, there are no rules giving Commissioners guidance on how to include diversity considerations in their evaluations. When Commissioners evaluate candidates, diversity is not weighted. Commissioner Keetch (UT) said that diversity is one of many factors considered by the nominating Commission. Diversity is not the exclusive factor, nor will it override other important factors. But having a judiciary that is representative of all of the people of Utah is certainly a significant consideration as the Commission identifies the best candidates.[196] This approach was shared by Commissioner Carlotti (RI) who said, "[w]e don't have a scorecard, but diversity is considered along the way. Each Commissioner puts whatever weight on the qualities they want."[197]

Commissions vary widely in their attempts to recruit candidates. Some Commissions engage in general outreach for all types of applicants, while others do no official outreach at all.

Commissioner Diament (NH) said that if the Commission is dealing with "two applicants whose qualifications are equal across the board, the Commission would lean towards the diverse individual." Given that there are no directives, diversity considerations are not treated as a matter of weighting. Instead, Commissioner Diament said that conversations usually include statements such as, "'[t]his person has really excelled in this area – and the fact that they are a diverse applicant is an added benefit.'"[198]

Commissioner Farmer (TN) explained that if all things are equal between a number of candidates, the Commission will look at the balance in the specific court which has the judicial vacancy. If the court is in need of diversity, the Commissioners make efforts to ensure that at least one or two of the three names sent to the governor are minorities. Generally, Commissioner Farmer's personal view is that diversity "tips the scales" when all other things are equal between candidates. While Commissioner Farmer made clear that he cannot speak for his fellow Commissioners, he believes

Advertising and Outreach

All ten states advertised judicial openings in one way or another. But some states do a better job than others at getting the word out.

State	Where Commissions Advertise Judicial Openings
Arizona	• Advertises openings with state bar • Advertises openings in newspapers • Posts openings on the state website
Colorado	• Posts openings on the court's website • Notices of vacancies are emailed directly to the media • General press releases
Florida	• Basic announcements are mailed to a comprehensive mailing list • Chairman attends various bar meetings to advertise openings
Maryland	• Posts vacancy on court website • Advertises openings in statewide legal and general papers • List of candidates published on website
Missouri	• An announcement is sent to the bar as a whole
New Hampshire	• Notify bar of vacancy • Advertises openings in the state's paper
New Mexico	• Notices sent to the state bar • Notices sent to the women and minority bar associations • Notices sent to state's local papers • Dean's office sends email flashes to the relevant sections of the bar
Rhode Island	• Vacancy published in various papers around the state
Tennessee	• Administrative Office of Courts sends notice to all Commissioners • An email notification is sent to representatives in the Tennessee Defense Lawyers Organization who pass it along to the membership • Announcement in local papers
Utah	• Notification of vacancy sent to the bar • Outreach by individual Commissioners and sitting appellate judges • Outreach by the Governor and the Chief Justice to suggest diverse candidates that should apply

that the Commission as a whole considers diversity when the qualifications of the candidates are similar.[199]

The Florida Commission's approach appeared similar to that of the Tennessee Commission. As an informal procedure used to advance diversity considerations in the Commission's process, Commissioner Grigsby (FL) said that each Commissioner individually will look at the current composition of the court, and assess what is needed. "So, in terms of weight given to diversity, there is no consensus."[200] Anonymous Florida Commissioner concurred that each Commissioner in Florida is "on their own" to do what they feel is right.[201]

Commissioner Scarnecchia (NM) reported that after compiling an interview list, many times, Commission members will say, "[t]his is not a very diverse list, let's look at it again." There is no explicit factoring or weighting of diversity in the New Mexico Commissions' deliberations. However, Commissioner Scarnecchia noted that there is also no weighting of any of the other factors they consider.[202]

Missouri has no formal procedures to advance diversity considerations when screening and nominating candidates. Missouri's rules note, however, that Commissioners should give weight to reflecting the demographics of the community. Other than the rules, there are no other formal measures. According to Commissioner McLeod, Missouri's Commission uses no informal measures to advance diversity.[203]

Diversity Can Be Achieved Without Sacrificing Quality

Three of the Commissioners wanted to make sure we understood that diversity was not a trump card in the nominating process. Commissioner Carlotti (RI) declared, "[w]e start with a threshold. Integrity and competence come first. I won't accept less."[204] Commissioner Diament (NH) agreed and stated that "we would never compromise on quality."[205] And Commissioner Leavitt (AZ) echoed this stance adding, "[d]iversity is taken very seriously and is an added plus in the merit column, but it would not overcome basic qualities."[206]

Training to Be a Commissioner

Some states offer no training to Commissioners, while other states offer voluntary or mandatory training. In Arizona, training is required and must also be repeated annually to reinforce learning. Commissioners in Arizona must attend a one-day ethics class. Commissioner Strain (AZ) believes that the mandatory training Commissioners receive is "top-notch." In the training, Commissioners learn about ethics and how to deal with the media. Arizona's training touches only briefly on diversity.[207]

Anonymous Colorado Commissioner said that all Commissioners complete a non-mandatory training session run by the judicial branch. At least in the past, Colorado's Commissioners received training for half a day. They first watch a video of the Chief Justice discussing the importance of diversity. During the session, Commissioners discuss, among other things, the importance of diversity on the bench and what are appropriate and inappropriate questions to ask of applicants. Outside of the

training that Colorado Commissioners receive, they are given no other guidance on how to include diversity considerations in their evaluation of candidates.[208]

According to Commissioner Keetch (UT), for the most part, Utah Commissioners do not recruit candidates. Each time the Commission begins a new search, Commissioners discuss and receive training on the proper and improper areas of inquiry during their interviews of candidates, as necessary.[209]

Commissioner Diament (NH) said that he does not recall having received any training for his duties as a Commissioner[210] Similarly, Missouri Commissioners do not have required training.[211] As a new Commission is assembled with every new vacancy, the temporary nature of New Mexico's Commissions does not allow for any training. Commissioner Scarnecchia believes that the way New Mexico's Commissioners are prepped is sufficient, and believes that actual training is better suited for standing Commissions.[212]

Commissions vary widely in their approach to outreach and attempts to recruit candidates to apply for judicial openings. Commissions in Maryland and Florida do extensive outreach specially targeting underrepresented groups—this primarily involves seeking assistance with outreach from Black, Hispanic, Asian or Women bar associations. Some Commissions engage in general outreach for all types of applicants, whereas other Commissions do no official outreach at all. In many cases, individual Commissioners took the initiative to do their own informal outreach. In other instances, government officials from outside of the Commission were in charge of outreach efforts.

In New Mexico, Commissioner Scarnecchia (NM) reported that Commissioners do not play a formal role in outreach, but that, "[c]ommunities are so small, people know when positions are available. The women and minority bars also do good work in recruiting candidates."[213]

A Missouri Supreme Court rule requires the Commission to actively seek out and encourage qualified individuals, including women and minorities, to apply for judicial office (Mo. Rev. Bar Rule 10.32(f)). Commissioner McLeod (MO) said that the diversity provision makes mentioning or considering diversity not taboo. He said, "it balances out the political correctness of reluctance to say anything about race or gender." When asked how this provision impacts the recruitment efforts of the Commission, Commissioner McLeod said, "[v]ery little. I have never seen any effort in this regard."[214]

Colorado's Commission does not do any general outreach. The Colorado Commission does have members that attend women and minority bar association meetings, but does not have any rules or procedures in place requiring outreach to such bar associations.[215]

In Maryland the women and minority bar associations have the option of interviewing judicial candidates before the nominating Commission does. The bar associations then send their comments to the Commission.

In Florida, those interviewed presented very different points of view. Anonymous Florida Commissioner said that Commissioners in her state do not recruit candidates. She noted that if any of the

Commissioners do it, it would be an individual, informal process.[216] By contrast, Commissioner Grigsby (FL) said, "[w]hat has affected the applicant pool are the efforts to 'beat the bushes.'" He said that the minority bars have gotten involved in recruiting and with applications and the Governor's general counsel has gone around the state in support of diversity. Commissioner Grigsby believes that when more effort is made to publicize a vacancy, the applicant pool will become more diverse.[217]

Commissioner Keetch (UT) reported that the real outreach for judicial applicants is not generally done by the Commissioners. Others fill this role, including the Governor and his staff, the Chief Justice and other jurists, and prominent members of the bar and the community. Minority bar associations and their members are encouraged to become involved in the process and to identify top-flight candidates for consideration. Both formally and informally, Commissioners make clear that the application process is open to everyone, and that all applicants will be considered on their merits. Commissioner Keetch mentioned that some of the best recruiters for diverse applicants are those who are already judges. For example, he thinks Utah's Chief Justice, Christine Durham, has done a marvelous job in reaching out to diverse applicants and encouraging them to submit applications.[218]

Finally, Commissioner Briggs (AZ) noted his dissatisfaction with his Commission's outreach efforts for all applicants. He describes it as an unsystematic, "laissez-faire" approach. His experience in Arizona is similar to Rhode Island's, where there is no other formal outreach besides publishing notice of the vacancy.[219]

Interviewing Applicants

Some Commissions grant interviews to all applicants, but the majority have a screening process before an applicant is granted an interview. New Mexico, Florida and Missouri interview all candidates. Arizona, Colorado, Maryland, New Hampshire, Tennessee, Utah and Rhode Island employ a screening process before interviewing candidates. There may be a causal link between this interviewing pattern and the high number of minority judges in New Mexico, Florida and Missouri or it may be serendipitous. The data are simply not clear at the present time.

Commissioners' Attitudes about Diversity

All of the Commissioners we interviewed had positive things to say about the value of creating a diverse bench in their states. They offered different reasons about the basis for their belief that diversity is a laudable goal.

Commissioner Leavitt (AZ) believes that having African Americans in the judiciary is valuable because such a person brings tools and experience unique to his or her group. He explained that because life experience is a qualification to be a judge, diversity gets an applicant a "second look" from Commissioners.[220] Commissioner McLeod (MO) thought that "[d]iversity is important because triangulation gives us a broader view than just one viewpoint."[221]

When asked how and why diversity is important to Maryland's Commission, Commissioner Sachs (MD) said that when the bench reflects the diversity of the State's citizenry, there is greater public confidence in the judiciary.[222] Anonymous Florida Commissioner said that diversity on the bench helps create a court that accurately reflects society and it also diversifies the decision-making process.[223] Commissioner Scarnecchia (NM) believes that having a diverse judiciary is important because a judiciary should reflect the community it serves. She claims that diversity also enriches the development of the law.[224]

Barriers to Diversity

Commissioners informed us that there are several obstacles preventing them from creating a diverse bench in their respective states. First, some Commissioners have to battle the perception among some potential female and minority candidates that applying for a judicial opening would be fruitless. The reportedly hostile attitude of some Commissioners was another impediment. Another problem, discussed at length below, is that some minority judges are having difficulty retaining their seats if they are subject to retention and/or competitive judicial elections.

One challenge in increasing diversity noted by Commissioner Grigsby (FL)[225] and Commissioner Keetch (UT)[226] is prospective applicants' pessimism. Commissioner Keetch believes that a sizeable number of minorities and women view their diversity as a liability, when precisely the opposite is true.[227] Commissioner Scarnecchia (NM) shared this concern, and said that the biggest obstacle in diversifying the bench is potential candidates who assume that they are not "judicial material."

Commissioner Scarnecchia (NM) added that New Mexico's Commissioners also make the mistake of assuming that certain individuals are not "judicial material." Commissioner Scarnecchia said that some Commissioners have stereotypes or biases about what a judicial candidate should look or act like. As an example, Commissioner Scarnecchia worries about the younger, female Native American candidates. "Clearly, that candidate is not going to look and seem like other judges, but her resume may show that she has all of the qualities necessary." In terms of candidates, Commissioner Scarnecchia said that some candidates do not see themselves as judges and usually do not have the kind of necessary support during the application process.[228]

Here we have evidence of how implicit bias works in the real world. On the one hand, disadvantaged groups may underestimate their own chances to become judges.[229] As Nobel Laureate Amartya Sen wrote, "deprived people…may even adjust their desires and expectations to what they unambitiously see as feasible."[230] Meanwhile, Commissioners may exacerbate the problem by sharing or reinforcing low expectations.[231]

Another obstacle Commissioner Grigsby (FL) noted is:

> once minority judges are appointed, they are having problems getting re-elected in retention elections. A secondary problem is that whenever you appoint someone, they have to go into contested elections later on. A lot of minority candidates get targeted, don't have a large enough base, or are not able to raise a lot of [campaign] money. [232]

This obstacle is also present in New Mexico, where judges must run for election after they have been appointed. Commissioner Scarnecchia (NM) believes that this process makes it difficult to obtain diverse applicants.[233] Commissioner Sachs (MD) echoed this concern noting that Maryland has had African-American appointments, but when these judges ran for election, they were quickly defeated. Commissioner Sachs also said that African Americans have had little luck in certain jurisdictions or counties. She knows of an African-American judge who was appointed to the circuit court twice, and was defeated in elections after each appointment.[234] In Maryland, Commissioner Sachs does not believe that the problem is the lack of fundraising since members of the bar provide money to sitting judges who stand for election after their appointment. Commissioner Sachs could not pin-point what caused this difficulty with elections.

Putting current employment at risk is another barrier. Commissioner Leavitt (AZ) believes that "trying to be a judge can mean risking losing clients if an applicant is in the private sector."[235] While risking the loss of clients is a risk for all judicial applicants, this burden may have a stronger gatekeeping effect on women and minority attorneys.

The Governor's Role in Appointments

Many Commissioners expressed a view that regardless of what the nominating Commission does, ultimately the final decision regarding who is appointed to the bench is in the hands of the Governor. Having a Governor who is focused on diversity or indifferent to diversity can dramatically impact who is appointed.

"IT SOUNDS HORRIBLE, BUT I'M NOT AWARE OF ANY AFRICAN AMERICAN PRACTICING ATTORNEY IN NEW HAMPSHIRE."

—New Hampshire Commissioner

Two Florida Commissioners both noted the difference that Governors' attitudes made. Commissioner Grigby (FL) reported that "[o]ur last Governor [Jeb Bush] made it almost his religion to get diversity on the bench. Our current Governor [Charlie Crist] doesn't preach about diversity, but makes diversity his inspirational goal in his appointments."[236] Anonymous Florida Commissioner likewise reported that the current Governor "gives diversity lip-service" and notes that there were times when the Commission would have women on the nominating list, and the current Governor would pick all of the males.[237]

The relationships between nominating Commissions and Governors can become contentious over issues related to diversity. In Tennessee[238] and New Mexico,[239] Governors have sued the nominating Commission to modify the "short list" of judicial nominees. So far, one Commission has won and the other lost in these lawsuits.

Keeping or Failing to Keep Data on Diversity

In compiling this report, the Brennan Center was continually hamstrung by a lack of publicly

available data. This made comparing trends in the ten states virtually impossible. State practices vary when it comes to keeping demographic statistics about its judicial applicants, the nominees and jurists on the bench. While some maintain very copious records and make those records available to the public, others keep no records on diversity at any stage of the nominating process. Rhode Island's Commission provides gender diversity statistics of nominated applicants to the State every year. These statistics are also available to the public.[240] Tennessee's Court Administrator retains demographic data for the applicants and candidates that are nominated and distributes the data to Commissioners periodically in a report. The data are available to the public.

Arizona's Commission keeps demographic data on: (1) its members; (2) judicial applicants; (3) nominees; and (4) appointees. These data are available to the public on Arizona's webpage.[241] Maryland keeps the same data and makes them available to the public.[242]

The Colorado Commission only keeps geographical data showing which 14 Commissioners are appointed by congressional district. The Commission does not keep any other demographic data.[243] Utah's,[244] New Hampshire's,[245] Florida's[246] and New Mexico's[247] Commissions do not keep any demographic data. Missouri's Commission does not record or compile demographic data and all of the applications except those that belong to the nominees are destroyed.[248]

The "Pipeline" Issue and Demographic Trends

Many Commissioners interviewed by the Brennan Center complained that too few minority lawyers are available to apply for judicial openings in their states. Some noted the demographic trends are shifting and that in the near future they expect to have a more diverse pool of applicants to choose from. *See* Appendix D for a full list of the racial composition of bar memberships in the ten states.

Commissioner Nichols (TN) remarked that a low percentage of African-American bar members kept Tennessee from having a more diverse bench.[249] Commissioner McLeod (MO) indicated something similar, stating that "[t]he pool could be more diverse, but the constitutional requirements (such as the need to be a member of the bar) skew the demographics."[250]

Commissioner Carlotti (RI) noted that "usually, a person is not qualified enough for a judgeship in their thirties. This is why most of our applicants are in their forties." He added, "[o]nly over the last 15 years are we seeing an increase in the amount of Hispanic and Black candidates going to law school. You wouldn't apply for a judgeship right out after law school, so I think that the applicant pool is becoming and will continue to become more seasoned as time goes on."[251]

Commissioner Sachs (MD) said the Maryland Commission still wishes it had more minority candidates "interested in the job." She believes that this gap can be addressed through recruitment. She said, "[w]e're getting more women, but mostly white women." Commissioner Sachs reported that there are more minority lawyers in the bar than in years past. "Still, they are not yet at an age and stage where they are ready to be considered for a judgeship. The landscape will change in the next few years." Commissioner Sachs doubted that the issue of diversity and underrepresentation will exist in ten years.[252]

Commissioner Strain (AZ) wondered how Arizona should go about getting more women and minorities to attend law school. She has never seen an African American or Native American in the applicant pool, and is not sure why they are not applying. Commissioner Leavitt (AZ) offers one explanation by arguing, "Arizona does not have a lot of African Americans to start with. Even fewer go to law school, so the lawyer pool is small. Now, the African Americans [with law degrees] that we have, they have tremendous opportunities [in the private sector] at their disposal."[253]

New Hampshire, which is the least diverse state sampled, reported an almost insurmountable problem in finding racial minority applicants. As evidence of how stark the demographic problem is in New Hampshire, Commissioner Waystack related his experience: "it sounds horrible, and it goes to show you, but I'm not aware of any African American practicing attorney in New Hampshire. I know of Asian American attorneys, and I am aware of African American attorneys outside of New Hampshire, but none in the state." Commissioner Waystack added that, "[w]ithout sounding facetious, the only suggestion [for increasing diversity in the applicant pool] would be to increase the minority population in New Hampshire."

New Hampshire has had better luck with gender diversity.[254] Commissioner Diament reported that more women are being appointed on behalf of the Governor. As a Commission, he said that they "put the word out" to attract more female applicants. He believes that this has affected the gender mix of the applicant pool.[255]

The Effect of Judicial Salaries

Commissioners were split about whether low judicial salaries had a deleterious effect on diversity on the bench or recruitment efforts. Some thought low salaries were a huge obstacle. Others thought this was not a factor at all.

Commissioner Keetch (UT) was concerned that "we speak with candidates all the time who flatly say that they cannot afford to become a judge." He sees this issue as a "definite" problem to increasing the diversity of the pool.[256] Commissioner Carlotti (RI) said that low judicial salaries certainly have an impact on who applies. He said, "[i]f you are in your mid-40's with kids, judicial pay self-selects people out of the process. The salary doesn't cut it."[257]

Commissioners across the country noted that many applicants from underrepresented groups simply have more lucrative options besides becoming a state judge. Commissioner Leavitt (AZ) noted starkly, "[a]s an assistant police chief, I make more than a Superior Court judge. The few African Americans that we have are highly courted by law firms."[258] Commissioner Nichols' (TN) opinion is that,

> the small numbers of African Americans that are highly skilled have no interest on going on the bench. This is the same for a lot of women. They probably don't want to take a pay cut just to go on the bench. A lot of these people are parents. I think that this is a big drawback, particularly for African Americans. They are just not going to take salary cuts. And I don't blame them.[259]

Commissioner Sachs (MD) believes that the possibility of being defeated in a contested election after appointment to a trial court (having given up a law practice or other rewarding legal job), coupled with the judiciary's relatively low salary, has something to do with the low number of minority candidates, notwithstanding the fact that the judiciary's pension is "wonderful."[260]

One Commissioner was unconvinced that pay was the issue. When asked if he felt low judicial salaries have an impact on who applies, Commissioner McLeod (MO) said, "We frequently get individuals who are willing to take a pay cut. The prestige of being a public servant and a government employee outweigh those concerns."[261]

Assumptions About the Applicants

Some Commissioners interviewed appeared to hold certain assumptions about women and minority judicial applicants. In some cases, these assumptions seemed at times based on negative stereotypes. In other cases, the Commissioners seemed to have an overly positive view of these applicants.

> "IF DIVERSITY IS GOING TO BE A PRIORITY, IT NEEDS TO BE BOTH A TOP-DOWN AND BOTTOM-UP PROCESS. THE GOVERNOR HAS TO PUSH THE ISSUE, AND INDIVIDUALS FROM THE MINORITY AND WOMEN BAR ASSOCIATIONS HAVE TO RECRUIT."
>
> *—Florida Commissioner*

The Commissioners often separated their views on gender from their views on race. Many of the assumptions they articulated were about the different types of law that women and men allegedly practice. Commissioner McLeod (MO) reports that his Commission is seeing fewer experienced trial lawyers among women than men.[262] Commissioner Scarnecchia noted that "New Mexico has a lot of underpopulated communities where women work for the government or work as staff on the courts—usually domestic courts."[263] Commissioner Grigsby (FL) said that he assumed "that more women are involved in family law. Men tend to be in private practice." He added that this pattern, in turn, can affect the perception of women being qualified or not for a judicial position.[264] In terms of career backgrounds, Anonymous Florida Commissioner said that more women tend to be in the public sector than men.[265]

Two Commissioners said that female applicants were stronger than their male counterparts. Commissioner Leavitt (AZ) believes that women have better backgrounds. He stated that, "women jump from firm to firm, which could be an adjustment made because of kids. But men tend to lack the practice experience because they end up staying at a firm and specializing. Overall, we get better resumes from women."[266] Commissioner Nichols (TN) appeared to share this sentiment when he

stated that "most of the individuals that apply are high academic achievers. Women, particularly have better grades. Many were in the top 10% of their law school graduating class."[267]

The Commissioners also held assumptions about the career paths of racial minorities. In terms of career backgrounds, Anonymous Florida Commissioner said that more minorities tend to be in the public sector than whites.[268] Commissioner McLeod (MO) was only able to provide an anecdotal recollection regarding minorities, but he felt that among minorities, there are fewer experienced trial lawyers.[269]

Commissioner Leavitt (AZ) reported that:

> [i]n terms of African Americans, many go towards federal government jobs because they have better opportunities…On the contrary, Hispanic lawyers tend to go into immigration law or become a federal public defender because of the language abilities they more often have. These types of jobs are not good for a judgeship because they are removed from the state and local courts and they practice in the federal process. Local attorneys and lay people on the Commission don't know them as well as those who practice in the local courts. White government lawyers have the least problem applying.[270]

Commissioner Leavitt stated that, "the problem is that many [Hispanics] don't leave the federal system, and then ten years down the road, they are forgotten by the local bar. When they try to apply for a judgeship, there is no diversity seen in their record because they have limited practice experience."[271]

Innovative Approaches to Advance Diversity

As the foregoing snapshots from the ten state Commissions should show, there is an enormous variety in legal regimes, demographics, and approaches to diversity. Some Commissions as a whole and some individual Commissioners have taken the lead in making a diverse bench in their respective states a priority. Many have innovative approaches which work now as well as suggestions of how to improve future results.

Current practices that seem particularly effective are those which increase outreach efforts. Florida stood out in terms of its outreach efforts. When there is a vacancy, the Florida Commission sends a basic announcement using a comprehensive mailing list created to reach state, county and volunteer groups throughout Florida. Commissioner Grigsby (FL) said that the list is specialized and reaches women, African American and Cuban groups. Along with the announcement, the Chairman of the Commission offers to attend meetings or answer any questions individuals or groups may have about the process. Commissioner Grigsby said that "if diversity is going to be a priority, it needs to be both a top-down and bottom-up process. The Governor has to push the issue, and individuals from the minority and women bar associations have to recruit."[272]

Making Commissioners available to candidates to answer questions is a positive solution in those states with reasonably sized applicant pools. For example, Commissioner Leavitt (AZ) personally meets with prospective applicants to discuss questions and/or concerns because "the whole thing is a humiliating process." [273]

Education of potential applicants about how to become a judge is also helpful. The Arizona Commission hosts a "[d]o you want to be a judge?" program with the minority bar association at neighboring law schools. Commissioner Leavitt (AZ) thinks this program is useful because it catches students early on in their educational careers and explains how to make the correct career choices in preparation for a judgeship.[274] Commissioner Waystack (NH) reported favorably that, "[o]ne of our female Commissioners was a major presenter at a CLE 'Women Becoming Judges' program and urged anyone who even had a slight interest in a judgeship to apply."[275]

Another approach to encourage underrepresented applicants is outreach by affinity groups. For example, in Maryland the women's and minority bar associations have the option of interviewing judicial candidates before the nominating Commission does. The bar associations then send their comments to the Commission.[276]

Commissioner Diament (NH) thought that a certain leadership structure was helpful in fostering diversity. He believes that having co-chairs that are from both genders helps increase the diversity of the judicial nominating pool.[277]

Two Commissioners also had suggestions of new approaches to increase diversity. Commissioner Briggs (AZ) suggested that polling potential judicial applicants could give Commissions a better idea of how to target and attract strong candidates. He proposed that the state poll groups of people that they would like to see apply for judgeships. The poll would be facilitated by the sub-sections of the bar for women and persons of color. Questions asked in the poll would include:

(1) Have you ever considered being a judge?
(2) If not, why not?
(3) Are you aware of the process to become a judge in our state?
(4) Do you view your credentials, your occupation, judicial pay or any other factors as significant barriers to your becoming a judge?
(5) Do you believe that you will be given a fair opportunity under our merit selection system if you apply to be a judge?[278]

Commissioner Scarnecchia (NM) suggested political training would help and said that, "law schools and young lawyer associations should introduce the possibility of judicial careers and help students prep for it. A lot more could be done to educate lawyers about…[the] need to be politically active and politically connected to be a nominee. Political training would improve this. The special interest bars could also do a lot more work in preparing candidates, such as mock interviews."[279]

V. BEST PRACTICES IN JUDICIAL SELECTION

As our interviews with Commissioners across the country demonstrate, the day-to-day practices of nominating Commissions vary considerably as do their perspectives. Below are our suggestions for best practices based on the existing literature on judicial nominating Commissions and our interviews.

1. GRAPPLE FULLY WITH IMPLICIT BIAS

As summarized above, recent research from cognitive science shows that most people are prevented from being truly egalitarian because of implicit biases picked up in childhood.[280] As Professors Christine Jolls and Cass Sunstein write,

> [i]mplicit bias is largely automatic; the characteristic in question (skin color, age, sexual orientation) operates so quickly…that people have no time to deliberate…[P]eople are often surprised to find that they show implicit bias. Indeed, many people say in good faith that they are fully committed to an antidiscrimination principle with respect to the very trait against which they show a bias.[281]

The findings in this area of cognitive research are extensive. As two experts note:

> [E]vidence from hundreds of thousands of individuals across the globe shows that (1) the magnitude of implicit bias toward members of outgroups or disadvantaged groups is large, (2) implicit bias often conflicts with conscious attitudes, endorsed beliefs, and intentional behavior, (3) implicit bias influences evaluations of and behavior toward those who are the subject of the bias and (4) self, situational, or broader cultural interventions can correct systematic and consensually shared implicit bias.[282]

Given the prevalence of implicit bias and its potential to undermine efforts to establish an open and fair appointment process, nominating Commissions must take proactive steps such as attempts to expand the applicant pool, to counteract the unconscious tendency to appoint white male judges.[283] One of the first steps is recognizing that a problem exists. As Professors Kang and Banaji write, "[a]s a threshold matter, in order to correct bias, decision makers in…hiring…must be made aware of their own implicit biases."[284]

Another step is trying to achieve as diverse a nominating Commission as possible. As Professor Russell Robinson explains having diversity on hiring committees has the following beneficial debiasing effects.

> (1) The presence of outsiders [women and minorities] on interviewing committees will help the interviewee when bias emerges during the interview; [and] (2) the presence of outsiders in decisionmaking groups concerning hiring and promotion will help the employee/interviewee in that the outsider may debias the group's deliberations.[285]

2. INCREASE STRATEGIC RECRUITMENT

The first step in fostering a diverse applicant pool is ensuring that an open judicial seat is widely advertised.[286] This advertisement cannot be a single announcement in a newspaper or two. Genuinely active outreach is necessary to make sure that a wide cross-section of members of the bar knows about the opening.[287] As state bars become more technologically savvy, the bars should make an effort to email their members directly about openings on the bench instead of passively posting job opening on web pages that few practicing lawyers visit.

In particular, outreach to women and minorities may be necessary to ensure a diverse applicant pool. Merely relying on Commission members to spread the word about a judicial opening through their limited friend and professional networks—as one Commissioner suggested—will not ensure a diverse pool. Indeed, this may only replicate an "old-boy's" network.[288] For example, sending announcements to minority bar associations and women bar associations increases the chances that members of these groups will apply.[289] Another approach would be to use the alumni networks of local law schools to disseminate announcements. The more widely a judicial opening is broadcasted, the more likely it is that a diverse slate of applicants will apply for the job.

Recruitment is successful if it is, as one Commissioner put it, both "top-down and bottom-up."[290] When Governors, Chief Justices and other leaders in the state make an effort to advertise the fact that judicial vacancies are truly open to non-traditional candidates, a broader array of applicants is likely to apply. Also when these high officials place a priority on diversifying the bench, those involved in the nominating process are more likely to take the mandate for diversity seriously.

A diverse bench will not be achieved only by opening the door; minority and female lawyers must be willing to walk through the door. This means that minority and female attorneys need to take the risks associated with applying for judicial openings. They also have a role to play in circulating announcements and cultivating younger lawyers to be ready to apply. An excellent suggestion was Arizona's practice of working with local law schools to plant the seed in the minds of students that a judicial career is promising.

3. BE CLEAR ABOUT THE ROLE OF DIVERSITY IN THE NOMINATING PROCESS IN STATE STATUTES

Many Commissioners we interviewed expressed views that there was no consensus among Commissioners about how the Commission was supposed to consider diversity during the nominating process. Many were against what they termed "weighting" but preferred thinking of diversity as a "plus" when two candidates were otherwise equal, which indicates that they thought of it as having a numerical value on a scale.[291]

The problem of weighting diversity is a complex one. First, unlike a college admission process where an admission committee has a numerical matrix of grade point averages and test scores, in a judicial nominating process, Commissions are largely working with resumes, publications and writing samples. If none of these factors has a numerical value, then it makes little sense to worry about the numerical weight given to diversity.

We suggest that the Commission consider racial and gender diversity as one of a number of qualities that it looks for in a judge. That way, diversity can be considered alongside a panoply of other intangible characteristics typically sought in a future judge, such as judgment, temperament, evenhandedness and collegiality. The impression we got from our interviews is that many Commissioners view diversity in this way, but many did not feel that there was a consensus on their particular Commissions that this was the preferred approach to diversity. The Commission should set out the parameters of when and how diversity can come into play, so that all Commissioners understand the extent of the mandate.

THE BEST WAY TO ENSURE THAT ALL COMMISSIONERS HAVE THE SAME GUIDANCE ON DIVERSITY IS BY ADOPTING A CONSTITUTIONAL OR STATUTORY REQUIREMENT THAT THE COMMISSION IS DIRECTED TO FOSTER A BENCH WHICH REFLECTS THE DIVERSITY OF THE STATE.

The best way to ensure that all Commissioners have the same guidance on diversity is by adopting a constitutional or statutory requirement that the Commission is directed to foster a bench which reflects the diversity of the state. This would require repealing New Hampshire's Executive Order, which requires their Commission to disregard race and gender in the judicial nominating process. This would also require states which are currently silent on the matter of diversity to change their laws to specifically cover diversity. Sample language can be found in Rhode Island, which states: "[t]he governor and the nominating authorities hereunder shall exercise reasonable efforts to encourage racial, ethnic, and gender diversity…."

4. KEEP THE APPLICATION AND INTERVIEWING PROCESS TRANSPARENT

The application process should be as transparent as possible.[292] Application packages should include a brief summary of the application process, such as who will review the applications; who will be granted an interview; will the interview be with a single Commissioner or with an entire Commission; will interviews be open to the public or in closed session; will there be a public hearing; will any part of the process be recorded or televised; what types of documents in an application are deemed public; how the applicant will be notified of the outcome of the application process; and if the applicant has questions, to whom should those questions be addressed.[293] Outlining this process for all applicants will ensure that each applicant is treated in a similar way and will assist potential applicants in preparing for each stage of the process.[294]

A problem of implicit bias may be activated by relying too heavily on resumes in the first instance, rather than giving candidates an opportunity to be interviewed. Research on implicit bias has shown candidates with "black" sounding names who submitted their resumes to private employers received 50% fewer calls to arrange an interview than their white counterparts.[295] Researchers sug-

gest that employers may unconsciously discount the resumes from candidates whom they presume to be black.[296] This research suggests the better practice is (1) careful review of all resumes and (2) opening the interview process to as many candidates as the Commission can reasonably handle given time constraints, so that this particular form of bias does not infect the nominating process.

On the other hand, interviews themselves may be a site for bias to rear its ugly head. As Professors Kang and Banaji report, "[i]nterviews are extraordinarily subjective, and for the past four decades, evidence has mounted that making decisions based on interviews produces worse outcomes that arriving at them via the paper record."[297] Implicit bias can lead to awkward interviews where the interviewer comes away with a bad impression of the interviewee.[298] This branch of the research indicates that interviewing must be done particularly carefully. Kang and Banaji suggest, "by interviewing an extensive pool of potential candidates and evaluating them in accordance with well-specified, pre-set guidelines, decision makers can diminish interview subjectivity."[299]

Nominating Commissions should rationalize interview questions.[300] Many of the Commissioners we interviewed stated that there was no standard list of questions applicants had to answer. When asked to give an example of questions posed to candidates, one reported asking an applicant about "their favorite novel" or "what historical figure they would most like to meet?" Given the import of the job of nominating Commissions—filling the few vacancies on state courts—this type of unproductive questioning does a great disservice to applicants as well as to the public, which relies on the Commission to act as a vetting agent.

There does not have to be a strict menu of questions because applicants are likely to have such varied life experiences. Indeed asking the same questions to all may waste the time of both the Commission and the applicant, in light of the fact that the Commission should have a full application which indicates relevant experiences. Nonetheless, interview questions should primarily focus on the substantive legal experiences of the applicant. Hypothetical or issue-spotting questions about relevant procedural, statutory or case law would also be appropriate, so that the Commission gets a sense of the applicant's legal reasoning skills. Such questions should be standardized so that the degree of difficulty is similar across all applicants.

Balancing privacy with the public's right to know about potential judges must be done thoughtfully. We suggest that the first stages of the application process remain confidential.[301] For some applicants, publicly seeking a competitive judgeship may put their current employment in jeopardy. Once the nominating Commission has decided that a particular candidate merits an interview or a hearing, he or she should be notified that the rest of the nominating process will be subject to public scrutiny. Once the applicant has consented to allow the process go forward, the Commission should publicly announce the name of the applicant and his or her credentials to the public, so that public interest groups and other interested parties can bring relevant information about the applicant to the Commission's attention.

5. TRAIN COMMISSIONERS TO BE EFFECTIVE RECRUITERS AND NOMINATORS

Commissioners need clear standards, as well as training about how to be effective interviewers. For most Commissioners, choosing judicial nominees is a part-time job done a half dozen times over a few years. This is not the best environment for consistency. Setting out standards for the Commission on an annual basis will help all Commissioners maintain a high level of performance. As a part of training, publishing a manual for Commissioners that clearly outlines their duties and responsibilities would be enormously helpful. This manual should include statutory or other authority which encourages or requires the consideration of diversity.

However, we note that recent research from Harvard indicates so-called "diversity training" may be problematic.[302] Research in the corporate context has shown that diversity training has had a negative impact and leads to less female and minority advancement.[303] As a recent study explained, "some studies of diversity training suggest that it may activate rather than reduce bias."[304]

Corporate diversity training appears to have caused a backlash in many instances.[305] Two of the Commissioners we interviewed worried that putting too much emphasis on diversity could also cause a backlash. This seems to be a reasonable concern since if the goal is increasing diversity, the steps taken to ameliorate the problem should not exacerbate it. Therefore, we do not recommend that Commissions invest in diversity training per se. On the other hand, bringing in a specialist to explain implicit bias may have a positive impact.[306]

The difference between diversity training and implicit bias training may seem subtle. In diversity training, classically a facilitator teaches workers about the legal liability that can be triggered by certain overtly discriminatory behaviors in the workplace such as racially derogatory remarks or sexual harassment. By contrast, implicit bias training alerts the employees to the ways in which unconscious bias may be interfering with their day-to-day decision making in allocating resources such as coveted jobs and promotions. Implicit bias training has not had a long enough history to determine its overall effectiveness. But initial clinical studies show that implicit bias can be partially minimized through heightened self-awareness.[307]

6. APPOINT A DIVERSITY COMPLIANCE OFFICER OR OMBUDSMAN

A perennial problem is determining who should be held accountable for a state's failure to achieve meaningful diversity on the bench. As research from the private sector has shown, one way that companies have made significant progress in recruiting and retaining female and minority talent is by giving a particular individual responsibility for monitoring diversity levels and strategizing about how to maintain or improve the current levels of diversity.[308]

States could appoint a diversity ombudsman on the nominating Commission or an independent actor to play this monitoring and problem solving role.[309] This person would be in charge of outreach efforts to ensure that all types of lawyers are aware of judicial openings and the application process. This person would also spearhead special programs such as Continuing Legal Education

(CLEs) on the judiciary or events at law schools to educate potential applicants about judicial career opportunities.

7. CREATE DIVERSE NOMINATING COMMISSIONS BY STATUTE

Having a diverse Commission is more likely to lead to a more diverse applicant pool. [310] The reason for this is not totally clear. It might be that the diversity on the Commission acts as a signal to potential minority and female applicants that their applications are truly welcome. Or female and minority Commissioners may go out of their way to try to recruit diverse candidates. Another explanation is that the whites and males on the Commission may have a heightened consciousness about diversity and less implicit bias if they serve with a diverse group of peers on the Commission.[311]

Since both lawyers and laypersons serve as Commissioners, obtaining a law degree is not a requirement to serve as a Commissioner. As such, achieving a diverse Commission becomes an easier task. One way to ensure diversity on a Commission is to draw lay Commissioners from community groups like the NAACP, La Raza, or the League of Women Voters.[312] Attaining a diverse Commission can be facilitated by statutorily requiring those who appoint the members of the Commission to take the diversity of the state into consideration when making such appointments. Sample language can be found in Arizona's law which states, "[t]he makeup of the committee shall, to the extent feasible, reflect the diversity of the population of the state."

8. MAINTAIN HIGH STANDARDS AND QUALITY

There is no need to abandon high standards of judicial quality to ensure a diverse bench. As Professors Johnson and Fuentes-Rohwer suggest:

> Many individual factors, such as ideology, judicial temperament, and life experience, as well as race, remain relevant to whether one is a suitable for judicial appointment. Just as any minority juror will be judged on factors other than race, so should prospective minority judges. [313]

Our demographic data show that minority and women lawyers are available from local law schools in all ten states studied. Commissioners should also make efforts to recruit the graduates of top national law schools with larger cohorts of minority graduates than most law schools in the ten states we studied.[314] This may require relaxing residency requirements to accommodate transplants from other states.[315] Increasing the quality of those sitting on the bench should supersede a desire to promote only local lawyers.

9. RAISE JUDICIAL SALARIES

Judicial salaries must be high enough to attract top talent. As our interviews demonstrated, low pay appears to be a significant barrier to creating a diverse bench in several states.[316] Often, the nominating commission has no power to change judicial salaries, which are either set by a judicial

compensation Commission or by the state legislature.[317] Nonetheless, state leaders should keep an eye on judicial salaries to make sure that they are high enough to attract the best candidates. Lawyers who are also parents may be particularly sensitive to the salaries offered to judges. The income from being a judge should be high enough to lure some of the best minds out of law firms and onto the bench. A list of judicial salaries is available in Appendix E.

10. IMPROVE RECORD KEEPING

Keeping a record of the racial and gender makeup of the applicant pool, including: who advanced to the interview/hearing stage, who was recommended to the governor and who the governor nominated, will make it much easier for Commissions to track their own progress on issues of diversity.[318] If no one must account for the levels of diversity at each stage, it is easier for Commissions to overlook the matter and focus only on filling the vacancy at hand. Discovering that applicant pools are nearly all white and male may prompt a Commission to make greater efforts to advertise the next opening to facilitate more female and minority applicants. The demographic data should also be in a form that is searchable and accessible to Commissioners, legislators and the public.

VI. CONCLUSION: A PROMISING FUTURE

More and more women and minorities are entering law school than at any other time in American history. They are graduating at record numbers and entering the legal profession in large cohorts. Of course, not every first year law student learning civil procedure today will be willing or able to become a state judge in a few decades' time. But the roster of female and minority lawyers who are perfectly qualified to sit on the bench is growing larger year after year. The numbers of women and minority jurists should increase dramatically in the next two decades. If it does not, it will be apparent that states failed to make the necessary structural and attitudinal changes to create a representative, diverse bench.

Attaining a diverse bench across the nation is paramount to maintaining the legitimacy and success of state courts. Therefore, states must make judicial diversity a core policy priority. Fostering judicial diversity requires an affirmative commitment by all involved—including politicians, Commissions, applicants, and the bar.

To achieve the goal of a diverse bench, states should replicate successes and learn from failures. Implementing the best practices outlined here should create better results for applicants, Commissions and state judicial systems. With targeted effort, states can increase judicial diversity, thereby improving both judicial quality and legitimacy. Our sense of justice should demand nothing less.

For more information on the Brennan Center's efforts to strengthen the judiciary, see its Fair Courts Project at www.brennancenter.org/content/section/category/fair_courts/.

Focus

League of Women Voters project focuses on judicial diversity

by Zaida Arguedas and David Ward

For more than 90 years, the League of Women Voters has worked to improve our systems of government and influence public policies through citizen education and advocacy. From 2001 to 2009, its program, "Safeguarding U.S. Democracy: Promoting Fair and Impartial Courts," sought to increase citizen understanding of the importance of our nation's system of separation of powers. Through this program, the League built a critical mass of informed citizens who are prepared to defend the merits of a fair and impartial judiciary, using various educational activities and programs. During the 2008 presidential election, the League organized approximately 50 "judiciary-related" events in 35 states. It held state supreme court candidate forums, created and distributed more than one million voter guides, and coordinated civic education efforts in schools and universities across the country.

Diversity, in all its forms, has been a common thread throughout all of the League's work. It has consistently valued more diverse representation in government and more diverse thought in policy-making processes. With a new administration in the White House, the changing expectations of 21st century citizens, and an increasingly diverse U.S. population, the League believes the time is ripe to bring to the forefront opportunities for enhancing diversity within our systems of government.

President Obama's nomination of Justice Sonia Sotomayor to the U.S. Supreme Court engaged the country in a rich and necessary discussion about the merits of a diverse judiciary. Should the Court's composition ultimately reflect the population of the United States? The results of this nomination are testing the nation in the short term, but larger questions about the importance of diversity within all levels of the U.S. judiciary still linger.

With this in mind, the League of Women Voters, in 2009, applied for and was awarded a two-year grant from the Transparency and Integrity Fund of the Open Society Institute to promote fair and impartial courts with a specific focus on the importance of diversity—ethnic, racial, gender and other—in state judiciaries. We launched this initiative in the state of Kansas. In cooperation with a broad-based coalition of partners, every League in Kansas is developing and implementing strategies for education and advocacy. They are sponsoring community forums, town hall meetings, events at local law schools, and meetings with appointed and elected officials.

Commenting on the grant award, Mary Wilson, President of the League of Women Voters of the United States, stated: "...[we] believe that diversity in our courts is crucial, not only because different viewpoints make for a more robust jurisprudence, but because it will help to legitimize our justice system in the eyes of an ever-diversifying public."

The "Quest for a More Diverse Judiciary in Kansas" was officially launched on October 17, 2009, in Topeka. More than 100 attendees discussed why a more diverse judiciary is important in Kansas. The keynote speaker was the Honorable Rebecca Love Kourlis, Executive Director of the Institute for the Advancement of the American Legal System. Shortly after the launching, Kansas Chief Justice Robert E. Davis formally supported the campaign by stating, "I share in your 'quest for a more diverse judiciary' and I thank you very much for your continued educational and advocacy efforts."

During the project's first year, the goals are to engage as many stakeholders as possible in this important dialogue, to broaden the distribution of announcement of judicial vacancies, to increase diversity among the members of the state's judicial nominating commissions, and to distribute information on how to become a judge. Between October 2009 and October 2010, Leagues across Kansas have organized and are organizing 25 events and activities to highlight the need for a more diverse judiciary and ultimately to enhance the legitimacy of our justice system in the eyes of audiences that include youth, attorneys, voters, women, and ethnic and racial minorities.

To achieve success in this "quest" the Leagues in Kansas have part-

nered with the American Association of University Women, the NAACP, the Kansas Women Attorneys Association, the American Constitution Society, area bar associations, the Eisenhower Presidential Library, the Robert J. Dole Institute of Politics, local chambers of commerce, and the Topeka Center for Peace and Justice. Other key partners include local libraries, Kansas University School of Law, Washburn University Law School, Kansas Wesleyan University, Emporia State University, and local high schools. The inclusion of the legal community of Kansas and the participation of members of the judicial nominating commissions are critical to effecting the changes proposed by the goals of the project.

To date, public response has been promising and encouraging, as attested by the following quote from *The Wichita Eagle*:

> [C]ourts should reflect the people they serve. Yet the Sedgwick County District Court bench is 100 percent male, and women hold just 17 percent of the state judgeships and 20 percent of the federal judicial positions in Kansas. Most of the state's various courts score poorly on ethnic diversity as well. To its credit, the League of Women Voters Wichita-Metro sees a problem with this status quo, which is part of why it has begun a two-year effort to promote diversity in the courts.

The League's efforts will be showcased and continued at the national level when it hosts a distinguished group of panelists at its biennial convention in Atlanta, Georgia, in June 2010. The Honorable Carol W. Hunstein, Chief Justice of the Georgia Supreme Court; Ciara Torres-Spelliscy, Democracy Counsel at the Brennan Center for Justice; and Zuraya Tapia, Executive Director of the Hispanic National Bar Association, will discuss "Is the Quest for a More Diverse Judiciary Important? Is it Attainable?"

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"Diversity on the Bench: Is the 'Wise Latina' a Myth?"

by Seth S. Andersen

> I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life.
>
> —Then-Judge Sonia Sotomayor, Judge Mario G. Olmos Memorial Lecture, University of California, Berkeley, School of Law, 2001.

Judge Delissa Ridgway, Chair of the National Conference of Federal Trial Judges of the ABA Judicial Division, opened the ABA 2010 Midyear Meeting program, "Diversity on the Bench: Is the 'Wise Latina' a Myth?" by quoting then-Judge Sotomayor's much-repeated observation about the connection between diversity and judicial decision making. A record 60 ABA entities and affiliated organizations, including the American Judicature Society, co-sponsored the program.

Professor Pat K. Chew of the University of Pittsburgh School of Law discussed her article, "Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases" (*Washington University Law Review*, 2009), which found a strong link between judges' race/ethnicity and case outcomes. While plaintiffs were successful in 22 percent of all cases examined by Professor Chew, those cases presided over by African-American judges were decided in favor of plaintiffs 46 percent of the time. White judges found for plaintiffs in 21 percent of cases and Hispanic judges in 19 percent of cases.

Professor Chew noted that a judge's race/ethnicity was statistically significant even when the political party of the appointing president was taken into account. She observed that the personal experiences and socialization of judges can affect judicial decision making, and that increased diversity on the federal bench has brought a wider range of perspectives to bear on all case types.

Jennifer Peresie, author of "Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts" (*Yale Law Journal*, 2005), presented her research findings based on analysis of 556 sexual harassment and discrimination cases heard in U.S courts of appeal between 1999 and 2001. Peresie found that male judges were twice as likely to find for female plaintiffs in sexual harassment cases, and three times as likely in sexual discrimination cases, when a female judge was on the appellate panel. She discussed several possible explanations, including effects of female judges on appellate panel deliberations, male judges' deference to female judges' views in sexual harassment and discrimination cases, and male judges' moderation of preferences in the presence of female judges.

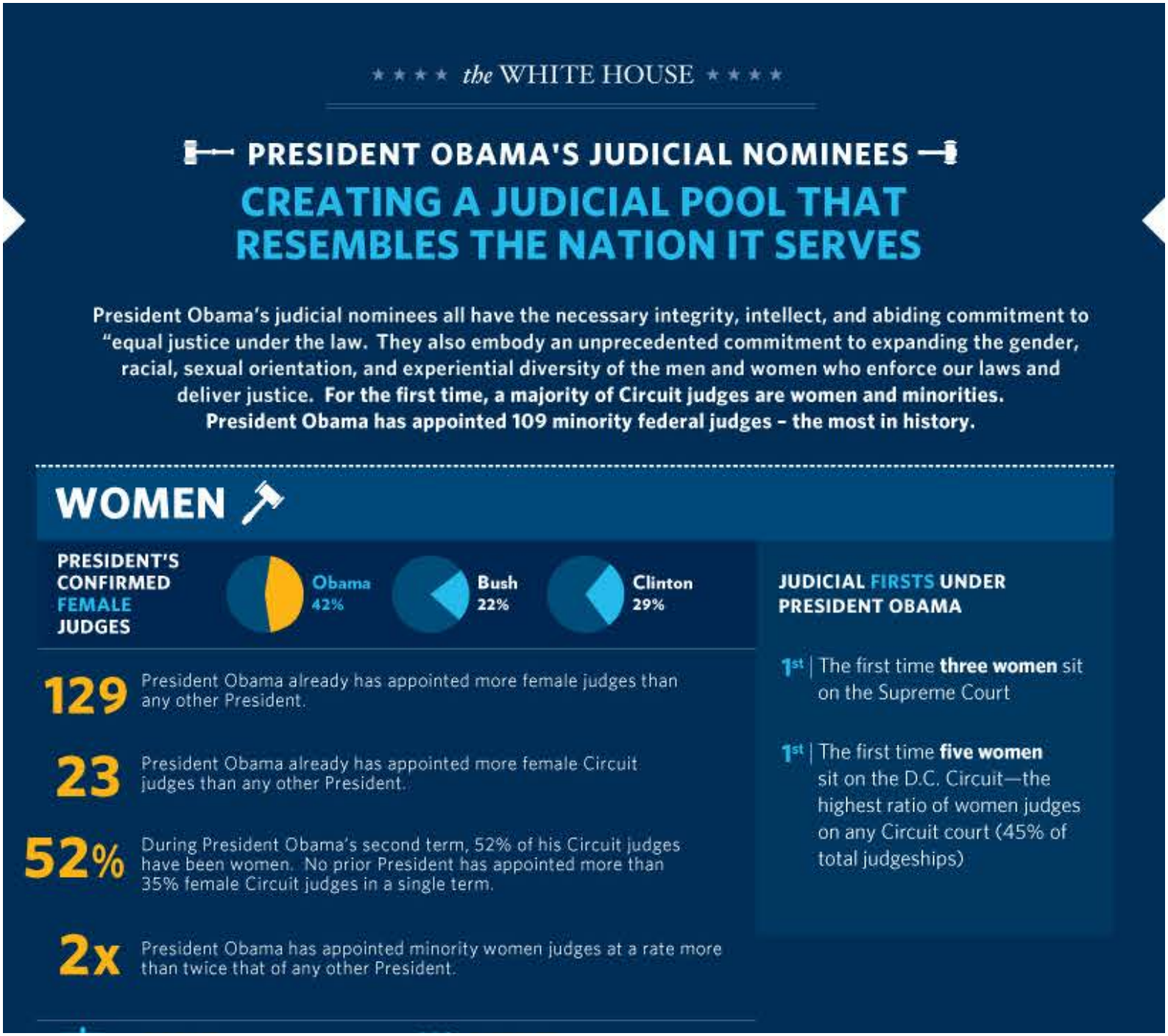
Judge Berle M. Schiller of the U.S. District Court for the Eastern District of Pennsylvania observed that female perspectives on appellate panels can affect deliberations, but did not believe that male judges moderate their views in the presence of female judges. Judge Philip R. Martinez of the U.S. District Court for the Western District of Texas noted that "the law is not static." In his view, the job of a judge is to apply the law to real-life experiences, so it is not surpris-

Wednesday, December 17th, 2014

This is the First Time Our Judicial Pool Has Been This Diverse

The men and women the President has nominated to enforce our laws and deliver justice represent his unprecedented commitment expanding the diversity of our nation's highest courts. That's a big deal — so if you learned something new here, pass it on.

SHARE ON FACEBOOK SHARE ON TWITTER



CIRCUIT

7 states now have their first female Circuit judge

Susan Carney - 2nd Circuit, CT
Morgan Christen - 9th Circuit, AK
Barbara Keenan - 4th Circuit, VA
Jane Kelly - 8th Circuit, IA
Carolyn McHugh - 10th Circuit, UT
Stephanie Thacker - 4th Circuit, WV
O. Rogeriee Thompson - 1st Circuit, RI

DISTRICT

17 district courts now have their first female District judge

Leslie Abrams - MD-GA
Shelly Dick - MD-LA
Elizabeth Dillon - WD-VA
Catherine Eagles - MD-NC
Nancy Freudenthal - D-WY
Sharon Gleason - D-AK
Landya McCafferty - D-NH
Kimberly Mueller - ED-CA
Pamela Pepper - ED-WI
Rosanna Peterson - ED-WA
Pamela Reeves - ED-TN
Christina Reiss - D-VT
Stephanie Rose - SD-IA
Nancy Rosenstengel - SD-IL
Nancy Torresen - D-ME
Susan Watters - D-MT
Elizabeth Wolford - WD-NY

AFRICAN AMERICANS

PRESIDENT'S CONFIRMED AFRICAN AMERICAN JUDGES

9 President Obama has appointed as many African American circuit court judges as any President in history.

24 President Obama already has appointed more African American women to the federal court than any other President.

CIRCUIT

5 states now have their first African American Circuit judge

Andre Davis - 4th Circuit, MD
Bernice Donald - 6th Circuit, TN
James Graves - 5th Circuit, MS
Joseph Greenaway - 3rd Circuit, NJ
O. Rogeriee Thompson - 1st Circuit, RI

DISTRICT

3 districts now have their first African American District judge

Irene Berger - SD-WV
Debra Brown - ND-MS
Staci Yandle - SD-IL

STATE

9 states now have their first African American female lifetime-appointed federal judge

Leslie Abrams and Eleanor Ross - GA
Arenda Wright Allen - VA
Irene Berger - WV
Debra Brown - MS
Denise Jefferson Casper - MA
Nannette Jolivette-Brown - LA
Benita Pearson - OH
Tanya Walton Pratt - IN
O. Rogeriee Thompson - RI

JUDICIAL FIRSTS UNDER PRESIDENT OBAMA

1st | Raymond Lohier is the **first Haitian American** lifetime-appointed federal judge nationwide

1st | Margo Kitsy Brodie is the **first Afro-Caribbean-born** District judge nationwide

1st | O. Rogeriee Thompson is the **first African American** Circuit judge on the First Circuit and the first African American female lifetime-appointed federal judge to serve anywhere in the First Circuit

1st | Bernice Donald is the **first African American female** Circuit judge in the Sixth Circuit

HISPANICS

PRESIDENT'S CONFIRMED HISPANIC JUDGES

33 President Obama already has appointed more Hispanic judges than any other President.

12 President Obama already has appointed as many Hispanic female judges as any President in history.

CIRCUIT

3 Circuit courts now have their first Hispanic Circuit judge

Albert Diaz – 4th Circuit
Adalberto Jordan – 11th Circuit
Jimmie Reyna – Federal Circuit

DISTRICT

3 district courts now have their first Hispanic District judge

Cathy Bissoon – WD-PA
Marco Hernandez – D-OR
Salvador Mendoza – ED-WA

STATE

3 states now have their first Hispanic female lifetime-appointed federal judge

Cathy Bissoon – PA
Gloria Navarro – NV
Esther Salas – NJ

JUDICIAL FIRSTS UNDER PRESIDENT OBAMA

1st | **First Hispanic** Supreme Court Justice

1st | Mary Murguia is the **first Hispanic female** Circuit judge from Arizona

ASIAN AMERICANS AND PACIFIC ISLANDERS

PRESIDENT'S CONFIRMED AAPI JUDGES

20 President Obama already has appointed more AAPI judges than all Presidents in history combined (20 to 17).

9 President Obama has appointed more than four times as many AAPI female judges as all Presidents in history combined (9 to 2).

4 President Obama has appointed four AAPI Circuit judges, compared to zero for President George W. Bush and one for President Clinton in their entire presidencies.

CIRCUIT

2 Circuit courts now have their first AAPI Circuit judge

Denny Chin – 2nd Circuit
Sri Srinivasan – D.C. Circuit

DISTRICT

Derrick Watson is the only Native Hawaiian lifetime-appointed federal judge nationwide

JUDICIAL FIRSTS UNDER PRESIDENT OBAMA

1st | Denny Chin was the **first active AAPI** Circuit judge in almost six years and is the first AAPI Circuit judge confirmed outside of the Ninth Circuit

1st | Jacqueline Nguyen is the **first AAPI woman** to serve as a Circuit judge nationwide

1st | Raymond Chen is the **first AAPI** nominated and confirmed to the Federal Circuit

STATE

5 states and the District of Columbia now have their first AAPI lifetime-appointed federal judge

Cathy Bissoon – PA
Edmond Chang – IL
Theodore Chuang – MD
Miranda Du – NV
Sri Srinivasan – DC
Indira Talwani – MA

1st | **Women judges** of Chinese, Filipino, Korean, South Asian, and Vietnamese descent

NATIVE AMERICANS

Diane Humetewa is the **first Native American female** lifetime-appointed federal judge nationwide.

JUDICIAL FIRSTS UNDER PRESIDENT OBAMA

1st | 1st Diane Humetewa is the first active Native American lifetime-appointed federal judge in more than ten years and first Native American lifetime-appointed federal judge outside of Oklahoma.

LGBT

11 11 of President Obama's confirmed judges have been openly gay or lesbian, compared to only one before 2009 (appointed by President Clinton).

STATE

7 states now have their first openly gay lifetime-appointed federal judge

Michael Fitzgerald – CA
Darrin Gayles – FL
Judith Levy – MI
Michael McShane – OR
Robert Pitman – TX
Nitza Quiñones – PA
Staci Yandle – IL

JUDICIAL FIRSTS UNDER PRESIDENT OBAMA

1st | Todd Hughes is the **first openly gay** Circuit judge nationwide

1st | Paul Oetken is the **first openly gay man** to be confirmed as a lifetime-appointed federal judge

Pamela Chen is the **first openly gay AAPI** lifetime-appointed federal judge nationwide

Nitza Quiñones is the **first openly gay Hispanic** lifetime-appointed federal judge nationwide

Darrin Gayles is the first **openly gay African American man** to be confirmed as a lifetime-appointed federal judge

EXPERIENTIAL DIVERSITY

4 President Obama has appointed more Circuit judges with experience as public defenders than all Presidents in history combined.

89% of President Obama's judges have worked outside private law firms*

91% of President Obama's Circuit judges have worked in public service*

64% of President Obama's Circuit judges have served on the board of an indigent legal services or other public interest organization

Not including judicial clerkships

JUDICIAL FIRSTS UNDER PRESIDENT OBAMA

1st | O. Rogeriee Thompson is the first judge on the First Circuit with experience at an indigent legal services organization

1st | James Wynn is the first judge on the Fourth Circuit with experience as a public defender

1st | Bernice Donald is the first judge on the Sixth Circuit with experience at an indigent legal services organization and the first with experience as a public defender

1st | Jane Kelly is the first judge on the Eighth Circuit with experience as a public defender

1st | Robert Wilkins is the first judge on the D.C. Circuit with experience as a public defender

Updated on: December 17, 2014

A DAY IN THE LIFE: WHAT JUDGES REALLY DO

A DAY IN THE LIFE: WHAT JUDGES REALLY DO

March 31, 2017

2:40 - 3:40 p.m.

I. **Welcome and Introduction**

Honorable Roxanne K. Song Ong (Retired)
Chief Presiding Judge - Phoenix Municipal Court

Frankie Y. Jones
Bureau Chief Maricopa County Attorney's Office
Probation Violation Bureau

II. Panel Discussion

Honorable Andrew Gould
Arizona Supreme Court and Court of Appeals, Division One

Honorable Kerstin Lemaire
Maricopa County Superior Court

Honorable Anna Huberman
County Meadows Justice Court, Maricopa County

Honorable Michael Hintze
Phoenix Municipal Court

FACULTY

Honorable Andrew Gould

Arizona Supreme Court

Justice Andrew W. Gould was appointed to the Arizona Supreme Court in 2017 after serving 5 years on Division One of the Arizona Court of Appeals. Prior to his appointment to the Court of Appeals, Justice Gould spent 11 years as a Judge of the Superior Court in Yuma County, where he served as both Associate Presiding Judge and Presiding Judge. He received his J.D. from Northwestern University School of Law in 1990. He began his legal career in Phoenix, Arizona, practicing in the field of civil litigation. In 1994, he became a Deputy County Attorney, prosecuting major criminal cases for Yuma and Maricopa Counties. He served as Chief Civil Deputy for the Yuma County Attorney's Office from 1999-2001. Justice Gould has previously served on the Arizona Supreme Court Commission on Technology, as the President of the Arizona Judges' Association, and has taught at the Judicial Conference and New Judge Orientations. Justice Gould currently sits as the Chair on the Committee on Judicial Ethics and Training, as a member on the Judicial College of Arizona and as a member of the Glendale Judicial Selection Board.

Honorable Kerstin G. LeMaire

Superior Court in Maricopa County

Judge Kerstin G. LeMaire received her undergraduate degree from Tufts University and her law degree from the University of Cincinnati, where she was awarded a fellowship at the Urban Morgan Institute for Human Rights. After graduation, she worked first as a staff attorney and then managing attorney in Yuma, Arizona for Community Legal Services. She then served as the Chief Tribal Judge for the Cocopah Nation before joining the Office of the Legal Defender for Yuma County. In 2001, Kerstin moved to Phoenix and joined the juvenile severance and dependency unit of the Maricopa County Office of the Legal Defender. In 2004, she accepted a position as a Managing Attorney for the Arizona Center for Disability Law, where she focused on accessibility issues and the provision of mental health services. Thereafter Kerstin joined the Law Offices of Lon S. Taubman working primarily in the area of juvenile law. Prior to her appointment first as a commissioner and then as a judge for the Superior Court, Kerstin had her own practice, LeMaire and Kennedy, PLLC. Kerstin has been repeatedly honored by the Volunteer Lawyers Project for her pro bono efforts.

Judge Anna Huberman

Country Meadows Justice Court, Maricopa County

Judge Anna Huberman was born and raised in the Midwest but moved with her parents to Argentina as a teenager where she finished high school and obtained a JD degree from the Universidad de Buenos Aires. As an adult she moved back to the United States with her husband and children.

Her love of language and law came together in her 15 year career as a court interpreter with the Maricopa County Superior Court. Highly regarded in her field, she taught skills classes for the Master's Program in Court Interpretation at the College of Charleston and mentored and trained new interpreters.

In 2012 a new justice court precinct was created in the West Valley. Drawing on her knowledge of the law and her 15 years of experience in the courts in Maricopa County Anna decided to run for the position. She has recently been re-elected to her second term.

Judge Huberman is chair of the Pro Tem Committee and member of the Best Practices Committee of the Maricopa County Justice Court Bench. She is also on the Supreme Court Commission on Minorities in the Judiciary and recently participated in the Judicial Conference Planning Committee. Chief Justice Bales has also appointed her to the Arizona Court Interpreter Program Advisory Committee.

In her role as a Justice of the Peace Anna continues to teach. She has presented as faculty in New Judge Orientation, the Judicial Conference, the Justice of the Peace Conference, Maricopa County Justice Courts Staff Conference and Judicial Officer trainings. She also serves as a mentor judge.

Judge Michael D. Hintze

Phoenix Municipal Court

Mayor Greg Stanton and the Phoenix City Council appointed Michael D. Hintze to serve as a Phoenix Municipal Court Judge on July 3rd, 2013. Thereafter, the Presiding Judge of the Phoenix Municipal Court Roxanne Song Ong administered the oath of office to Judge Hintze. Judge Hintze is currently assigned to Criminal Division 501, with a specialized therapeutic & problem solving Behavioral Health Court.

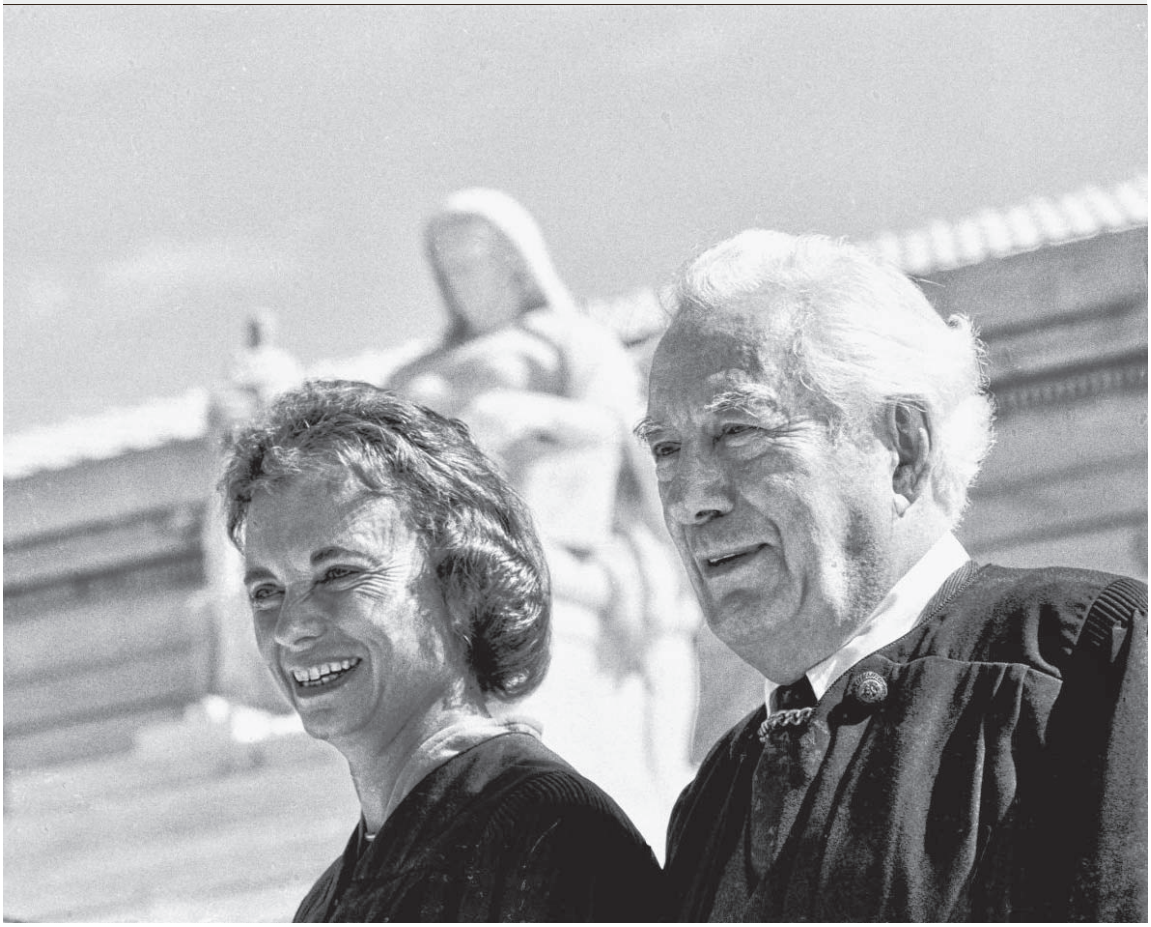
Judge Michael D. Hintze is a retired Maricopa County Superior Court Commissioner. He most recently presided over cases involving Criminal Competency, Probate Guardianships/ Conservatorships/Trusts with Mental Health Treatment Authority, Seriously Mentally Ill Probation Violations, Civil Commitments and Court Ordered Treatment, Mental Health & Guilty Except Insane, and Veterans. He previously presided over cases in the following Maricopa County Superior Court Divisions: Juvenile, Probate, Mental Health, Family, Civil, Tax and Criminal.

Judge Hintze is a graduate of Loyola Marymount University with a B.A. in Business Administration (1st major), and Political Science (2nd major), with minors in Management and Public Administration. He received his Juris Doctorate from the University of Arizona in 1983. Judge Hintze is a member of the State Bar of Arizona and Pennsylvania. He served as a Law Clerk for the District of Arizona, U.S. District Court; as a U.S. E.E.O.C. trial attorney, and senior partner of Michael D. Hintze & Associates, L.T.D.; Phoenix College adjunct teacher; and Maricopa County Attorney's Office, Division of County Counsel, Mental Health Division. Mike lectures at the Arizona Judicial College which provides training of Arizona's judicial officers, as well as additional educational programs which support Arizona's judicial branch.

Judge Hintze has been a member of the Association of Trial Lawyers of America; National Association of Council for Children; American Bar Association; United States Arbitration and Mediation of Arizona, New Mexico & Nevada; and a graduate of the National Institute for Trial Advo-

cacy. Mike is a member of the Arizona Judges Association, American Judges Association, Maricopa County Bar Association. He is a contributing author of Children and the Law, Rights and Obligations, Dependency Section, Clark Boardman Callaghan. Judge Hintze served as a Court Representative to the Maricopa County Commission of Justice System Intervention for the Seriously Mentally Ill, Co-Chair of McJustice Veterans Subcommittee, and is currently Chair of the AOC Training for Mental Health Experts in Legal Competency and Restoration. Judge Hintze is a native Arizonan.

MY TURN CHIEF JUSTICE SCOTT BALES



AP

U.S. Supreme Court Justice Sandra Day O'Connor with Chief Justice Warren Burger in 1981. O'Connor was appointed to the Arizona Court of Appeals in 1979 under the state's merit selection system.

A SYSTEM WITH MERIT

State to celebrate 40 years of soundly choosing judges

Arizonans casting votes this year will mark the 40th anniversary of one of their most successful efforts to improve state government.

In 1974, voters adopted a merit selection system for choosing judges for the appellate courts and the Superior Courts in our largest counties. This system incorporates public involvement, transparency and accountability.

And it has allowed Arizona's judiciary to earn a national reputation for fairness, efficiency and innovation.

My views may reflect that I was appointed to Arizona's Supreme Court under merit selection, and now, as chief justice, I oversee a judicial branch that includes 153 other merit-selected judges. But I am far from alone in praising Arizona's system.

At a recent Arizona Town Hall meeting, a broad cross-section of citizens concluded that Arizona has "one of the best state judiciaries in the nation."

Since 1974, merit selection has enjoyed the support of public figures like Justice Sandra Day O'Connor (who was appointed to the Arizona Court of Appeals in 1979 under merit selection), business leaders, civic groups like the League of Women Voters, and the general public. The U.S. Chamber of Commerce has said that "Arizona leads the nation" with its procedures for implementing nonpartisan merit selection.

At a recent Arizona Town Hall meeting, a broad cross-section of citizens concluded that Arizona has "one of the best state judiciaries in the nation" and that "this is mostly owing to the effects of merit selection, which produces high-quality, skilled judges who are independent of interests that would otherwise fund judicial elections."

Merit selection has succeeded because it involves the public in selecting well-quali-

See BALES, Page F8

Bales

Continued from Page F5

fied judges who are committed to fairly applying the law.

When a judicial vacancy occurs, the position is publicly announced and interested lawyers are invited to apply.

Lengthy applications describe each candidate's education, professional experience and other qualifications. The applications are posted on a court website for public review and comment.

Applications are then considered by a 16-person, nonpartisan judicial-nominating commission. There are now four such commissions, one for appellate judges and one each for Maricopa, Pima, and Pinal counties.

The chief justice or another justice chairs each commission but does not vote except when necessary to break a tie.

The other 15 members include 10 non-lawyers and five lawyers, all of whom are appointed by the governor and confirmed by the state Senate.

Under our state Constitution, the commission members must include people from different political parties and geographic areas.

Having chaired three of the commissions, I know that members work very hard to identify the most highly qualified candidates for judicial office.

Each commission meets in public to review applications and to interview selected candidates.

At each stage, the public can submit written or oral comments, and commission members themselves seek input from lawyers, judges and the community.

The commission publicly discusses the candidates and then votes to send a list of nominees to the governor. The list must include at least three nominees, and no more than two (or 60 percent if there are more than three nominees) can be from the same political party.

The governor appoints one of the nominees from the list to fill the judicial vacancy.

Through this process, merit selection has resulted in the appointment of competent, impartial judges who are diverse in their personal and professional backgrounds.

Public input in ensuring the quality of our judiciary does not end once a judge is appointed.

All merit-selected judges are subject to Judicial Performance Review, which the voters established in 1992.

As part of JPR, people who have appeared before judges are invited to complete written surveys on different aspects of judicial performance. The surveys are sent not only to lawyers, but also to litigants, witnesses, jurors, court staff and other judges.

The responses are compiled and reviewed by a 30-person JPR commission, which includes 18 public members who are neither judges nor lawyers. The JPR commission solicits other public input and, after public meetings, considers whether judges meet judicial performance standards.

At the general election, the voters decide whether appellate judges will retain their offices for another six-year term and trial judges for another four-year term.

People sometimes say they don't know much about the judges named in a long list at the end of the ballot. The list, I admit, can be daunting, but information about the judges is readily available.

The JPR commission's reports on whether judges meet the performance standards, as well as summaries of the survey results, are included in the Arizona Secretary of State's Office's publicity pamphlet for the election.

This pamphlet is mailed to households that have one or more registered voters.

Even more information about judges is available at the JPR commission's website: azjudges.info.

Some have observed that Arizona's voters do not often reject judges who are up for retention. This is true, but it is not a flaw in merit selection.

The system aims to identify well-qualified people for appointment. Their performance as judges is periodically reviewed with public input. Based on the surveys and the JPR commission's findings, all merit-selected judges work with the commission to develop plans to improve their judicial performance.

Judges who violate their duties may be disciplined and even removed through a separate Commission on Judicial Conduct.

Retention elections serve as a backstop, allowing voters to reject those judges who, despite the other safeguards, do not meet the public's standards for holding judicial office. That the voters rarely do so suggests the system works.

This fall, I hope you will join me in celebrating the 40th anniversary of our merit selection system.

I urge you to review the JPR reports and other information at azjudges.info and to exercise your right to vote on the judges seeking retention.

It's worth the time to finish your ballot.

Scott Bales is chief justice of the Arizona Supreme Court.

RELEVANT PORTIONS OF THE ARIZONA CONSTITUTION ARTICLE 6

Section 36: Commission on appellate court appointments and terms, appointments and vacancies on commission

A. There shall be a nonpartisan commission on appellate court appointments which shall be composed of the chief justice of the supreme court, who shall be chairman, five attorney members, who shall be nominated by the board of governors of the state bar of Arizona and appointed by the governor with the advice and consent of the senate in the manner prescribed by law, and ten nonattorney members who shall be appointed by the governor with the advice and consent of the senate in the manner prescribed by law. At least ninety days prior to a term expiring or within twenty-one days of a vacancy occurring for a nonattorney member on the commission for appellate court appointments, the governor shall appoint a nominating committee of nine members, not more than five of whom may be from the same political party. The makeup of the committee shall, to the extent feasible, reflect the diversity of the population of the state. Members shall not be attorneys and shall not hold any governmental office, elective or appointive, for profit. The committee shall provide public notice that a vacancy exists and shall solicit, review and forward to the governor all applications along with the committee's recommendations for appointment.

Attorney members of the commission shall have resided in the state and shall have been admitted to practice before the supreme court for not less than five years. Not more than three attorney members shall be members of the same political party and not more than two attorney members shall be residents of any one county. Nonattorney members shall have resided in the state for not less than five years and shall not be judges, retired judges or admitted to practice before the supreme court. Not more than five nonattorney members shall be members of the same political party. Not more than two nonattorney members shall be residents of any one county. None of the attorney or nonattorney members of the commission shall hold any governmental office, elective or appointive, for profit, and no attorney member shall be eligible for appointment to any judicial office of the state until one year after he ceases to be a member. Attorney members of the commission shall serve staggered four-year terms and nonattorney members shall serve staggered four-year terms. Vacancies shall be filled for the unexpired terms in the same manner as the original appointments.

B. No person other than the chief justice shall serve at the same time as a member of more than one judicial appointment commission.

C. In making or confirming appointments to the appellate court commission, the governor, the senate and the state bar shall endeavor to see that the commission reflects the diversity of Arizona's population.

In the event of the absence or incapacity of the chairman the supreme court shall appoint a justice thereof to serve in his place and stead.

D. Prior to making recommendations to the governor as hereinafter provided, the commission shall conduct investigations, hold public hearings and take public testimony. An executive session as prescribed by rule may be held upon a two-thirds vote of the members of the commission in a public hearing. Final decisions as to recommendations shall be made without regard to political affiliation in an impartial and objective manner. The commission shall consider the diversity of the state's population, however the primary consideration shall be merit. Voting shall be in a public hearing. The expenses of meetings of the commission and the attendance of members thereof for travel and subsistence shall be paid from the general fund of the state as state officers are paid, upon claims approved by the chairman.

E. After public hearings the supreme court shall adopt rules of procedure for the commission on appellate court appointments.

F. Notwithstanding the provisions of subsection A, the initial appointments for the five additional nonattorney members and the two additional attorney members of the commission shall be designated by the governor for staggered terms as follows:

1. One appointment for a nonattorney member shall be for a one-year term.
2. Two appointments for nonattorney members shall be for a two-year term.
3. Two appointments for nonattorney members shall be for a three-year term.
4. One appointment for an attorney member shall be for a one-year term.
5. One appointments for an attorney member shall be for a two-year term.

G. The members currently serving on the commission may continue to serve until the expiration of their normal terms. All subsequent appointments shall be made as prescribed by this section.

Section 37. Judicial vacancies and appointments; initial terms; residence; age

A. Within sixty days from the occurrence of a vacancy in the office of a justice or judge of any court of record, except for vacancies occurring in the office of a judge of the superior court or a judge of a court of record inferior to the superior court, the commission on appellate court appointments, if the vacancy is in the supreme court or an intermediate appellate court of record, shall submit to the governor the names of not less than three persons nominated by it to fill such vacancy, no more than two of whom shall be members of the same political party unless there are more than four such nominees, in which event not more than sixty percentum of such nominees shall be members of the same political party.

B. Within sixty days from the occurrence of a vacancy in the office of a judge of the superior court or a judge of a court of record inferior to the superior court except for vacancies occurring in the office of a judge of the superior court or a judge of a court of record inferior to the superior court in a county having a population of less than two hundred fifty thousand persons according to the most recent United States census, the commission on trial court appointments for the county in which the vacancy occurs shall submit to the governor the names of not less than three persons nominated by it to fill such vacancy, no more than two of whom shall be members of the same political party unless there are more than four such nominees, in which event no more than sixty per centum of such nominees shall be members of the same political party. A nominee shall be under sixty-five years of age at the time his name is submitted to the governor. Judges of the superior

court shall be subject to retention or rejection by a vote of the qualified electors of the county from which they were appointed at the general election in the manner provided by section 38 of this article.

C. A vacancy in the office of a justice or a judge of such courts of record shall be filled by appointment by the governor without regard to political affiliation from one of the nominees whose names shall be submitted to him as hereinabove provided. In making the appointment, the governor shall consider the diversity of the state's population for an appellate court appointment and the diversity of the county's population for a trial court appointment, however the primary consideration shall be merit. If the governor does not appoint one of such nominees to fill such vacancy within sixty days after their names are submitted to the governor by such commission, the chief justice of the supreme court forthwith shall appoint on the basis of merit alone without regard to political affiliation one of such nominees to fill such vacancy. If such commission does not, within sixty days after such vacancy occurs, submit the names of nominees as hereinabove provided, the governor shall have the power to appoint any qualified person to fill such vacancy at any time thereafter prior to the time the names of the nominees to fill such vacancy are submitted to the governor as hereinabove provided. Each justice or judge so appointed shall initially hold office for a term ending sixty days following the next regular general election after the expiration of a term of two years in office. Thereafter, the terms of justices or judges of the supreme court and the superior court shall be as provided by this article.

D. A person appointed to fill a vacancy on an intermediate appellate court or another court of record now existing or hereafter established by law shall have been a resident of the counties or county in which that vacancy exists for at least one year prior to his appointment, in addition to possessing the other required qualifications. A nominee shall be under sixty-five years of age at the time his name is submitted to the governor.

Section 41. Superior court divisions; commission on trial court appointments; membership; terms

A. Except as otherwise provided, judges of the superior court in counties having a population of two hundred fifty thousand persons or more according to the most recent United States census shall hold office for a regular term of four years.

B. There shall be a nonpartisan commission on trial court appointments for each county having a population of two hundred fifty thousand persons or more according to the most recent United States census which shall be composed of the following members:

1. The chief justice of the supreme court, who shall be the chairman of the commission. In the event of the absence or incapacity of the chairman the supreme court shall appoint a justice thereof to serve in his place and stead.
2. Five attorney members, none of whom shall reside in the same supervisorial district and not more than three of whom shall be members of the same political party, who are nominated by the board of governors of the state bar of Arizona and who are appointed by the governor subject to confirmation by the senate in the manner prescribed by law.
3. Ten nonattorney members, no more than two of whom shall reside in the same supervisorial district.

C. At least ninety days prior to a term expiring or within twenty-one days of a vacancy occurring for a nonattorney member on the commission for trial court appointments, the member of the board of supervisors from the district in which the vacancy has occurred shall appoint a nominating committee of seven members who reside in the district, not more than four of whom may be from the same political party. The make-up of the committee shall, to the extent feasible, reflect the diversity of the population of the district. Members shall not be attorneys and shall not hold any governmental office, elective or appointive, for profit. The committee shall provide public notice that a vacancy exists and shall solicit, review and forward to the governor all applications along with the committee's recommendations for appointment. The governor shall appoint two persons from each supervisorial district who shall not be of the same political party, subject to confirmation by the senate in the manner prescribed by law.

D. In making or confirming appointments to trial court commissions, the governor, the senate and the state bar shall endeavor to see that the commission reflects the diversity of the county's population.

E. Members of the commission shall serve staggered four year terms, except that initial appointments for the five additional nonattorney members and the two additional attorney members of the commission shall be designated by the governor as follows:

1. One appointment for a nonattorney member shall be for a one-year term.
2. Two appointments for nonattorney members shall be for a two-year term.
3. Two appointments for nonattorney members shall be for a three-year term.
4. One appointment for an attorney member shall be for a one-year term.
5. One appointment for an attorney member shall be for a two-year term.

F. Vacancies shall be filled for the unexpired terms in the same manner as the original appointments.

G. Attorney members of the commission shall have resided in this state and shall have been admitted to practice in this state by the supreme court for at least five years and shall have resided in the supervisorial district from which they are appointed for at least one year. Nonattorney members shall have resided in this state for at least five years, shall have resided in the supervisorial district for at least one year before being nominated and shall not be judges, retired judges nor admitted to practice before the supreme court. None of the attorney or nonattorney members of the commission shall hold any governmental office, elective or appointive, for profit and no attorney member is eligible for appointment to any judicial office of this state until one year after membership in the commission terminates.

H. No person other than the chief justice shall serve at the same time as a member of more than one judicial appointment commission.

I. The commission shall submit the names of not less than three individuals for nomination for the office of the superior court judge pursuant to section 37 of this article.

J. Prior to making recommendations to the governor, the commission shall conduct investigations, hold public hearings and take public testimony. An executive session as prescribed by rule

may be held upon a two-thirds vote of the members of the commission in a public hearing. Final decisions as to recommendations shall be made without regard to political affiliation in an impartial and objective manner. The commission shall consider the diversity of the county's population and the geographical distribution of the residences of the judges throughout the county, however the primary consideration shall be merit. Voting shall be in a public hearing. The expenses of meetings of the commission and the attendance of members thereof for travel and subsistence shall be paid from the general fund of the state as state officers are paid, upon claims approved by the chairman.

K. After public hearings the supreme court shall adopt rules of procedure for the commission on trial court appointments.

L. The members of the commission who were appointed pursuant to section 36 of this article prior to the effective date of this section may continue to serve until the expiration of their normal terms. All subsequent appointments shall be made as prescribed by this section.

Section 42: Retention evaluation of justices and judges

The supreme court shall adopt, after public hearings, and administer for all justices and judges who file a declaration to be retained in office, a process, established by court rules for evaluating judicial performance. The rules shall include written performance standards and performance reviews which survey opinions of persons who have knowledge of the justice's or judge's performance. The public shall be afforded a full and fair opportunity for participation in the evaluation process through public hearings, dissemination of evaluation reports to voters and any other methods as the court deems advisable.

UNIFORM RULES OF PROCEDURE FOR COMMISSIONS ON APPELLATE AND TRIAL COURT APPOINTMENTS

RULE 1. PURPOSE

Article VI, Section 36 of the Arizona Constitution provides that when making recommendations for judicial office, the Commission on Appellate Court Appointments "shall consider the diversity of the state's population, however, the primary consideration shall be merit." Similarly, Article VI, Section 41 of the Arizona Constitution provides that the Commissions on Trial Court Appointments "shall consider the diversity of the county's population and the geographical distribution of the residences of the judges throughout the county, however, the primary consideration shall be merit." The goal, therefore, of the judicial nomination process is to select judges who have outstanding professional competence and reputation and who are also sensitive to the needs of and held in high esteem by the communities they serve and who reflect, to the extent possible, the ethnic, racial and gender diversity of those communities. Competence and diversity among our judges will enhance fairness and public confidence in judicial proceedings.

RULE 2. COMMISSION CHAIR

The Chief Justice of Arizona, or such other Justice of the Supreme Court as shall be appointed by the Supreme Court to serve in place of the Chief Justice, shall be chair of each Commission. The Chair shall preside at all meetings of each Commission.

RULE 3. COMMISSION SECRETARY

The Chair shall appoint a member of each Commission as Secretary subject to the approval of the Commission. It shall be the duty of the Secretary to sign the record of the action taken at each meeting upon approval by the Commission. Either the Chair or the Secretary at the direction of the Chair shall sign all correspondence for the applicable Commission. In the Secretary's absence a Commission shall choose a member to be Acting Secretary.

RULE 4. COMMISSIONER IMPARTIALITY

a. A Commissioner shall consider each applicant for a judicial office in an impartial, objective manner.

b. A Commissioner shall disclose to the Commission any relationship with an applicant (business, personal, attorney-client) or any other possible cause for conflict of interest, bias or prejudice. A Commissioner shall also disclose efforts to recruit an applicant. A Commissioner is disqualified from voting on the application of a family member within the third degree of consanguinity or a present co-worker in the same company or firm as the Commissioner. A Commissioner shall disqualify himself or herself from voting on an applica-

tion if voting on that application would present a conflict of interest. At the commencement of any Commission meeting where qualifications of any applicant are to be considered, the Chair shall inquire as to any basis of disqualification or disclosure pursuant to this rule.

c. A Commissioner shall not be influenced other than by facts or opinion which are relevant to the judicial qualifications of the applicants. A Commissioner shall promptly report to the Chair any such attempt by any person or organization to influence a Commissioner other than by fact or opinion.

d. A Commissioner shall not individually communicate verbally or in writing with an applicant, from the time the application is submitted until the Commission conducts its final vote on the nominations and is dismissed, about the application, the contents of the application, the judicial position, the Commission, the nomination process or any other matters related to the judicial vacancy which is the subject matter of the application.

RULE 5. COMMISSION MEETINGS

a. Meetings of a Commission may be called by the Chair or a majority of the members by written notice to the other members specifying the time and place of meeting. Such notice shall be mailed or delivered at least seven (7) days before the time specified, except that an emergency meeting may be held on shorter notice if the Chair or a majority of the Commissioners conclude that it is essential to hold an emergency meeting. The right to notice of a meeting may be waived by any Commissioner either before or after the meeting takes place. Attendance at a meeting by any member shall constitute a waiver of such notice unless the member, at or promptly after the beginning of such meeting, objects to the holding of the meeting on the ground of lack of, or insufficiency of, notice.

b. A Commissioner may be present at an administrative meeting or a screening meeting through electronic means such as telephone or video conferencing upon approval of the Chair. A Commissioner shall not participate in applicant interviews or voting on nominations through electronic means. To assure that a Commission will meet the 60-day constitutional deadline for submitting nominations to the Governor, the Chair of the Commission shall approve requests by members to attend electronically only after confirming that a quorum plus one of the Commissioners in office at the time of the meeting will be physically present at the meeting location. A member who attends electronically accepts the risk that technical problems could occur which would prevent their actual participation and recognizes that the constitutional deadline for submitting nominations to the Governor requires that meetings be held as scheduled.

c. The Chair shall issue a call for a meeting promptly upon learning of the existence or anticipated existence of a vacancy in a judicial office within the jurisdiction of the Commission.

d. Notice of all Commission meetings other than emergency meetings shall be posted at least seven (7) days in advance of the meeting in locations identified in a statement to the public filed by the Secretary of each Commission with the Clerk of the Supreme Court. A

notice of a Commission meeting shall state the date, time and specific location of the meeting. Each Commission shall provide such additional notice as is reasonable and practicable.

e. The Chair shall call at least one meeting each year of all Commissioners for the following purposes:

1. Orienting Commissioners about Commission procedures and purposes as stated in Rule 1 and a Commissioner's role in accomplishing that purpose.

2. Reviewing Commission action during the preceding year including information about nominees and appointees and statistical information about applications, nominations and appointments relative to the constitutional goal of diversity and such other matters as the Commission deems appropriate. Such statistics shall be compiled from information obtained in the applications.

3. Educating Commissioners about means of improving the judicial nominating process through presentations by knowledgeable individuals and representatives of community organizations.

f. A quorum for a Commission meeting shall be a majority plus one of the Commissioners in office at the time of the meeting. A Commission may act on any matter other than the decision to hold a meeting in executive session by majority vote of the Commissioners present and voting on the matter.

RULE 6. RECRUITMENT OF APPLICANTS

a. Commissioners shall actively seek out and encourage applications from qualified individuals who will reflect the diversity of the community they will serve. Commissions shall enlist the aid of community groups and organizations in this effort. It is incumbent upon Commissioners to seek out well-qualified persons who may not otherwise apply.

b. A Commissioner shall under no circumstances commit in advance to vote for any applicant.

c. Each Commission shall provide wide public notice by press releases and by mailing notices of vacancies designed to encourage all interested parties and groups to submit names and recommend persons for initial consideration. When feasible, such notice shall be given thirty (30) days or more before the deadline for applications. The notice of vacancy shall state that a Commission may, at its discretion, use the applications filed for the vacancy that is the subject of the announcement to nominate candidates for any additional vacancy or vacancies known to the commission before the screening meeting for the announced vacancy is held.

RULE 7. APPLICATION

a. Every applicant shall complete and file with the Administrative Office of the Supreme

Court an original and at least sixteen (16) copies of the "Application for Nomination to Judicial Office," as specified in the public announcement of each judicial vacancy. The application shall be on a form approved by the Supreme Court after opportunity for public comment.

b. The original application of a person not appointed by the Governor shall be retained for six months after the application deadline date stated on the first page of the judicial application. All documents received with respect to the person's application shall also be retained for six months. At the applicant's request, the original application and any supplemental material submitted by the applicant may be returned to the applicant at any time during the six months. Unless earlier returned to the applicant, all documents shall be retained on file and provided to the appropriate Commission for any vacancy for which the person applies during the six-month period the documents remain on file, unless the applicant states in writing that he or she does not wish to apply for any subsequent vacancy occurring within the six-month period. If the application has not been returned to the applicant and is not being considered for any other pending vacancy, at the expiration of the six -month period the application and all supplemental materials submitted by the applicant or any third party shall be destroyed.

c. Applications and documents on file for each judicial vacancy shall be provided to the members of the appropriate Commission at least seven days prior to the first Commission meeting concerning each vacancy.

d. Except as provided in subsection (2) below, information provided to the Commission by the applicant or by a third party shall be presumed to be available to the public.

(1) The following shall be available to the public:

(a) The applicant's name, occupation, employer, relevant work history, any other information provided in response to Section I of the application form, and any supplemental material submitted by the applicant relating to Section I;

(b) Any information that is specifically authorized for release by the source of that information.

(2) The following information shall remain confidential throughout the nomination and appointment process until destroyed at the conclusion of the six-month period pursuant to Rule 7.b.:

(a) The applicant's home address, information regarding the applicant's family, and all other information that is provided to the Commission in response to questions contained in Section II of the application form;

(b) Information provided in writing or orally to the Commission by third parties regarding an applicant, and the third party's identity, unless the third party specifically states in writing that the information may be made public;

(c) Notes of the individual Commissioners that are generated for personal use only and not published to other members of the Commission;

(d) Any information that is provided to a member of the Commission after a promise of confidentiality is properly extended to the source by that Commissioner pursuant to Rule 8 (b) or 9(d);

(e) Any information obtained by or submitted to the Commission that is made confidential by other provisions of law.

RULE 8. SCREENING OF APPLICATIONS AND SELECTION OF INTERVIEWEES

a. Public Notice and Comment: Names of applicants and the date, place and time of the Commission meeting to screen applications shall be widely disseminated to the public. Comments about applicants should be made, if feasible, at least three working days before the screening meeting as follows: (1) in writing to the Judicial Nominating Commission for distribution by staff to the Commission, or (2) verbally to Commissioner(s).

b. Investigation of Applicants: As soon as Commissioners receive applications and documents on file, they shall begin investigating the background and qualifications of applicants. Using the application as a starting point, Commissioners shall contact as many of the individuals and institutions knowledgeable about the applicant as deemed beneficial. Commissioners shall encourage sources to allow their names to be disclosed to the commission and to the applicant, but may accept comments about an applicant from a source that requests confidentiality as to the commission and/or as to the applicant, if the commissioner believes it is in the best interests of the public to accept such comment.

When a comment given to a Commissioner concerning an applicant contains an opinion as to the applicant's character, fitness or competency, the Commissioner shall inquire as to the factual basis, circumstances and examples which support the opinion and as to names of others whom the source of the opinion believes might have knowledge about the opinion.

c. Screening Meeting

1. General: The appropriate Commission shall meet for the purpose of deciding which applicants are to be interviewed. A Commission shall hold an executive session upon two-thirds vote of Commissioners in attendance in order to promote open and frank discussion of applicant qualifications. Each Commissioner shall disclose comments and other information concerning each applicant relied upon by that Commissioner in evaluating that applicant. If confidentiality has been promised to a source, commission members shall consider whether less weight should be given to the information. Information received in the course of the investigation that is material and adverse and is reasonably presumed to have a potential to influence the decision of the Commission shall be treated in accordance with paragraphs 3 and 4 below. The qualifications of each applicant shall be discussed and evaluated.

2. Public Comment: Members of the public are invited to comment orally at the screening meeting. The Chair shall allocate equal time at the screening meeting for relevant comment on each applicant. The Chair may terminate comments which exceed the time allocated or which are irrelevant to the qualifications of applicants. The Chair may also limit duplicative comments regarding an applicant.

3. Opinion Comments: Opinions that are not supported with factual basis, or circumstances, or a second source shall not be disclosed at the Commission meeting. Opinions that are supported with factual basis or circumstances or a second source may be shared with the Commission at the meeting provided that the supporting information is also disclosed.

4. Anonymous Comments: No information from an anonymous source shall be considered by any Commissioner or shared with any other Commissioner or the Commission at any point in the screening process.

5. Selection of Applicants for Interviews: Upon returning to public session, the Chair shall invite Commissioners to nominate applicants to be placed on a tentative list of those to be interviewed. Such a nomination requires the concurrence of one additional Commissioner. The name of each applicant who receives a vote of the majority of Commissioners present and voting shall be placed on a tentative list of applicants to be interviewed. Following this procedure and with or without an additional executive session or sessions, the tentative list of interviewees may be added to or subtracted from by public vote until a final list of applicants to be interviewed is determined.

RULE 9. INTERVIEWS OF APPLICANTS AND SELECTION OF NOMINEES

a. Public Notice and Comment: Names of applicants selected for interview and the date, place and time of the Commission meeting to interview applicants shall be widely disseminated to the public. The public, the judiciary and bar associations shall be invited to provide comments regarding these applicants. Comments about applicants should be made, if feasible, at least three working days before the interview meeting as follows: (1) in writing to the Judicial Nominating Commission for distribution by staff to the Commission, or (2) verbally to Commissioner(s).

b. Investigation of Applicants Selected for Interviews: Commissioners shall further evaluate selected applicants by contacting as many individuals, community groups and other sources as deemed reasonable to obtain information on the applicants' life experiences, community activities and background. Commissioners shall encourage sources to allow their names to be disclosed to the Commission and to the applicant, but may accept comments about an applicant from a source that requests confidentiality as to the Commission and/or as to the applicant, if the Commissioner believes it is in the best interests of the public to accept such comment.

When a comment given to a commissioner concerning an applicant contains an opinion as to the applicant's character, fitness or competency, the commissioner shall inquire as to the factual basis, circumstances and examples which support the opinion and as to names

of others whom the source of the opinion believes might have knowledge about the opinion.

c. Communication with Applicants. Nothing in this rule prohibits the Chair of the Commission from contacting an applicant if he or she determines that it is in the best interests of the public, the Commission, and the applicant, to make such contact.

d. Interview Meeting

1. General: Each Commission shall meet for the purpose of interviewing selected applicants in order to compile a list of nominees to be forwarded to the Governor. The qualifications of each applicant shall be discussed and evaluated. Each Commissioner shall disclose comments and other information concerning each applicant relied upon by that Commissioner in evaluating that applicant. If confidentiality has been promised to a source, commission members shall consider whether less weight should be given to the information. The Commission shall schedule sufficient time prior to the interview of each applicant to discuss the results of Commissioners' investigations and to determine whether any matters that were disclosed in the course of the investigation should be discussed with the applicant at the interview. Information received in the course of the investigation that is material and adverse and is reasonably presumed to have a potential to influence the decision of the commission shall be treated in accordance with paragraphs 3 and 4 below.

2. Public Comment: Members of the public are invited to comment at the interview meeting. The Chair shall allocate equal time for relevant comment on each applicant. The Chair may terminate comments which exceed the time allocated or which are irrelevant to the qualifications of applicants. The Chair may also limit duplicative comments regarding an applicant.

3. Opinion comments: Opinions that are not supported with factual basis, or circumstances, or a second source shall not be disclosed at the commission meeting. Opinions that are supported with factual basis or circumstances or a second source may be shared with the commission at the meeting provided that the supporting information is also disclosed.

4. Anonymous comments: No information from an anonymous source shall be considered by any commissioner or shared with other commissioner or the commission at the interview meeting.

5. Conduct of Interviews. Selected applicants shall be publicly interviewed by Commissioners. A Commissioner may question an applicant about comments made about the applicant for which confidentiality has been requested so long as the source of comment is not identified. Upon motion and a two-thirds vote of the Commission, a portion of the interview may occur in executive session, in which case the applicant shall have the right to disclose in public session the content of the executive session.

6. Deliberations of the Commission. A Commission shall hold an executive session upon two-thirds vote of the members of the Commission in attendance in order to promote

open and frank discussion regarding the qualifications of applicants interviewed. No material and adverse information about an applicant that is known to a Commissioner prior to the interview may be disclosed to the Commission after the interview occurs. Whether in public or in executive session, the Chair shall read the names of the applicants in alphabetical order and open the meeting to a discussion of that particular applicant's qualifications for judicial office. After this procedure has been followed for each applicant, the Chair shall open the meeting to a general discussion of the relative qualifications of all the applicants. To encourage frank discussion, the substance of deliberations in executive session shall not be disclosed.

7. Selection of Nominees for Submission to the Governor. All voting by each Commission on the number of nominees to be forwarded to the Governor and on the applicants nominated shall be in public session. Upon returning to or continuing in public session, the Chair shall invite Commissioners to nominate applicants interviewed for consideration for referral to the Governor for appointment. Such a nomination requires the concurrence of one additional Commissioner. Each applicant who receives a vote of the majority of Commissioners present and voting shall be listed for consideration for referral to the Governor. Such list is only tentative and names may be added to or subtracted from it at any time by further vote of the Commission. The Commission may return to executive session to further discuss the applicants under consideration. The above process may be repeated until the resulting list of nominees satisfies constitutional requirements and is approved for referral to the Governor by a public vote of the Commission.

e. Communication after Interview Meetings: A Commission may designate a member or members to communicate with applicants not nominated to the Governor. If a Commissioner receives new written information about a nominee to the Governor after the interview meeting has adjourned, the Commissioner shall forward the information to the Chair of the Commission and the Chair shall forward the information to the Governor's office, with a cover memorandum explaining that the information was not submitted in time for consideration by the Commission and the applicant had neither been questioned about nor responded to the information. If the information is verbal, the Commissioner shall advise the source about his or her right to contact the Governor's office.

RULE 10. TRANSMITTAL TO THE GOVERNOR

The names of the nominees, listed in alphabetical order, shall be delivered to the Governor as directed by the Chair. The Chair shall thereafter promptly inform the public of the names of the nominees.

In order to facilitate the Governor's selection of the appointee, the Commission file concerning each nominee shall be provided to the Governor with the list containing that nominee's name unless the respective Commission directs otherwise.

AN EXCERPT FROM THE HANDBOOK FOR ARIZONA JUDICIAL NOMINATING COMMISSIONERS

EVALUATION CRITERIA

American Bar Association Guidelines

These guidelines are intended for use by bar association committees and judicial nominating commissions which are evaluating applicants for state and local judicial office. It is assumed that the evaluators desire to recommend to the electorate or to the appointing authority the applicants who are most qualified by virtue of merit.

The guidelines attempt to identify those characteristics to be sought after in the judicial applicants. They attempt to establish criteria for the prediction of successful judicial performance. The identified traits are not mutually exclusive and cannot be wholly separated from one another. The outlined areas have been selected as essential for inquiry in considering all applicants for judicial office. With the exception of integrity, which is always indispensable, the degree to which the characteristics should be present in any particular applicant may vary in relation to the responsibility of the office.

These guidelines are not intended to deal with methods or procedures for judicial selection; nor are they intended to provide specific operating rules for the commissions and committees. The guidelines are not intended as a definitive review of the qualifications of sitting judges when being considered for retention or evaluation, since judicial experience will then provide important additional criteria which are treated elsewhere.

It is hoped that the use of these guidelines, if made known to the public and the press, will enhance the understanding and respect to which the judiciary is entitled in the community being served. The ultimate responsibility for selecting the judiciary is in the appointing power of any given judicial system. The function of these guidelines is to present minimum criteria for appointment; the more rigorous the criteria the better the quality of the judiciary.

1. Integrity. An applicant should be of undisputed integrity.

The integrity of the judge is, in the final analysis, the keystone of the judicial system, for it is integrity which enables a judge to disregard personalities and partisan political influences and enables him or her to base decisions solely on the facts and the law applicable to those facts. It is, therefore, imperative that a judicial applicant's integrity and character with regard to honesty and truthfulness be above reproach. An individual with the integrity necessary to qualify must be one who is able, among other things, to speak the truth without exaggeration, admit responsibility for mistakes and put aside self-aggrandizement. Other elements demonstrating integrity are intellectual honesty, fairness, impartiality, ability to disregard prejudices, obedience to the law and moral courage.

An applicant's past personal and professional conduct should demonstrate consistent adherence to high ethical standards. The evaluator should make inquiry of judges before whom the applicant has appeared and among other members of the bar as to whether or not an applicant's representations can be relied upon. An applicant's disciplinary record, if any, should be considered. Hence, an applicant should waive any privilege of confidentiality, so that the appropriate disciplinary body may make available to the evaluator the record of disciplinary sanctions imposed and the existence of serious pending grievances. The reputation of the applicant for truthfulness and fair dealing in extra-legal contexts should also be considered. Inquiry into an applicant's prejudices that tend to disable or demean others is relevant. However, since no human being is completely free of bias, the important consideration is that of whether or not the applicant can recognize his or her own biases and set them aside.

2. Legal Knowledge and Ability. An applicant should possess a high degree of knowledge of established legal principles and procedures and have a high degree of ability to interpret and apply them to specific factual situations.

Legal knowledge may be defined as familiarity with established legal principles and evidentiary and procedural rules. Legal ability is the intellectual capacity to interpret and apply established legal principles to specific factual situations and to communicate, both orally and in writing, the reasoning leading to the legal conclusion. Legal ability connotes also certain kinds of behavior by the judge such as the ability to reach concise decisions rapidly once he or she is apprized of sufficient facts, the ability to respond to issues in a reasonably unequivocal manner and to quickly grasp the essence of questions presented.

Legal knowledge and ability are not static qualities, but are acquired and enhanced by experience and the continual learning process involved in keeping abreast of changing concepts through education and study. While an applicant should possess a high level of legal knowledge, and while a ready knowledge of rules of evidence is of importance to judges who will try contested cases, an applicant should not normally be expected to possess expertise in any particular substantive field. More important is the demonstration of an attitude reflective of willingness to learn the new skills and knowledge which will from time to time become essential to a judge's performance and of a willingness to improve judicial procedure and administration.

A review of an applicant's academic distinctions, participation in continuing legal education forums, legal briefs and other writings, and reputation among judges and professional colleagues who have had first-hand dealings with the applicant will be helpful in evaluating knowledge and ability.

3. Professional Experience. An applicant should be a licensed, experienced lawyer.

An applicant should be admitted to practice law in the jurisdiction. The length of time that a lawyer has practiced is a valid criterion in screening applicants for judgeships. Such professional experience should be long enough to provide a basis for the evaluation of the applicant's demonstrated performance and long enough to ensure the applicant has had substantial exposure to legal problems and the judicial process.

It is desirable for an applicant to have had actual trial experience, as an attorney, a judge or both, beyond general litigation experience. This is particularly true for an applicant for the trial bench.

The extent and variety of an applicant's experience should be considered in light of the nature of the judicial vacancy being filled. Although substantial trial experience is desirable, other types of legal experience should also be carefully considered. An analysis of the work performed by the modern trial bench indicates that, in addition to adjudication, many judges perform substantial duties involving administration, discovery, mediation and public relations. A private practitioner who has developed a large clientele, a successful law teacher and writer, or a successful corporate, government or public interest attorney all may have experience which will contribute to successful judicial performance. Outstanding persons with such experience should not be deemed unqualified solely because of lack of trial experience. The important consideration is the depth and breadth of the professional experience and the competence with which it has been performed, rather than the applicant's particular type of professional experience.

For an applicant for the appellate bench, professional experience involving scholarly research and the development and expression of legal concepts is especially desirable.

4. Judicial Temperament. An applicant should possess a judicial temperament, which includes common sense, compassion, decisiveness, firmness, humility, open-mindedness, patience, tact and understanding.

Judicial temperament is universally regarded as a valid and important criterion in the evaluation of an applicant. There are several indicia of judicial temperament which, while premised upon subjective judgment, are sufficiently understood by lawyers and non-lawyers alike to afford workable guidelines for the evaluator.

Among the qualities which comprise judicial temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion and humility. Because the judicial function is essentially one of facilitating conflict resolution, judicial temperament requires an ability to deal with counsel, jurors, witnesses and parties calmly and courteously, and the willingness to hear and consider the views of all sides. It requires the ability to be even-tempered, yet firm; open-minded, yet willing and able to reach a decision; confident, yet not egocentric. Because of the range of topics and issues with which a judge may be required to deal, judicial temperament requires a willingness and ability to assimilate data outside the judge's own experience. It requires, moreover, an even disposition, buttressed by a keen sense of justice which creates an intellectual serenity in the approach to complex decisions, and forbearance under provocation. Judicial temperament also implies a mature sense of proportion; reverence for the law, but appreciation that the role of law is not static and unchanging; understanding of the judge's important role in the judicial process, yet recognition that the administration of justice and the rights of the parties transcend the judge's personal desires. Judicial temperament is typified by recognition that there must be compassion as the judge deals with matters put before him or her.

Factors which indicate a lack of judicial temperament are also identifiable and understandable. Judicial temperament thus implies an absence of arrogance, impatience, pomposity, loquacity,

irascibility, arbitrariness or tyranny. Judicial temperament is a quality which is not easily identifiable but which does not wholly evade discovery. Its absence can usually be fairly ascertained.

Wide-ranging interviews should be undertaken to provide insight into the temperament of a judicial applicant.

5. Diligence. An applicant should be diligent and punctual.

Diligence is defined as a constant and earnest effort to accomplish that which has been undertaken. While diligence is not necessarily the same as industriousness, it does imply the elements of constancy, attentiveness, perseverance and assiduousness. It does imply the possession of good work habits and the ability to set priorities in relation to the importance of the tasks to be accomplished.

Punctuality should be recognized as a complement of diligence. An applicant should be known to meet procedural deadlines in trial work and to keep appointments and commitments. An applicant should be known to respect the time of other lawyers, clients and judges.

6. Health. A candidate should be in good health.

Good health embraces a condition of being sound in body and mind relative to the extraordinary decision making power vested in judges. Physical handicaps and diseases which do not prevent a person from fully performing judicial duties should not be a cause for rejection of an applicant. However, any serious condition which would affect the applicant's ability to perform the duties of a judge may be further investigated by the evaluator.

Good health includes the absence of erratic or bizarre behavior which would significantly affect the applicant's functioning as a fair and impartial judge. Addiction to alcohol or other drugs is of such an insidious nature that the evaluator should affirmatively determine that a candidate does not presently suffer from any such disability.

The ability to handle stress effectively is a component of good mental health. A candidate should have developed the ability to refresh himself or herself occasionally with non-work-related activities and recreations. A candidate should have a positive perception of his or her own self-worth, in order to be able to withstand the psychological pressure inherent in the task of judging.

7. Financial Responsibility. An applicant should be financially responsible.

The demonstrated financial responsibility of an applicant is one of the factors to be considered in predicting the applicant's ability to serve properly. Whether there have been any unsatisfied judgments or bankruptcy proceedings against an applicant and whether the applicant has promptly and properly filed all required tax returns are pertinent to financial responsibility. Financial responsibility demonstrates self-discipline and the ability to withstand pressures that might compromise independence and impartiality.

8. Public Service. Consideration should be given to an applicant's previous public service activities.

Participation in public service and pro bono activities adds another dimension to the qualifications of the applicant. The degree of participation in such activities may indicate social consciousness and consideration for others. The degree to which bar association work provides an insight into the qualifications of the applicant varies in each individual. Significant and effective bar association work may be seen as a favorable qualification.

The rich diversity of backgrounds of American judges is one of the strengths of the American judiciary, and an applicant's non-legal experience must be considered together with the applicant's legal experience. Experience which provides an awareness of and a sensitivity to people and their problems may be just as helpful in a decision making process as a knowledge of the law. There is, then, no one career path to the judiciary. A broad, non-legal academic background, supported by varied and extensive non-academic achievements are important parts of an applicant's qualifications. Examples of such non-legal experience are involvement in community affairs and participation in political activities, including election to public office. The most desirable applicant will have had broad life experiences.

There should be no issue-oriented litmus test for selection of an applicant. No applicant should be precluded from consideration because of his or her opinions or activities in regard to controversial public issues. No applicant should be excluded from consideration because of race, creed, sex or marital status.

While interviews of applicants may touch on a wide range of subjects in order to test an applicant's breadth of interests and thoughtfulness, the applicant should not be required to indicate how he or she would decide particular issues that may arise on litigated cases. However, an applicant's judicial philosophy and ideas concerning the role of the judicial system in our scheme of government are relevant subjects of inquiry.

Other Considerations for Qualification

In addition to the ABA guidelines, a commissioner should consider the following in analyzing the qualifications of an applicant for judicial office.

Diversity on the Bench. When deciding among applicants whose qualifications appear to be relatively comparable, it is relevant to consider the background and experience of the applicants in relation to the current composition of the bench on which the vacancy exists. While the primary consideration must be merit, the constitutional requirement that the commissions consider the diversity of the state's or county's population in making their nominations is intended to promote a judiciary of sufficient diversity that it can most effectively serve the needs of the community.

Impartiality. A judge must be able to determine the law and sometimes the facts of a dispute objectively and impartially. Applicants may be evaluated on their ability to make the transition from advocate to arbiter, and their ability to hear and consider all sides of an issue.

Industry. Applicants should demonstrate a willingness to dedicate themselves to diligent, efficient and thorough work. Rising court caseloads demand industry of judges. This means the ability to manage time, resources and priorities efficiently; to persevere against obstacles; to prepare thoroughly and punctually; and to resolve issues concisely and decisively.

Trial Court Judges. Substantial trial experience as an attorney, a judge or both is desirable. This includes the preparation and presentation of matters of proof in an adversarial setting for practicing attorney applicants, or the hearing, ruling and decision-making experience of a sitting judge applicant. However, litigation experience should not be overemphasized. A trial court judge must also be an able administrator and mediator.

A trial court judge should speak effectively in order to be understood by those appearing before the bench as well as by visitors in the courtroom. Communication skills are vitally important in dealing with litigants who are unrepresented by counsel and in communicating with jurors. The judge must be able to give the jury an understanding of its role and instruct the jurors on the law using plain language.

A trial court judge must be able to make quick decisions under pressure. The judge must be able to rule on motions and objections quickly in order to keep cases moving. A trial court judge must be able to quickly assimilate law and facts to respond to issues raised by counsel with confidence and without hesitation. The judge must be willing to make hard decisions and be able to rule with firmness.

Appellate Court Judges. Because of the collegial decision making process on the appellate bench, it is important judges be able to understand and respect differing opinions without personal rancor. A good appellate court judge should be able to give and receive criticism of opinions and arguments without giving or taking personal offense.

Appellate court judges should have well-developed research and writing skills, and backgrounds with broad experience. It is crucial that they be able to produce understandable opinions. The judge's written opinion should persuade the reader through its logic and internal coherence.

ARIZONA CODE OF JUDICIAL CONDUCT

2014

Arizona Supreme Court
Rule 81, Rules of the Supreme Court,

Effective September 1, 2009
Amended November 24, 2009

ARIZONA CODE OF JUDICIAL CONDUCT

CONTENTS

[The index and page numbers are not part of the official version of the code.]

PREAMBLE

An independent, fair, and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the rules contained in this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

This code establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the code. The code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

SCOPE

This code consists of four canons, numbered rules under each canon, and comments that generally follow and explain each rule. Scope and terminology sections provide additional guidance in interpreting and applying the code. An application section establishes when the various rules apply to a judge or judicial candidate.

The canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a rule, the canons provide important guidance in interpreting the rules. Where a rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

The comments that accompany the rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Second, the comments identify aspirational goals for judges. To implement fully the principles of this code as articulated in the canons, judges should strive to exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

The rules in the code are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

The black letter of the rules is binding and enforceable. It is not intended, however, that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the rules and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

The code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

"Appropriate authority" means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported.

"Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure.

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality.

"Domestic partner" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

"Economic interest" means ownership of more than a de minimis legal or equitable interest and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11). Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian.

"Impartial," "impartiality," and **"impartially"** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

"Impending matter" is a matter that is imminent or expected to occur in the near future.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality.

"Independence" means a judge's freedom from influence or controls other than those established by law.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character.

"**Judge"** means any person who is authorized to perform judicial functions within the Arizona judiciary, including a justice or judge of a court of record, a justice of the peace, magistrate, court commissioner, special master, hearing officer, referee, or pro tempore judge.

"Judicial candidate" means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office.

"Knowingly," "knowledge," "known," and **"knows"** means actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Law" encompasses court rules as well as ordinances, regulations, statutes, constitutional provisions, and decisional law.

"Member of the judge's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

"Member of a judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

"Nonpublic information" means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in dependency cases or psychiatric reports.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

"Personally solicit" means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this code, the term does not include a judicial candidate's campaign committee created as authorized by Rule 4.3.

"Public election" includes primary and general elections, partisan elections, nonpartisan elections, recall elections, and retention elections.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

APPLICATION

The Application section establishes when the various rules apply to a judge or judicial candidate.

PART A. Applicability of this Code.

(1) The provisions of the code apply to all judges. Parts B through D of this section identify exemptions that apply to part-time judges.

(2) The provisions of Canon 4 apply to judicial candidates.

Comment

1. The rules in this code have been formulated to address the ethical obligations of any person who serves a judicial function within the Arizona judicial branch, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions. The code does not apply to administrative law judges or administrative hearing officers in this state unless expressly made applicable by statute or by agency rules. Such officers are generally affiliated with the executive branch of government rather than the judicial branch and each agency should consider the unique characteristics of particular positions in adopting and adapting the code for administrative law judges or administrative hearing officers. See Arizona Judicial Ethics Advisory Committee, Opinion 92-03 (January 31, 1992).

2. The determination of which category of judicial service and, accordingly, which specific rules apply to an individual judicial officer, depends upon the nature of the particular judicial service.

3. Arizona has what are often called "problem-solving" courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules governing problem-solving courts, or protocols for problem-solving courts known and consented to by the participants, specifically authorize conduct not otherwise permitted under these rules, they take precedence over the provisions set forth in the code. Nevertheless, judges serving on "problem-solving" courts shall comply with this code except to the extent local rules or protocols provide and permit otherwise. See Rule 2.9, Comment 4.

PART B. Retired Judge Available for Assignment.

A retired judge available for assignment to judicial service need not comply with Rules 3.2 (appearances before governmental bodies and consultation with government officials), 3.3 (acting as a character witness), 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 (appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business or remunerative activities), 3.12 (compensation for extrajudicial activities),

3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.14 (reimbursement of expenses and waivers of fees or charges), 3.15 (reporting requirements), and 4.1(A) (political and campaign activities of judges and judicial candidates in general).

PART C. Continuing or Periodic Part-Time Judge.

A judge who serves part-time on a continuing or periodic basis, but is permitted to devote time to another profession or occupation and whose compensation is less than that of a full-time judge, is not required to comply:

(1) except while serving as a judge with Rules 2.10(A) and (B) (judicial statements on pending and impending cases); or

(2) at any time with Rules 3.4 (appointments to governmental positions), 3.8 (appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.14 (reimbursement of expenses and waivers of fees or charges), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), 4.2 (political and campaign activities of judicial candidates in public elections), 4.3 (activities of candidates for appointive judicial office), 4.4 (campaign committees), and 4.5 (activities of judges who become candidates for nonjudicial office).

Additionally, such a judge shall not practice law in the specific court on which the judge serves or in any court subject to the appellate jurisdiction of the specific court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

Comment

When a person who has been a continuing part-time judge is no longer a continuing part-time judge, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties, and pursuant to any applicable Rules of Professional Conduct.

PART D. Pro Tempore Part-Time Judge.

A pro tempore part-time judge is a person appointed pursuant to Article 6, § 31 of the Arizona Constitution, or municipal charter or ordinance, who serves or expects to serve repeatedly on a less than full-time basis, but under a separate appointment by a presiding judge for each limited period of service or for each matter.

(1) A pro tempore part-time judge is not required to comply:

(a) except while serving as a judge with Rules 1.2 (promoting confidence in the judiciary), 2.4 (external influences on judicial conduct), 2.10 (judicial statements on pending and impending cases), 3.2 (appearance before governmental bodies and consultation with government officials), 3.3 (acting as a character witness); or

(b) at any time with Rules 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 appointments to fiduciary positions), 3.9 (service as arbitrator or mediator, 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), and 4.5 (activities of judges who become candidates for nonjudicial office).

(2) A person who has been a pro tempore part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Arizona Rules of Professional Conduct.

(3) A pro tempore part-time judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a lawyer in such specialized division or court during such service.

(4) A pro tempore part-time judge who serves repeatedly on a continuing scheduled basis in a specialized division of a court or in a court without specialized divisions shall not appear as a lawyer in such specialized division or court during such service.

(5) A part-time pro tempore judge who is appointed to perform judicial functions of a nonappealable nature on a continuing scheduled basis shall not appear as a lawyer in other proceedings involving the function of the court in which the service was performed, but may appear as a lawyer in all other areas of practice before the court.

Comment

1. The restrictions of Part D apply to the members of a pro tempore part-time judge's law firm.

2. The purpose of Part D is to allow the greatest possible use of part-time pro tempore judges to augment judicial resources in order to reduce case backlogs and the time necessary to process cases to disposition while minimizing any potential for the appearance of impropriety.

3. The language of Part D is intended to allow, at a minimum, the following current practices:

(a) A lawyer sits as a part-time pro tempore judge for one family law trial and during this time appears in the family law divisions as a lawyer in other matters.

(b) A lawyer sits as a part-time pro tempore juvenile judge two or more half days a week on a continuing scheduled basis and during this time appears in court as a lawyer in all types of proceedings except for juvenile matters.

(c) A lawyer sits as a part-time pro tempore criminal judge in the after-hours and weekend initial appearance program and thereafter appears as a lawyer in the

criminal divisions except that the lawyer does not appear in the initial appearance program on behalf of clients.

(d) A lawyer sits on a continuing scheduled basis as a part-time pro tempore judge in a satellite court in one community and otherwise appears in the main court located in a different community on all variety of matters, but does not appear in any proceeding in the satellite court.

(e) A lawyer sits on a continuing scheduled basis as a pro tempore part-time justice of the peace in one precinct and appears as a lawyer in a justice court in another precinct.

(f) A lawyer sits once or only sporadically as a pro tempore part-time magistrate in a municipal court and otherwise appears as a lawyer in the same court on all variety of matters.

(g) These comments replace Advisory Opinion 92-16 (issued December 8, 1992, and reissued March 8, 1993) dealing with ethical constraints on lawyers serving as pro tempore judges.

PART E. Time for Compliance by New Judges.

A person to whom this code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (appointments to fiduciary positions) and 3.11 (financial, business, or remunerative activities) apply shall comply with those rules as soon as reasonably possible, but in no event later than one year after the code becomes applicable to the judge.

Comment

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1. Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

Comment

For a discussion of the judge's obligation when applying and interpreting the law, see Rule 2.2 and the related comment.

RULE 1.2. Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Comment

1. Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

2. A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the code.

3. Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the rule is necessarily cast in general terms.

4. Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

5. Actual improprieties include violations of law, court rules, or provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party. A judge's personal and family circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.

6. A judge should initiate and participate in activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this code.

RULE 1.3. Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Comment

1. It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

2. A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use judicial letterhead if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

3. Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, by recommending qualified candidates for judicial office, and by responding to inquiries from and volunteering information to such entities concerning the professional qualifications of a person being considered for judicial office.

4. A judge who writes or contributes to publications of for-profit entities should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY

RULE 2.1. Giving Precedence to Judicial Duties

The judicial duties of a judge take precedence over all of a judge's other activities.

Comment

1. To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

2. Judicial duties are those prescribed by law. In addition, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2. Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment

1. To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

2. Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

3. A good faith error of fact or law does not violate this rule. However, a pattern of legal error or an intentional disregard of the law may constitute misconduct.

4. It is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

RULE 2.3. Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but

not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Comment

1. A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

2. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Facial expressions and body language may convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

3. Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socio-economic status, or political affiliation.

4. Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome. See Arizona Supreme Court Administrative Order 92-33 (Oct. 19, 1992), for the judiciary's sexual harassment policy.

RULE 2.4. External Influences on Judicial Conduct

(A) A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Comment

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

RULE 2.5. Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently, diligently, and promptly.

(B) A judge shall reasonably cooperate with other judges and court officials in the administration of court business.

(C) A judge shall participate actively in judicial education programs and shall complete mandatory judicial education requirements.

Comment

1. Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

2. A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

3. Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

4. In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

5. Article 2, § 11 of the Arizona Constitution requires that "Justice in all cases shall be administered openly, and without unnecessary delay." Article 6, Section 21 provides that "Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the submission thereof. The supreme court shall by rule provide for the speedy disposition of all matters not decided within such period." See Rule 91(e), Rules of the Supreme Court; A.R.S. § 12-128.01. In addition, A.R.S. § 11-424.02(A) prohibits a justice of the peace from receiving compensation if a cause "remains pending and undetermined for sixty days after it has been submitted for decision." These and other time requirements are discussed in depth in Arizona Judicial Ethics Advisory Committee, Advisory Opinion 06-02 (April 25, 2006).

RULE 2.6. Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute, but shall not coerce any party into settlement.

Comment

1. The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

2. The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, or is on appellate review, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, (6) whether the matter is civil or criminal, and (7) whether the judge involved in the settlement discussions will also be involved in the decision on the merits.

3. Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision-making during trial or on appeal and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

RULE 2.7. Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

Comment

1. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

2. A judge is not ethically obligated to automatically recuse himself or herself from a case in which one of the litigants has filed a complaint against the judge with the Commission on Judicial Conduct. See Advisory Opinion 98-02.

RULE 2.8. Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Comment

1. The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

2. Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case. There are several exceptions to this general rule, however, and with certain qualifications judges may speak to a discharged jury following the return of a verdict. See Arizona Judicial Ethics Advisory Committee Opinion 01-01 (reissued January 22, 2003). This rule does not preclude a judge from communicating with jurors personally, in writing, or through court personnel to obtain information for the purpose of improving the administration of justice.

RULE 2.9. Ex Parte Communication

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision to promptly notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding.

(3) A judge may consult with other judges, or with court personnel whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities. If in doing so the judge acquires factual information that is not part of the record, the judge shall make provision promptly to notify the parties of the substance of the information and provide the parties with an opportunity to respond. The judge may not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(6) A judge may engage in ex parte communications when serving on problem-solving courts, if such communications are authorized by protocols known and consented to by the parties or by local rules.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

Comment

1. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. A judge may also direct judicial staff, without invoking the notice and disclosure provisions of this rule, to screen written ex parte communications and to take appropriate action consistent with this rule.

2. Whenever the presence of a party or notice to a party is required by this rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

3. The proscription against communications concerning a proceeding includes communications with persons who are not participants in the proceeding, except to the limited extent permitted by this rule.

4. When serving on problem-solving courts, such as mental health courts or drug courts, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others. See Application, Part A, Comment 3.

5. A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

6. The prohibition against a judge independently investigating the facts in a matter extends to information available in all mediums, including electronic.

7. A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this code.

8. An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

9. A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

10. If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

RULE 2.10. Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Comment

1. This rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

2. This rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an administrative capacity, the judge may comment publicly on the merits of the case. In cases in which the judge is a litigant in a nominal capacity, such as a special action, the judge must not comment publicly except as otherwise specifically permitted by this rule.

3. Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

RULE 2.11. Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest, as defined by this code or Arizona law, in the subject matter in controversy or in a party to the proceeding.

(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous four years made aggregate contributions to the judge's campaign in an amount that is greater than the amounts permitted pursuant to A.R.S. § 16-905.

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer in the preceding four years who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep reasonably informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not

be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

(D) Official communications received in the course of performing judicial functions as well as information gained through training programs and from experience do not in themselves create a basis for disqualification.

Comment

1. Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply.

2. A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

3. The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

4. The fact that a lawyer in a proceeding is affiliated with a law firm with which a member of the judge's family is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or a member of the judge's family is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

5. A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

6. "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11). Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(a) an interest in the individual holdings within a mutual or common investment fund;

(b) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(c) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(d) an interest in the issuer of government securities held by the judge.

7. A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Rule 2.11(A)(6)(a); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

Rule 2.12. Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

(C) A judge shall require staff, court officials, and others subject to the judge's direction and control to comply with the provisions of the Code of Conduct for Judicial Employees adopted by the supreme court.

Comment

1. A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the code if undertaken by the judge.

2. Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

Rule 2.13. Administrative Appointments

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Comment

1. Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

2. Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative. Arizona's anti-nepotism statute, which applies to judicial officers, is found in A.R.S. § 38-481.

RULE 2.14. Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

1. "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

2. Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

RULE 2.15. Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

(E) Acts of a judge in the discharge of disciplinary responsibilities required or permitted by Rule 2.15 are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Comment

1. Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This

rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

2. A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

RULE 2.16. Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

Comment

1. Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

2. Judicial employees have a right to cooperate or communicate with the Commission on Judicial Conduct at any time, without fear of reprisal, for the purpose of discussing potential or actual judicial misconduct.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE

RULE 3.1. Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality or demean the judicial office;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Comment

1. To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

2. Participation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.

3. Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, political affiliation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

4. While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably or would do so to curry favor with the judge.

5. The telecommunications policy of the Arizona judiciary, which defines the permissible uses of electronic equipment, is set forth in Part 1, Chapter 5, § 1-503 of the Arizona Code of Judicial Administration.

RULE 3.2. Appearances Before Governmental Bodies and Consultation with Government Officials.

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting in a matter involving the judge's interests or when the judge is acting in a fiduciary capacity.

Comment

1. Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

2. In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

3. In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions and must otherwise exercise caution to avoid using the prestige of judicial office.

RULE 3.3. Acting as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Comment

A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

RULE 3.4. Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

Comment

1. Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

2. A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

RULE 3.5. Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

Comment

1. In the course of performing judicial duties a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

2. This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of any individual if consistent with other provisions of this code.

Rule 3.6. Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

(C) A judge's membership or participation in a religious organization as a lawful exercise of the freedom of religion, or a judge's membership or participation in an organization that engages in expressive activity from which the judge cannot be excluded consistent with the judge's lawful exercise of his or her freedom of expression or association, is not a violation of this rule.

Comment

1. A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

2. An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization stigmatizes excluded persons as inferior and odious, whether it perpetuates and celebrates cultures, historical events, and ethnic or religious beliefs, identities, or traditions, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

3. When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

4. This rule does not prohibit a judge's national or state military service.

RULE 3.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) A judge may not directly solicit funds for an organization. However, subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, volunteering services or goods at fund-raising events, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may do so only if the event concerns the law, the legal system, or the administration of justice.

(5) making or soliciting recommendations to such a public or private fund-granting organization or entity in connection with its fund-granting programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono legal services.

(C) Subject to the preceding requirements, a judge may:

(1) Provide leadership in identifying and addressing issues involving equal access to the justice system; develop public education programs; engage in activities to promote the fair administration of justice; and convene or participate or assist in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, or the administration of justice.

(2) Endorse projects and programs directly related to the law, the legal system, the administration of justice, and the provision of services to those coming before the courts, and may actively support the need for funding of such projects and programs.

(3) Participate in programs concerning the law or which promote the administration of justice.

Comment

1. The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations. An organization concerned with the law, the legal system, and the administration of justice may include an accredited institution of legal education, whether for-profit or not-for-profit.

2. Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

3. Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute participation in violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

4. Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

5. In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono legal services, if in doing so the judge does not employ coercion or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono legal work, and participating in events recognizing lawyers who have done pro bono work.

6. A judge may be an announced speaker at a fund-raising event benefitting indigent representation, scholarships for law students, or accredited institutions of legal education.

RULE 3.8. Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

Comment

A judge should recognize that other restrictions imposed by this code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

RULE 3.9. Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

Comment

1. This rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute

resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

2. Retired, part-time, or pro tempore judges may be exempt from this section. See Application, Parts B, C(2) and D(2).

RULE 3.10. Practice of Law

A judge shall not practice law. A judge may represent himself or herself and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum.

Comment

1. A judge may act as his or her own attorney in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

2. Retired, part-time, or pro tempore judges may be exempt from this section. See Application, Parts B, C(1)(b) and D(1)(b).

3. Judges who are actively practicing law at the time of their election or appointment to the bench are encouraged to become familiar with ethical considerations immediately affecting the transition from lawyer to judge. Arizona Judicial Ethics Advisory Committee Opinion 00-07 (December 20, 2000).

4. This rule does not prohibit the practice of law pursuant to military service.

RULE 3.11. Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and members of the judge's family.

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this code.

Comment

1. Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

2. As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this rule.

3. A judge's uncompensated participation as an officer, director, or advisor of an organization concerned with the law, the legal system, or the administration of justice is not prohibited by this rule. See Rule 3.7, Comment 1.

4. To the extent permitted by Rule 1.3, a judge's participation as a teacher at an educational institution is not prohibited by this rule. See Rule 3.12, Comment 1.

RULE 3.12. Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Comment

1. A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

2. Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding

pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards granted on the same terms and based on the same criteria applied to other applicants;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge;

(9) gifts incident to a public testimonial;

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal, or civic activities permitted by this code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

(C) A judge shall report the acceptance of any gift, loan, bequest, or other thing of value as required by Rule 3.15.

Comment

1. Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 prohibits the acceptance of such benefits except in circumstances where the risk of improper influence is low and subject to applicable financial disclosure requirements. See Rule 3.15.

2. Gift-giving between friends and relatives is a common occurrence and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making.

Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances but may require public reporting.

3. The receipt of ordinary social hospitality, commensurate with the occasion, is not likely to undermine the integrity of the judiciary. However, the receipt of other gifts and things of value from an attorney or party who has or is likely to come before the judge will be appropriate only in the rarest of circumstances.

4. Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

5. If a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to influence the judge indirectly. A judge should remind family and household members of the reporting requirements imposed upon judges by Rule 3.15 and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

6. Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other rules of this code, including Rules 4.2 and 4.3.

RULE 3.14. Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

Comment

1. Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related

and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this code.

2. Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this code.

3. A judge must determine whether acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity.

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

RULE 3.15. Financial Reporting Requirements

(A) A judge shall file annually the financial disclosure statement required by A.R.S. § 38-542 or other applicable law. The completion and filing of the annual financial disclosure statement fulfills the reporting requirements set forth in this code.

(B) Reports made in compliance with this rule shall be filed as public documents in the office designated by law.

Comment

1. The information required to be reported by Rules 3.12, 3.13, and 3.14 is a portion of the information that must be included on the annual financial disclosure statement mandated by A.R.S. § 38-542 or other applicable law. A judge is obligated to disclose fully and accurately all information requested on the annual disclosure statement and does not fulfill the statutory obligation by reporting only the information required by Rules 3.12, 3.13, and 3.14. Applicable law requires sufficient disclosure of the financial interests of and gifts to a judge and members of his or her household to promote judicial accountability and integrity.

2. To avoid needless repetition of disclosure requirements, the Arizona judiciary deems compliance with the substantive legal requirement as sufficient to meet the ethical obligations of a judge and thus incorporates them in this code.

3. Reimbursement of expenses from a judge's employer need not be reported under Rule 3.14(C) or Rule 3.15.

RULE 3.16. Conducting Weddings

(A) The performance of wedding ceremonies by a judge is a discretionary function rather than a mandatory function of the court.

(B) A judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony.

(C) A judge shall not advertise his or her availability for performing wedding ceremonies.

(D) A judge shall not charge or accept a fee, honorarium, gratuity, or contribution for performing a wedding ceremony during court hours.

(E) A judge may charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court.

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY

RULE 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General

(A) A judge or a judicial candidate shall not do any of the following:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization or another candidate for public office;

(3) publicly endorse or oppose another candidate for any public office;

(4) solicit funds for or pay an assessment to a political organization or candidate, make contributions to any candidate or political organization in excess of the amounts permitted by law, or make total contributions in excess of fifty percent of the cumulative total permitted by law. See, e.g., A.R.S. § 16-905.

(5) actively take part in any political campaign other than his or her own campaign for election, reelection or retention in office;

(6) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;

(7) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others, except as provided by law;

(8) use court staff, facilities, or other court resources in a campaign for judicial office;

(9) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(10) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

(C) Except as prohibited by this code, a judge may:

(1) engage in activities, including political activities, to improve the law, the legal system and the administration of justice; and

(2) purchase tickets for political dinners or other similar functions, but attendance at any such functions shall be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by these rules.

Comment

General Considerations

1. Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure.

2. When a person becomes a judicial candidate, this canon becomes applicable to his or her conduct. A successful judicial candidate is subject to discipline under the code for violation of any of the rules set forth in Canon 4, even if the candidate was not a judge during the period of candidacy. An unsuccessful judicial candidate who is a lawyer and violates this code may be subject to discipline under applicable court rules governing lawyers.

Participation in Political Activities

3. Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations. Examples of such leadership roles include precinct committeemen and delegates or alternates to political conventions. Such positions would be inconsistent with an independent and impartial judiciary.

4. Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. Paragraph (A)(3) does not prohibit a judge or judicial candidate from making recommendations in complying with Rule 1.3 and the related comments. These rules do not prohibit candidates from campaigning on their own behalf or opposing candidates for the same judicial office for which they are running.

5. Paragraph (A)(3) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

6. A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

7. Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take and should urge members of their families to take reasonable steps to avoid any implication that the judge or judicial candidate endorses any family member's candidacy or other political activity.

8. Judges and judicial candidates retain the right to participate in the political process as voters in all elections. For purposes of this canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate and is not prohibited by paragraphs (A)(2) or (A)(3).

Statements and Comments Made During a Campaign for Judicial Office

9. Subject to paragraph (A)(9), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is permissible for someone else, including another judge, to respond if the allegations relate to a pending case.

10. Paragraph (A)(9) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

11. Paragraph (A)(9) must be read in conjunction with Rule 2.10, which allows judges to make public statements in the course of their official duties.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

12. The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

13. Paragraph (A)(10) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

14. The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other

issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

15. A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system or advocating for more funds to improve the physical plant and amenities of the courthouse.

16. Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(10) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(10), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

RULE 4.2. Political and Campaign Activities of Judicial Candidates

(A) A judicial candidate shall:

(1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities other than those described in Rule 4.4 that the candidate is prohibited from doing by Rule 4.1.

Rule 4.3. Campaign Standards and Communications

During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, advertisements in the media, electronic communications, or a speech, press release, or any other public communication, shall not knowingly or with reckless disregard do any of the following:

(A) Post, publish, broadcast, transmit, circulate, or distribute information concerning the judicial candidate or an opponent that would be deceiving or misleading to a reasonable person;

(B) Manifest bias or prejudice toward an opponent that would be prohibited in the performance of judicial duties under Rule 2.3(B), which prohibition does not preclude a judicial candidate from making legitimate reference to the listed factors when they are relevant to the qualifications for judicial office;

(C) Use the title of an office not currently held by a judicial candidate in a manner that implies that the judicial candidate currently holds that office;

(D) Use the term "judge" when the judicial candidate is not a judge unless that term appears after or below the name of the judicial candidate and is accompanied by the words "elect" or "vote," in prominent lettering, before the judicial candidate's name or the word "for," in prominent lettering, between the name of the judicial candidate and the term "judge";

(E) Use the term "re-elect" when the judicial candidate has never been elected at a general or special election to the office for which he or she is a judicial candidate;

(F) Misrepresent the identity, qualifications, present position, or any other fact about the judicial candidate or an opponent;

(G) Make a false or misleading statement concerning the formal education or training completed or attempted by a judicial candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned, or held by a judicial candidate; or the period of time during which a judicial candidate attended any school, technical program, college, or other educational institution;

(H) Make a false or misleading statement concerning the professional, occupational, or vocational licenses held by a judicial candidate, or the candidate's employment history and descriptions of work-related titles or positions;

(I) Make a false or misleading statement about an opponent's personal background or history;

(J) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a judicial candidate by a person, organization, political party, or publication.

Comment

1. A judicial candidate must be scrupulously accurate, fair, and honest in all statements made by the candidate and his or her campaign committee. This rule obligates the candidate and the committee to refrain from making statements that are false or misleading or that omit facts necessary to avoid misleading voters.

2. A sitting judge, who is a judicial candidate for an office other than the court on which he or she currently serves, violates Rule 4.3(C) if he or she used the title "judge" without identifying the court on which the judge currently serves.

3. Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate this rule, the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks and request the third party to cease and desist.

RULE 4.4. Campaign Committees

(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this code and other applicable law. See generally A.R.S. § 16-901 *et seq*.

(B) A judicial candidate subject to public election shall direct his or her campaign committee to solicit and accept only such campaign contributions as are permissible by law and to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.

Comment

1. Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(6). This rule recognizes that in many jurisdictions, judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept lawful financial contributions or in-kind contributions.

2. Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law and for the activities of their campaign committees.

3. During the campaign, the candidate and his or her campaign committee should consider whether a contribution may affect the independence, integrity, and impartiality of the judge. The judicial candidate and his or her campaign committee should be aware that contributions could create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.

Rule 4.5. Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office other than as a candidate to a constitutional convention, a judge shall resign from judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this code.

Comment

1. In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

2. The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

THE LIMITS OF LAW

Eliminating Discrimination Requires Attitude Adjustment

BY RANDALL M. HOWE

RANDALL M. HOWE is the Deputy Appellate Chief at the United States Attorney's Office for the District of Arizona. The opinions expressed in the article are his own and not those of the United States Attorney's Office or the United States Department of Justice.

As lawyers, we understand, perhaps better than others, the importance of law and the rule of law. Laws are essential to a civilized society. Laws create rules and boundaries that guide us in our pursuit of life, liberty, and happiness.

An occupational hazard of being a lawyer, however, is believing that enacting and enforcing legislation or winning a court case always solves the problem at hand. We forget that laws have limits.

In August of last year, I spoke in Washington, DC, at the IMPACT Career Fair. It is an event for law students with disabilities. Fifty-seven law students and young lawyers came to interview for jobs with 29 East Coast law firms—and to hear about my own experiences in trying to get a job as a lawyer with a disability. Of course, the employment market is bad for all lawyers, but the law students at the fair approached matters with extra trepidation because of the challenges that their disabilities presented.

Although the most recent unemployment rate (in January 2011) for all workers is 9.7 percent, the unemployment rate for persons with disabilities is 13.6 percent.[1]

The Americans with Disabilities Act (ADA)—enacted 20 years ago—is wonderful civil rights legislation that has increased the access of persons with disabilities to public accommodations, to transportation, to state and local government programs, and, most important, to employment. Persons with disabilities now have ramps and elevators to enter buildings and businesses, wheelchair lifts to get on buses, and the right to seek jobs without discrimination based on their disabilities. I no longer worry whether a building has too many steps for me to go inside.

But laws only go so far, as any of the law students at the fair would tell you. The biggest problem for persons with disabilities is not physical barriers; it is attitudinal ones.

THE NEED FOR LAW

I grew up in the Dark Ages of the late 1960s, long before the ADA. At that time, persons with disabilities were not expected to be contributing members of society. I know that firsthand, given that I have cerebral palsy.

In 1969, when I was 6 years old, my mother sought to enroll me in the first-grade class of my neighborhood public school. She did so without any thought of standing up for the rights of children with disabilities; she enrolled me in school because the law required that all 6-year-olds go to school. She enrolled me despite the personal opposition of her mother, who thought that I should just stay home and play in my backyard, and despite the official opposition of the school administrators, who required me to undergo psychological testing to determine whether I was capable of learning.

I TRAVEL A LOT, AND ALTHOUGH I WALK, I USE A WHEELCHAIR INSIDE AIRPORTS BECAUSE IT IS EASIER AND QUICKER. BUT, GIVEN THE REACTIONS OF THOSE AROUND ME, MY I.Q. APPARENTLY PLUMMETS EVERY TIME THAT I SIT IN A WHEELCHAIR.

No other child had to prove that he or she was intellectually capable before being allowed to go to school. Even after I proved my intellectual competence, school administrators told my mother that they were not capable of handling a child with a disability. I went to school only after months of negotiations and threats of lawsuits.

In the late 1980s, I clerked for a law firm in my second year of law school, where I did a lot of work for the attorneys in the litigation department. They liked my work, and the firm offered me a job after graduation. The hiring partner asked me if I would work in the firm's banking department drafting loan agreements and deeds of trust because—while the partners knew that I liked litigation and that I did good work for them—they "didn't see" me having a future as a courtroom litigator. He also told me that before I met any clients, he would "prepare" them to meet me. No one had ever had to be "prepared" to meet me before, but I was young, intimidated and very much in need of the job that the firm had just offered me.

THE NEED FOR A CHANGE IN ATTITUDE

Undoubtedly, things are better now after the ADA. No one today would dare say the things that were said in the past. But the attitude problem remains.

I travel a lot, and although I walk, I use a wheelchair inside airports because it is easier and quicker. But, given the reactions of those around me, my I.Q. apparently plummets every time that I sit in a wheelchair.

When I arrived at the airport for my trip to Washington for the job fair, an airline employee helped me to a wheelchair and took me to the security screening area. I gave him my carry-on bag and my crutch to go through the metal detectors, and I waited in line by myself for a personal pat-down search, the procedure for handling those in wheelchairs. After several minutes, the TSA screener approached me and asked if I had been "abandoned" and if I knew why I was there. When I answered that I was waiting to be screened so that I could get on an airplane, he seemed flummoxed that I was traveling by myself and demanded to know who I was traveling with and who had my property. He was quite condescending as he patted me down, and he muttered that I should not have been left alone, as if I did not have enough intelligence to be responsible for myself—all because I was in a wheelchair.

On another occasion at the airport, an airline employee took me to get my boarding pass at an electronic kiosk that was reserved for passengers who had no luggage, even though I had luggage. When I tried to tell him several times that I had luggage (which was sitting right next to me), he shushed me as he struggled with the machine. Once he had my boarding pass printed out, he looked at the luggage and said with sad surprise, "Oh, you have luggage!" He would not have dismissed me had I been standing. When I travel with my girlfriend, you would be surprised at the number of times that people ask her if I need to use the restroom. Her stock answer: "I don't know. You'll have to ask him."

These are not merely the stories of a harried traveler. They are the experiences that people with disabilities face every day. Today, only bigots believe that a person's skin color, ethnicity or gender affects the person's ability to perform a job. But people—even well-educated people—who have never met or have never been around a person with a disability wonder whether a person who is blind or deaf or in a wheelchair can perform a job with that disability.

Of course, sometimes those concerns are justified—for example, because my cerebral palsy makes my muscle movements occasionally spasmodic, no one would want me to do brain surgery! But most of the time, concerns are entirely unjustified. Most people with disabilities can perform jobs with minimal accommodations.

When I applied for the position in the Criminal Appeals Section at the Attorney General's Office, the Chief Counsel at the time—who had no experience with a person with a disability—wondered privately how I physically wrote a brief, and he asked me, "How do you write briefs?" Because I had written without any difficulty on a computer for years, even though computers still were not common in government offices, it never occurred to me that he was concerned about how I could physically perform the job. Wanting to impress him, I blithely answered, "Quite well!" He told me years later that he hired me because I gave him that answer.

Despite the physical challenges and the attitudes of others, many lawyers with disabilities have done well. Using a wheelchair certainly has not prevented several lawyers from being appointed as judges in the Superior Court, the Court of Appeals, and even the Arizona Supreme Court, as recently retired Justice Michael Ryan will attest. Several lawyers with disabilities have thriving practices.

Although I have had the occasional bump along the way, my cerebral palsy has not prevented me from arguing more than 70 cases before the Arizona Court of Appeals, the Arizona Supreme Court, the Ninth Circuit Court of Appeals, and even the United States Supreme Court. It did not prevent me from being named the Chief Counsel of the Criminal Appeals Section at the Attorney General's Office or, when I left there, being named the Deputy Appellate Chief at the United States Attorney's Office. Several lawyers with disabilities have indeed succeeded, many quietly and without drawing attention to their disabilities.

But the success of some does not mean that barriers no longer exist. Despite the ADA, employment for persons with disabilities—and lawyers with disabilities—is a difficult problem, as demonstrated by the four-percentage-point gap in the unemployment rate between the disabled and the nondisabled. New laws, or more comprehensive laws, will not remove the attitudinal barriers.

REMOVING REAL BARRIERS

The State Bar of Arizona was one of the first bar associations in the country to acknowledge that the ADA did not solve all the problems facing persons with disabilities. Its leaders recognized that persons with disabilities continued to have particular difficulties in becoming lawyers and in succeeding in the legal profession. In 2001, the Bar created a Task Force on Persons with Disabilities in the Legal Profession—today a full-fledged Bar Committee—which brought together lawyers with disabilities to address the problems facing persons with disabilities in entering into and succeeding in the legal profession. The committee has worked to raise the visibility of lawyers with disabilities and to provide mentoring opportunities to law students and new lawyers with disabilities.

One of the committee's successes has been the Courthouse Survey—a survey of state, county and city courthouses across Arizona to see how accessible they were for lawyers and other people with disabilities. Some courthouses were very accessible; some had work to do. The survey brought attention to the physical barriers that lawyers with disabilities faced just trying to do their jobs.

The federal government also has recognized that the ADA is not the sole answer in addressing the problems facing persons with disabilities. In July 2010, President Barack Obama signed an Executive Order requiring federal agencies to adopt policies and strategies that encourage the hiring of persons with disabilities, with a goal of hiring 100,000 persons with disabilities in the next five years.[2] Though that may seem like a large number, it is not when you consider that currently 737,000 persons with disabilities are seeking employment.[3]

The high rate of unemployment of persons with disabilities and the fact that persons with disabilities comprise only 3.7 percent of the national work force[4] demonstrate the underlying reason for the attitudes that persons with disabilities face: unfamiliarity. People have certain attitudes about persons with disabilities because they do not interact daily with them; they do not see them in the community; they do not work with them. If they interacted with persons with disabilities, they would see that those people are just as smart—and in some cases, just as dumb—as they are.

The old adage is that familiarity breeds contempt. But I think, at least in this instance, that familiarity would breed understanding.

Laws cannot change attitudes. Only people can do that. Laws, after all, have limits.

endnotes

1. U.S. Department of Labor, Office of Disability Employment Policy, *available at* www.dol.gov/odep/ (last visited Feb. 13, 2011).
2. See www.whitehouse.gov/the-press-office/executive-order-increasing-federal-employment-individuals-with-disabilities (last visited Feb. 13, 2011).
3. U.S. Department of Labor, Bureau of Labor Statistics, *available at* www.bls.gov/news.release/empsit.t06.htm (last visited Feb. 13, 2011).
4. Although the total employed labor force in the United States is nearly 147 million, only 5.4 million of that number are persons with disabilities. *Id.*

THE NUTS AND BOLTS OF: APPLICATIONS, INTERVIEWS, RESUMES, LETTERS, PHONE CALLS

THE NUTS AND BOLTS: APPLICATIONS, INTERVIEWS, RESUMES, LETTERS, PHONE CALLS

March 31, 2017

3:45 - 4:45 p.m.

I. **Welcome and Introduction**

Frankie Y. Jones

Bureau Chief Maricopa County Attorney's Office
Probation Violation Bureau

II. Panel Discussion

Michael Liburdi

General Counsel, Office of Governor Doug Ducey

Honorable Ron Reinstein, Retired

Maricopa County Commission on Trial Court Appointments

Honorable Rosa Mroz

Maricopa County Superior Court Commissioners Selection Committee

Honorable Roxanne K. Song Ong (Retired)

Chief Presiding Judge - Phoenix Municipal Court and former member of the Phoenix Municipal Court Merit Selection Board

FACULTY

Michael Liburdi

General Counsel to Governor Douglas A. Ducey

Michael Liburdi is general counsel for Arizona Governor Doug Ducey. Prior to joining the governor's office, Michael was a Partner at Snell & Wilmer L.L.P. His law practice focused on commercial litigation, government relations and political law. Michael advised clients on all aspects of campaign finance law, assisted with drafting legislation and initiatives, assisted with referendum campaigns and litigated cases involving constitutional disputes, ballot access requirements and the separate amendment rule for constitutional amendments. Michael also served as a staff attorney in the litigation department of the Federal Election Commission's office of the general counsel, an attorney with Perkins Coie LLP and a law clerk for Justice Ruth McGregor on the Arizona Supreme Court. He is an adjunct faculty member at the Sandra Day O'Connor College of Law and the Barrett Honors College at Arizona State University where he teaches courses on election law, impeachment and post-Watergate reforms. Michael frequently speaks to various local groups and organizations on political law topics such as campaign finance law and impeachment. He received his Bachelor of Science degree *summa cum laude* from Arizona State University and earned his *Juris Doctor* degree *magna cum laude* from the Sandra Day O'Connor College of Law.

Honorable Ron Reinstein, Retired

Maricopa County Commission on Trial Court Appointments

Ron Reinstein retired as a Judge of the Superior Court of Arizona after 22 years on the bench. He now works as a judicial consultant for the Arizona Supreme Court and was appointed by the Chief Justice as the Director of the Center for Evidence Based Sentencing. He was appointed to the bench in December of 1985, and served as the Presiding Criminal Judge from 1990-1998, and the Associate Presiding Judge of the Court from 1998-2000. Prior to his appointment he was a Deputy Maricopa County Attorney from 1974 to 1985, serving as Supervisor of the Criminal Trial Unit and the head of the Sex Crimes Unit. He received his B.A. from Indiana University in 1970, his J.D. from Indiana University School of Law in 1973, and was inducted into the School of Law's Academy of Law Alumni Fellows in 2002.

Judge Reinstein also serves as a consultant to the National Institute of Justice, National Center for State Courts, Center for Effective Public Policy, National Forensic Science Technology Center, Justice Department Office of Victims of Crime, the Crime and Justice Institute, the Justice Management Institute, and the Center for Sex Offender Management.

Judge Reinstein was a member of the National Commission on the Future of DNA Evidence, of which he chaired the Post-Conviction Issues Committee. He is the Chair of the Supreme Court Commission on Victims in the Courts, the Supreme Court Capital Case Oversight Committee, as well as the Chair of the Arizona Forensic Science Advisory Committee. He also serves on the National Advisory Board of the Justice Department Center for Sex Offender Management, the Advisory Council of the National Crime Victim Law Institute, the Board of the Justice Management Institute, the Working Group for the National Institute of Justice "Principles of Forensic DNA for Officers of the Court" Training Project, the Advisory Board of the National Clearinghouse for Science, Technology ,and the Law, the Advisory Board of the National Institute of Corrections Evidence Based Decision Making Project, the Supreme Court Capital Case Task Force, the Attorney General's Victims Rights Advisory Committee, the Commission on Trial Court Appointments, and was a charter mem-

ber of the Governor's Children's Justice Task Force. He was appointed to the Interagency Working Group of the White House Subcommittee on Forensic Science and was recently appointed to the Organization of Scientific Area Committees, where he serves as Vice Chair of the Legal Resources Committee.

Judge Reinstein also has served as a presenter and on the faculty of numerous judicial and legal education programs on various subjects including DNA evidence, forensic science, sentencing issues, capital litigation, victims rights, sex offender management, child sexual abuse, and trial advocacy. He is also on the faculty of the National Judicial Education Program for Adult Victim Sexual Assault Cases.

Judge Reinstein has been the recipient of numerous awards, including the State Bar of Arizona Outstanding Judge Award, the Arizona Supreme Court Distinguished Service Award for Improving Public Trust and Confidence, the 2011 United States Attorney General National Crime Victims Service Award, the State Bar Judicial Award of Excellence, the United States Attorney General's Distinguished Service Award for DNA Commission, the Attorney General's Distinguished Service Award for Leadership, the Attorney General's Award as the Outstanding Sexual Assault Judicial Professional, the Outstanding Judge Award from the Maricopa County Bar Association, the Society of Professional Journalists Sunshine Award and the "Empty Shoes" Award from Parents of Murdered Children. He was selected to the Maricopa County Bar Association Hall of Fame in 2015 and was recently named a Distinguished Fellow of the Morrison Institute for Public Policy at Arizona State University.

Honorable Rosa Peng Mroz

Maricopa County Superior Court

Judge Mroz is a judge with the Superior Court of Arizona, Maricopa County. Judge Mroz is currently assigned the Criminal Department. Judge Mroz has also served in Family Department and was the Presiding Judge of the Probate and Mental Health Department. Judge Mroz was awarded the 2012 Arizona Supreme Court Judicial Achievement Award in the General Jurisdiction Category. Under her leadership, Judge Mroz and the Probate and Mental Health Department were the recipients of the 2013 National Association for Court Management's Justice Achievement Award, and the 2013 National Association of Counties' Achievement Award in the category of Court Administration and Management for "Reinventing Probate Court in Maricopa County: Restoring Public Trust and Confidence in the Judiciary."

Before she became a judge, Judge Mroz worked as a civil litigator with the Liability Management Section of the Arizona Attorney General's Office, and with the firms of Fennemore Craig and Jennings Strouss & Salmon. Judge Mroz has also worked as a prosecutor with the Maricopa County Attorney's Office, mostly in the Sex Crimes Bureau. Judge Mroz was a law clerk for former Arizona Supreme Court Justice James Duke Cameron, and former Arizona Court of Appeals Judge Thomas Kleinschmidt. Prior to becoming a lawyer, she practiced as a Certified Public Accountant with the firm of Price Waterhouse and Motorola, Inc. Judge Mroz received both her undergraduate and law degrees, with honors, from Arizona State University.

Honorable Roxanne K. Song Ong (Retired)

Chief Presiding Judge - Phoenix Municipal Court

Judge Roxanne K. Song Ong was appointed the Chief Presiding Judge of the Phoenix Municipal Court in 2005 and served in that position until her retirement in 2014. She is recognized as the first Asian woman lawyer and judge in the State of Arizona and is the first woman and minority to be named as the City's Chief Judge. She has served as a judge for Phoenix since 1991 and was appointed the Assistant Presiding Judge in 2000. Prior to that, she served as a judge for the Scottsdale City Court from 1986-1991. Prior to judging, Judge Song Ong practiced in the areas of criminal prosecution, defense, and immigration law. Offices Held: 2016 UA College of Law Board of Visitors; 2016 Board Member of the ABA Center for Racial and Ethnic Diversity; 2014 President of the National Conference of Metropolitan Courts (NCMC); Chair of the Arizona Supreme Court's Commission on Minorities (COM); Chair of the Arizona Supreme Court Committee on Judicial Education and Training (COJET); Member Arizona Judicial Council (AJC); Member Supreme Court Commission on Technology (COT); 2012 President of the Arizona Foundation for Legal Services and Education; Board Member and faculty for the State Bar of Arizona's Leadership Institute; Faculty for the Arizona Supreme Court's New Judge Orientation Program and the Arizona Judicial College. Honors and Awards: 2016 UA Law College Public Service Award; 2014 YWCA Tribute to Leadership Award for Public Service; 2013 Maricopa County Bar Association's Hall of Fame Inductee; 2013 Arizona Supreme Court Judge of the Year; 2013 Asian Pacific Community in Action Award; One of "48 Most Intriguing Women in Arizona 2012" by the Arizona Historical Society; 2010 recipient of the Arizona State Bar's Judicial Award of Excellence; 2009 National Asian American Bar Association's Trailblazer Award; One of "100 Outstanding Women and Minorities for the State of Arizona 2000" by the State and County Bar Associations; and, the 1999 Arizona Bar Foundation's Attorney Law-Related Education Award.

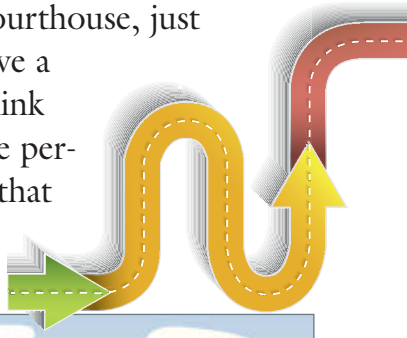
Career Amendment
Judge

Your Unique Roadmap to Becoming a Judge

BY HON. RANDALL HOWE

Since I became a judge two years ago, the two most frequent questions I have been asked are "How do you like being a judge?" and "What did you do to become a judge?" The first is easy to answer; I like it just fine! Being a judge is a great job. I have the humbling honor and privilege of performing a vital government function serving the people of Arizona every day, and every day presents an intellectual challenge. What's not to like?

The second question is not so easy to answer, and my answer is not so satisfying to the questioner. Young attorneys ask what I did to become a judge to discover some roadmap that—if they follow it precisely, step by step, turn by turn—will lead them right to the chair behind the bench in the courthouse, just as it led me. The problem is that I didn't have a roadmap to get to the bench, and I don't think one really exists—or at least I didn't have the perspicacity to find it if it's out there. The best that I can do is identify guideposts that point toward the courthouse. Here they are.



HON. RANDALL HOWE is a Judge on the Arizona Court of Appeals, Division 1.

1 Be a Good Attorney

This is as true as it is obvious, and it is often overlooked by eager and ambitious young attorneys. If you aren't good at understanding and applying the law of your practice area and serving your client's needs (whether you work in private practice or in the government), no one will consider you as judge material. My law school classmates will tell you that I always had ambitions to serve as a judge, but I spent at least the first four or five years of my career in the Criminal Appeals Section at the Attorney General's Office learning the substance of criminal law and procedure, how to write persuasive appellate briefs, and how to persuasively argue appeals before panels of judges. Only after I thought that I was doing well at my job, and got feedback from my supervisors, fellow attorneys, and judges that I was doing my job well, did I venture further out into the legal community.

2 Expand Your Horizon

Being a good attorney is essential to become a judge. But after you have mastered your job, you need to understand that a wide and deep legal world exists beyond your narrow practice area. Superior Court judges and Court of Appeals judges must handle cases from nearly every legal practice area—civil, criminal, probate, juvenile, family, and tax. In this time of legal specialization, you cannot be expected to be an expert in more than one area (or at most, a few areas). But you can become aware of those other areas and the legal principles they have in common. That might even lead you to practice in a new area.

While I was still doing criminal appeals, I had the opportunity to serve on the Attorney General's Opinion Review Committee. The Attorney General's Office issues nonbinding legal opinions on questions submitted by government agencies, and the Committee reviews, edits and gives substantive input on those opinions. The opinion requests presented a wide range of legal issues that I had never been exposed to. I learned about many areas of the law during my membership on the Committee, and it led in part to changing positions in the Attorney General's Office from handling criminal appeals to serving for two years as the appellate supervisor in the Liability Management Section, which was responsible for defending the State of Arizona in civil lawsuits. Thus, when I was considered for a judgeship, I could show that, while the majority of my experience and practice was in criminal law, I had some exposure to other areas.

3 Get Involved in the Community

Being a good attorney and having as wide legal experience as possible will get you a long way toward a judgeship. But the Merit Selection Committees and the Governor are looking for more than legal excellence. Judges decide cases that affect Arizona in general and its people in particular. Judges will understand the effects their decisions have on the community and on people individually only if they have been involved in the community. So find an activity or cause that you are passionate about and get involved, achieve some common goal, meet other people outside the legal profession. You will gain perspectives that you would never have if you did nothing but practice law all and every day.

I have been asked what activities I got involved in—apparently with an eye to precisely following my roadmap—but the particular activities don't really matter. Because I have a disability, integration of people with disabilities into the community is an important goal for me, and I became involved in organizations that promote that goal. I find legal education important, and I like to meet and interact with people, so I became involved in developing seminars for the State Bar Convention and the Minority Bar Convention. I like to write (and to read!), so I got on the ARIZONA ATTORNEY Editorial Board.

But unless you share my particular interests, you shouldn't be involved in these activities. My community activities indeed helped me when I applied to be a judge. But that wasn't why I got involved. If you get involved in something just to fill out a resume or a judicial application, it will show. Get involved because you care about something. You will help do something important, whether or not it helps you become a judge.

These are the three guideposts I followed during my career. If you follow them, you will end up in the vicinity of the courthouse, and you will be qualified to be considered for a judgeship. How you get from there to behind the bench, how you maneuver through the Merit Selection and gubernatorial appointment processes, I will leave to others to tell.

I applied to the Court of Appeals several times before I was appointed, and at one point I despaired that I would ever be a judge. I once lamented to Arizona Supreme Court Justice Michael Ryan that my opportunities to serve on the Court of Appeals had passed and what a terrible fate that was. He paused, gave me that shy, amused smile of his and told me not worry; he said that even if I never got on the Court of Appeals, I already had an accomplished career as an attorney and should be happy with that.

So, if you want to be a judge someday, follow the guideposts that I have identified. If you do, you still may never be a judge, but in the end, you will have an accomplished, successful career.

What's not to like about that? AZ

QUESTIONS FREQUENTLY ASKED ABOUT THE JUDICIAL NOMINATING COMMISSIONS

What is "merit selection" of judges?

Merit selection is a way of choosing judges through a non-partisan commission of lawyers and non lawyers that investigates and evaluates applicants. The commission submits the names of the most highly qualified applicants to the Governor, who makes the final selection. Two-thirds of the states and the District of Columbia use some form of merit selection to choose their judges.

Unlike the federal system, merit selection in Arizona is not a system that grants lifetime judgeships. Once Arizona judges are appointed, they must periodically stand for retention election, when voters decide whether to keep or remove them. Performance review is a way of evaluating the judges who seek to remain on the bench. A commission reviews the judges' job performances to determine if they are meeting judicial performance standards. The public uses the information provided from the performance reviews at the retention election to decide if the judges should remain in office. While a number of states use some form of performance review to evaluate their judges, Arizona also requires its judges to undergo a self-evaluation process.

Arizona voters approved merit selection in 1974. At that time, Arizonans voted to discontinue the popular election of appellate judges, Supreme Court justices, and trial court judges in the most populous counties. Three judicial nominating commissions were created to screen judicial candidates for nomination to the Governor for appointment (currently the Commission on Appellate Court Appointments, and the Maricopa and Pima County Commissions on Trial Court Appointments).

A constitutional amendment passed by Arizona voters in 1992 increased the number of non lawyer members on the nominating commissions, created the Commission on Judicial Performance Review to give the public information on the performance of judges, and opened all aspects of the process to the public. The amendment broadened public participation in selecting and reviewing judges.

Why did Arizona voters adopt the merit selection system?

The merit selection process promotes judicial impartiality and integrity because judges are not forced to solicit campaign contributions from, among others, attorneys who practice before them and people who might someday appear before them in court. In other states, judicial candidates have been forced to spend thousands, sometimes millions of dollars, to run an election campaign in heavily populated areas.

Merit selection has these advantages:

- Promotes Public Accountability -
Retention elections held under merit selection systems are an effective and appropriate means of holding judges accountable to the people. In addition to being subject to removal and other sanctions available for misbehavior by the Commission on Judicial Conduct, all merit system judges are regularly subject to removal from office by popular vote. By contrast, elected judges in other states can be removed by popular vote only if they are opposed in the general election. Since judges are frequently unopposed, the people often have less "control" over elected judges. Retention elections also allow the general public, bar associations and the media to focus on problems with a particular judge's performance, rather than on campaign rhetoric often heard in contested election campaigns. The Judicial Performance Review Commission assesses whether or not judges meet judicial performance standards through the collection of data and reports its findings to voters in the Secretary of State's Guide. The voters decide whether to retain the judges in office.

- Produces a Highly-Qualified Judiciary -
Merit selection judges are chosen from a large pool of applicants on the basis of their qualifications rather than on political signs and slogans. Qualified attorneys are often unwilling to risk their practices on the expensive effort that is required for election to office. Candidates who are unable to raise sufficient campaign contributions have less likelihood of winning office - no matter their qualifications. This results in a reduced field from which qualified candidates can be selected. Merit selection removes these barriers and also prevents qualified applicants from being screened out by political parties because of their lack of political credentials. Furthermore, it has the advantage of assuring that only qualified and competent applicants reach the bench.

- Fosters Impartiality -
Sometimes judges are required to make unpopular decisions in order to uphold the law. It is the job of the courts to make sure that the limits of power placed on each branch of government are observed. Judges who must depend on winning re-election to keep their jobs may be unable to remain impartial as they could be penalized by the voters for making one or two unpopular decisions.

- Encourages Diversity on the Bench -
An increased number of minorities and women have been appointed to the bench because merit selection encourages a larger pool of qualified candidates.

- Incorporates Representative Democracy -
Merit selection compensates for limited voter knowledge about, or interest in, even contested judicial elections. Under merit selection, a nominating commission, rather than the Governor alone, makes the initial determination of the applicants' qualifications. The majority of the commission members are non-lawyers appointed by the Governor with the approval of the Senate.

- Provides Continuous Improvement of the Judiciary -
Arizona's retention process includes a second important component, self evaluation. Midway through a judge's term in office, and again before a retention election, a judge meets with a team composed of one public volunteer, one attorney, and one judge appointed to assist the judge in setting performance goals. This makes self-evaluation and continuous improvement an integral component of the judiciary.

Why is the merit selection system only used to select judges for Maricopa, Pima and Pinal counties?

The Arizona constitution provides that merit selection will be used to select judges in counties with a population greater than 250,000 people. At this time only Maricopa, Pima and Pinal counties exceed that population threshold. Other counties may choose to adopt merit selection by popular vote. When a county's population exceeds 250,000 as documented by the U.S. Census, that county automatically enters the merit selection system. Currently, Superior Court judges are elected in non-partisan elections in all counties except Maricopa and Pima.

Are nominating commission meetings open to the public or are the nominees chosen behind closed doors?

All meetings are open to the public and all voting occurs in public session. Occasionally the commissions conduct a very brief part of a meeting in executive session, when two-thirds of the members vote to do so, to address sensitive information such as selection of the questions to be asked at interviews.

I am interested in applying. Can I contact one or more commission members before a vacancy to discuss the nominating process?

Yes, anyone who is interested in applying may contact any commission member with questions about the process. The commission rules encourage members to actively recruit qualified applicants and members often find that speaking with potential applicants individually or in group settings is a useful recruitment tool. However, the rules specifically prohibit any advance agreement to vote for a recruited applicant and also prohibit substantive communication with an applicant after an application is filed. At the same time, potential applicants should know that it is not necessary to have met with any commission member before applying in order to be considered.

Please contact us if you would like more information or to arrange for someone to speak with your group about the judicial nominating process.

What qualifications are the commissions looking for?

At a minimum, applicants must meet the residency, age and legal practice requirements established by law. The criteria considered by all commissions include integrity, legal knowledge and ability, professional experience, judicial temperament, communication skills, diligence, public service and impartiality. As an example, when looking at an applicant's temperament the commission members evaluate the applicant's common sense, compassion, decisiveness, firmness, humility, open-mindedness, patience, tact and understanding.

The Arizona constitution requires that the commissions consider the diversity of Arizona's population when making nominations. While the constitution directs that merit shall be the primary consideration in making nominations, the commissions take the additional directive to consider our population's diversity very seriously.

The commissions that nominate judges for the Superior Court also consider an applicant's trial, mediation and administrative experience. A trial court judge must speak effectively in order to be understood by the people appearing in court and by jurors, so the commission evaluates the applicant's ability to express legal concepts using plain language.

The commission that nominates judges for the appellate courts also evaluates the applicant's research, writing and interpersonal skills. Because of the decision-making process in the appellate courts, it is important that those judges be able to give and receive criticism of opinions and arguments without giving or taking personal offense. The commission considers an applicant's demonstrated ability to produce well-reasoned and understandable opinions.

As an applicant, should I have my references write or call the commission members?

The commission welcomes and needs written assessments of an applicant's skills, expertise, ethics and any other characteristic relevant to an individual's potential for a judgeship. Many applicants solicit letters of reference supporting their application. However, applicants are advised "more" is not necessarily "better." The commissions feel that ten to twelve substantive letters of reference are usually adequate to give the commission an insight into what others think about the applicant.

Letters about applicants should be sent to the commission in care of the Human Resources Department, Administrative Office of the Courts, 1501 W. Washington, Suite 227, Phoenix, AZ, 85007, as opposed to individual commission members. Written comments can also be sent to jnc@courts.az.gov. All letters and comments timely sent to those addresses will be forwarded to all commission members.

The commissions also welcome telephone calls to individual members from citizens who can provide candid insight into an applicant's qualifications. Please see the commission membership lists for direct contact information for each member.

Applicants should not personally contact commission members about their application during the nomination process. The commission rules prohibit members from individually interviewing applicants or committing in advance to vote for any applicant.

How can citizens participate in selecting, reviewing and voting on judges?

• Encourage highly qualified people to apply to serve as a judge.

• Volunteer to serve on a judicial nominating commission. Applications are available from the Governor's Office when volunteers are needed.

• Send your comments on applicants being considered for judgeships to a Judicial Nominating Commission.

• Volunteer to serve on the Commission on Judicial Performance Review (JPR) or a JPR Conference Team.

• Complete and return a judicial performance survey when you are in court as an attorney, juror, litigant or witness during the survey period.

• Send your comments on a judge's performance at any time to the JPR Commission.

• Be an informed voter. Read the findings and report of the JPR Commission before you vote in retention elections.

What information is available to the public about the people who apply for a judicial office?

All applications received by the commissions are posted on this website. They are also available for public review during business hours at the Administrative Office of the Courts, Human Resources Department, 1501 West Washington Street, Suite 227, Phoenix, AZ, 85007.

A small section of each application containing personal, family and reference information is kept confidential for use only by the commission and the Governor.

Can a member of the public contact the commission or an individual member to offer comments about an applicant?

Citizens familiar with an applicant are encouraged to share their comments with the commission via this website, or by sending an e-mail to jnc@courts.az.gov or a written comment to the commission in care of the Human Resources Department, Administrative Office of the Courts, 1501 West Washington Street, Suite 227, Phoenix, AZ, 85007.

The nominating process operates best when a full range of information is available to commission members. Members spend significant time contacting people in the community, lawyers and judges to discuss an applicant's qualifications. The commissions also welcome unsolicited comments. The commission rules do not allow members to accept anonymous comments, but members can assure confidentiality in those limited cases when it is appropriate, such as when the comment is about a supervisor or a colleague.

WHERE TO LOCATE INFORMATION ABOUT VACANCIES ON THE JUDICIAL NOMINATING COMMISSIONS bc.azgovernor.gov

APPELLATE AND TRIAL COURT COMMISSIONS ON APPOINTMENTS CONTACT INFORMATION

Commission on Appellate Court Appointments

Arizona Constitution, Article 6, § 36(A)

- 16 members
- Staggered 4-year terms.
- No more than 5 non-attorneys (public members) from the same political party.
- No more than 2 non-attorneys (public members from the same county.
- No more than 3 attorneys from the same political party.
- No more than 2 attorneys from the same county.

Public Members (10)

Public Member

Vacant Position as of February 2016

Maricopa County

Dr. Tracy Munsil (R)
tracy.munsil@arizonachristian.edu

Appointed: 03/24/2015
Confirmed: 04/02/2015
Expires: 01/21/2019

Jonathan Paton (R)
patonj@msn.com

Appointed: 12/14/2015
Confirmed: 02/02/2016
Expires: 01/20/2020

Navajo County

Joshua Hall (I)
P. O. Box 3769
Pinetop, AZ 85935
928-892-5258

Appointed: 10/01/2015
Confirmed: 03/08/2016
Expires: 01/21/2019

Pima County

Joseph Cuffari (R)
520-444-5407
josephcuffari@comcast.net

Appointed: 03/02/2016
Confirmed: 04/05/2016
Expires: 01/20/2020

Phillip Masciola (I)
pjmasciola@gmail.com

Appointed: 03/02/2016
Confirmed: 04/14/2016
Expires: 01/20/2020

Pinal County

Buchanan Davis (R)
davishb@gmail.com

Appointed: 03/02/2016
Confirmed: 04/14/2016
Expires: 01/21/2019

Charie Wallace (D)
12398 W. Greystone Dr.
Casa Grande, AZ 85294
chariewallace@hotmail.com

Appointed: 04/02/2014
Confirmed: 04/23/2014
Expires: 01/15/2018

Yuma County

Harry Hengl (I)
1319 W. Ridgeview Dr.
Yuma, AZ 85364
928-343-2400
hhengl@yahoo.com

Appointed: 04/02/2014
Confirmed: 04/23/2014
Expires: 01/16/2017

Phil Townsend (R)
4620 Laguna Dam Road
Yuma, AZ 85365
ptowns6902@aol.com

Appointed: 04/04/2016
Confirmed: Pending 2017 Session
Expires: 01/20/2020

Attorney Members (5)

Maricopa County

Monica Klapper (D)
40 N. Central Ave, Suite 1200
Phoenix, AZ 85004
602-514-7500
monica.klapper@usdoj.gov

Appointed: 07/14/2015
Confirmed: 02/16/2016
Expires: 01/21/2019

Benjamin Reeves (L)
One Arizona Center
400 E. Van Buren Street
Phoenix, AZ 85004-2202
602-382-6506

Appointed: 07/14/2015
Confirmed: 02/16/2016
Expires: 01/21/2019

Mohave County

William Ekstrom, Jr. (R)
P. O. Box 7000
Kingman, AZ 86402-7000
928-753-0770

Appointed: 04/02/2014
Confirmed: 04/23/2014
Expires: 01/15/2018

Pima County

Michael “Mick” Rusing (R)
Rusing, Lopez & Lizardi PLLC
6363 N. Swan Road, Suite 151
Tucson, AZ 85718
520-529-4268
mrusing@rllaz.com

Appointed: 04/02/2014
Confirmed: 04/23/2014
Expires: 01/16/2017

Yavapai County

Krista Carman (R)
246 S. Cortez St.
Prescott, AZ 86305
928-445-8056

Appointed: 04/02/2014
Confirmed: 04/23/2014
Expires: 01/15/2018

Chair
The Honorable Scott Bales
Chief Justice
Arizona Supreme Court
Phone: (602) 452-3534

For information, contact:

Vanessa Haney
Program Manager
vhaney@courts.az.gov
602-452-3098

Blanca Moreno
Program Specialist
bmoreno@courts.az.gov
602-452-3308

Arizona Supreme Court
1501 W. Washington St., Suite 221
Phoenix, AZ 85007
602-452-3652 FAX

Maricopa County Commission on Trial Court Appointments

Arizona Constitution, Article 6, § 41

- 16 members
- Staggered 4-year terms.
- No more than 2 public members (non-attorneys) from each supervisorial district, who shall not be of the same political party.
- No more than 3 attorneys from the same political party, none of whom shall reside in the same supervisorial district.

Public Members (10)

Supervisorial District 1

Warde Nichols (R)
warde@claruscompanies.com

Appointed: 01/22/2016
Confirmed: 04/05/2016
Expires: 01/20/2020

Andrea Donnellan (I)
adonnellan51@gmail.com

Appointed 04/04/2016
Confirmed: Pending 2017 Session
Expires: 01/21/2019

Supervisorial District 2

Leonard Gilroy (I)
713-927-8777
lengilroy@gmail.com

Appointed: 06/03/2016
Confirmed: Pending 2017 Session
Expires: 01/20/2020

William Hughes (R)
bhughes@glassratner.com

Appointed: 01/20/2014
Confirmed: 04/23/2014
Expires: 01/15/2018

Supervisorial District 3

Amanda Reeve (R)
400 E. Van Buren St. # 1000
Phoenix, AZ 85004
602-382-6177
areeve@swlaw.com

Appointed: 01/16/2017
Confirmed: Pending 2017 Session
Expires: 01/18/2021

Vacant Position as of June 2016

Supervisorial District 4

Vacant Position as of August 2016

Paul Senseman (R)
602-274-4244
psenseman@policydevelopmentgroup.com

Appointed: 01/22/2016
Confirmed: 04/05/2016
Expires: 01/20/2020

Supervisorial District 5

Steven Perica (D)
602-228-7863
sperica01@gmail.com

Appointed: 04/11/2014
Confirmed: 04/23/2014
Expires: 01/15/2018

Barry Aarons (R)
4315 N. 12th Street, Suite 200
Phoenix, AZ 85004
602-315-0155
aarons1231@aol.com

Appointed: 04/11/2013
Confirmed: 02/11/2014
Expires: 01/16/2017

Attorney Members (5)

Supervisorial District 1

Barbara Marshall (R)
301 W. Jefferson, 8th Floor
Phoenix, AZ 85003
602-506-3411
marshall@mcao.maricopa.gov

Appointed: 04/02/2014
Confirmed: 04/23/2014
Expires: 01/15/2018

Supervisorial District 2

Ron Reinstein (I)
1501 W. Washington St.
Phoenix, Arizona 85007
602-452-3138
rreinstein@courts.az.gov

Appointed: 01/21/2013
Confirmed: 04/08/2014
Expires: 01/16/2017

Supervisorial District 3

Tommy Richardson (I)
tommy@friedlrichardson.com

Appointed: 03/18/2011
Confirmed: 04/12/2011
Expires: 01/19/2015

Supervisorial District 4

Walt Opaska (R)
15059 N. Scottsdale Rd. #400
Scottsdale, AZ 85254
480-308-3607
walt.opaska@jda.com

Appointed: 06/09/2015
Confirmed: 04/14/2016
Expires: 01/21/2019

Supervisorial District 5

Robert Dalager (R)
602-200-6777
rob@p3gr.com

Appointed: 01/20/2014
Confirmed: 04/23/2014
Expires: 01/15/2018

Acting Chair
The Honorable Robert Brutinel
Justice
Arizona Supreme Court
Phone: (602) 452-3531

For information, contact:

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Program Manager
vhaney@courts.az.gov
602-452-3098

Blanca Moreno
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bmoreno@courts.az.gov
602-452-3308

Arizona Supreme Court
1501 W. Washington St., Suite 221
Phoenix, AZ 85007
602-452-3652 FAX

Pima County Commission on Trial Court Appointments

Arizona Constitution, Article 6, § 41

- 16 members
- Staggered 4-year terms.
- No more than 2 public members (non-attorneys) from each supervisorial district, who shall not be of the same political party.
- No more than 3 attorneys from the same political party, none of whom shall reside in the same supervisorial district.

Public Members (10)

Supervisorial District 1

Marian Hill (D)
rnmhill@aol.com

Appointed: 03/19/2015
Confirmed: 03/01/2016
Expires: 01/19/2019

Julie Katsel (R)
jmail@katsel.com

Appointed: 10/12/2016
Confirmed: Pending 2017 Session
Expires: 01/20/2020

Supervisorial District 2

Cassia Lundin (D)
2208 East 21 Street
Tucson, AZ 85719
520-904-9281

Appointed: 01/18/2016
Confirmed: Pending 2017 Session
Expires: 01/20/2020

Vacant Position (Not filled since created in 1992)

Supervisorial District 3

John Barry (I)
520-275-1439

Appointed: 03/24/2016
Confirmed: Pending 2017 Session
Expires: 01/21/2019

Lynn Cuffari (R)
520-751-8300
lynncuffari@comcast.net

Appointed: 03/06/2014
Confirmed: 04/23/2015
Expires: 01/15/2018

Supervisorial District 4

Michael Hennessy (D)
520-882-4343
mike@burrishennessy.com

Appointed: 04/11/2013
Confirmed: 04/08/2014
Expires: 01/16/2017

Richard Schaefer (R)
3430 East Sunrise Drive, Suite 250
Tucson, Arizona 85718
520-615-4324
richard.Schaefer@RBC.com

Appointed: 03/24/2016
Confirmed: 04/14/2016
Expires: 01/20/2020

Supervisorial District 5

Vacant Position as of April 2014

Vacant Position as of May 2010

Attorney Members (5)

Supervisorial District 1

Micah Schmit (I)
aboutschmit@hotmail.com

Appointed: 10/12/2016
Confirmed: Pending 2017 Session
Expires: 01/21/2019

Supervisorial District 2

Nanette Warner (D)
5363 E. Pima St., Suite 100
Tucson, AZ 85712
520-325-4200
520-325-4224 Fax
nmwarner1985@gmail.com

Appointed: 07/14/2015
Confirmed: 04/14/2016
Expires: 01/16/2017

Supervisorial District 3

Michael Boreale (R)
290 N. Meyer Ave
Tucson, AZ 85701
520-334-2069
520-441-2797 Fax

Appointed: 06/09/2015
Confirmed: 04/14/2016
Expires: 01/21/2019

Supervisorial District 4

Gioia Sanderson (R)
Tucson City Attorney's Office
255 West Alameda, 7th Floor
Tucson, AZ 85726
gioia.sanderson@tucsonaz.gov

Appointed: 01/20/2014
Confirmed: 04/08/2014
Expires: 01/15/2018

Supervisorial District 5

Sherry Downer (R)
Law Office of Sherry Janssen Downer PLLC
34 W. Franklin St.
Tucson, AZ 85701
520-207-2311
520-844-8011 Fax
sherry@sherrydownerlaw.com

Appointed: 04/17/2014
Confirmed: 04/23/2014
Expires: 01/15/2018

Pima County Commission on Trial Court Appointments

Acting Chair
The Honorable Ann A. Scott Timmer
Justice
Arizona Supreme Court
Phone: (602) 452-3532

For information, contact:

Vanessa Haney
Program Manager
vhaney@courts.az.gov
602-452-3098

Blanca Moreno
Program Specialist
bmoreno@courts.az.gov
602-452-3308

Arizona Supreme Court
1501 W. Washington St., Suite 221
Phoenix, AZ 85007
602-452-3652 FAX

Pinal County Commission on Trial Court Appointments

Arizona Constitution, Article 6, § 41

- 16 members
- Staggered 4-year terms.
- No more than 2 public members (non-attorneys) from each supervisorial district, who shall not be of the same political party.
- No more than 3 attorneys from the same political party, none of whom shall reside in the same supervisorial district.

Public Members (10)

Supervisorial District 1

Laura Calvert (R)
P. O. Box 5509
Oracle, AZ 85623

Appointed: 10/13/2016
Confirmed: Pending 2017 Session
Expires: 01/21/2019

Vacant Position

Supervisorial District 2

Vacant Position as of June 2016

Vacant Position

Supervisorial District 3

Vacant Position as of November 2014

Jim Hartdegen (R)
11515 N. Fantail Trl.
Casa Grande, AZ 52194
thg@jv85194.com

Appointed: 07/08/2016
Confirmed: Pending 2017 Session
Expires: 01/20/2020

Supervisorial District 4

Martin Hermanson (R)
22183 N. Reinbold Drive
Maricopa, AZ 85138
martyhermanson@yahoo.com

Appointed: 04/17/2013
Confirmed: 04/10/2014
Expires: 01/16/2017

David Mix (I)
dmix007@gmail.com

Appointed: 04/22/2013
Confirmed: 04/08/2014
Expires: 01/18/2016

Supervisorial District 5

Vacant Position as of May 2016

James Stephens (R)
3700 South Ironwood, #156
Apache Junction, AZ 85120
480-213-9113

Appointed: 04/19/2013
Confirmed: 04/08/2014
Expires: 01/19/2015

Pinal County Commission on Trial Court Appointments

Attorney Members (5)

Supervisorial District 1

Cody Weagant (D)
P. O. Box 12363
Casa Grande, AZ 85130
520-518-5168
520-876-0173 Fax

Appointed: 07/22/2015
Confirmed: 03/08/2016
Expires: 01/21/2019

Supervisorial District 2

Vacant Position as of June 2016

Supervisorial District 3

Stephen Cooper (R)
P.O. Box 15005
221 N. Florence Street
Casa Grande, AZ 85130
520-836-8265
src@centralazlaw.com

Appointed: 06/20/2013
Confirmed: 04/23/2014
Expires: 01/16/2017

Supervisorial District 4

Tiffany Shedd (I)
520-314-1861
tshedd@sheddlawfirm.com

Appointed 12/08/2016
Confirmed Pending 2017 Session
Expires: 01/20/2020

Supervisorial District 5

James Dutson (R)
228 N. Ironwood Drive, Ste. #102
Apache Junction, AZ 85120
480-983-0059
james.dutson@azbar.org

Appointed: 03/20/2014
Confirmed: 04/23/2014
Expires: 01/15/2018

Acting Chair
The Honorable Clint Bolick
Justice
Arizona Supreme Court
Phone: (602) 452-3535

For information, contact:

Vanessa Haney
Program Manager
vhaney@courts.az.gov
602-452-3098

Blanca Moreno
Program Specialist
bmoreno@courts.az.gov
602-452-3308

Arizona Supreme Court
1501 W. Washington St., Suite 221
Phoenix, AZ 85007
602-452-3652 FAX

SAMPLE APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

APPLICATION INSTRUCTIONS

Note: Canon 4 of the Code of Judicial Conduct applies to candidates for judicial office. See Ariz. Sup. Ct. R. 81, Application.

1. **This application is a public record. As such, all information except that specifically denoted herein as confidential (Section II) is available for public inspection and may be posted at the Commission's website. Additionally, completed applications, including the confidential portion, are forwarded to the Governor upon nomination by the Commission. Although the Commission asks the Governor to maintain the confidential portions of this application as confidential, it cannot compel the Governor to do so.**

2. Do not include these instructions or the Judicial Vacancy Announcement with the completed application form.

   Applicants must download or request the application form in electronic format. To download the form, go to the Judicial Department website (http://www.azcourts.gov/jnc). To request the form, send your request to: jnc@courts.az.gov.

3. Completely answer all questions. If a question does not apply, write "Not applicable" in the space provided. If information is not available, write "Not available" and state the reason(s) the information is not available. Sign the Waiver of Confidentiality and Release of Information Sheet.

4. Questions in the application ask about legal matters you have handled as a lawyer. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential section of this application.

5. You may reveal contact information for any individual in the confidential section of this application.

6. File with the Administrative Office of the Supreme Court a signed original application with all attachments and a .pdf version of the application and attachments (the "application packet"). The original application may include tabbed sections and must be bound a rubber band or clip; do not submit it with a cover or in a notebook. Submit the .pdf version in a searchable format and on a disk. You are encouraged to insert bookmarks into the .pdf version for ease of navigation through the application and attachments. The original application is sent to the Governor if an applicant is nominated. The signed original application governs if discrepancies exist with the .pdf version.

The application packet must be filed by 3:00 p.m. on the deadline date, with:

Administrative Office of the Courts
Human Resources Department
1501 W. Washington, Suite 221
Phoenix, AZ 85007

The Administrative Office of the Courts cannot be responsible for applications not received; if the U.S. mail is used, applications should be sent by registered or certified mail, return receipt requested. If you would like acknowledgment of receipt of the application, enclose a self-addressed, stamped envelope.

7. The deadline for applications is stated in the Judicial Vacancy Announcement and at the top of the application form. Applications should be submitted by the stated deadline.

INSTRUCTIONS FOR LETTERS OF REFERENCE AND TELEPHONE CALLS

The Commission welcomes and needs written assessments of the applicants' skills, expertise, ethics, and any other characteristic relevant to an individual's qualifications to be a judge. Many applicants solicit letters of reference. "More" is not necessarily "better." Applicants are encouraged to solicit ten to twelve substantive letters of reference. This number provides sufficient insight into the applicant's potential for serving as an outstanding judge.

Letters regarding applicants should be sent to the Commission in care of the Human Resources Department, Administrative Office of the Courts, 1501 W. Washington, Suite 221, Phoenix, AZ, 85007, no later than three business days before the screening and/or interview meetings. All letters timely submitted to that address will be forwarded to all commissioners.

Individual commissioners welcome letters, e-mails, and telephone calls no later than three business days before the screening and/or interview meetings, from individuals who can provide candid insight into an applicant's qualifications. But commissioners do not need or desire "phone banks" on behalf of applicants. Again, more is not necessarily better. All letters, e-mails, and verbal communications about an applicant may be disclosed to the applicant and the public unless a source requests confidentiality as to the applicant and/or the public. All such communications must be disclosed to the entire Commission, except that the source may request that his or her identity be kept confidential.

Applicants should not personally contact commissioners regarding their application or the nomination process from the time the application is submitted until the individual's application is no longer under consideration. Applicants whose applications have rolled

over from a previous vacancy may communicate with commissioners from the date the application was released from consideration in the previous vacancy until the date the new application period closes. Commissioners cannot individually interview applicants or commit in advance to vote for any applicant.

INSTRUCTIONS FOR INTERVIEWS

Subject to applicable rules, applicants are interviewed in public session. In fairness to other applicants, an applicant should not attend earlier scheduled interviews of other applicants or otherwise seek out or accept information about the content of such interviews.

SUMMARY OF THE NOMINATION PROCESS

1. **Application Period:** The Commission announces the vacancy. The press release announcing the vacancy advises where applications forms can be obtained and the deadline for submitting applications. Potential applicants are given a Judicial Vacancy Announcement, which provides specific information about the nomination process for that particular vacancy.

2. **Public Notice:** The date, time and location of the commission's screening meeting are usually given in the Judicial Vacancy Announcement. The names of applicants are made available to the public. The public is invited to attend the screening meeting and may submit oral or written comments. Section I (public portion) of all applications may be posted on the commission's website.

3. **Screening Meeting:** At the screening meeting the Commission reviews all applications received and the results of any investigation conducted by commissioners. Voting to determine the applicants to be interviewed is conducted in public session.

4. **Notification to Applicants:** Applicants selected for interview are notified by letter of the date, time and location of the interviews. Applicants not selected for interview are notified by letter.

5. **Public Notice:** The Commission announces the names of the applicants to be interviewed and invites oral or written public comment regarding their qualifications.

6. **Investigation:** Further investigation of the applicants to be interviewed is conducted. The credit, criminal, and professional discipline histories of the applicants are requested, and the results are given to the commissioners. The commissioners seek comments from judges, attorneys and the community.

7. **Interviews:** Subject to applicable rules, the applicant is interviewed in public session. After all the interviews are completed the Commission discusses the relative qualifications of all the applicants. Voting to determine the nominees to be submitted to the Governor is conducted in public session.

8. **Nominations:** Further investigation of the applicants to be interviewed is conducted. Applicants authorize the committees of the State Bar of Arizona, all bar associations, references, employers, credit reporting agencies, business and professional associations, and all government agencies to release to the commission any information requested by the commission in connection with their application. The commissioners also seek comments from judges, attorneys and the community. Applicants are required to furnish a full set of fingerprints.

9. **Public Notice:** The names of the nominees are announced. Each nominee's city of residence, political party registration, and current employment are included in the announcement.

10. **Records Retention:** The commissioners' personal notes are not public information. The original application packet and all documents received with respect to the application are maintained and destroyed pursuant to Rule 6, Uniform Rules of Procedure for the Commissions on Appellate and Trial Court Appointments. At an applicant's request, the original application, the .pdf version, and any supplemental material submitted by the applicant will be returned to the applicant during the one year retention period set forth in Rule 6. Otherwise, all documents and the .pdf file shall be retained and provided to the Commission that originally considered the application if a new vacancy arises during the one year period. The applicant can withdraw his or her application for any or all vacancies occurring during that period by notifying the Commission in writing of the withdrawal. After the one year period, any applications, .pdf files, and supplemental materials retained by the Commission shall be destroyed and deleted.

11. **Minutes:** Minutes of all commission meetings are available on request for five years from the date the names of nominees are submitted to the Governor.

APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 71)

PERSONAL INFORMATION

1. Full Name:

2. Have you ever used or been known by any other name? _____ If so, state name:

3. Office Address:

4. How long have you lived in Arizona? What is your home zip code?

5. Identify the county you reside in and the years of your residency.

6. If nominated, will you be 30 years old before taking office? ☐ yes ☐no

   If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? ☐ yes ☐no

7. List your present and any former political party registrations and approximate dates of each:

   (The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender:

Race/Ethnicity:_____

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

10. List major and minor fields of study and extracurricular activities.

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? _____ If so, explain.

    b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? _____ If so, explain any circumstances that may have hindered your performance.

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER DATES LOCATION

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

17. List other areas of law in which you have practiced.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

20. Have you practiced in adversary proceedings before administrative boards or commissions? _____ If so, state:

    a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

    b. The approximate number of these matters in which you appeared as:

       Sole Counsel: _____

       Chief Counsel: _____

       Associate Counsel: _____

21. Have you handled any matters that have been arbitrated or mediated? _____ If so, state the approximate number of these matters in which you were involved as:

       Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case: and (4) a statement of any particular significance of the case.

23. Have you represented clients in litigation in Federal or state trial courts? _____
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: _____

State Courts of Record: _____

Municipal/Justice Courts: _____

The approximate percentage of those cases which have been:

Civil: _____

Criminal: _____

The approximate number of those cases in which you were:

Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: _____

You argued a motion described above _____

You made a contested court appearance (other than as set forth in the above response) _____

You negotiated a settlement: _____

The court rendered judgment after trial: _____

A jury rendered a verdict: _____

The number of cases you have taken to trial:

Limited jurisdiction court _____

Superior court _____

Federal district court _____

Jury _____

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

24. Have you practiced in the Federal or state appellate courts? _____ If so, state:

The approximate number of your appeals which have been:

Civil: _____

Criminal: _____

Other: _____

The approximate number of matters in which you appeared:

As counsel of record on the brief:

Personally in oral argument:

25. Have you served as a judicial law clerk or staff attorney to a court? _____ If so, identify the court, judge, and the dates of service and describe your role.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case:

(1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

29. Describe any additional professional experience you would like to bring to the Commission's attention.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? _____ If so, give details, including dates.

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? _____ If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

    Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed?

_____ If not, explain your decision.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them?_____ If not, explain.

33. Have you paid all state, federal and local taxes when due? _____ If not, explain.

34. Are there currently any judgments or tax liens outstanding against you? _____ If so, explain.

35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? _____ If so, explain.

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? _____ If so, identify the nature of the case, your role, the court, and the ultimate disposition.

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest?_____ If so, explain.

38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? _____ If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? _____ If so, provide details.

40. Have you ever been arrested for, charged with, and/or convicted of any felony,

misdemeanor, or Uniform Code of Military Justice violation? _____

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

44. List and describe any sanctions imposed upon you by any court.

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? _____ If so, in each case, state in detail the circumstances and the outcome.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? _____ If your answer is "Yes," explain in detail.

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? _____ If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? _____ If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you

submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? _____ If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties,

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? _____ If so, list with the citations and dates.

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? _____ If not, explain.

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? _____ If so, describe.

53. List memberships and activities in professional organizations, including offices held and dates.

    Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? _____

    List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

54. Describe the nature and dates of any relevant community or public service you have performed.

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

    Have you ever been removed or resigned from office before your term expired? ___ If so, explain.

    Have you voted in all general elections held during the last 10 years? _____ If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? _____

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the county's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? _____ If not, explain.

62. Attach a brief statement explaining why you are seeking this position.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

-- INSERT PAGE BREAK HERE TO START SECTION II (CONFIDENTIAL INFORMATION) ON NEW PAGE --

SECTION II: CONFIDENTIAL INFORMATION (QUESTIONS 72 THROUGH 88)

PERSONAL INFORMATION

66. Home Address:

67. E-mail Address:

68. Office Telephone:

69. Home Telephone:

70. Cell Phone Number:

71. Date of Birth:

72. Place of Birth:

73. Social Security Number:

74. State Bar Number:

75. Driver's License Number:

76. List all public social media accounts and public blogs:

REFERENCES

77. List the names, addresses, telephone numbers and e-mail addresses of three references who are lawyers or judges, and who are familiar with your professional activities, who would enthusiastically recommend you as qualified to serve on the judiciary.

78. List the names, addresses, telephone numbers and e-mail addresses of three persons who are neither lawyers nor judges, with whom you have had contact other than professionally, who would enthusiastically recommend you as qualified to serve on the judiciary.

79. List the names, addresses, telephone numbers and e-mail addresses of four lawyers with whom you have continuously dealt on substantive matters as adversaries in the last five years. If you have been a full-time judicial or quasi-judicial officer for the last five years, list the names, addresses, telephone numbers and e-mail addresses of four lawyers who have frequently appeared before you in contested matters.

80. List the names, addresses, telephone numbers and e-mail addresses of three references who have served with you and could comment on your participation in bar or professional association committees or activities.

81. List the names, addresses, telephone numbers and e-mail addresses of three references who have served with you and could comment on your participation in community organizations or activities.

82. **If your application "rolls over" for future openings, you must provide an updated list of current contact information for all listed references before the application periods for such openings close.**

-- INSERT PAGE BREAK AFTER ALL CONFIDENTIAL CONTENTS, TO START REMAINDER OF APPLICATION (INCLUDING ATTACHMENTS) ON NEW PAGE --

WAIVER OF CONFIDENTIALITY AND RELEASE OF INFORMATION

I _____ hereby authorize the committees of the State Bar of Arizona, all bar associations, references, employers, credit reporting agencies, business and professional associations, and all government agencies to release to the Commission any information requested by the Commission in connection with the processing of my request for consideration as a candidate for judicial office. I understand that the fact that I have applied and all responses provided in Section I of the application are not confidential and the information provided may be verified and is subject to public disclosure.

Upon submission of this application to the Commission, I expressly consent to the release of my name and the contents of Section I of this application to the public. Furthermore, I waive the benefits of any statute, rule, or regulation prescribing confidentiality of records or information that is disclosed in Section I. If the commission nominates me for a judicial appointment, I authorize the release of the information contained in my entire application file to the Governor of the State of Arizona with the understanding that it may become public record.

All of the statements made in this application are true and correct to the best of my knowledge, and submission expresses my willingness to accept appointment to the judicial position for which I have applied, should I be selected by the Governor of the State of Arizona.

_____ _____

(Signature) (Date)

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? _____

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the county's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? _____ If not, explain.

62. Attach a brief statement explaining why you are seeking this position.

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REFERENCES

77. List the names, addresses, telephone numbers and e-mail addresses of three references who are lawyers or judges, and who are familiar with your professional activities, who would enthusiastically recommend you as qualified to serve on the judiciary.

78. List the names, addresses, telephone numbers and e-mail addresses of three persons who are neither lawyers nor judges, with whom you have had contact other than professionally, who would enthusiastically recommend you as qualified to serve on the judiciary.

79. List the names, addresses, telephone numbers and e-mail addresses of four lawyers with whom you have continuously dealt on substantive matters as adversaries in the last five years. If you have been a full-time judicial or quasi-judicial officer for the last five years, list the names, addresses, telephone numbers and e-mail addresses of four lawyers who have frequently appeared before you in contested matters.

80. List the names, addresses, telephone numbers and e-mail addresses of three references who have served with you and could comment on your participation in bar or professional association committees or activities.

81. List the names, addresses, telephone numbers and e-mail addresses of three references who have served with you and could comment on your participation in community organizations or activities.

82. **If your application "rolls over" for future openings, you must provide an updated list of current contact information for all listed references before the application periods for such openings close.**

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WAIVER OF CONFIDENTIALITY AND RELEASE OF INFORMATION

I _____ hereby authorize the committees of the State Bar of Arizona, all bar associations, references, employers, credit reporting agencies, business and professional associations, and all government agencies to release to the Commission any information requested by the Commission in connection with the processing of my request for consideration as a candidate for judicial office. I understand that the fact that I have applied and all responses provided in Section I of the application are not confidential and the information provided may be verified and is subject to public disclosure.

Upon submission of this application to the Commission, I expressly consent to the release of my name and the contents of Section I of this application to the public. Furthermore, I waive the benefits of any statute, rule, or regulation prescribing confidentiality of records or information that is disclosed in Section I. If the commission nominates me for a judicial appointment, I authorize the release of the information contained in my entire application file to the Governor of the State of Arizona with the understanding that it may become public record.

All of the statements made in this application are true and correct to the best of my knowledge, and submission expresses my willingness to accept appointment to the judicial position for which I have applied, should I be selected by the Governor of the State of Arizona.

_____ _____

(Signature) (Date)

RULES OF PROCEDURE FOR THE JUDICIAL SELECTION ADVISORY BOARD FOR THE CITY OF PHOENIX MUNICIPAL

Rules of Procedure
for the Judicial Selection Advisory Board
for the City of Phoenix Municipal Court

Rule 1. Board Chair and Vice-Chair.

The board members shall elect a chair and a vice-chair at the first meeting of each calendar year. The chair shall preside at all meetings of the board. In the chair's absence, the vice-chair shall preside and if both the chair and vice-chair are absent, the board shall choose a member to be acting chair.

Rule 2. Board Secretary.

The board shall choose one of its members as secretary. It shall be the duty of the secretary to prepare and keep the minutes of all meetings and to send information packets to other members prior to a meeting. In the secretary's absence, the board shall choose a member to be acting secretary. Some or all of the secretary's duties may be delegated to an individual designated by the board as a staff person.

Rule 3. Board Members.

(A) A board member shall consider each applicant for judicial office in an impartial, objective manner. A board member shall not consider the race, ethnicity, religion or gender of an applicant.

(B) If a board member knows of any facts which may cause or appear to cause a conflict of interest with an applicant, the member shall report such facts to the board for its decision.

(C) A board member shall discourage any person or organization attempting to influence the member with facts or opinions other than those relevant to the judicial qualifications of the applicants.

Rule 4. Board Meetings.

(A) All meetings of the board shall comply with the Arizona Open Meeting Law (Ariz. Rev. Stat. Ann. section 38-431 et seq.).

(B) The chair shall issue a call for a meeting promptly upon learning of the existence or anticipated existence of a vacancy in judicial office within the jurisdiction of the board or upon learning of the termination or anticipated termination of an existing term of office.

(C) At least one meeting each year shall include as an agenda item a review of the board's rules of procedure.

(D) A quorum for the board shall be four (4) board members. The board may act on any matter by a majority vote of the board members present and voting on the matter.

Rule 5. Recruitment of Applicants.

Board members shall actively seek and encourage qualified individuals to apply for judicial office. Board members should keep in mind that qualified persons often will not actively seek judicial appointment and, thus, that it is incumbent upon the board members to seek well-qualified persons and encourage them to agree to accept nomination even if a board member ultimately may be unable to vote, pursuant to Rule 3(B), for this person's nomination.

Rule 6. Procedure for Recommendation for Reappointment.

(A) The chair shall notify the board and the mayor and city council or the appropriate subcommittee in writing at least sixty (60) days in advance of the expiration of an existing term of a city judge.

(B) The board shall hold a meeting to determine whether to recommend to the mayor and city council the reappointment of a city judge whose term expires.

(C) All interested members of the public are encouraged to comment on the reappointment of city judges. The board shall advertise notice of reappointment meetings in a daily newspaper of general circulation in Maricopa County and in a professional newspaper at least once a week for two successive weeks. The publication shall be done no more than forty-five (45) days and not less than twenty (20) days prior to the meeting date. The notice shall advise the public that comments or information must be received no later than the public hearing date in order to be considered. Any information provided after that date must be sent directly to the mayor and city council.

(D) In addition to other evaluation information received, the board shall make inquiry of the Commission on Judicial Conduct for any adverse rulings against a city judge scheduled for reappointment consideration.

(E) The board's written recommendation concerning the reappointment of a city judge shall be delivered to the mayor and city council or an appropriate subcommittee of the council as soon as possible after the vote of the Board and shall state that the Board does or does not recommend reappointment.

(F) The board shall meet annually to determine whether to recommend to the mayor and city council or the appropriate subcommittee the reappointment of the chief presiding judge for another one-year term in that position. The board shall consider the qualifications required for this position separately from the regular reappointment of that judge. All other requirements of this rule shall apply to a chief presiding judge reappointment meeting. The board may combine a regular four-year term reappointment meeting with a chief presiding judge reappointment meeting as long as the matters are considered separately.

Rule 7. Application Procedures for New Vacancies.

(A) Upon learning from the chair that a vacancy exists, the board shall begin the process of screening applicants.

(B) Every applicant shall complete and file an application for appointment with the office of the chief presiding judge, using a form approved by the chief presiding judge. Every applicant shall complete and file an original and fifteen copies. As an alternative, the court may provide for the electronic filing of applications and supplemental material in a format specified by the chief presiding judge. The application form shall consist of two sections, including “Section I” for public information, and “Section II” which will be reserved for confidential information not to be made available to the public.

(C) Applications and documents on file for each judicial vacancy shall be provided to the board members at least seven days prior to the first board meeting concerning each vacancy.

(D) Except as provided in subsection (2) below, information provided to the board by the applicant or by a third-party shall be presumed to be available to the public.

(1) The following shall be available to the public:

(a) The applicant's name, occupation, employer, relevant work history, any other information provided in response to section I of the application form, and any supplemental materials submitted by the applicant relating to Section I of the application form;

(b) Any information that is specifically authorized for release by the source of that information.

(2) The following information shall remain confidential throughout the application and appointment process until destroyed pursuant to the applicable municipal court document retention schedule.

(a) The applicant's home address, information regarding applicant's family, and all other information that is provided to the board in response to questions contained in Section II of the application form;

(b) Information provided in writing or orally to the board by third parties regarding an applicant, and the third party's identity, unless the third party specifically states in writing that the information may be made public;

(c) Notes of the individual board members that are generated for personal use only and not published to other members of the board;

(d) Any information that is provided to a member of the board after a promise of confidentiality is properly extended to the source by that board member pursuant to rule 8(B) or 9(D) of these rules;

(e) Any information obtained by or submitted to the board that is made confidential by other provisions of law.

E. The original application of a person not appointed by the Mayor and City Council shall be retained for six months after the application deadline date stated on the first page of the judicial application. All documents received with respect to the person’s application shall also be retained for six months. At the applicant’s request, the original application and any supplemental material submitted by the applicant may be returned to the applicant at any time during the six months. Unless earlier returned to the applicant, all documents shall be retained on file and provided to the board for any vacancy for which the person applies during the six-month period the documents

remain on file, unless the applicant states in writing that he or she does not wish to apply for any subsequent vacancy occurring within the six-month period. If the application has not been returned to the applicant and is not being considered for any other pending vacancy, at the expiration of the six-month period the application and all supplemental materials submitted by the applicant or any third party shall be destroyed.

Rule 8. Investigation of applicants, initial screening of applications and selection of interviewees.

(A) Public notice and comment: Names of applicants and the date, place and time of the board meeting to screen applications shall be made available to the public. Public notice shall include, but is not limited to posting of applicant names and Section I of each applicant's application on the City of Phoenix and municipal court websites. Comments about applicants should be made, if feasible, at least three working days before the screening meaning as follows: (i) in writing to the office of the chief presiding judge of the municipal court for distribution by staff to the board, or (ii) verbally to board members.

(B) Investigation of applicants: As soon as board members receive applications and documents on file, they shall begin investigating the background and qualifications of applicants. Using the application is a starting point, board members may contact as many of the individuals and institutions knowledgeable about the applicant as deemed beneficial. Board members shall encourage sources to allow their names to be disclosed to the board and to the applicant, but may accept comments about an applicant from a source that requests confidentiality as to the board and/or as to the applicant, if the board member believes it is in the best interests of the public to accept such comment. When a comment given to a board member concerning an applicant contains an opinion as to the applicant's character, fitness or competency, the board member shall inquire as to the factual basis, circumstances and examples which support the opinion and as to names of others whom the source of the opinion believes might have knowledge about the opinion.

(c) Screening meeting:

(1) General: The board shall meet for the purpose of deciding which applicants are to be interviewed.

(2) Public comment: Members of the public are invited to comment orally at the screening meeting. The chair shall allocate equal time at the screening meeting for relevant comment on each applicant. The chair may terminate comments which exceed the time allocated or which are irrelevant to the qualifications of applicants. The chair may also limit duplicative comments regarding an applicant.

(3) Executive session: Upon completion of receipt of public comment, the board may hold an executive session upon a majority vote of the board members in attendance in order to promote open and frank discussion of applicant qualifications. Each board member shall disclose comments and other information concerning each applicant relied upon by that board member in evaluating that applicant. If confidentiality has been promised to a source,

board members shall consider whether less weight should be given to the information. Information received in the course of the investigation that is material and adverse and is reasonably presume to have a potential to influence the decision of the board shall be treated in accordance with paragraph 4 and 5 below. The qualifications of each applicant shall be discussed and evaluated.

(4) Opinion comments: Opinions that are not supported with factual basis, circumstances or a second source, shall not be disclosed at the board meeting. Opinions that are supported with factual basis or circumstances or a second source may be shared with the board at the meeting provided that the supporting information is also disclosed.

(5) Anonymous comments: No information from an anonymous source shall be considered by any board member or shared with any other board member at any point in the screening process.

(6) Selection of applicants for interviews: Upon returning to public session, the chair shall invite board members to nominate applicants to be placed on a tentative list of those to be interviewed. Such a nomination requires the concurrence of one additional board member. The name of each applicant who receives a vote of the majority of the board members present and voting shall be placed on a tentative list of applicants to be interviewed. Following this procedure and with or without an additional executive session or sessions, the tentative list of interviewees may be added to or subtracted from by public vote until a final list of applicants to be interviewed is determined.

(7) Notification of applicants: Upon determination of a final list of applicants to be interviewed, all applicants shall be promptly notified, and the names of applicants not selected and their applications shall be removed from the city's website.

Rule 9. Selection of Nominees.

(A) The Board shall interview each candidate in accordance with the Arizona Open Meeting Law. The board shall vote on the candidates in an open meeting in accordance with the Arizona Open Meeting Law, selecting three or more nominee(s) to be sent to the mayor and city council.

(B) Public notice and comment: Names of applicants selected for interview and the date, place, and time of the board meeting to interview applicants shall be made available to the public. The public, the judiciary, the State Bar of Arizona, and the Maricopa County Bar Association are invited to provide comments regarding these applicants. Comments about applicants should be made, if feasible, at least three working days before the interview meeting as follows: (i) in writing to the office of the chief presiding judge for distribution by staff to the board, or (ii) verbally to board members.

(C) Investigation of applicants selected for interviews: Board members shall further evaluate selected applicants by contacting as many individuals, community groups

and other sources as deemed reasonable to obtain information on the applicant's life experiences, community activities and background. Board members shall encourage sources to allow their names to be disclosed to the board and to the applicant, but may accept comments about an applicant from a source that requests confidentiality as to the board and/or as to the applicant, if the board member believes it is in the best interests of the public to accept such comment. When a comment given to a board member concerning an applicant contains an opinion as to the applicant's character, fitness, or competency, the board member shall inquire as to the factual basis, circumstances and examples which support the opinion and as to the names of others whom the source of the opinion believes might have knowledge about the opinion.

(D) Interview meeting:

(1) General: The board shall meet for the purpose of interviewing selected applicants in order to compile a list of nominees to be forwarded to the mayor and city council or appropriate subcommittee. The qualifications of each applicant shall be discussed and evaluated. Each board member shall disclose comments and other information concerning each applicant relied upon by the board member in evaluating that applicant. If confidentiality has been promised to a source, board members shall consider whether less weight should be given to the information. The board shall schedule sufficient time prior to the interview of each applicant to discuss results of board members investigations and to determine whether any matters that were disclosed in the course of the investigation should be discussed with the applicant at the interview. Information received in the course of the investigation that is material and adverse and is reasonably presumed to have the potential to influence the decision of the board shall be treated in accordance with paragraphs 3 and 4 below.

(2) Public comment: Members of the public are invited to comment at the interview meeting. The chair shall allocate equal time for each relevant comment on each applicant. The chair may terminate comments which exceed the time allocated or which are irrelevant to the qualifications of applicants. The chair may also limit duplicative comments regarding an applicant.

(3) Opinion comments: Opinions that are not supported with factual basis, or circumstances, or a second source shall not be disclosed at the board meeting. Opinions that are supported with factual basis or circumstances or a second source may be shared with the board at the meeting provide the supporting information is also disclosed.

(4) Anonymous comments: No information from an anonymous source shall be considered by any board member or shared with other board members or the board at the interview meeting.

(5) Conduct of interviews: Selected applicants shall be publicly interviewed by the board. A board member may question an applicant about comments made about the applicant for which confidentiality has been requested so long as the source of the comment is not identified. Upon a motion and a majority vote of the board, a portion of the interview may occur in executive session, in which

case the applicant shall have the right to disclose in public session the content of the executive session.

(6) Deliberations of the board: The board shall hold an executive session upon a majority vote of the voting members in attendance in order to promote open and frank discussion regarding the qualifications of applicants interviewed. No material and adverse information about an applicant that is known to a board member prior to the interview may be disclosed to the board after the interview occurs. Whether in public or in executive session, the chair shall read the names of the applicants in alphabetical order and open the meeting to a discussion of that particular applicant's qualifications for judicial office. After this procedure has been followed for each applicant, the chair shall open the meeting to a general discussion of the relative qualifications of all applicants. To encourage frank discussion, the substance of deliberations in executive session shall not be disclosed.

(7) Selection of nominees for submission to the mayor and city council or subcommittee: All voting by the board on the number of nominees to be referred to the mayor and city council or appropriate subcommittee and on applicants nominated shall be in public session. Upon returning to or continuing in public session, the chair shall invite board members to nominate applicants interviewed for consideration for referral. Such a nomination requires the concurrence of one additional board member. Each applicant who receives a vote of the majority of board members present and voting shall be listed for consideration for referral. Such list is only tentative and names may be added to or subtracted from it at any time by further vote of the board. The above process may be repeated until the resulting list of nominees includes at least three nominees for each vacancy to be filled and is approved for referral by a public vote of the board.

(8) Communication after interview meeting:

(a) The board may designate a member or court staff to communicate with applicants interviewed informing them whether or not they have been referred to the mayor and council. Names and applications of applicants not referred shall be removed from the City of Phoenix and municipal court websites. The names and applications of applicants referred shall remain on the City of Phoenix and municipal court websites until such applicants are considered by the mayor and city council or appropriate subcommittee.

(b) If a board member receives new written information about an applicant after the interview meeting has adjourned, the board member shall forward the information to the chair of the board and the chair shall forward the information to the staff liaison for the mayor and city council or the appropriate subcommittee of the council, with a cover memorandum explaining that the information was not submitted in time for consideration by the board and the applicant has not been questioned about nor responded to the information. If the information is verbal, the board member shall advise the source about his or her right to contact the mayor and city council or the appropriate subcommittee of the council.

Rule 10. Transmittal to Mayor and City Council.

The names of the applicants referred, listed in alphabetical order, shall be delivered to the mayor and city council, or the appropriate subcommittee of the council. The number of applicants submitted to the mayor and city council shall be a minimum of three names for each vacancy.

CITY OF PHOENIX JUDICIAL SELECTION ADVISORY BOARD CONTACT INFORMATION

JUDICIAL SELECTION ADVISORY BOARD

MEMBER	ADDRESS	PHONE/EMAIL	REPRESENTATIVE
Honorable Diane M. Johnsen *(Secretary)*	Division One Court of Appeals 1501 W. Washington St., Rm. 317 Phoenix, AZ 85007-3231	(602) 542-1432 (W) djohnsen@appeals.az.gov	Court of Appeals
Mr. Joseph A. Kanefield	Ballard Spahr LLP 1 East Washington St., Ste. 2300 Phoenix, AZ 85004	(602) 798-5468 kanefieldj@ballardspahr.com	State Bar Representative
Honorable David Cunanan	Maricopa County Superior Court Central Court Building 201 W. Jefferson, 4th floor, Ste. 4B Phoenix, AZ 85003-2243	(602) 372-1710 (W) DavidCunanan@mcjc.maricopa.gov	Superior Court Representative
Mr. Vincent Barraza, Esq.	3417 N. 23rd Ave. Phoenix, AZ 85015	(480) 362-5662 (W) vbarr51815@aol.com	Maricopa County Bar Association
Mr. Craig Steblay	2990 E. Washington Phoenix AZ 85034	602-266-3500 (W) craig@steblay.com	General Public Representative
Mr. David Tierney, Esq. *(Vice-Chair)*	Sacks Tierney PA 4250 N. Drinkwater Boulevard, 4th Floor Scottsdale, AZ 85251-3693	(480) 425-2620 (W) tierney@sackstierney.com	General Public Representative
Ms. Lanette Campbell	Daichatre' Public Relations, LLC PO Box 93744 Phoenix, AZ 85070-3744	(602) 257-9300 (W) lanetcamp@aol.com	General Public Representative
Honorable Eric L. Jeffery	Acting Chief Presiding Judge 300 W. Washington Phoenix, AZ 85003	(602) 262-1899 (W) eric.jeffery@phoenix.gov	Non-Voting Permanent Position as Chief Presiding Judge

CITY OF PHOENIX JUDICIAL APPLICATION 2014

PHOENIX MUNICIPAL COURT

APPLICATION FOR JUDICIAL OFFICE

NOTE: An original application and current resume, plus fifteen (15) copies of application and current resume, must be filed with the City of Phoenix Municipal Court Judicial Selection Advisory Board, 300 West Washington, 9th Floor, Phoenix, AZ 85003. **Applications may be completed and printed with this on-line form. Some questions allow limited response space. If additional space is needed, attachments may be added. Applications must be typed. PLEASE NOTE: The Rules of Procedure for the Judicial Selection Advisory Board for the City of Phoenix Municipal Court provide for public access to this application as follows:**

JSAB Rule 7(D) - *Except as provided in subsection (2) below, information provided to the board by the applicant or by a third-party shall be presumed to be available to the public.*

(1) The following shall be available to the public:

(a) The applicant's name, occupation, employer, relevant work history, any other information provided in response to section I of the application form, and any supplemental materials submitted by the applicant relating to Section I of the application form;

(b) Any information that is specifically authorized for release by the source of that information.

(2) The following information shall remain confidential throughout the application and appointment process until destroyed pursuant to the applicable municipal court document retention schedule.

(a) The applicant's home address, information regarding applicant's family, and all other information that is provided to the board in response to questions contained in Section II of the application form;

(b) Information provided in writing or orally to the board by third parties regarding an applicant, and the third party's identity, unless the third party specifically states in writing that the information may be made public;

(c) Notes of the individual board members that are generated for personal use only and not published to other members of the board;

(d) Any information that is provided to a member of the board after a promise of confidentiality is properly extended to the source by that board member pursuant to rule 8(B) or 9(D) of these rules;

(e) Any information obtained by or submitted to the board that is made confidential by other provisions of law.

SECTION I – PUBLIC INFORMATION		
Last Name	**First Name**	**MI**

How many years have you resided in Arizona immediately preceding this application?		
Have you had at least five years practice of law? If no, describe what equivalent legal experience you have.		
State Bar of Arizona Number	**Date of Admission**	
Schools Attended (preparatory, college and law)	**Dates**	**Degree**
	From: Through:	
	From: Through:	
	From: Through:	
	From: Through:	
	From: Through:	
1) Indicate major and minor fields of study		
2) Indicate college and law school extracurricular activities		

3) Indicate all bar admissions, numbers, and dates
4) If you have been certified as a specialist by the State Bar of Arizona, identify specialty.
5) Explain if you have been denied admission to any State Bar.

6) Current Job Title	Employer	Date(s) of Employment
		From: Through:

7) Describe chronologically, providing dates, your law practice and relevant experience following your graduation from law school, specifically indicating the following:

A. If you have served as a judge, indicate the court(s) and dates of service.

B. If you have served as a clerk to a judge, indicate the name of the judge, the court, and the dates.

C. If you practiced alone, indicate the addresses and dates.

D. Indicate the names, addresses and dates of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.
E. Describe the types of major clients you have served and mention areas of law in which you have specialized or focused. Give details of any regular service you have provided in a fiduciary capacity.
F. Provide any other relevant information.

8)	**Indicate your frequency of appearances in court as a lawyer:**
	Describe the nature of your appearances, giving dates, court names, and the nature of the proceedings.

A. Indicate the percentage of these appearances between the listed court types.			
Federal Courts	State Courts of Record	Justice Courts	
City Courts	Administrative Boards or Commissions		
B. Indicate the percentage of your litigation practice.			
Private Civil	Criminal	Traffic	Administrative
C. State the number of cases you tried to verdict or judgment (rather than settled), for each of the following:			
Sole Counsel	Chief Counsel	Associate Counsel	
D. What percentage of these trials was:			
Jury	Nonjury		

E. Describe not more than five of the more significant litigated matters which you handled and give the citations, if the cases were reported. Give a capsule summary of the substance of each case, and a succinct statement of what you believe to be the particular significance of the case. Please identify the party or parties whom you represented, describe the nature of your participation in the litigation and the final disposition of the case. Please also state, as to each case: 1) the date of the trial; 2) the name of the court and the judge before whom the case was tried; and 3) the names and addresses of counsel for the other parties.
1)
2)
3)

4)
5)

9) Describe any significant arbitration, mediation, or litigation experience not discussed above.

10) If you are or have been a judge, describe not more than five of the more significant cases you have tried or opinions you have written, or attach copies. Give the citations if the opinions were reported as well as citations to any appellate review of such opinions.
11) Have you ever been engaged in any occupation, business, or profession other than the practice of law or holding judicial office? If yes, please give details, including dates.

12) Are you now or have you ever been an officer or director or otherwise engaged in the management of any business enterprise? If yes, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties, and the terms of your service.
13) Is it your intention to resign such position and withdraw from any participation in the management of any of such enterprises if you are appointed? If no, please explain.
14) Have you ever been sued by a client or a party? If yes, give details, including dates.

15) Have you published any legal or other books or articles? If yes, please list them, giving the citations and dates.
16) Are you in compliance with the continuing legal education requirements applicable to you? If yes, list the courses and dates of attendance for the last two (2) years.

17) Have you taught any courses on law or lectured at bar associations, conferences, law school forums, or continuing legal education seminars? If yes, please describe.
18) List any honors, prizes, awards, or other forms of recognition which you have received other than those mentioned in answers to the foregoing questions.
19) List any public offices held and dates.
20) List memberships and activities in professional organizations, including offices held.

Optional: List memberships and activities in civic organizations, including offices held.
21) List vocational interests and hobbies.
22) To your knowledge, has any complaint of professional misconduct ever been filed, in any jurisdiction, where any form of disciplinary action has been taken against you? If yes, when and where? How was it resolved?

23) Have you ever been convicted of any misdemeanor or felony or violation of the Uniform Code of Military Justice in the United States or any foreign country? If yes, when and where? How was it resolved?
24) Include any further information relative to your candidacy or qualifications that you wish to transmit to the Judicial Selection Advisory Board at this time.

SECTION II – CONFIDENTIAL INFORMATION			
Applicant's Address			
Office Street Address	**City**	**State**	**Zip Code**
Home Address	**City**	**State**	**Zip Code**

Work Phone	Home Phone	E-mail address

REFERENCES

List three references who are neither lawyers nor judges with whom you have had contact other than professionally, who would enthusiastically recommend you as qualified to serve on the judiciary.

Name	Address	Email Address	Area Code, Phone Number

List four professional adversaries with whom you have dealt in the last five years.

Name	Address	Email Address	Area Code, Phone Number

List three references who are lawyers or judges who are familiar with your professional activities and who would enthusiastically recommend you as qualified to serve on the judiciary.			
Name	**Address**	**Email Address**	**Area Code, Phone Number**

The undersigned hereby authorizes the State Bar of Arizona Association, all other Bar Associations, listed references, employers, other listed business and professional associations, and all governmental agencies to release to the Judicial Selection Advisory Board any information requested by said Board pertinent to processing and evaluation of this application for judicial appointment.

Certification

By my signature below I certify my willingness to accept a judicial appointment to the Phoenix Municipal Court. I also certify that the information contained herein is true and complete and includes any information about me that might reflect upon my ability to serve as a judge in full compliance with the Arizona Code of Judicial Conduct. I acknowledge that if I am a successful external applicant, I will be required to take and pass a drug test and that employment will be contingent upon successful completion of this drug test, and consideration of background, reference, and other job-related selection information.

Signed: _____ Dated: _____

Please transmit the original and fifteen additional (15) copies of this application and current resume in an envelope marked "Personal" to the Judicial Selection Advisory Board, c/o Phoenix Municipal Court, 300 West Washington, 9th Floor, Phoenix, Arizona 85003.

WHERE TO LOCATE JUDICIAL VACANCY ANNOUNCEMENTS

Information regarding Judicial Vacancies can be on found the Arizona Judicial Branch web site either on the "NEWS" tab or by following the "Judicial Vacancies" link at the bottom of the page under "Careers".

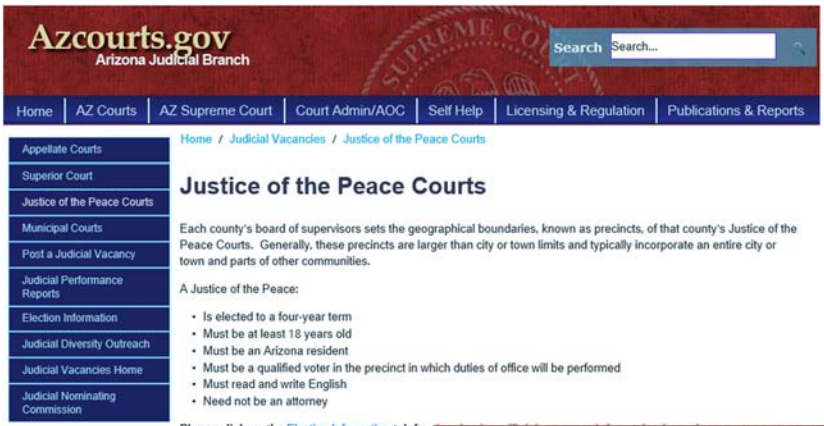
Selecting "Judicial Vacancies" opens the page below. This page provides candidates seeking positions as judges, commissioners or judges pro tem with a single place to look for Arizona judge vacancies, appointment and election information.

Links to vacancies at the various court levels and the Judicial Nominating Commissions and Judicial Diversity Outreach are provided.

The web pages for the different jurisdictions are as follows:

The Appellate Court webpage provides basic information and a link to the Judicial Nominating Commission.

The Superior Court webpage provides links to the Judicial Nominating Commission for merit-selected counties; election information for the other 12 counties; and to a web page that lists Commissioner and Judge Pro Tem vacancies.



The Justice of the Peace Court webpage lists the qualifications for a Justice of the Peace and provides an election information link.

The Municipal Court website provides links to current judicial vacancies.

The Judicial Nominating Commissions website provides information about the Commissions, merit selection, recent judicial appointments; and the means to apply for a vacancy, sign up for vacancy notices and view current applications.

When "Apply for a Current Vacancy" on the Judicial Nominating Commissions page is clicked, the viewer is offered information about Code of Judicial Conduct, Cannon 4 and current merit selection vacancies.

When selecting "Judicial Diversity Outreach" a page that states the following will appear. "The Arizona Judicial Council desires to increase the number of qualified minority applicants available for service as judicial officers. The Judicial Diversity Outreach site provides a comprehensive source of information regarding judicial vacancies, the application process and minority bar association assistance for those who are contemplating judicial careers." Selecting the link in the paragraph will open the following page.