

# **SUPREME COURT COMMITTEE ON WOMEN IN THE COURTS**



## **SURVEY ON PERCEPTIONS OF RACE AND GENDER IN THE COURTS**

**MARCH 2009**

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## EXECUTIVE SUMMARY

In Fall 2007, the Supreme Court Committee on Women in the Courts (the “Committee”) conducted the Survey on Perceptions of Race and Gender to study the issue of gender bias in the context of both gender and race. The purpose of the survey was twofold: 1) to determine the perceptions of attorneys and judges about gender and racial bias in the courts, and 2) to provide input for future direction for the Committee.

The Committee analyzed 851 responses generated by the survey. The results represent the perceptions of those who took the time to fill out the lengthy survey and cannot be generalized to the broader population of attorneys and judges, because the survey was not based on a random sample of members of the bar. While the survey was disseminated broadly, and may not constitute a representative sample, it nonetheless provides usable and constructive data when evaluated against the committee’s past surveys conducted with similar methodology. The data are presented through the use of charts and are discussed in detail in the report that follows.

Of the 851 respondents who took the survey, 71 percent identified their gender. Of those, 55 percent were female and 45 percent were male. Among the respondents, 71 percent identified their race. Of those, 83 percent identified as white, 7.4 percent as African-American/Black, 3.9 percent as Hispanic/Latino(a), 2.3 percent as Asian/Pacific Islander, .5 percent as American Indian/Alaskan Native and 2.8 percent as “other.”

### General Perceptions of Gender or Racial Bias

The majority of survey respondents (59 percent) perceive that attorneys are treated about the same irrespective of gender. When analyzed by the gender or race of the respondent, the responses differ. Less than half of female respondents (48 percent) and respondents of color (42 percent) expressed this view, indicating that male respondents as a group perceived less gender bias in the courts, while both female respondents and respondents of color perceived more gender bias.

The majority of survey respondents (67 percent) perceive that attorneys are treated about the same, irrespective of their race. A majority of female respondents (59 percent) expressed this view, but a smaller percentage of respondents of color (31 percent) expressed it. Thus, perceptions of racial bias were more prevalent among respondents of color.

The majority of respondents (54 percent) indicated that attorneys are treated about the same, irrespective of their race and gender. Again, perceptions differ among respondents when they are categorized by race and gender. The percentage of male respondents who perceive that attorneys are treated about the same was nearly double the percentage of female respondents (80 to 43 percent). The percentage of white respondents who perceived that attorneys are treated about the same was more than double the percentage of respondents of color (66 percent to 27 percent). Female attorneys and attorneys of color perceived more

race and gender bias in the courts, even when the biased treatment was aimed toward race and gender groups different from their own.

### Perceived Mistreatment of Attorneys

The survey also asked respondents to report on specific incidents of mistreatment in court within the prior two-year period. Fifty percent of respondents indicated that they had not observed or experienced incidents of mistreatment, while 48 percent said they had. More specifically, 58 percent indicated they had not seen an attorney demeaned, disparaged or unfairly criticized by a judge. A higher percentage of male respondents perceived this to be true than female respondents (68 percent to 59 percent) and a higher percentage of white respondents chose this response than respondents of color (73 percent to 59 percent).

Respondents who answered the question in the affirmative were asked to describe the gender and race of the attorneys whom they perceived were mistreated. White female attorneys were the group chosen by the highest percentages of respondents, followed closely by white male attorneys. Smaller percentages were reported for attorneys of color. Although white attorney groups were chosen more often by the total group of respondents, higher percentages of respondents of color reported judicial mistreatment of attorneys of color than white attorneys, while higher percentages of white respondents reported judicial mistreatment of white attorneys.

Some respondents provided a narrative describing the incident(s) they observed or experienced. Some of the incidents were perceived to be rooted in bias. For example, one respondent reported that a female attorney was told by a judge that she should have gone to secretarial school when she could not locate a document during trial. Another reported that a judge admonished an attorney who speaks with an accent to learn “proper English.” Some of the incidents described did not purport to have anything to do with gender or racial bias. The comments described incidents of yelling, belittling or the use of sarcasm.

A majority of respondents said that they had not perceived an attorney being mistreated by another attorney. Those who responded that they had perceived such mistreatment were asked to describe the gender and race of the attorneys perceived to be mistreated. A higher percentage of white attorneys reported mistreatment of white attorneys, both male and female, while a higher percentage of attorneys of color reported mistreatment against male and female attorneys of color. Similarly, higher percentages of female attorneys reported mistreatment of female attorneys, and higher percentages of male attorneys reported mistreatment against male attorneys.

Again, some respondents provided narratives describing the incident(s) they observed or experienced. While many did not provide sufficient context to determine if the incidents evidenced gender or racial bias, others did. For example, one respondent reported that co-counsel suggested she “wear a skirt at trial” and stated “I only talk to women I sleep with.” Another respondent reported hearing an attorney “comment that he didn’t want to hear anymore [sic] ‘ghetto’ strategies from the black attorney.”

Among those respondents who reported incidents of attorney-to-attorney mistreatment in the presence of a judge, about half indicated that the judge acknowledged in some way that the behavior was inappropriate, usually by admonishing the attorney. The other half indicated that the judge's response was insufficient when he or she tried to "calm" down the attorneys or that the judge did not respond at all. In a handful of incidents, it was reported that the judge appeared to condone the behavior.

The overwhelming majority of respondents indicated that they had not perceived an attorney demeaned, disparaged or criticized by a sheriff's officer (91 percent) or by a court employee (92 percent). Eight percent of respondents, including 10 percent of female respondents and 18 percent of respondents of color, reported observing or experiencing mistreatment by sheriff's officers, including mistaking female attorneys and attorneys of color for clients, using disrespectful or pejorative language to address female attorneys, and a general bias and abuse of power with regard to attorneys. Eight percent of respondents, including 10 percent of female respondents and 14 percent of respondents of color, reported they had observed or experienced mistreatment by a court employee. The behavior described in the narratives can be categorized as follows: (1) rude, nasty or disrespectful behavior, (2) denying attorneys information or access to the courts and (3) aggressive or combative behavior, including yelling and screaming.

#### Perceived Mistreatment of Judges

The majority of respondents indicated that they had not observed or experienced incidents in which they thought a judge was demeaned, disparaged or unfairly criticized. Twenty percent of respondents reported that they had observed or experienced such conduct. Male and female respondents chose this answer at the same rate; respondents of color chose this answer at a slightly higher rate (22 percent) than white respondents (19 percent).

Respondents who answered the question in the affirmative were asked to describe the gender and race of the judges whom they perceived were mistreated. The highest percentages were for perceived mistreatment of white female and white male judges. Respondents of color showed higher percentages of perceived mistreatment of judges of color but the low number of such respondents makes it difficult to draw any conclusions about the data.

The narrative comments describing the behavior can be categorized as follows: name calling comments, allegations of biased rulings, rude behavior inside the courtroom and public responses about judges. For example, talking over a judge was more often described as rude and discourteous when directed at a female judge, but described as argumentative when directed at a male judge.

The overwhelming majority of respondents (98 percent) indicated that they had not perceived a judge demeaned, disparaged or criticized by an officer charged with court security. Only two percent of respondents reported observing or experiencing mistreatment by sheriff's officers. The paucity of affirmative answers makes it difficult to analyze the data in any meaningful way, except to note that respondents are more likely to report on perceived mistreatment of judges in their own demographic category.

### Perceptions as to Advantageous or Disadvantageous Treatment Based on Race or Gender

The majority of respondents (72 percent) indicated that they had not perceived an attorney being treated advantageously because of race or gender by a judge. However, female respondents were less likely (65 percent) to give this response than male respondents (85 percent) and respondents of color were less likely (55 percent) than white respondents (78 percent). Moreover, respondents most often perceived white male attorneys to have received advantageous treatment from judges.

Similarly, the majority of respondents (81 percent) indicated they had not perceived an incident in which an attorney had been treated disadvantageously because of race or gender by a judge. The vast majority of male respondents (94 percent) chose this response. Female respondents chose this response at the rate of 73 percent and respondents of color chose it at the rate of 66 percent. Thus, the survey reveals differences among demographic groups in the perception of disadvantageous treatment. Respondents of color reported that they had perceived disadvantageous treatment of attorneys because of race or gender at the rate of 23 percent and female respondents reported the same at the rate of 20 percent. In contrast, male respondents reported it at a rate of 5 percent. Once again, respondents more often reported perceptions of disadvantageous treatment of attorneys in their own demographic category.

Some narrative responses described the perceived advantageous and disadvantageous treatment in general terms. For example, a respondent referred to an “old boys network” that favors white male attorneys over other attorneys. Another respondent stated that “[t]he judge routinely makes statements that are help to people of his own race.” Other perceptions involved subtleties of address and demeanor, for example, addressing female attorneys as “honey,” or “ma’am,” rather than as “counsel.” Respondents also described disadvantageous treatment as not allowing the same latitude to both sexes with respect to lateness, discovery or childcare needs. Other treatment included not allowing equal time for arguments, interrupting and other dismissive behavior.

The vast majority of respondents indicated that they had not observed or experienced advantageous (91 percent) or disadvantageous treatment (93 percent) based on race or gender by sheriff officers and court employees. Where it was reported, there are higher percentages of perceived disadvantageous treatment of female attorneys, both white and of color, but the numbers are too small for significant analysis.

### Perceptions of Bias in Judicial Appointments and Law Clerkships

The majority of respondents (67 percent) reported that gender or race affects the access that individuals have to judicial appointments. There was little difference between male respondents (66 percent) and female respondents (69 percent) on this question. A higher percentage of attorneys of color (83 percent) indicated that gender and/or race affects opportunities for judicial appointments. Respondents were asked to rank the opportunity

different demographic groups have to be appointed judges. White males ranked as the group with the highest opportunity, followed by white females, males of color and females of color. However, when categorized by race and gender, respondent groups differed in how they ranked access for each group.

With respect to law clerkships, a slight majority (52 percent) indicated that gender and race do not affect access. However, there was a big difference when the responses were categorized by the race of respondent. While 59 percent of white respondents reported that gender and race do not affect access, only 22 percent of respondents of color gave that answer. Respondents were asked to rank the opportunity different demographic groups have to be appointed clerks. White males ranked as the group with the highest opportunity, followed by white females, females of color and males of color. Again, the demographic groups ranked access differently.

### Perceptions of Treatment of Attorneys and Judges of Color

The final two questions relate to perceptions of treatment of attorneys and judges of color. Respondents were asked to choose whether gender or race had a bigger impact on the treatment of attorneys of color. The largest response rate, 32 percent, was that neither gender nor race has an impact. Respondents chose gender or race as having the stronger impact at the same rate, 22 percent. In addition, 16 percent chose “gender and race have an equal impact.” An analysis of the responses by gender and race suggest that the perceptions are shaped, at least in part, by how respondents identify themselves.

Respondents were also asked to indicate whether gender or race has a greater impact on the treatment of judges who are females of color. The largest group of respondents, 33 percent, indicated that neither gender nor race has an impact. The next largest group, 23 percent, indicated that gender has the stronger impact and 21 percent said that race has the stronger impact. In addition, 15 percent indicated that gender and race have an equal impact. Again there was disparity when the responses were analyzed along gender and racial lines.

### Recommendations

Respondents who reported observing or experiencing inappropriate conduct in the courts were asked to make recommendations to improve the situation. The largest number of suggestions involved training, particularly for judges. The most common suggestion was some form of sensitivity training on race and gender issues and the more subtle forms of bias or unequal treatment. A smaller number of respondents indicated that attorneys and court staff also were in need of training.

There were a number of other suggestions as well. Most notably, respondents recommended the creation of a confidential reporting mechanism for individuals to report incidents of bias, the creation of a court monitoring program that involves unannounced observers, and enhancement of available sanctions for inappropriate conduct. Other respondents commented that the judicial appointment process was biased or political and is in need of reform.



## Conclusion

The Committee concluded that, despite efforts over the past 25 years to address issues of bias in the courts, perceptions of bias persist. The committee therefore will seek ways to address those perceptions to help build trust and confidence in the courts.

## **I. INTRODUCTION AND BACKGROUND**

The New Jersey Supreme Court Committee on Women in the Courts is charged with monitoring the Judiciary's progress in achieving gender fairness in the New Jersey courts and making recommendations to the court to effectuate the goal of eliminating any existing gender bias. In furtherance of its mission, the committee has endeavored to assess the treatment of women of color in the courts through the perceptions of attorneys and judges. This report summarizes the committee's findings from a survey conducted in 2007 that was designed to study the issue of gender bias in the context of both gender and race.

By way of background, in 1982, New Jersey's then-Chief Justice, Robert Wilentz, created the Task Force on Women in the Courts "to investigate the extent to which gender bias exists in the New Jersey judicial branch and to develop an educational program [for the 1983 New Jersey Judicial College] to eliminate any such bias." Subsequently, the Chief Justice expanded the mandate of the Task Force to include an in-depth investigation of the extent to which gender bias in the courts operated to disadvantage women. The task force issued its first report in 1984 and a second report in 1986. An evaluation of the work of the task force was completed in 1989. In 1990, Chief Justice Wilentz appointed a standing committee of the New Jersey Supreme Court to carry on the work of the Task Force.

The 2007 survey is the third the committee and its predecessor, the Supreme Court Task Force on Women in the Courts, have conducted in the past 25 years. The task force conducted the first survey on women in the New Jersey courts in 1983 and the committee conducted a follow-up survey in 1996. The most recent survey is the first to include perceptions of race bias in the New Jersey courts. The members of the committee believed it was important to expand its study of bias in the courtroom to get a better picture of how these two elements might affect one another in terms of bias perceptions.

### Methodology

The committee conducted the survey online in take advantage of several benefits. First, costs for copying and mailing the survey would be avoided. Second, the online format allowed the committee to use skip logic to help respondents move to the next set of relevant questions based on how they answered previous questions. Third, the availability of the survey on the Internet would make it more convenient for attorneys and judges to complete the survey and submit their responses. Finally, the committee chose an online survey vendor, SurveyMonkey.com, because the software available could be adapted to meet the committee's needs. The Quantitative Research Unit of the Administrative Office of the Courts assisted with the administration of the survey.

The committee originally planned to make the survey available online from Sept. 10, 2007 through Oct. 31, 2007. Because the New Jersey Bar Association was holding its fall meeting in November, the committee extended the survey period and, through bar association representatives, encouraged conference participants to log on to the survey and submit their responses during the conference.

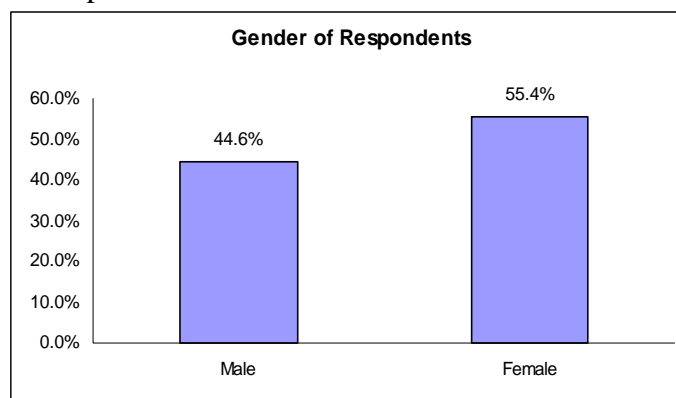
The survey was publicized in a number of ways. The Administrative Office of the Courts issued both a press release and a notice to the bar on Sept. 10, 2007. These were posted on the Judiciary Web site and published in the *New Jersey Lawyer* and in the *New Jersey Law Journal*. In addition, announcements to attorneys and judges regarding the survey were distributed to county and specialty bar associations around the state, inns of court, assignment judges, the Department of Law and Public Safety, county prosecutors, the Office of the Public Defender and Legal Services of New Jersey. Representatives from these organizations reported to the committee that they had forwarded the notice to their members via email or publication.

The survey notice directed participants to the URL [www.njcourtsonline.com/wicsurvey/](http://www.njcourtsonline.com/wicsurvey/). From there, respondents could select a link that led them to the SurveyMonkey Web site. The two-step process enabled the committee to use a fairly simple URL in publicity materials rather than the very long URL for the Web site where the survey actually was located. Those reading the notice or the press release online could click on the link directly from the press release, offering further convenience.

The committee received 851 survey responses in which at least one of the questions had been answered. Each response received an identification number to aid in data analysis. Because the survey was not conducted on a random sample of attorneys and judges, the results represent only the perceptions of those who took the time to fill out the lengthy survey and cannot be generalized to represent the broader population of attorneys and judges. While the survey was disseminated broadly, and may not constitute a representative sample, it nonetheless provides usable and constructive data when evaluated against the committee's past surveys conducted with similar methodology.

## II. CHARACTERISTICS OF RESPONDENTS

Graph 1.



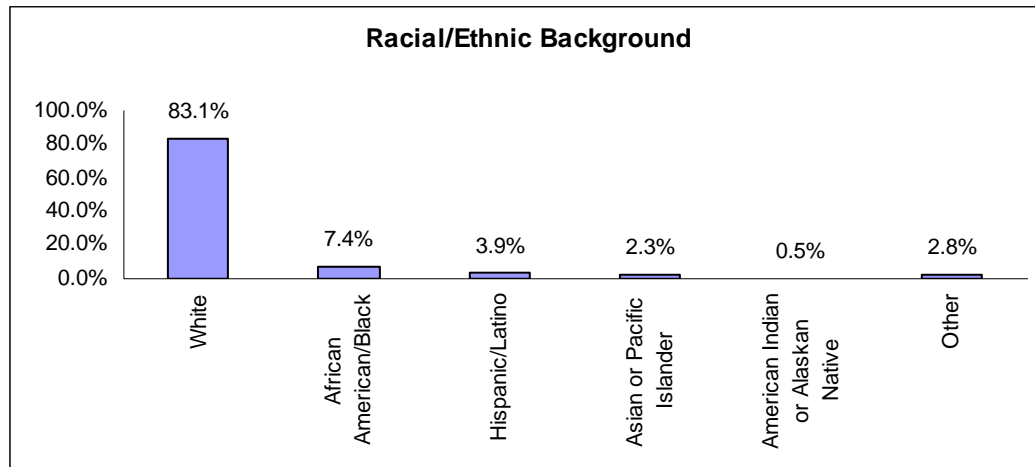
Respondents were asked several questions about themselves to help the committee analyze and compare the perceptions of different demographic groups. Although the demographic information is being analyzed near the beginning of the report, questions regarding personal identifiers were placed at the end of the survey in the belief that respondents would be less

inclined to share their perceptions if they felt that they had been asked to reveal their personal identifiers beforehand.

It is likely that some of the respondents who did not share their race, gender or other identifiers were unable or unwilling to complete the lengthy survey.

Of the 851 respondents who took the survey, 71 percent identified their gender. Of those, 55 percent were female and 45 percent were male.

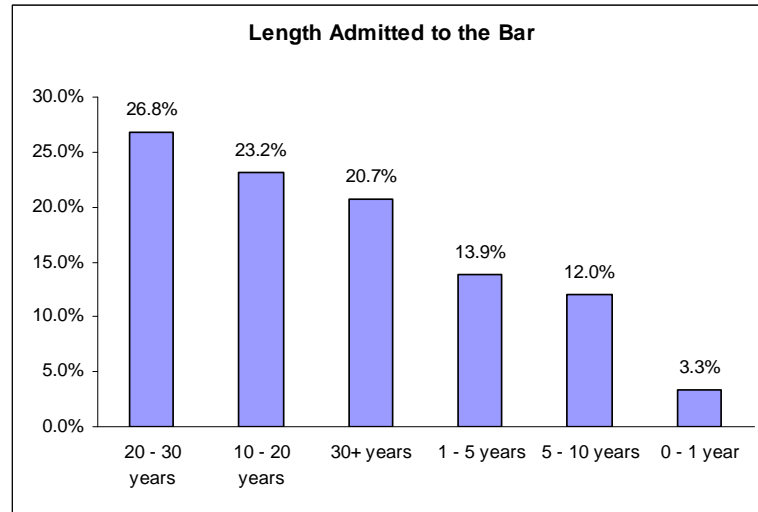
Graph 2.



Of the 71 percent of the total respondents who identified their race/ethnic background, 83 percent identified themselves as white, 7.4 percent as African-American/Black, 3.9 percent as Hispanic/Latino(a), 2.3 percent as Asian or Pacific Islander, .5 percent as American Indian or Alaskan Native and 2.8 percent as “other.” Of the total number of surveys submitted, 61 surveys, or 7.2 percent, were submitted by respondents who identified themselves as female attorneys or judges of color.

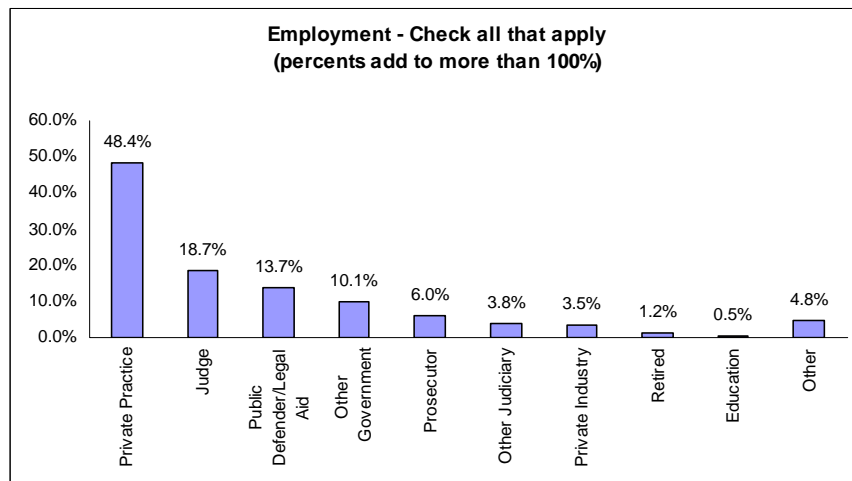
One of the challenges faced by the committee was to balance the small number of responses of those who identified themselves as attorneys or judges of color, in particular the responses of female attorneys or judges of color, against the much larger number of white respondents. For certain questions, the small number of responses from attorneys and judges of color undermined any effort at meaningful comparisons between respondent groups.

Graph 3.



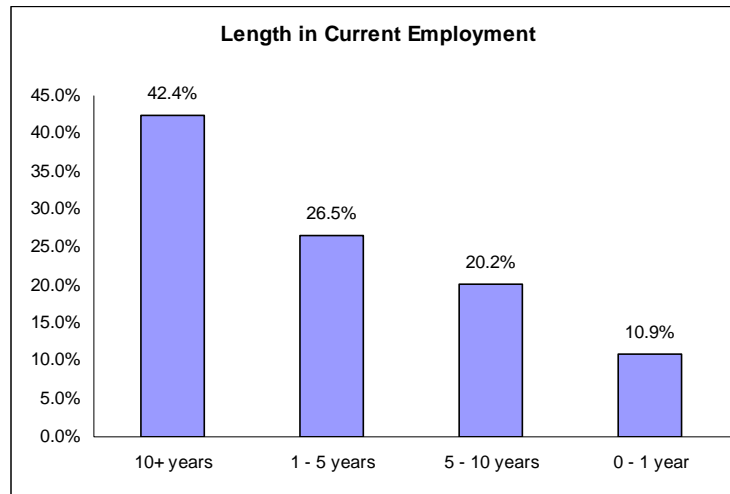
Length of time admitted to practice was spread fairly evenly among respondents, with nearly 27 percent of those who answered this question having been admitted to the bar for between 20 and 30 years. Another 23 percent had been admitted for between 10 and 20 years, while 20.7 percent were admitted for more than 30 years.

Graph 4.



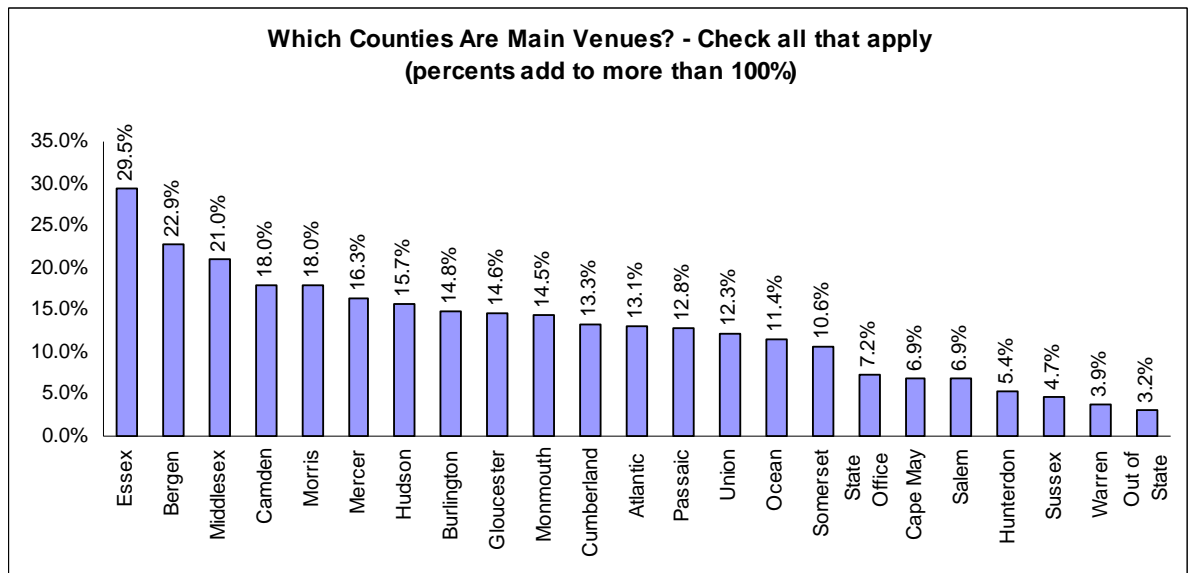
Seventy percent of survey respondents identified their employment. Respondents could choose as many responses as applied. Nearly one-half of respondents (49 percent) were employed in private practice, and 19 percent (113 respondents) identified themselves as a judge. Part-time municipal court judges are permitted to work in private practice, so these two identifiers were not exclusive of each other. Fourteen percent identified themselves as a public defender or Legal Services attorney, 10 percent said they held another government position, and 6 percent identified themselves as prosecutors. Much smaller responses were received for those in private industry, retired attorneys, and those in education. Another 29 attorneys identified themselves as “other.”

Graph 5.



Of the 71 percent of respondents who identified the length of time they had been in their current employment, nearly half (42 percent) said they had been there more than 10 years, while 20 percent said they had been there 5 to 10 years and 27 percent said they had been there for 1 to 5 years. Eleven percent said they had been in their current position less than one year.

Graph 6.



Asked to identify their main venue for practicing in the courts, 29.5 percent of those who answered the question said that they practiced in Essex County. Bergen, Middlesex, Camden, and Morris counties received more than 100 responses each. Attorneys and judges in the less populated parts of the state, including Cape May, Salem, Hunterdon, Sussex and Warren counties, generated the fewest responses.

### III. PERCEPTIONS OF RACE AND GENDER BIAS

Because the introduction to the survey explained that the Supreme Court Committee on Women in the Courts was established to monitor the courts' progress in achieving gender fairness, participants could make a reasonable inference that at some time in the past the courts did not believe that women received equal treatment, that the courts wanted to move toward the goal of equal treatment, and that the courts might expect that gender equity had not yet been achieved.

The introduction also stated that this survey was the first effort by the committee to understand the issues of gender bias in the context of both gender and race. Respondents therefore could make a reasonable inference that the committee was assuming that both the race and gender of attorneys and other court participants could be factors in the unequal treatment of attorneys.

The survey asked four key questions regarding the perceptions of respondents based on their personal experiences or observations in New Jersey courts. The questions asked respondents their opinions on whether attorneys received disparate treatment as a result of race or gender bias, and which factor—race or gender—had a bigger impact on how they are treated.

The first question focused on their perceptions of gender bias.

Table 1.

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
1	As you can see from the introduction, this is a survey about your perceptions of gender fairness in the New Jersey Court System. Please put a check in the circle next to the statement below that is closest to your opinion of the situation at the present time for attorneys in the courts.						
1. Attorneys are treated about the same, irrespective of their gender	59%	86%	48%	46%	70%	42%	46%
2. Female attorneys receive better treatment	4%	5%	1%	7%	2%	5%	7%
3. Male attorneys receive better treatment	29%	6%	39%	41%	21%	44%	42%
4. Not sure	7%	3%	11%	5%	7%	10%	5%
Total	851	269	337	245	503	103	245

This question received the highest number of responses. Of the 851 respondents who answered this question, a majority (59 percent), responded that attorneys are treated about the same, irrespective of their gender. Eighty-six percent of respondents who identified themselves as male chose this response, while 48 percent of respondents who identified themselves as female chose this response. The different percentages suggest that male respondents as a group perceived less gender bias in the courts, while female respondents perceived more gender bias.

The next highest response category was that males received better treatment, and 251 respondents, or 29 percent, chose this response. Only 6 percent of those identified as male gave this response, while 39 percent of those identified as female gave this response. Fewer

respondents chose any of the other responses; however, nearly five times as many males than females (5 percent to 1 percent) said that women receive better treatment.

Because nearly one quarter of the respondents did not identify their gender, their responses should be examined to determine whether they, as a group, shared similar perceptions to other respondents. Nearly half of those who did not identify themselves by gender (46 percent), said that attorneys are treated about the same, irrespective of gender, differing only a few percentage points (46 percent compared to 41 percent) from those who said that male attorneys receive better treatment. These percentages more closely resemble the percentages of responses given by those who identified as female. That does not mean that those who chose not to identify their own gender are mostly women, although that is one possible interpretation. It may be, too, that those who perceived disparate treatment did not feel comfortable identifying their own gender on the survey, or they simply did not reach that point of the survey.

An examination of respondents who identified themselves as either white attorneys/judges or attorneys/judges of color shows that a higher percentage of white respondents, 70 percent, perceive that attorneys are treated about the same, irrespective of gender. By contrast, 42 percent of the respondents who identified themselves as attorneys of color chose that response. Thus attorneys/judges of color perceive more gender bias than white attorneys/judges. In addition, 44 percent of attorneys/judges of color said that male attorneys receive better treatment, while 21 percent of white attorneys/judges gave that response.

Of those respondents who did not identify themselves by race, 46 percent said that attorneys are treated about the same, regardless of gender. This is a smaller percentage than the percentage of white respondents who chose this response but somewhat higher than the percentage of respondents of color who chose this response.

The second question focused on the attorneys' perception of race bias.

Table 2.

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
<b>2 Put a check in the circle next to the statement below that is closest to your opinion regarding the effect of the race of attorneys on their treatment in the courts.</b>							
1. Attorneys are treated about the same, irrespective of their race.	67%	84%	59%	60%	78%	31%	60%
2. Attorneys of color receive better treatment than other attorneys.	4%	4%	3%	6%	4%	2%	6%
3. White attorneys receive better treatment than other attorneys.	20%	9%	25%	24%	10%	56%	25%
4. Not sure	9%	4%	13%	9%	9%	11%	9%
Total	846	268	334	244	501	101	244

Of the 846 respondents who answered this question, the majority (67 percent), said that attorneys are treated about the same, irrespective of their race. This response was chosen by 84 percent of male respondents and by 59 percent of the female respondents.



Perceptions of racial bias were more prevalent among female attorneys and attorneys of color. While 78 percent of white respondents said that attorneys are treated about the same regardless of race, only 31 percent of respondents of color chose this statement. In addition, although only 20 percent of all respondents said that white attorneys receive better treatment, more than half of the attorneys of color (56 percent) gave this response, as did 25 percent of the female respondents.

The percentage of respondents not identified by gender who said that attorneys are treated about the same was nearly the same as the percentage of female respondents who selected this response (60 percent to 59 percent).

The majority of those who did not identify themselves by race (60 percent) said that attorneys are treated about the same, irrespective of their race, while 25 percent said that white attorneys receive better treatment than other attorneys.

The third question asked respondents to focus on the combination of race and gender as it might affect the treatment of attorneys in court.

Table 3.

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender - No response			Race - No response		
		Male	Female		White	Of Color	
<b>3 Now think about the combination of gender and race as it might affect the treatment of attorneys and put a check in the circle next to the statement below that is closest to your opinion.</b>							
1. Attorneys are treated about the same irrespective of their race and gender	54%	80%	43%	40%	66%	27%	40%
2. Attorneys who are females of color receive better treatment	3%	2%	2%	5%	2%	3%	5%
3. Attorneys who are females of color receive worse treatment	6%	1%	8%	10%	3%	15%	10%
4. Attorneys who are males of color receive better treatment	1%	0%	1%	2%	1%	1%	2%
5. Attorneys who are males of color receive worse treatment	3%	4%	2%	2%	1%	13%	2%
6. Attorneys who are white females receive better treatment	1%	2%	0%	1%	1%	2%	1%
7. Attorneys who are white females receive worse treatment	3%	1%	4%	3%	3%	1%	3%
8. Attorneys who are white males receive better treatment	21%	4%	30%	28%	16%	28%	28%
9. Attorneys who are white males receive worse treatment	1%	1%	0%	1%	0%	1%	1%
10. Not sure	7%	3%	10%	8%	6%	9%	8%
Total	839	269	332	238	499	102	238

This question received 839 responses. The majority of respondents (54 percent) said that attorneys are treated about the same, irrespective of their race and gender. This majority is a somewhat smaller percentage than the majority in either of the first two questions (59 percent and 67 percent).

The percentage of male respondents who perceived that attorneys are treated about the same was nearly double the percentage of female respondents (80 percent to 43 percent) and was exactly double the percentage of respondents who did not identify their gender (40 percent). The percentage of white respondents who perceived that attorneys are treated about the same was more than double the percentage of attorneys of color (66 percent and 27 percent).

The second most frequent selection was that white male attorneys receive better treatment, which was chosen by 21 percent of all respondents. Thirty percent of female respondents chose this response, compared to only 4 percent of male respondents. Twenty-eight percent of respondents of color chose this response, compared to 16 percent of white respondents. In addition, 28 percent of respondents who did not identify their race or gender chose this response.

Question 4 asked respondents to choose which factor, race or gender, has a greater effect on how attorneys are treated. Respondents who said that attorneys are treated about the same in Question 3 and respondents who said they were not sure did not see Question 4 of the survey. However, those who said that attorneys were treated about the same in Question 3 of the survey were included in the number of respondents who answered that race and gender have an equal impact in Question 4.

Table 4

<b>WOMEN IN COURTS SURVEY QUESTIONS</b>		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
<b>4 Put a check in the circle next to the statement below that is closest to your opinion as to which, if any, affects the treatment of attorneys more, race or gender. (If Question 3 equals response 1 - 9).</b>							
1. Gender has the stronger impact	21%	5%	27%	29%	18%	11%	29%
2. Race has the stronger impact	13%	10%	15%	15%	6%	44%	15%
3. Gender and race have an equal impact (includes question 3.1 "Attorneys are treated about the same irrespective of their race and gender")	64%	85%	53%	54%	74%	39%	54%
4. Not sure	2%	0%	4%	1%	1%	6%	1%
Total	780	260	303	217	470	93	217

The majority of respondents said that race and gender have an equal impact on how attorneys are treated. Eight-five percent of males chose this response, while only 53 percent of females said the same. The percentage of those who did not identify themselves by race or gender who gave this response also was 54 percent.

A smaller percentage of respondents (21 percent) said that gender had the stronger impact. This response was chosen by a much higher percentage of females (27 percent) than males (5 percent) and a higher percentage of white attorneys/judges (18 percent) than attorneys/judges of color (11 percent). Twenty-nine percent of those who did not identify their race and their gender agreed with this statement.

Forty-four percent of respondents of color reported that race had the stronger impact, compared to only 6 percent of white respondents and 15 percent of those not reporting race who gave that response.

#### IV. REPORTED INCIDENTS OF BIAS

The next section of the survey asked respondents to report specific incidents in which they perceived that attorneys and judges had been subject to mistreatment in court. Questions 5 through 17 asked respondents to share information about their experiences during the past two years. The committee chose to limit the study to recent events to help maintain the relevance and the accuracy of the recollections reported.

In Question 5, respondents were asked if, during the past two years, they had observed or experienced incidents in which an attorney was demeaned, disparaged or unfairly criticized.

Table 5

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
<b>5 In the last two years have you ever observed or experienced any incidents in the New Jersey courts in which you thought an attorney was demeaned, disparaged or unfairly criticized?</b>							
1. Yes	48%	35%	47%	66%	40%	49%	66%
2. No	50%	63%	52%	33%	58%	49%	32%
3. Not sure	1%	1%	1%	1%	1%	2%	1%
Total	819	268	335	216	501	102	216

Half of the total 819 respondents indicated that they had not observed or experienced such incidents, while 48 percent, or 394, said they had. The differences among groups of respondents were fairly small. A somewhat higher percentage of females than males said they had perceived such mistreatment (47 percent to 35 percent); the difference between attorneys/judges of color and white attorneys/judges was somewhat similar (49 percent to 40 percent).

Respondents who answered “no” or “not sure” to Question 5 were routed directly to Question 10 and did not see Question 6 through Question 9. Those who answered “yes” to Question 5 were routed to Question 6, which asked about perceptions of incidents involving disparaging, demeaning or unfair treatment of an attorney by a judge.

Because Questions 6 through 10 ask questions regarding unfair treatment of attorneys by people who fill different roles in the courthouse, the “no” responses in Question 5 were extrapolated to be counted as “no” responses in Questions 6 through 10. In other words, the number of “no” responses to Questions 6 through 10 include those who answered “no” to Question 5.

Table 6

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
6 In the last two years have you ever observed or experienced any incidents in the New Jersey courts in which you thought an attorney was demeaned, disparaged or unfairly criticized by a judge? (If Question 5 equals 1 or 2).							
1. Yes	41%	32%	41%	57%	27%	40%	57%
2. No (includes Question 5 where the response equals "No").	58%	68%	59%	42%	73%	59%	42%
3. Not sure	0%	0%	0%	1%	0%	1%	1%
Total	817	266	314	218	650	100	218

More than half of all respondents (58 percent) in Question 6 said that they had not seen an attorney demeaned, disparaged or unfairly criticized by a judge. Again, the total number of “no” responses includes those who answered “no” to Question 5, indicating that they had not seen an attorney demeaned, disparaged or unfairly criticized at all in the last two years. This response was chosen by a somewhat higher percentage of male respondents than female respondents (68 percent to 59 percent) and white respondents than respondents of color (73 percent to 59 percent).

Respondents who answered “no” were directed to Question 7. Those who answered “yes” to Question 6 were then directed to Question 6.0, which asked them to describe the race and gender of the attorneys they thought were demeaned, disparaged or unfairly criticized. They also were asked whether their experience included more than one incident. Question 6.0 did not seek to establish a causality between the race and gender of the attorney and the unfair treatment perceived by the respondent. In other words, respondents were not asked whether they thought the unfair treatment was due to race or gender bias of the judge.

Table 6.0

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
6.0 Please describe the attorneys you thought were demeaned, disparaged or unfairly criticized by a judge. (check all that apply)							
1. Male of color attorney-- once	4%	2%	4%	6%	2%	8%	6%
2. Male of color attorney-- more than once	5%	6%	4%	7%	2%	12%	7%
3. Female of color attorney-- once	3%	2%	3%	5%	1%	9%	5%
4. Female of color attorney-- more than once	8%	4%	8%	13%	3%	15%	13%
5. White male attorney-- once	10%	10%	10%	12%	8%	3%	13%
6. White male attorney-- more than once	12%	15%	6%	19%	8%	5%	19%
7. White female attorney-- once	9%	5%	11%	13%	6%	9%	13%
8. White female attorney-- more than once	15%	8%	18%	20%	11%	4%	20%
Total number of survey responses from Question 6	817	266	314	218	650	100	218

Question 6.0 leans heavily on perceptions, and it is possible that some respondents needed to guess the race of the attorneys involved if they were describing an incident that involved an attorney other than themselves. Respondents could choose more than one response to this question.

White female attorneys were the group chosen by the highest percentages of respondents, followed closely by white male attorneys. Smaller percentages were reported for attorneys of color.

Although white attorney groups were chosen more often by the total group of respondents, when respondents are separated by race, higher percentages of respondents of color reported judicial mistreatment of attorneys of color than white attorneys, while higher percentages of white respondents reported judicial mistreatment of white attorneys.

The differences in perceptions does not hold true when respondents are separated by gender, since higher percentages of both male and female respondents selected white attorneys, both male and female, as the group most often demeaned, disparaged or unfairly criticized by a judge. That result, however, is likely driven by the greater number of white attorneys responding overall.

### Comments

After the multiple-choice questions regarding judicial mistreatment, respondents were invited to provide details of the incidents they had observed or experienced. The comments were both helpful and problematic, in that they gave a fuller picture of the incidents described, but not always in enough detail to help the reader determine whether the respondent perceived the mistreatment to be the result of bias.

On the other hand, many comments illustrate that perception plays an important role in how we understand experience. Because of the adversarial nature of court events and the acknowledged power of the judge and other persons over attorneys and their clients, perceptions may be affected by feelings of vulnerability, by past experience, and by cultural assumptions. None of those factors diminishes the legitimacy of one's perceptions, but it would be naïve to believe that all participants in any event, whether in or out of court, share a common perception of what occurred. Nevertheless, perceptions of bias are a valid concern in the Judiciary, and negative perceptions regarding fairness in the courts damage the public's trust and confidence in the entire legal system.

In one telling illustration of this point, one respondent, when asked whether the attorney had observed or experienced any incidents in which an attorney had been demeaned, disparaged or unfairly criticized by a judge, answered, "Cannot think of a particular instance. But given the circumstances, I have no doubt that happens, and happens all too frequently."

Some respondents acknowledged the difficulty of perceiving biased treatment against others. "As a white attorney, it is difficult for me to assess if attorneys of color are treated less favorably - although I have never personally observed improper treatment." This seemed particularly true for some respondents who reported little interaction with female attorneys/judges or attorneys/judges of color.

Of the 41 percent of the respondents who answered "yes" to Question 6, many expressed frustration with the behavior and reactions of judges. Examples of impropriety were

expressed in general terms twice as often as examples detailing race or gender specifics. Themes of attorney competence, calendar control and timeliness were identified.

In the context of race and gender were examples of comments regarding attorney competence, including a female attorney who was told by a judge during trial that she should have gone to secretarial school when she could not locate a document. Other female attorneys were reported to be belittled in front of clients, interrupted or had their professionalism questioned. Some respondents noted multiple instances where a judge was perceived to be harsh or more critical of women, creating a reputation that women would have had to work harder than men to gain respect from this judge. One respondent noted favoritism toward a black male attorney.

Twelve responses indicated incidents of calendar control issues such as a “mean spirited emphasis on moving cases without regard to legitimate dictates of justice.” Another example described a judge who was upset or offended that the attorney appeared to be making more work for the court. In the context of race and gender, some examples include a male attorney given greater leniency during discovery or a female attorney being cut off or criticized when presenting her case when her male counterpart was not. Two more examples included a perception that female attorneys waited longer to be called for cases and that female attorneys were treated as if they had less busy calendars than male attorneys.

Being late for court was listed by nearly a dozen respondents as a reason for provoking a negative and often public reaction from a judge. An attorney who arrived late to court was made to “apologize to everyone in the courtroom, despite the fact that the attorney had called chambers earlier, advised of car trouble, and indicated same to the court.” In many examples, the reason for the attorney’s lateness was explained to the judge, but this did not prevent reprimand in open court: “Attorney was 10 mins late due to a child care problem and judge made comment in court in front of courtroom that attorney’s priorities needed adjustment.” In several instances the reprimand included being chastised, yelled at or berated because the attorney was late (with or without excuse). One gender-specific comment highlighted a judge who “stated that the woman attorney had disrespected the court by not calling to say she was going to be late; when she tried to explain she had called, he said he didn’t want to hear here [sic]. He then called her into chambers and yelled at her privately.”

Many of the incidents described are not clearly attributable to perceptions of race or gender bias, while other examples are more obvious. Several examples are given of bias in chambers during pretrial conferences or other meetings with judges. On the issue of race, an attorney was referred to in court as the “Korean attorney.” One respondent described an incident when a “judge told the attorney to learn to speak ‘proper English.’ This attorney has a slight accent.” On the issue of gender, respondents made reference to the “good ole boys club” setting where sexual jokes or stories were told that left the female out and the case was never discussed. In another instance, a female attorney was asked if she was going to cry during a case management conference. One female attorney was called a “brat,” and one was told she should stop wasting her client’s money. In other instances, female attorneys were told they were whining. Another female respondent noted an incident where a judge made sexual comments in his chambers. One response referenced female attorneys being referred

to during court as “lady” or “madame” while her male counterpart was referred to as “counselor.”

Many of the comments reveal that the attorneys expect more leniency or understanding for tardiness or family-related issues such as child care. The comments also suggest that attorneys perceive judges’ reactions, when harsh, as being unprofessional.

Comments described judicial mistreatment in the form of yelling, belittling or using sarcasm. Some examples include “Sometimes judge rude or short with attorneys,” “judge was rude and unjustifiably critical of attorney. [T]hey were generally treated with lack of respect” and “spoken to in a rude and unprofessional manner.” Rudeness was explained by one respondent as “Many incidents of rudeness, generally fed by arrogance....Usually involved sarcasm.” Another example noted by two respondents identified attorneys being “cut off” and given little respect. Others gave specific instances where the judge “berated the attorney until tears began to flow down her cheek” and of a judge “screaming and personally criticizing while alleging that ‘it wasn’t personal.’”

While attorneys clearly dislike these reactions, when the reaction is done in a public setting, whether in a full courtroom or in front of a client, the frustration intensifies. More than 70 responses described incidents that took place during court proceedings. An example of rudeness expressed in a public setting was described as a “sneer from bench at the back of the attorney, seen by public.” In one instance, a judge “threatened to arrest attorney for making a procedural flaw.” Another attorney noted that, “In open court, the judge stated that the papers were substandard, with flaws in grammar and word usage.” Another example described an attorney who was “unfairly criticized in court in front of client. Very over-the-top criticism by the court and not anything that needed to be placed on the record.” One respondent described a judge making a “joke at the attorney’s expense in a full courtroom.” Attorneys were personally attacked or called lazy while presenting arguments. In one example, a judge took over the attorney’s interrogation.

The theme of judicial criticism or demeaning remarks about attorney competence included references to judges who had called attorneys “stupid” or questioned their ability or “personal competence.” Other examples included judges telling attorneys that their argument was “not worthy,” that they presented “ridiculous motions” and that the judge had “impugned attorney’s intelligence.”

Question 7 asked about perceptions of mistreatment by other attorneys.

Table 7

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
<b>7 In the last two years have you ever observed or experienced any incidents in the New Jersey courts in which you thought an attorney was demeaned, disparaged or unfairly criticized by another attorney? (If response to Question 5 equals 1 or 2).</b>							
1. Yes	25%	20%	27%	35%	17%	29%	35%
2. No (includes Question 5 where the response equals "No").	74%	79%	71%	64%	82%	69%	64%
3. Not sure	1%	2%	2%	1%	1%	2%	1%
Total	738	266	294	140	613	100	140

Nearly three quarters of all respondents said that they had not perceived an attorney being demeaned, etc. by another attorney, although female attorneys/judges and attorneys/judges of color reported smaller majorities of “no” responses (71 percent and 69 percent). Respondents who did not identify themselves by race or gender reported even fewer perceptions of mistreatment in the last two years.

Respondents who answered “no” to Question 7 were directed to Question 8. Those who answered “yes” to Question 7 were directed to Question 7.0, which asked them to describe the race and gender of the attorneys they perceived as being demeaned, disparaged or unfairly criticized. They also were asked whether their experience included more than one incident.

Table 7.0

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
<b>7.0 Please describe the attorney(s) you thought were demeaned, disparaged or unfairly criticized by another attorney. (check all that apply).</b>							
1. Male of color attorney-- once	2%	1%	2%	3%	0%	5%	3%
2. Male of color attorney-- more than once	3%	5%	2%	4%	2%	8%	4%
3. Female of color attorney-- once	2%	0%	3%	4%	0%	6%	4%
4. Female of color attorney-- more than once	4%	2%	4%	11%	1%	10%	11%
5. White male attorney-- once	4%	5%	2%	5%	3%	2%	5%
6. White male attorney-- more than once	6%	8%	3%	9%	5%	2%	9%
7. White female attorney-- once	4%	1%	5%	6%	2%	3%	6%
8. White female attorney-- more than once	11%	7%	14%	14%	9%	5%	14%
Total number of survey responses from Question 7	738	266	294	140	613	100	140

Like Question 6.0, Question 7.0 asked respondents to give the actual or perceived race of the attorneys involved. Respondents could choose more than one response to this question. As with the previous question involving judicial mistreatment, respondents were not asked if the mistreatment was caused by race or gender bias.



The highest percentage of respondents said that white female attorneys had been demeaned, disparaged or unfairly criticized by another attorney, with a somewhat smaller percentage of respondents saying that white male attorneys received such mistreatment.

As with Question 6.0, this question yielded different responses from the various race and gender groups. A higher percentage of white attorneys/judges reported mistreatment of white attorneys, both male and female, while a higher percentage of attorneys/judges of color reported mistreatment of male and female attorneys of color.

Likewise, higher percentages of female respondents reported mistreatment of female attorneys, and higher percentages of male respondents reported mistreatment of male attorneys.

### Comments

Of the 181 respondents who answered Question 7 in the affirmative, 91 offered one or more narrative comments describing the behavior. In many cases, the narratives provided insufficient detail to determine if the inappropriate behavior was perceived to be the result of bias. In a few instances, the respondent expressly stated or implied the behavior was not based on race or sex. In others, the respondents described one or more incidents where the inappropriate behavior did appear to be gender- or race-based.

The inappropriate behavior described by respondents fell into three general categories: 1) demeaning the other attorney by speaking in a condescending tone or questioning the attorney's work product or lawyering skills, 2) bullying the attorney by screaming or interrupting and 3) using racially or sexually stereotypical comments or other offensive language. Several incidents illustrative of the third category are worth noting. For example, one respondent reported that co-counsel in a criminal matter suggested she "wear a skirt at trial" and, in response to a question, stated "I only talk to women I sleep with." Another respondent reported that an attorney made "comments about mood that were infering [sic] hormonal changes" and engaged in other offensive behavior. Another respondent reported hearing an attorney "comment that he didn't want to hear anymore [sic] 'ghetto' strategies from the black attorney." In another narrative, a respondent explained that a male attorney representing the husband in a divorce action "got very heated with his adversary (a female attorney) and said 'What are you one of those lesb's [sic] who stick with their own' and he also called her a bitch."

Among the 181 respondents who answered Question 7 in the affirmative, a total of 78 reported that one or more incidents occurred in the presence of a judge and offered a narrative explaining the judge's response. About half of the narratives indicated that the judge acknowledged in some way that the conduct was inappropriate. While the responses from the bench varied, generally the judge admonished the offending attorney and reminded him or her to act professionally. In a few cases, respondents described a stronger response from the judge, for example asking the offending attorney to apologize to the other attorney or, in another instance, offering "the female attorney an opportunity to respond on the record

to the gender bias comments.” In at least two instances, the judge threatened sanctions against the offending attorney.

Respondents expressed dissatisfaction with the judge’s response in about half of the narrative comments. Several respondents stated that the judge’s response was insufficient when he or she merely tried to “calm down” the attorneys. Approximately 25 respondents reported that the judge did not respond at all. In a handful of cases, respondents perceived that the judge condoned the conduct by joining in with the demeaning comments or agreeing with unfair criticism.

Table 8

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
<b>8 In the last two years have you ever observed or experienced any incidents in the New Jersey courts in which you thought an attorney was demeaned, disparaged or unfairly criticized by a sheriff’s officer or other officer charged with court security? (If response to Question 5 equals 1 or 2).</b>							
1. Yes	8%	7%	10%	12%	5%	18%	12%
2. No (includes Question 5 where the response equals "No").	91%	92%	89%	87%	94%	80%	87%
3. Not sure	1%	1%	1%	1%	1%	2%	1%
Total	710	265	271	115	566	100	115

Question 8 asked respondents if they had seen an attorney mistreated by a sheriff’s officer. Although sheriff’s officers are not part of the Judiciary staff, they work closely with judges and with court administrators to ensure a safe and orderly flow of cases before the judges. They are an integral part of the courthouse and the courtroom, and they interact frequently with judges and attorneys as well as litigants, members of the public and other court visitors.

The overwhelming majority of respondents (91 percent) said that they had not perceived an attorney demeaned, disparaged or criticized by a sheriff’s officer, including those respondents who answered “no” to Question 5. While the percentage of respondents who indicated “no” remained above 90 percent for male attorneys, female attorneys, and white attorneys, a somewhat smaller percentage (80 percent) of the respondents of color said that they had not perceived such mistreatment.

### Comments

In their comments, respondents recounted demeaning, disparaging or critical treatment by sheriff’s officers such as mistaking female attorneys and attorneys of color for clients, using disrespectful or pejorative language to address female attorneys, and a general bias and abuse of power with regard to attorneys. In one example, “the attorney although dressed appropriately was asked where was his attorney.” In another, an officer “asked the black male attorney for a ‘Lawyer I.D.’ He did not ask the other attorneys for I.D. [before allowing them] to sit in the jury box,” as well as an incident where, “[a]fter showing his county

attorney I.D., the office[r] made the Hispanic attorney take off his belt before he would allow him to enter and then laughed about it when the attorney got on the elevator.”

Table 8.0

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
<sup>80</sup> Please describe the attorney(s) you thought were demeaned, disparaged or unfairly criticized by a sheriff's officer or other officer charged with court security. (check all that apply).							
1. Male of color attorney-- once	1%	2%	1%	1%	1%	4%	1%
2. Male of color attorney-- more than once	2%	2%	1%	1%	1%	7%	1%
3. Female of color attorney-- once	1%	0%	1%	3%	0%	2%	3%
4. Female of color attorney-- more than once	2%	1%	3%	5%	1%	5%	5%
5. White male attorney-- once	1%	2%	0%	3%	1%	1%	3%
6. White male attorney-- more than once	1%	2%	1%	1%	1%	0%	1%
7. White female attorney-- once	1%	0%	3%	1%	1%	0%	1%
8. White female attorney-- more than once	2%	2%	3%	2%	2%	2%	2%
Total number of survey responses from Question 8	710	265	271	115	566	100	115

Question 8.0 asked respondents to identify the race and gender of the attorneys involved. It did not ask respondents to report their perceptions on whether race or gender bias were the causes of mistreatment.

Of the 60 who responded “yes” to Question 8, the breakdown of whom they perceived to have been mistreated was fairly evenly divided. However, the numbers of respondents are so small that they do not provide meaningful data.

### Comments

Fifteen of the incidents of inappropriate conduct by a sheriff's officer reportedly occurred in the presence of a judge. Respondents described three incidents where a judge acknowledged the sheriff's conduct and took some level of corrective action. With respect to another incident, the respondent stated the judge noticed but did not take sufficient corrective action. In six incidents it was reported that the judge did not acknowledge the offensive conduct. In two separate incidents, it appeared to the respondent that the judge condoned the behavior of the sheriff's officer.

Table 9

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
9 In the last two years have you ever observed or experienced any incidents in the New Jersey courts in which you thought an attorney was demeaned, disparaged or unfairly criticized by a court employee? (If response to Question 5 equals 1 or 2).							
1. Yes	8%	7%	10%	7%	5%	14%	7%
2. No (includes Question 5 where the response equals "No").	92%	92%	89%	93%	94%	85%	93%
3. Not sure	1%	1%	1%	0%	1%	1%	0%
Total	706	266	269	109	568	100	109

Question 9 asked respondents whether they had observed or experienced attorneys being demeaned, disparaged or unfairly criticized by a court employee. The vast majority (92 percent) said “no.” Only 53 respondents answered yes. When broken out by race and gender, the group with the highest percentage of respondents who indicated they had perceived such mistreatment was attorneys/judges of color.

Table 9.0

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
9.0 Please describe the attorney(s) you thought were demeaned, disparaged or unfairly criticized by a court							
1. Male of color attorney-- once	0%	0%	1%	1%	0%	1%	1%
2. Male of color attorney-- more than once	2%	3%	1%	1%	1%	5%	1%
3. Female of color attorney-- once	1%	0%	2%	1%	0%	3%	1%
4. Female of color attorney-- more than once	2%	2%	3%	2%	1%	7%	2%
5. White male attorney-- once	1%	1%	1%	4%	1%	1%	4%
6. White male attorney-- more than once	2%	3%	1%	2%	2%	3%	2%
7. White female attorney-- once	1%	0%	2%	2%	1%	0%	2%
8. White female attorney-- more than once	2%	2%	4%	1%	3%	1%	1%
Total number of survey responses from Question 9	706	266	269	109	568	100	109

Of the 50 respondents who answered Question 9.0, only very small percentages indicated any perception of mistreatment of any group of attorneys by court employees.

### Comments

Approximately 39 comments described the treatment by court staff of attorneys in general with no specific reference to race or gender. That treatment fell into three general categories: (1) rude, nasty or disrespectful behavior, (2) denying attorneys information or access to the courts and (3) aggressive or combative behavior that included yelling and screaming.

Examples of mistreatment included comments such as “too numerous to detail,” “very rude,” “demeaning,” “discourteous, abrupt and nasty,” “disrespectful and not a team player” and

“obnoxious.” One commenter described court staff who demonstrated “sarcasm and lack of professionalism.”

Twelve survey comments described court staff’s treatment of women attorneys. The comments included female attorneys being denied information about and/or access to the court, court employees being more responsive to and respectful of male attorneys and female attorneys being mistaken for litigants. Six comments described incidents where court staff denied female attorneys information about or access to the court; for example, preventing female attorneys from participating in telephone motion conference calls, or seeing judges in chambers. Other comments observed that a particular team leader offered male attorneys better service than female attorneys; a male attorney of color was given scheduling priority, and that there was a “mild bias” in favor of males.

Six comments described the treatment by court staff of attorneys of color. Of those, three described court staff treating attorneys of color unprofessionally or denying them information about or access to the courts. One comment referred to “the disrespectful treatment of [a] minority attorney by white female court personnel,” one observed that attorneys of color are called last, and one said that “court employee was unnecessarily rude to [a] minority attorney in the presence of the judge, opposing counsel, the public, and the parties.” Two comments described court staff mistaking attorneys of color for clients. One comment described court staff making racist statements about Asian attorneys: “I feel that there is a lack of respect or maybe a lack of understanding of cultural differenc[e] particularly when the attorneys are Korean or Chinese. Jokes about the culture, language or pronunciations of words are made.”

Respondents indicated that 18 of the incidents of inappropriate behavior by court employees occurred in the presence of a judge. In four incidents, respondents stated that the judge acknowledged the employee’s conduct to some extent either by apologizing for the conduct or trying to “calm things down.” In 10 incidents, respondents stated that the judge ignored or was indifferent to the conduct. One respondent stated that judges and court employees in municipal court regularly “engage in demeaning discussion about the clients and attorneys.”

The next set of questions (10 through 12) relate to perceptions of inappropriate conduct towards judges.

Table 10

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender - No			Race - No		
		Male	Female	response	White	Of Color	response
<b>10 In the last two years have you ever observed or experienced any incidents in the New Jersey courts in which you thought a judge was demeaned, disparaged or unfairly criticized?</b>							
1. Yes	20%	20%	20%	20%	19%	22%	21%
2. No	78%	77%	78%	79%	79%	73%	79%
3. Not sure	2%	3%	2%	1%	2%	5%	1%
Total	709	269	333	107	501	101	107

Question 10 asked whether in the last two years respondents had observed or experienced incidents in which they thought a judge was demeaned, disparaged or unfairly criticized. The majority of respondents (78 percent) answered that they had not seen a judge so mistreated. There was little disparity among demographic groups in the responses to this question.

Those who answered “no” or “not sure” to Question 10 were routed directly to Question 13 and did not see Questions 11-12. Those who answered “yes,” a total of 141 respondents, were routed to Question 11.

Because Questions 11 through 12 ask questions regarding unfair treatment of judges by people who fill different roles in the courthouse, the “no” responses in Question 10 were extrapolated to be counted as “no” responses in Questions 11 through 12. In other words, the number of “no” responses to Questions 11 through 12 include those who answered “no” to Question 10.

Table 11

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender -			Race -		
		Male	Female	No response	White	Of Color	No response
<b>11 In the last two years have you ever observed or experienced any incidents in the New Jersey courts in which you thought a judge was demeaned, disparaged or unfairly criticized by an attorney? (If Question 10 equals 1 or 2).</b>							
1. Yes	13%	13%	14%	14%	9%	17%	14%
2. No (includes Question 10 where the response equals "No").	86%	87%	86%	85%	91%	82%	85%
3. Not sure	1%	0%	1%	1%	0%	1%	1%
Total	699	262	326	108	740	96	108

Question 11 asked whether in the last two years respondents had observed or experienced incidents in which they thought a judge was demeaned, disparaged or unfairly criticized by an attorney.

The majority of respondents (86 percent) said that they had not seen such mistreatment of a judge by an attorney. There was little disparity among demographic groups in the way the question was answered, although the percentage of respondents of color who answered “no” was slightly smaller (82 percent).

Those who answered “yes” (a total of 94 respondents) were directed to Question 11.0, which asked them to identify the gender of the judge they thought was demeaned, disparaged or unfairly criticized and whether the judge was a person of color. They were also asked whether their experience included more than one incident. Respondents were not asked if they perceived the mistreatment to be the result of race or gender bias.

Question 11.0 relies heavily on perceptions, and it is possible that respondents needed to guess at the ethnicity of the judges involved. Respondents could choose more than one response to the question.

Table 11.0

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender - No response			Race - No response		
		Male	Female		White	Of Color	
<sup>11a</sup> Please describe the judge(s) you thought were demeaned, disparaged or unfairly criticized. (check all that apply).							
1. Male of color judge-- once	2%	2%	2%	1%	1%	6%	1%
2. Male of color judge-- more than once	1%	0%	1%	1%	0%	1%	1%
3. Female of color judge-- once	2%	1%	1%	6%	0%	4%	6%
4. Female of color judge-- more than once	1%	1%	2%	1%	0%	4%	1%
5. White male judge-- once	4%	3%	4%	5%	3%	2%	5%
6. White male judge-- more than once	3%	3%	3%	1%	2%	1%	1%
7. White female judge-- once	3%	2%	4%	6%	2%	5%	6%
8. White female judge-- more than once	3%	3%	4%	0%	3%	2%	0%
Total number of survey responses from Question 11	699	262	326	108	740	96	108

The highest percentages were for perceived mistreatment of white female and white male judges. When separated by gender, higher percentages of both male and female respondents said that they had perceived such mistreatment of white male and white female judges.

Respondents of color showed higher percentages of perceived mistreatment of judges of color; however, with only 16 respondents of color answering the question, the responses are difficult to analyze to any useful degree.

### Comments

Eighty-six comments about judges who were perceived to be demeaned, disparaged or unfairly criticized were given by 76 respondents. Where the gender of the judge was identified, 14 were male (three identified as of color) 23 were female (two identified as of color) and 49 were not identified by gender or race.

Eighty of the comments could be sorted into four categories: name calling comments, allegations of bias rulings, rude and argumentative behavior inside the courtroom and public responses about judges. Six of the comments were incomplete for interpretation.

Twenty-four responses referenced comments questioning the competency of judges: calling a judge “dumb,” “stupid,” “clueless,” “incompetent, or “ignorant,” or questioning whether a judge is on the bench only because of gender or diversity appointments. Seven comments complained of unfair allegations of bias rulings, claiming the court granted or denied a matter based on collateral racial issues. Twenty-six respondents noted disrespectful courtroom behavior by attorneys yelling or mumbling, being sarcastic or condescending or by interrupting or speaking over a judge. Fourteen responses referenced attorneys who refused to comply with court orders based on personal disagreements with the court’s rulings.

Description of court behaviors could be itemized by gender. For example, talking over a judge was more often described as rude and discourteous when directed at a female judge, but described as argumentative when directed at a male judge. Finally, nine respondents noted public condemnation of the judges either in newspaper articles or in Senate or political hearings.

Table 12

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender - No response			Race - No response		
		Male	Female		White	Of Color	
<b>12 In the last two years have you ever observed or experienced any incidents in the New Jersey courts in which you thought a judge was demeaned, disparaged or unfairly criticized by a sheriff's officer or other officer charged with court security? (If Question 10 equals 1 or 2).</b>							
1. Yes	2%	1%	2%	4%	1%	2%	4%
2. No (includes Question 10 where the response equals "No").	98%	99%	98%	95%	99%	98%	95%
3. Not sure	0%	0%	0%	1%	0%	0%	1%
Total	696	262	312	103	709	97	103

Question 12 asked about mistreatment of judges by officers charged with court security. Of a total of 696 responses, 98 percent of respondents reported they had not observed or experienced an incident in which they perceived a judge was demeaned, disparaged or unfairly criticized by a sheriff's officer or other officer charged with court security.

Table 12.0

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender - No response			Race - No response		
		Male	Female		White	Of Color	
<b>12.0 Please describe the judge(s) you thought were demeaned, disparaged or unfairly criticized. (check all that apply).</b>							
1. Male of color judge-- once	0%	0%	0%	0%	0%	0%	0%
2. Male of color judge-- more than once	0%	0%	0%	1%	0%	0%	1%
3. Female of color judge-- once	0%	0%	1%	0%	0%	1%	0%
4. Female of color judge-- more than once	0%	0%	0%	1%	0%	0%	1%
5. White male judge-- once	0%	0%	0%	2%	0%	0%	2%
6. White male judge-- more than once	0%	0%	0%	0%	0%	0%	0%
7. White female judge-- once	0%	0%	0%	1%	0%	0%	1%
8. White female judge-- more than once	1%	1%	0%	2%	0%	0%	2%
Total number of survey responses from Question 12	696	262	312	103	709	97	103

Those who answered "no" to Question 12 were routed directly to Question 13, while those who answered "yes" were asked to identify the race and gender of the judges they thought had been demeaned, etc. by sheriff's officers. They were not asked their perceptions on whether the mistreatment was the result of race or gender bias.

It is difficult to draw any conclusions from the small number of respondents who answered Question 12.0. Of those 12 respondents, eight provided demographic information about themselves: three males; five females; six white respondents and two respondents of color.



Although the statistics suggest that respondents are more likely to report on perceived mistreatment of judges in their own demographic category, the paucity of responses to this question precludes further analysis of the relationship between race or gender and perceived treatment of judges by sheriff's officers.

The few comments received on this topic cannot be categorized except to note that incidents of sheriff's officers demeaning, disparaging or criticizing judges appear to be anomalous. One sheriff's officer was noted for referring to a female judge of color with a racist and misogynist nickname, and another sheriff's officer was said to criticize the judge's ability to control her courtroom and her perceived leniency toward criminal defendants. Two sheriff's officers were reported to have openly confronted a judge in court.

Question 13 asks respondents to report their perceptions on advantages attorneys may receive from a judge because of race or gender. Those who answered "no" were directed to Question 14.

Table 13

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender -			Race -		
		Male	Female	No response	White	Of Color	No response
<b>13 In the last two years have you ever observed or experienced any incident(s) in which you thought an attorney was being treated advantageously because of race or gender by judge(s) in the New Jersey court system?</b>							
1. Yes	24%	14%	30%	37%	19%	37%	38%
2. No	72%	85%	65%	60%	78%	55%	59%
3. Not sure	3%	1%	5%	3%	3%	8%	3%
Total	697	270	334	93	502	102	93

Of the 697 responses received for this question, 72 percent said they had not perceived an attorney being treated advantageously because of race or gender by a judge. The percentage of female respondents who chose this response (65 percent) was smaller than the percentage of males (85 percent), and the percentage of attorneys of color who said "No" (55 percent) was smaller than the percentage of "no" responses from white respondents (78 percent).

Table 13.0

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender -			Race -		
		Male	Female	No response	White	Of Color	No response
<b>13o Please describe the attorneys you thought were treated advantageously by judge(s). (check all that apply).</b>							
1. Male of color attorney-- once	2%	1%	1%	3%	2%	1%	3%
2. Male of color attorney-- more than once	2%	1%	2%	4%	2%	0%	4%
3. Female of color attorney-- once	2%	1%	2%	1%	2%	1%	2%
4. Female of color attorney-- more than once	2%	3%	1%	2%	2%	1%	2%
5. White male attorney-- once	3%	0%	5%	6%	3%	5%	6%
6. White male attorney-- more than once	13%	5%	18%	22%	10%	25%	22%
7. White female attorney-- once	2%	2%	1%	1%	1%	4%	1%
8. White female attorney-- more than once	3%	3%	2%	5%	2%	5%	5%
Total number of survey responses from Question 13	697	270	334	93	502	102	93

When asked who was treated advantageously by a judge because of race or gender, respondents across the board most often perceived white male attorneys to have received advantage from judges. While the highest percentage of the total pool of respondents made this selection, the percentage of male respondents who gave this response was somewhat lower than the percentage of other groups. Attorneys of color had the highest percentage response for this category.

Table 14

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender - No response			Race - No response		
		Male	Female		White	Of Color	
<b>14 In the last two years have you ever observed or experienced any incident(s) in which you thought an attorney was being treated disadvantageously because of race or gender by judge(s) in the New Jersey court system?</b>							
1. Yes	14%	5%	20%	18%	12%	23%	18%
2. No	81%	94%	73%	74%	85%	66%	74%
3. Not sure	5%	1%	7%	8%	3%	12%	8%
Total	677	269	336	72	503	102	72

Question 14 asked about perceptions of disadvantageous treatment of attorneys by judges. The majority of respondents (81 percent) said that they had not perceived an incident in which an attorney had been treated disadvantageously because of race or gender by a judge.

While almost all male respondents (94 percent) chose this response, smaller percentages of other groups answered “no” to this question. For example, 85 percent of white respondents and 73 percent of female respondents said they had not perceived disadvantageous treatment that was attributable to race or gender. Among respondents of color, 66 percent said they had not observed that type of disadvantageous treatment.

Table 14.0

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender - No response			Race - No response		
		Male	Female		White	Of Color	
<b>14o Please describe the attorneys you thought were treated disadvantageously by judge(s). (check all that apply).</b>							
1. Male of color attorney-- once	1%	1%	1%	0%	1%	4%	0%
2. Male of color attorney-- more than once	2%	2%	1%	3%	1%	5%	3%
3. Female of color attorney-- once	3%	0%	4%	3%	1%	8%	3%
4. Female of color attorney-- more than once	2%	1%	3%	1%	1%	8%	1%
5. White male attorney-- once	0%	0%	0%	0%	0%	0%	0%
6. White male attorney-- more than once	1%	1%	1%	1%	1%	1%	1%
7. White female attorney-- once	3%	1%	5%	1%	4%	1%	1%
8. White female attorney-- more than once	5%	0%	9%	7%	5%	3%	7%
Total number of survey responses from Question 14	677	269	336	72	503	102	72

Of the 91 responses received for Question 14.0, higher percentages of responses were received for white female attorneys and female attorneys of color. When separated into groups, however, a higher percentage of male respondents selected male attorneys of color and white male attorneys as groups whom they perceived to have been treated

disadvantageously. In addition, a higher percentage of attorneys of color chose both male and female attorneys of color as groups whom they perceived to be mistreated.

### Comments

Written comments for Questions 13 and 14 reveal a number of respondents who believe that the “old boy network” favors white male attorneys appearing before white male judges, both in court and in chambers: “Small talk directed to male counsel during conferences, about stereotypical male matters (sports, etc.) and a lack of engagement with female counsel.” One commenter wrote, “Men still get better treatment in the old boys club—and I’m a white male.”

Advantageous treatment included allowing a favored attorney more time to present an argument, more leeway in fulfilling obligations, acceptance of tardiness or missed court appearances, more access to fee-generating assignments, and even more direct assistance in court: “The judge routinely makes statements that are help to people of his own race. ‘You should phrase your questions better.’ Then he will ask the question they should of [sic] asked.”

Other perceptions involved subtleties of address and demeanor, addressing women not as “counsel” but as “honey, “ma’am,” “Ms.” or another term perceived to be condescending, and addressing an adversary by his first name, indicating a familiarity.

Responses discuss preferential treatment not only for white male attorneys, but for Jewish attorneys, female attorneys and attorneys of color: “It depends on the Judge. The Latino judges DEFINITELY favor the other Latino attorneys and even speak in Spanish to them in open court. They are so clearly unfair, it’s disgusting.” Not all favorable attention was perceived to be beneficial: “The judge was so friendly he appeared to be flirting.”

Disadvantageous treatment includes not allowing the same leeway to both adversaries in a case with regard to lateness, discovery, or childcare needs. Other disadvantageous treatment included not allowing equal time for arguments, interrupting and generally disrespectful and dismissive behavior. “Judge refused to let the attorney speak when she was explaining her arguments, even though she was speaking in turn. It was uncomfortable and awkward because the judge would talk over the attorney and would hastily finish her sentences.”

Table 15

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender - No response			Race - No response		
		Male	Female		White	Of Color	
<b>15 In the last two years have you ever observed or experienced any incident(s) in which you thought an attorney was being treated more advantageously because of race or gender by court employees in the New Jersey court system?</b>							
1. Yes	7%	4%	8%	18%	6%	8%	18%
2. No	91%	95%	90%	78%	93%	89%	78%
3. Not sure	2%	1%	2%	4%	1%	3%	4%
Total	657	269	333	55	500	102	55

Question 15 asked about perceptions of advantageous treatment of attorneys by court employees. The great majority (91 percent) indicated that they had not seen such treatment. Each category of respondent showed only a small percentage of “yes” responses.

Table 15.0

<b>WOMEN IN COURTS SURVEY QUESTIONS</b>		Gender - No Male Female response			Race - No White Of Color response		
	Total						
<b>15o Please describe the attorneys you thought were treated advantageously by court employees. (check all that</b>							
1. Male of color attorney-- once	0%	0%	0%	4%	0%	0%	4%
2. Male of color attorney-- more than once	2%	1%	1%	4%	1%	2%	4%
3. Female of color attorney-- once	1%	0%	0%	5%	0%	0%	7%
4. Female of color attorney-- more than once	1%	1%	0%	2%	1%	1%	2%
5. White male attorney-- once	1%	0%	1%	2%	0%	2%	2%
6. White male attorney-- more than once	3%	1%	5%	4%	3%	4%	2%
7. White female attorney-- once	0%	0%	0%	2%	0%	0%	2%
8. White female attorney-- more than once	1%	1%	1%	5%	1%	1%	4%
Total number of survey responses from Question 15	657	269	333	55	500	102	55

As with Question 13, higher percentages of all categories of respondents perceived court employees treating white males advantageously. It appears that higher percentages of female attorneys and attorneys of color reported this perception, but the pool of respondents for this question is too small (44 total respondents) for meaningful analysis of the subgroups.

Table 16

<b>WOMEN IN COURTS SURVEY QUESTIONS</b>		Gender - No Male Female response			Race - No White Of Color response		
	Total						
<b>16 In the last two years have you ever observed or experienced any incident(s) in which you thought an attorney was being treated disadvantageously because of race or gender by court employees in the New Jersey court system?</b>							
1. Yes	4%	2%	6%	7%	3%	9%	7%
2. No	93%	96%	92%	89%	96%	84%	89%
3. Not sure	2%	2%	2%	5%	1%	7%	5%
Total	649	269	336	44	503	102	44

Question 16 asked respondents whether they had observed or experienced any incidents in which they thought an attorney was being treated disadvantageously because of race or gender by court employees. Out of 649 respondents, 93 percent said they had not perceived such mistreatment. Of all of the subgroups, attorneys/judges of color showed the highest percentage of respondents saying that they had perceived such disadvantageous treatment.

Table 16.0

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender -			Race - No		
		Male	Female	No response	White	Of Color	response
<sup>16o</sup> Please describe the attorneys you thought were treated disadvantageously by court employees. (check all that							
1. Male of color attorney-- once	0%	0%	1%	0%	0%	2%	0%
2. Male of color attorney-- more than once	0%	1%	0%	0%	0%	2%	0%
3. Female of color attorney-- once	0%	0%	1%	0%	0%	2%	0%
4. Female of color attorney-- more than once	1%	0%	2%	2%	0%	5%	2%
5. White male attorney-- once	0%	0%	0%	0%	0%	0%	0%
6. White male attorney-- more than once	1%	1%	1%	2%	1%	0%	2%
7. White female attorney-- once	1%	0%	1%	0%	1%	0%	0%
8. White female attorney-- more than once	1%	0%	2%	0%	1%	1%	0%
Total number of survey responses from Question 16	649	269	336	44	503	102	44

Twenty six of the respondents to Question 16 provided demographic data relating to attorneys they believe were treated disadvantageously by court employees. When the responses are viewed in the aggregate, there are higher percentages of perceived disadvantageous treatment of female attorneys, both white and of color, but the numbers are too small for analysis.

### Comments

Written comments to Questions 15 and 16 reveal that respondents perceive preferential treatment of a variety of groups. Some recalled incidents in which male court personnel or sheriff's officers favored male attorneys, and some incidents involved favor shown to female attorneys or attorneys of color. In a few incidents, preferable treatment was a mixed bag: "A Sheriff's officer took a liking to one of the female prosecutors and would bring that defendant up first so that the female prosecutor could go first. Conversely, sometimes the officer would refuse to bring the defendant up because he 'liked looking at the prosecutor' so he wanted to keep her sitting in the courtroom longer."

Respondents perceived that court staff were able to help preferred attorneys by scheduling their cases first, obtaining for the attorneys information from case management databases, or speaking cordially or deferentially to attorneys.

Table 17

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender -			Race - No		
		Male	Female	No response	White	Of Color	response
<sup>17</sup> In answering the survey questions on your observations or experience please circle all that apply.							
1. I personally experienced one or more of the incidents descri	35%	21%	46%	28%	32%	47%	31%
2. I personally observed one or more of the incidents describe	43%	38%	48%	36%	43%	49%	33%
3. I did not observe or experience any incident	42%	53%	33%	50%	44%	34%	50%
Total	631	266	329	36	494	101	36

Question 17 asked respondents to explain the basis of their answers to the survey. Of the 631 responses to the question, 43 percent of respondents answered "I personally observed one or more of the incidents described," and 35 percent answered "I personally experienced one or

more of the incidents described.” In addition, 42 percent of respondents chose “I did not observe or experience any incident.” Because respondents were instructed to choose all the applicable answers, some respondents may have chosen both the first and second response, which are not mutually exclusive.

Of the 266 respondents who identified themselves as male, the highest percentage of respondents (53 percent) said they have not observed or experience any incidents. Higher percentages of the 329 female respondents said they either observed or experienced incidents of bias or mistreatment. Attorneys of color also showed higher percentages of observing or experiencing incidents of bias than white attorneys.

## V. PERCEPTIONS OF BIAS IN JUDICIAL APPOINTMENTS AND LAW CLERKSHIPS

The next set of questions relates to perceptions regarding access to judicial appointments and opportunity for judicial clerkships.

Table 19

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response			Race - No response		
	Total	Male	Female		White	Of Color	
<sup>19</sup> Do you think that either gender or race affects the access that individuals have to be appointed to judgeships?							
1. Yes	67%	66%	69%	67%	64%	83%	67%
2. No	24%	29%	20%	27%	28%	6%	27%
3. Not sure	8%	5%	11%	7%	8%	11%	7%
Total	635	270	335	30	503	102	30

Question 19 asked whether respondents believe that either gender or race affects the opportunity that individuals have to be appointed to the bench. This question elicited 635 responses. Sixty-seven percent responded that either gender or race affects the access that individuals have to be appointed. A higher percentage of attorneys/judges of color (83 percent) said that gender and/or race affects opportunities for judicial appointments.

Twenty-four percent of all respondents to this question (154 of 635 respondents) indicated that they do not think that gender or race affects judicial appointments. Among those who chose this response, there was some disparity between those who identified themselves as male (29 percent) and those who identified themselves as female (20 percent). There was also a disparity along racial lines in that 28 percent of respondents who identified as white chose this response but only 6 percent of those respondents who identified as people of color chose that response.

Table 20

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender -			Race -		
		Male	Female	No response	White	Of Color	No response
<sup>20</sup> Rank from 1 to 4 the opportunity you think each group has to be appointed to judgeships. ("1" is the greatest opportunity and "4" is the least opportunity.)							
Males of color	2.65	2.66	2.65	2.73	2.49	3.25	2.67
Females of color	2.74	2.26	3.09	2.93	2.55	3.41	2.80
White males	2.08	2.70	1.62	1.73	2.31	1.27	1.87
White females	2.53	2.38	2.65	2.60	2.66	2.07	2.67
Total number of surveys with responses	420	176	229	15	317	88	15

Question 20 asked respondents to rank, on a scale of 1 to 4, the opportunity the following demographic groups have to be appointed to judgeships: males of color, females of color, white males and white females. The question received a total of 420 responses. Based on the answers of all respondents, white males ranked as the group with the highest opportunity for judicial appointment with an average score of 2.08, followed by white females with an average score of 2.53, males of color with an average score of 2.65, and females of color with an average score of 2.74.

When the responses are broken down by gender, the average scores and relative rankings vary considerably. Respondents who identified as male (a total of 176) ranked females of color as the group with the most opportunity for judicial appointments with an average score of 2.26, followed by white females with a score of 2.38, males of color with a score of 2.66 and white males with a score of 2.7. In contrast, respondents who identified as female (a total of 229) ranked white males as having the highest opportunity for judicial appointment with an average score of 1.62, followed by white females and males of color both with an average score of 2.65, and females of color with an average score of 3.09.

When the responses are broken down by race, the average scores and relative rankings for each demographic group also vary to some degree. Respondents who identified as white (317 in total) ranked white males as the group with the highest opportunity for judicial appointment with an average score of 2.31, followed by men of color with an average score of 2.49, females of color with an average score of 2.55, and white females with an average score of 2.66. Respondents who identified as people of color (88 in total) also ranked white males as the group with the highest opportunity for judicial appointment with an average score of 1.27 followed by white females with an average score of 2.07, males of color with an average score of 3.25, and females of color with an average score of 3.41.

Table 21

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender - No response			Race - No response		
		Male	Female		White	Of Color	
<sup>21</sup> Do you think that either gender or race affects the opportunity that individuals have to law clerkships?							
1. Yes	35%	32%	36%	59%	29%	61%	59%
2. No	52%	56%	50%	36%	59%	22%	36%
3. Not sure	13%	13%	14%	5%	13%	17%	5%
Total	630	271	337	22	505	103	22

Question 21 asked whether respondents believe that either gender or race affects the opportunity individuals have to obtain law clerkships. This question elicited 630 responses. More than half of respondents (52 percent) said that gender and race do not affect the opportunity for law clerkships. That answer elicited a higher percentage of white respondents (59 percent) than respondents of color (22 percent). The difference between male respondents and female respondents was less striking (56 percent and 50 percent, respectively). In addition, only 36 percent of respondents who did not identify their race or gender said that these identifiers were not factors in law clerk recruitment.

Table 22

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender - No response			Race - No response		
		Male	Female		White	Of Color	
<sup>22</sup> Rank from 1 to 4 the opportunity you think each group has to law clerkships. ("1" is the greatest opportunity and "4" is the least opportunity.)							
Males of color	3.00	3.06	2.97	2.89	2.80	3.45	2.89
Females of color	2.77	2.34	3.08	2.67	2.51	3.30	3.00
White males	2.09	2.62	1.71	2.44	2.43	1.36	2.11
White females	2.13	1.98	2.25	2.00	2.25	1.89	2.00
Total number of surveys with responses	211	82	120	9	138	64	9

Question 22 asked respondents to rank, on a scale of 1 to 4, the opportunity the following demographic groups have to law clerkships: males of color, females of color, white males and white females. The question received only 211 responses. Based on the answers of all respondents, white males ranked as the group with the highest opportunity for clerkships with an average score of 2.09, followed by white females with an average score of 2.13, females of color with an average score of 2.77, and males of color with an average score of 3.0.

The average scores and relative rankings vary considerably when the responses are broken down by gender. Respondents who identified as male (a total of 82) ranked white females as the group with the most opportunity for law clerkships, followed by females of color, white males, then males of color. Female respondents ranked white males as the group with the greatest opportunity, followed by white females, then gave males of color a slight edge over females of color. Those who did not identify their gender said white females had the greatest opportunity.

When the responses are broken down by race, the average scores vary considerably, but the rankings are closer for each demographic group. Respondents who identified as white (138



in total) ranked white females as the group with the highest opportunity for law clerkships, followed by white males, females of color, then males of color. Respondents who identified as people of color (64 in total) ranked white males as the group with the highest opportunity for law clerkships, followed by white females, females of color, then males of color.

## VI. PERCEPTIONS REGARDING TREATMENT OF ATTORNEYS AND JUDGES WHO ARE FEMALES OF COLOR

The final two questions related to perceptions of treatment of attorneys and judges of color.

Table 23

WOMEN IN COURTS SURVEY QUESTIONS	Total	Gender - No response			Race - No response		
		Male	Female		White	Of Color	
<sup>23</sup> Put a check in the circle next to the statement below that is closest to your opinion as to which, if any, has the greater impact on the treatment of attorneys who are females of color: race or gender.							
1. Gender has the stronger impact	22%	13%	30%	20%	23%	17%	20%
2. Race has the stronger impact	22%	18%	25%	20%	17%	44%	20%
3. Gender and race have an equal impact	16%	12%	18%	30%	15%	17%	30%
4. Gender and race have no impact	32%	49%	19%	20%	37%	12%	20%
5. Not sure	8%	9%	8%	10%	8%	11%	10%
Total	614	270	334	10	501	103	10

Question 23 asked respondents to choose whether gender or race has a greater impact on the treatment of attorneys who are females of color. A total of 614 respondents answered the question. The highest response category was that gender and race have no impact, and 198 respondents, or 32 percent, chose this response. However, there was a sharp disparity along gender lines on this response. Only 19 percent of respondents who identified as female gave this response, while 49 percent of those who identified as male gave this response. There was also a noticeable difference along racial lines on this response. Only 12 percent of respondents who identified as people of color chose this response, while 37 percent of respondents who identified as white chose this response.

Respondents chose gender or race as having the stronger impact in nearly identical numbers. Of the 614 respondents, 136, or 22 percent, chose the response “Gender has the stronger impact.” Similarly, 133 respondents, or 22 percent, chose the response “Race has the stronger impact.” An analysis of the responses by gender and race suggest that perceptions are shaped, at least in part, by how respondents identify themselves. Thus, 30 percent of respondents who identified as female chose “Gender has the stronger impact” while only 13 percent of those who identified as male chose that response. When respondents are broken down by race, there is less disparity in the response rate: 17 percent of respondents who identify as people of color chose this response, while 23 percent of respondents who identify as white chose this response.

A similar dichotomy appears in the breakdown of respondents who chose the response “Race has the stronger impact.” Among those who identified as people of color, 44 percent chose

this response, compared to only 17 percent of those who identified as white. In contrast, there was less disparity along gender lines: 18 percent of those who identified as male chose this response and 25 percent who identified as female chose the response.

In addition, 96 respondents, or 16 percent, chose “Gender and race have an equal impact.” There was less disparity along demographic lines among the respondents who chose this answer. Only 12 percent of respondents who identify as male chose this response, while 18 percent of those who identified as female chose the response. Of those who identified as white, 15 percent chose this response and 17 percent of those who identified as people of color chose this response.

Table 24

WOMEN IN COURTS SURVEY QUESTIONS		Gender - No response		Race - No response	
	Total	Male	Female	White	Of Color
<b>24 Put a check in the circle next to the statement below that is closest to your opinion as to which, if any, has the greater impact on the treatment of judges who are females of color: race or gender.</b>					
1. Gender has the stronger impact	23%	13%	30%	22%	27%
2. Race has the stronger impact	21%	14%	26%	17%	38%
3. Gender and race have an equal impact	15%	13%	17%	15%	16%
4. Gender and race have no impact	33%	51%	19%	38%	10%
5. Not sure	9%	8%	9%	8%	10%
Total	612	269	333	499	103

Question 24 asked respondents to indicate whether gender or race has a greater impact on the treatment of judges who are females of color. Respondents were asked to choose whether gender or race had a bigger impact. A total of 612 respondents answered the question. The responses were similar, though not identical, to the responses to Question 23. The highest response category was that gender and race have no impact, chosen by 33 percent of all respondents.

There was a noticeable divergence along gender lines on this response, as only 19 percent of respondents who identified as female gave this response, while 51 percent of those who identified as male gave this response. There was also a divergence along racial lines on this response. Only 10 percent of respondents who identified as people of color chose this response, while 38 percent of respondents who identified as white chose this response.

The next highest response category was “Gender has the stronger impact.” Of the 612 respondents, 138, or 23 percent, chose this response. Again we see a correlation along gender lines. Thus, 30 percent of respondents who identified as female chose “Gender has the stronger impact” while only 13 percent of those who identified as male chose that response. When respondents are broken down by race, again there is a smaller difference in the responses: 27 percent of respondents who identify as people of color chose this response while 22 percent of respondents who identify as white chose this response.

Twenty-one percent said that “Race has the stronger impact.” There was some disparity along both gender and racial lines among the respondents who chose this answer. Of those who identified as people of color, 38 percent chose this response while 17 percent of those

who identified as white chose the response. Similarly, 14 percent of those who identified as male chose this response and 26 percent who identified as female chose the response.

In addition, 92 respondents, or 15 percent, chose “gender and race have an equal impact.” As with Question 23, there was less disparity along demographic lines among the respondents who chose this answer. Thirteen percent of respondents who identified as male chose this response and 17 percent of those who identified as female chose the response. Of those who identified as white, 15 percent chose this response and 16 percent of those who identified as people of color chose this response.

## **VII. RESPONDENT RECOMMENDATIONS**

Question 18 asked, “Considering your answers to previous questions in which you indicated that you observed or experienced an incident, what recommendations would you make to improve the situation?”

Of the 249 respondents who answered the question, the largest number of suggestions (67) involved training, particularly for judges. The most common suggestion was for some form of sensitivity training on race and gender issues and the more subtle forms of bias or unequal treatment.

One respondent wrote,

“Some of the judges who have been on the bench for 10 years or more should be required to take a training on understanding how attorneys, especially younger ones, are trying very hard to balance home and professional lives without intentionally being disrespectful. Also, judges should be reminded that everything does not revolve around them.”

Other comments:

“Train judges to be mindful of informal chambers conversations where a rapport is made with one attorney due to a common interest while the other attorney is present but because she does not share the same interest, cannot engage in the conversation.”

“More oversight and training - especially for court personnel. - Also, as one would expect, it is the over 45-50 white male judges who have been involved in the “negative experiences” - they should be trained - and reprimanded if there are further problems. They also need to understand that they can not allow their staff to engage in inappropriate conduct - most of the offending incidents occurred in front of the Judge. Also, the Judge who will not do closed door chamber conferences with female attorneys tells his staff not to close the door with female attorneys because he does not trust what the female attorneys may say about what happened behind closed doors - what message does that send to court

personnel???"

“Judges have to be sensitized to their personal habits and biases. They have to affirmatively include women in their professional networks, for referral as mediators, etc. and recognize that women have different conversational styles. Also, address outmoded habits of addressing attorneys as Gentlemen.”

Several respondents indicated that judges in rural areas, smaller towns and municipal courts, are particularly in need of bias training.

Judges, however, were not the only groups identified in need of training. A small number of respondents indicated that attorneys and court staff also need to be trained:

“Quality white privilege and gender privilege training to all judges and court personnel. Emphasis on subtle and subconscious forms of discrimination - everyone is pretty well versed on the overt kind -- though there are still offenders even there.”

Other suggestions made by respondents include

- Improve judicial diversity
- Put in place a confidential reporting mechanism for individuals to report incidences of bias
- Monitor judges in the courtroom by unannounced observers
- Appoint judges based on merit – the process is now too political. Some commented this was especially true for municipal judges and linked this to problems of gender and race bias, as well as general discourtesy.
- Judges should apply standards uniformly in their courtrooms regardless of which attorneys appear before them.
- Judges should take responsibility for professionalism in the courtroom, judges’ ability to sanction attorneys should be enhanced
- There should be penalty or other accountability for judges and attorneys that demean others in court
- Removal of bad judges
- Professionalism and courtesy need improvement
- One respondent indicated that female attorneys should avoid provocative dress

A small number of respondents indicated resignation to the problem of disparate treatment, either because it was too ingrained in human nature or in the culture. For example, one respondent wrote,

“I think the old boy network in the judicial system still exists as the judges remain for the most part white males. As a public interest attorney I often feel that judges have little time for my clients or cases.”

Another said,

“I believe that the bias that exists within our judicial system is so deeply institutionalized that unfortunately, mere recommendations could not begin the [sic] improve the situation.”

A few indicated that the problem of disparate treatment has improved and will continue to improve over time.

Twenty-nine respondents did not provide a recommendation, but rather, indicated that no problem of bias exists. These respondents indicated that often reported problems are interpersonal clashes regardless of gender and race. Of those, 10 were male, nine were female, and three did not report their gender. Twenty-six of those responders were white, and three did not report their race. It is notable that no identifying minority respondents reported that no problem of bias exists.

Question 25 provided a last opportunity for comment by directing responders to “[p]lease use the space below for any further comments that would help the committee in its work.”

There were 136 respondents to this question, 79 females and 57 males. Two did not report gender. The most common categories of responses are as follows:

- Thirty respondents indicated no problem or race or gender bias exists and/or that that it was cronyism, and not race or bias that leads to unfair treatment – 30 responders, 29 white, and one with no race indicated, gave this response. Half were male and half were female.
- Fourteen respondents, including 11 females and four males, stated that gender or race bias still exists, three of the respondents specifically indicated that female judges experience bias; one indicating the bias was from male attorneys, and the other stating that that bias hampers female judges’ advancement. Four respondents, all females, noted that bias was subtle but persistent.
- Eleven respondents indicated that there was a need for more diversity; six specifically noting more diversity was needed in the judiciary. Six respondents were female and four male. One did not report gender.
- Ten respondents stated that judicial appointments are biased, six indicated that women and minorities are receiving preferential treatment, and four that cronyism, political or other, is at play. A white female respondent indicated that when females or minorities are appointed to the Judiciary there is an assumption it is not based on merit, and that this assumption is rarely made when a white male is appointed to the judiciary, regardless of qualifications.

- Nine respondents stated that calls for diversity have resulted in reverse discrimination in filling judicial vacancies and in promotions in the bar. All of these respondents were white.
- Seven stated diversity training is needed, several noted it should be ongoing, and two indicated it should include a history of slavery in this country.
- Sixteen respondents commented on the survey itself, 13 providing criticisms such as poor design, was not representative, looked for issues that were not there, or did not address other relevant factors. Three respondents appreciated the survey or looked forward to the results.
- Five noted improvements in race and gender bias. They were all females, three white and two minorities.
- Five respondents noted a real issue not addressed was the biased treatment of litigants, especially pro se litigants who are females or people of color.
- Four respondents indicated that judges' evaluations and complaints against judges should be reviewed.
- Three respondents indicated that attorneys face more race and gender bias in small firms.
- Three female respondents made comments suggesting that women need to present themselves better to get respect. Two of the comments were about female judges whom they saw as either indecisive or not representing themselves well. The third comment indicated some women act like "damsels in distress" while others work hard to be treated equally.

## VIII. CONCLUSION

More than half of survey respondents perceive that attorneys practicing in the New Jersey courts are treated about the same, regardless of race or gender, and few reported perceptions of attorneys being treated either advantageously or disadvantageously because of race or gender. Not all attorneys share those perceptions, however.

The responses to some of the questions show that higher percentages of respondents perceived that attorneys from their own race or gender categories were treated unfairly. Furthermore, higher percentages of respondents perceived unfair treatment from groups that had more power over them (judges and other attorneys) rather than groups that had less power over them (court staff and sheriff's officers). While the statistical data in the survey may not be sufficient to establish that a majority of attorneys believe that bias exists, the combination of data and anecdotal responses indicate an unacceptable perception that bias toward female attorneys and attorneys of color persist.

The committee did not set out to discover or confirm the existence of bias in how attorneys are treated in court. Rather, the survey focuses on perceptions. This is an important distinction, and one that courts around the nation have begun to study in great detail as part of their ongoing efforts to build and maintain public trust and confidence.

The delivery of justice requires not only a fair and legally sound ruling from the bench, but also the perception that the process of obtaining justice from the courts is fair in every aspect. "Procedural fairness" is the result of deliberate efforts by the courts to treat court users with respect, to give them the opportunity to participate fully in the proceedings, to maintain neutrality among the parties, and to offer clear explanations for judicial rulings.

The survey statistics show that at least some respondents perceived unfair treatment, but their perceptions are not necessarily a result of their disagreement with a court decision. In fact, the anecdotes and comments shared in the written portions of the survey detail failed expectations in areas directly related to procedural fairness, including respondents who had expected to be treated respectfully, had expected to be given the opportunity to fully present their arguments, had expected to be included in informal conversations and to receive the same deference as their colleagues, or had expected a better explanation of a ruling or a court process.

Some might be tempted to question the practicality of the respondents' expectations or the accuracy of their perceptions when those expectations were not met. If a newer attorney observes an experienced attorney being greeted by name or being called first for a case, will the attorney perceive preferential treatment? If an attorney is treated discourteously, might that mistreatment be attributed to race or gender? In fact, some of the written responses reveal incidents that could have been perceived as fair or reasonable, and some of the responses reveal incidents of unfairness that seem unrelated to issues of race or gender.

On the other hand, the accuracy of the perceptions is not necessarily the point. The courts have a special duty to ensure that all court users perceive that they have been treated fairly, and that duty extends to all areas of the courthouse.

The committee concludes that further work in the area of procedural fairness would benefit all court users, including those who responded to the survey, and would improve the perceptions of attorneys and their clients that the New Jersey courts value fair treatment as critical to the delivery of justice in this state.

#### **IV. PROPOSED FUTURE DIRECTIONS FOR COMMITTEE**

- Continue to promote, through educational programming, civility and respect in the court system as a matter critical to the delivery of justice
- Promote a gender-neutral environment to ensure equality of treatment for all court personnel and court users.
- Develop bias awareness and cultural sensitivity programs for judges, court staff, attorneys and sheriff's officers.
- Continue to monitor situations where bias may occur and reporting results to increase awareness.
- Promote awareness of existing complaint/disciplinary processes.
- Raise awareness of diversity recruiting efforts, including the minority law clerk recruitment program.
- Seek input from minority bar associations to identify areas of concern and to explore new ideas for training and awareness.



## APPENDIX

**This report is the result of an evolving process that spanned several committee cycles. In addition to the 2008-2010 members listed here, the committee is indebted to former member Deborah Fennelly, Esq. and former committee staff Marilyn Slivka, who worked tirelessly on this project. Thanks also are due to Mark Davies, the Judiciary's chief of quantitative research, and administrative specialist Tara Carskaddan of the quantitative research staff, for their assistance in administering the survey and compiling the data.**

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