

NOTICE TO THE BAR

SUPREME COURT ADMINISTRATIVE DETERMINATIONS ON THE REPORT AND RECOMMENDATIONS OF THE 2017-2019 COMMITTEE ON MINORITY CONCERNS (RECENTLY RENAMED AS THE COMMITTEE ON DIVERSITY, INCLUSION, AND COMMUNITY ENGAGEMENT)

Published with this notice are the Supreme Court's administrative determinations on the recommendations of the Supreme Court Committee on Minority Concerns as set forth in its 2017-2019 report (<https://www.njcourts.gov/courts/assets/supreme/reports/2019/minorityrpt.pdf>). As announced in an August 13, 2019 notice to the bar, the Supreme Court has since renamed the Committee as the Committee on Diversity, Inclusion, and Community Engagement (<https://www.njcourts.gov/notices/2019/n190814b.pdf>).

The Committee's January 2019 report, which contained thirteen recommendations, was published for comment by notice dated January 30, 2019. The Court has reviewed and acted on each of those thirteen recommendations, as set forth in the attached administrative determinations document. Implementation of the Committee's recommendations as approved by the Supreme Court will involve referral to other Supreme Court Committees, Judiciary divisions, and others.

Questions regarding this notice or the Court's administrative determinations may be directed to Yolande Marlow at Yolande.Marlow@njcourts.gov or 609-815-2900 ext. 52364 or Lisa Burke at Lisa.Burke@njcourts.gov or 609-815-2900 ext. 52365.



Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: September 5, 2019

**Administrative Determinations by the Supreme Court
on the 2017-2019 Report and Recommendations of the
Supreme Court Committee on Minority Concerns
(Issued September 5, 2019)**

The Supreme Court has acted on the recommendations of the Committee on Minority Concerns¹ as contained in its 2017-2019 Report, which previously was published for comment. This document sets out those administrative determinations by the Court as to each of the recommendations.

PROCEDURAL FAIRNESS

Recommendation 2019:01.

The Committee recommended that the Judiciary focus on the role of judges in ensuring procedural fairness. It proposed further opportunities for judges to discuss, share, and develop bench practices that enhance access to justice through procedural fairness in the courtroom both during and outside of formal proceedings.

Determination: The Court approves this recommendation and will refer it for incorporation in the Judiciary's ongoing judicial education efforts.

ACCESS TO JUSTICE AND LEGAL REPRESENTATION

Recommendation 2019:02.

The Committee recommended that the Judiciary work to ameliorate the gap in access to legal representation by developing a pilot "legal services" clinic model. Building on the law school clinic-court partnership that was included as part of the original Ombudsman Offices in Camden, the Committee recommended developing a pilot for [re-]establishing such partnerships with local law schools.

Determination: The Court approves this recommendation as modified. The Judiciary has been and continues to be involved in initiatives related to law school clinics and legal services. The Court supports continued discussions with Rutgers Law School and Seton Hall Law School as well as additional relevant efforts.

Recommendation 2019:03.

The Committee recommended that when appropriate, (a) court operational procedures that are routinely communicated internally should also be shared with practitioners; and (b) informational procedures and changes in practice should also be made available to self-represented litigants and the general public, either by (1) entitling notices as "Notice to the Bar and the Public" or (2) developing an alternate instrument to convey relevant information in plain language.

Determination: The Court approves this recommendation as to (a), but not as to (b). The Court will continue to consider Judiciary staff suggestions to share information disseminated internally for possible subsequent publication in a public notice, where appropriate. The

¹ As announced in an August 13, 2019 notice, the Supreme Court has renamed this standing committee as the Committee on Diversity, Inclusion, and Community Engagement.

<https://www.njcourts.gov/notices/2019/n190814b.pdf>.

Court also will continue to publish general notices (as opposed to notices to the bar) as appropriate. Self-represented litigants and others are already able to access such notices; additionally, they can opt to receive text alerts through the Judiciary's public website.

DIVERSITY AND INCLUSION

Recommendation 2019:04.

The Committee recommended that the Administrative Office of the Courts (AOC) adopt an internal self-reporting census mechanism by which court-appointed committee members are invited and encouraged to share demographic information so that the Judiciary can more meaningfully assess the diversity and representativeness of Supreme Court committees and related advisory bodies. The Committee also recommended incorporating these demographic data (which would be shared on a voluntary basis) as part of the committee membership appointment/reappointment processes as part of measuring diversity, inclusion, and representativeness.

Determination: The Court approves this recommendation and supports the implementation of a routine voluntary self-reporting census in order to develop a demographic profile of Court-appointed committees. Implementation of this new protocol will be referred to appropriate Judiciary divisions.

Recommendation 2019:05.

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

Determination: The Court approves this recommendation in concept. The Judiciary will continue to review data collection in court forms and systems, including as to gender and gender-related content.

IMMIGRATION ISSUES

Recommendation 2019:06.

The Committee recommended that the Judiciary institute periodic practice-area related educational sessions for judges on immigration.

Determination: The Court approves this recommendation and will refer it for incorporation in the Judiciary's ongoing judicial education efforts.

Recommendation 2019:07.

The Committee recommended that the Judiciary explore development and promulgation of an immigration collateral consequences notification colloquy for children-in-court proceedings when a parent/guardian is stipulating to or has been adjudicated of having committed abuse and/or neglect. The Committee also recommended that the Judiciary explore adding a similar immigration collateral consequences notification colloquy in other Family Court dockets, such as domestic violence cases.

Determination: The Court approves this recommendation and will refer it to the Family Practice Division for further development. The Criminal Practice Division and the Municipal Court Services Division will review the existing colloquies currently used for criminal and municipal matters, including to ensure the avoidance of any appearance that

New Jersey State courts are rendering legal advice as to any concurrent or intersecting immigration matters.

Recommendation 2019:08.

The Committee recommended that it be included in the review process for matters that involve an immigration nexus to a policy, procedure, or practice.

Determination: The Court does not approve this recommendation. The Judiciary already has procedures in place to involve subject matter experts when developing policies and procedures that have an actual or potential immigration law nexus.

Recommendation 2019:09.

The Committee recommended that the AOC convene a task force to develop standard operating procedures to ensure that persons in immigration detention or in state or county custody on an immigration detainer are produced for pending Superior Court and Municipal Court matters.

Determination: The Court does not approve this recommendation. The existing order-based system enables communication between Judiciary units and external stakeholders, including federal Immigrations and Customs Enforcement (ICE) authorities and county detention facilities, and provides for court appearances by persons held on immigration detainees.

REENTRY ISSUES

Recommendation 2019:10.

The Committee recommended that (a) the child support obligation flag on the Pre-Sentence Report (PSR) be highlighted and that sentencing judges be advised to reference any existing identified child support obligations on the record at sentencing and to provide verbal notice to defendants that child support obligations are not automatically suspended or modified upon sentencing to prison/jail and that the defendant must file a motion in order to suspend or modify child support, and (b) the Pre-Sentence Report (PSR) thoroughly catalogue all outstanding Superior Court and Municipal Court matters so that sentencing judges can notify defendants on the record at the time of sentencing as to these pending matters and the need to resolve them prior to release from custody.

Determination: The Court approves this recommendation in concept. The Judiciary already is engaged in addressing these issues (including the specific recommendation to flag child support obligations). Implementation will be handled by the appropriate Judiciary divisions.

Recommendation 2019:11.

The Committee recommended exploration of the issue of how best to address and resolve pending out-of-county municipal detainees, particularly for defendants charged with an offense prior to implementation of Criminal Justice Reform (CJR), and development of a set of standard protocols for addressing these in a timely and efficient manner that considers and balances the justice interests of the Court and the parties.

Determination: The Court does not approve this recommendation. The Judiciary already has in place protocols for resolving out-of-county municipal detainees.

Recommendation 2019:12.

The Committee recommended that the Office of Probation Services explore potential private foundation grant funding for the purposes of developing a pilot reentry support project for adult

probationers with the intention of eventually developing a statewide model that includes a Reentry Navigator at the AOC and in each vicinage.

Determination: The Court does not approve this recommendation. Many reentry services are handled by the Executive Branch. There is no need at this time to create a new Reentry Navigator Program within Probation Services.

**IMPLEMENTATION OF SEPTEMBER 2017 CHANGES TO R. 4:72-1:
PROCEDURAL RECOMMENDATIONS FOR STATEWIDE PROMULGATION**

Recommendation 2019:13.

The Committee recommended that the Court adopt certain statewide practices regarding name changes for minors heard in the Family Part that are not related to another Family Part matter (such as a divorce or an adoption) within the preceding three years, as follows:

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

Determination: The Court approves this recommendation in concept, with some modifications. The Court recognizes the privacy concerns implicated by applications for names changes for minors and will refer this recommendation to the Family Practice Committee for development of proposed rule amendments and operational protocols consistent with the following guidance.

2019:13(1) – Use of Initials and Sealing of the Record

Determination: The Judiciary will identify technological solutions, case management protocols, and other methods to support appropriate use of initials and consistent sealing practices for name change applications.

2019:13(2) – Waiver of Publication

Determination: This part of the recommendation will be referred to the Family Practice Committee for development of proposed amendatory language and clarification of

procedures for general waiver of publication except when necessary to supplement routine notice.

2019:13(3) – Disposition Without Appearance

Determination: The Court agrees that some name change applications can and should be decided without a court appearance and will refer this part of the recommendation to the Family Practice Committee for development of proposed amendatory language and, if necessary, direction to applicants, practitioners, and judges to clarify and reinforce the permissibility of disposition without appearance in these matters.

2019:13(4) – Sample Colloquies

Determination: Judiciary stakeholders will collaborate to develop proposed sample colloquies that will be shared with the Family Practice Committee for finalization and recommendation to the Court.

MATTER RAISED BY THE PUBLIC:
ISSUE OF LANGUAGE ACCESS, TRANSLATION, AND INTERPRETING
STANDARDS FOR LAW ENFORCEMENT

A member of the public submitted written comments and provided in-person testimony expressing concerns about language access, translation, and interpreting standards for law enforcement. The individual framed these concerns as related to court procedures and practices based on the intersection between law enforcement communications (such as those during arrest or interrogation) and subsequent court events. The public commenter shared thoughts during the Rules Hearing and related them to issues contained in the 2017-2019 Report and Recommendations of the Supreme Court Committee on Minority Concerns.

Determination: The Court takes no position on the merits of this issue as the Judiciary is a separate and independent branch of government without authority to oversee or to direct the Executive Branch, including law enforcement agencies. The matter as presented thus is outside the administrative purview of the Court. The issues raised will be communicated to the Attorney General for his handling as he deems appropriate.

September 5, 2019