



VERMONT JUDICIARY COMMISSION ON DIVERSITY, EQUITY, AND INCLUSION

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Commission's Second Report to the Vermont Supreme Court

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Introduction

The Vermont Supreme Court established the Judiciary Commission on Diversity, Equity, and Inclusion (the Commission) in January of 2022. According to its charge and designation, the Commission's overarching purpose is "to advance racial and social equity in pursuit of equal justice under the law," with an "aim ... to broadly identify disparities in our justice system, understand the causes, evaluate solutions, and implement changes."

The Commission is required to deliver three reports to the Supreme Court. The Commission's first report to the Supreme Court was accepted by the Court in May 2023. That report summarized the work of the Commission during the initial phase of its work.

This report is in response to the Commission's second reporting requirement. According to the Commission's charge and designation, the report is to include the following:

- Evaluation of current diversity, equity, and inclusion practices within the Judiciary.
- Recommended solutions to address identified inequities and disparities and remove barriers to achieve desired outcomes.

This report is based on the activities of each of the committees in the context of the second reporting requirement.

Commission Activities

Community Engagement Committee

Committee Update

The Community Engagement Committee (CEC) is chaired by Chief Justice Reiber. The CEC's task is to create a dialogue with the public that will: 1) help increase the community's understanding of the Judiciary; 2) enable court leaders to gain an understanding of how it is viewed by the community; and 3) deepen partnerships with community stakeholder groups.

The CEC hosted a series of community forums as an initial step toward meeting its goals. The CEC hosted 15 forums between December 6, 2022, and June 29, 2023. Thirteen of the 15 events were hybrid events, which were recorded.

In preparation for the forums, judiciary staff created a list of statewide and county-specific contacts, which currently includes over 1,400 entries. These contacts received an email invitation to forums. Staff also created marketing materials that were shared with contacts and

posted on the judiciary's social media accounts in advance of each forum. The Commission's dedicated page on the judiciary website was updated regularly with information about the forums and links to the recordings of the events that were hybrid. The Commission's webpage also has a link on it to an online form which can be used to submit comments to the Commission.

Chief Justice Reiber facilitated each of the forums and either he or one of the other Commission members in attendance typically referred to the following materials as a way of framing the discussion:

- The Commission's [charge and designation](#)
- Chief Justice Reiber's November 22, 2022 [Op-ed](#)
- The Commission Committee Structure [document](#)
- The Vermont [Constitution](#)
- The Commission's first [report](#) to the Supreme Court (March 30, 2023)
- Conference of Chief Justices and Conference of State Court Administrators Resolution 1 (2020): [In Support of Racial Equality and Justice for All](#)
- National Center for State Courts' [Racial Justice Organizational Assessment Tool for Courts](#)¹
- The Commission's [webpage](#) on the Judiciary's website

All forums were held in a courthouse, except for the first two. Over 250 people participated in the forums in all, either in-person or online. Details about forum participation are in *Appendix A* and a summary of feedback received at the forums is in *Appendix B*.

Several press releases were issued regarding the Commission's work during the period, and statewide and local media covered several of the forums. Details regarding media coverage of the Commission and the forums are in *Appendix C*.

Committee Next Steps

On the basis of activity during the period, the CEC proposes the following next steps:

1. Refer feedback received at the community forums for review and comment to the State Court Administrator, Chief Superior Judge, or committees within the branch, as appropriate.

¹ The Organizational Assessment Tool for Courts (OAT) was developed by the National Center for State Courts to assist courts in their efforts to ensure a diverse, equitable, and inclusive workplace. The OAT is divided into several sections with questions relating to judiciary operations in the context of leadership, the collection and use of data, human resource practices, and the design and delivery of court services. The committees are using the OAT in different ways to support their work.

2. Draft a framework for sustaining community engagement on the matters being taken up by the Commission beyond the initial round of forums.
3. Develop a video on unconscious bias for jurors to watch in advance of jury service. The video would be modeled on one done by the King County, WA superior and district courts, which incorporates a video developed by the U.S. District Court, Western District of Washington. The King County video is available online at <https://www.youtube.com/watch?v=su-KAVd274>. Judges from the Vermont Judiciary could provide the lead-in to such a video, which judiciary staff can produce. (The Commission has received authorization from the U.S. District Court, Western District of Washington to use the video).

Administration and Operations Committee

The Administration and Operations Committee (AOC) is chaired by Justice Nancy Waples. The AOC is examining the judiciary's administrative and operational policies to assess possible disparate equity impact(s) in their design or implementation. Examples of the practices and policies to be reviewed include, but are not limited to the following:

- New employee recruitment, screening, and selection
- Employee and judge training
- Jury operations
- The design of court programs and the delivery of court services
- Internal and external communications and reporting
- Judiciary strategic planning

Committee Update

The AOC continues to work through an assessment of administrative and operational practices, being guided in large part by the National Center for State Courts' *Racial Justice Organizational Assessment Tool for Courts (OAT)*. Subject areas of the OAT include recruitment, hiring, staff development, staff retention, employee promotion, employee engagement and training, and the design and delivery of court services.

Committee Next Steps

On the basis of activity during the period, the AOC proposes the following next steps:

1. As a corollary to the community engagement forums, conduct "inreach" to engage staff on the work of the Commission. Justice Waples, and others as may be needed, will visit

each unit of the Superior Court on an in-service day to discuss the Commission's work and to invite comments from staff on the ways it can best reach its goals. This effort will be designed to complement the community outreach that was done earlier in the year by the CEC and will give judiciary staff an opportunity to inform key elements of the Commission's workplan.

These meetings will be preceded by a meeting with court managers to get their input on the management activities associated with, and implicated by, the Commissions' work. A separate meeting will be held for this purpose with programs managers within the Court Administrator's Office who manage public-serving activities or programs such as the Language Access Program, the Access and Resource Center, the Guardian ad Litem program, the treatment dockets, the Family Mediation and Parent Coordination programs, and others.

2. Propose a training curriculum for the Commission to review that addresses issues of equity, bias, diversity, customer service, and related topics.

Data Committee

The Data Committee (DC) is chaired by Justice William Cohen. The Data Committee is examining the existence and use of judiciary data related to race, gender, and ethnicity.

Committee Update

The DC continues to refer the diversity, equity, and inclusion-related data questions and issues that were outlined in its March 2023 memo and made part of the Commission's first report to the Supreme Court. These are as follows:

1. What questions does the court want to answer with this information?
 - a. Are these questions directly relevant to the Commission's goals as set forth in its charge and designation?
 - b. Is the information being collected only when necessary to achieve those goals?
2. Who needs access to this information?
3. How will information be provided to those who need access?
4. How can access be limited to those with a legitimate business need for it?
5. Who would be harmed if there were a data breach?
6. What measures are in place to protect the data in the event of a data breach?
7. Will the information, once originally collected, continue to carry over from docket to docket? From the civil into the criminal docket? From juvenile to adult? Is there an ability to change or remove the information later?

8. Will race, ethnicity, or gender information appear in an individual court file, or will it be anonymized and used for statistical reporting purposes only?
9. Is the information subject to disclosure if requested, such as through a Vermont Public Records Act request?
10. What about additional datapoints, such as disability or veteran status?

Underlying all of this work are key principles relating to the collection and use of judiciary data that were laid out in the March memo to the Commission. These are as follows:

1. Establish routine access to individual-level race/ethnicity data for analysis.
2. Ensure that race/ethnicity data are collected in a manner that is compatible with a comprehensive set of standard high-level categories.
3. Collect individual-level data in a manner that allows for all applicable race/ethnicity identities to be captured.
4. Identify and understand the method used for collecting race and ethnicity data.
5. Define race/ethnicity in data collection using categories that meaningfully describe the composition of the local community.

Representatives from the DC have met several times with staff from the judiciary's Technology Services Center to learn about the upgrades to the Odyssey case management system that are being planned for early 2024 and about how those upgrades may support the Commission's goals. Benefitting from these changes may require changes to trial court business practices, which will require consultation and coordination with court managers and others. For example, while protocols exist for the capture of race and ethnicity data in criminal and some juvenile matters, these protocols are not consistently followed, do not apply to other case types, and are not managed in ways that advance Commission goals.

Committee Next Steps

On the basis of activity during the period, the DC proposes the following next steps:

1. Develop a form and process to collect race, ethnicity, and gender information voluntarily from parties in cases in the civil, probate, and family divisions; engage law enforcement and others as may be necessary to discuss the routine collection of race and ethnicity information in criminal matters.
2. Work with Trial Court Operations leadership, court managers, and other staff as may be needed to propose alterations to business processes needed to support the consistent and sustainable collection of race and ethnicity data.

3. Work with Technology Services Center staff to develop a test plan to address the collection of race and ethnicity data in the upgraded Odyssey platform.
4. Draft a proposal regarding the governance of race and ethnicity data within the judicial branch that identifies the purpose of collecting this data and addresses issues relating to the protection of privacy interests, transparency, accountability, and the collection, maintenance, quality, accessibility, and use of such data.

Conclusion

The co-chairs are grateful for the time and effort Commission members are contributing to the judiciary's diversity, equity, and inclusion work, and to those judiciary staff and others who are providing input on the issues being studied.

Appendix A: Community Forum Participation

County	Location	Date	In-Person	Remote	Total
Chittenden/Burlington	Fletcher Library	12/9/2022	32	N/A	32
Chittenden/Winooski	O'Brien Community Center	12/13/2022	10	N/A	10
Bennington	Bennington County Criminal and Family Courthouse (Bennington)	1/19/2023	21	16	37
Windsor	Windsor County Criminal and Family Courthouse (White River Junction)	3/9/2023	7	14	21
Rutland*	Rutland County Civil and Probate Courthouse (Rutland)	3/16/2023	22	1	23
Lamoille	Lamoille County Courthouse (Hyde Park)	3/28/2023	7	3	10
Caledonia	Caledonia County Courthouse (St. Johnsbury)	4/6/2023	12	8	20
Addison	Addison County Courthouse (Middlebury)	4/13/2023	2	2	4
Windham	Windham County Criminal, Family and Probate Courthouse (Brattleboro)	4/26/2023	5	24	29
Franklin	Franklin County Civil and Probate Courthouse (St. Alban's)	5/4/2023	2	0	2
Orleans	Orleans Civil, Family and Probate Courthouse (Newport)	5/10/2023	9	3	12
Orange	Orange County Courthouse (Chelsea)	5/17/2023	8	3	11
Essex	Essex County Courthouse (Guildhall)	6/6/2023	22	6	28
Grand Isle	Grand Isle County Courthouse (South Hero)	6/7/2023	2	3	5
Washington	Washington County Civil and Probate Courthouse (Montpelier)	6/29/2023	5	4	9
Total					253**
Average					17

* A technical malfunction with the Webex link for the Rutland forum resulted in the inability of some parties to join the event remotely. All invitees to the Rutland forum were provided with a link to the recording of the event and notified about how to participate in a future event.

** Exclusive of judiciary staff. Numbers are approximate.

Appendix B: Summary of Community Forum Feedback Received

A summary of the comments received at the forum is below. Unless otherwise noted, all comments were from members of the public.

- The Commission should recognize the issue of poverty as a matter of equity and consider the impact that poverty has on an individual's ability to access the courts.
- The Judiciary should consider the vulnerabilities of people who are poor and marginalized in any review of court services or processes.
- The full range of resources available to provide support to and advocacy for those needing help accessing the courts is missing or insufficient.
- More information for the public about how the (court) system works is needed.
- Judge and staff training on implicit bias is needed; training on cultural sensitivity and trauma are key. All training should be systematic and learning improvements should be measurable and measured.
- Internal Judiciary practices are lacking from a DEI perspective.*
- A more diverse Judiciary workforce, including judges, is needed; internships could be helpful.
- Diversity on Judiciary committees and the commission and other bodies is important.
- Juror orientation efforts should be updated and culturally sensitive.
- Remote access to court proceedings and court services is not equal access; the lack of internet access is a problem in Vermont, and it constrains access for people.
- The Judiciary should avoid overreliance on remote access; Webex is difficult for some users.
- The Commission should be results-oriented in this work; the Commission should avoid spending too much time on fact-finding and information gathering.
- The process used to secure American Sign Language (ASL) interpreters should be streamlined; the need for language access services (not just ASL) is significant.
- The Judiciary should work with the Legislature to address justice system resource needs; courts do not have enough staff.
- Some court users feel unwelcome, intimidated, or confused in coming to court; the Judiciary should consider the use of "Ambassadors" or "Navigators" to help court users.

- The Commission should consider a range of venues – not just courthouses – when developing public engagement plans. Proceedings should be less formal where possible.
- Collecting race data on court users is important but challenging; better collection of race data is needed, as is the Judiciary’s use of it – especially with respect to sentencing.
- A lack of resources for counsel in child dependency matters can impact cases in the Family Division.
- An assessment of the source and impact of the drug problem in Vermont is needed.
- Procedural differences exist in case types in which a guardian is appointed.
- Court proceedings can sometimes feel rushed; better communication between the court and the parties would be helpful.
- The Judiciary’s website should provide clearer information about court processes; support, including legal services, for self-represented parties is key.
- Rural communities are lacking in supports and services (specifically remote capabilities), including court-based services.
- More information for the public about how the court system works is needed.
- Case processing delay can impact case outcomes and justice.
- The Judiciary’s response to DEI issues it is facing must “meet the moment.” How do we ensure that our efforts will be tailored and managed in a way that will be impactful?
- Court fees can be high.
- The Judiciary’s efforts to engage the community are important. There have been too few opportunities to do this in the past; Bench/Bar meetings are an important opportunity for the courts to engage the input of justice partners.
- Courthouses should be decorated to highlight minority involvement on the bench so as to promote diversity in role models*
- The terms “diversity,” “equity,” and “inclusion,” are political, not legal, terms that are controversial and not precisely defined. The terms can be divisive and exclusionary. The Constitution provides for equality, equity, and inclusion.

*Comment provided by judiciary employee.

Appendix C: Media Coverage of Community Forums

- September 2022
 - The establishment of the Commission was announced in a September 16, 2022 press release from the judiciary.
- November 2002
 - Commission Co-chair Chief Justice Reiber penned an op-ed about the Commission on November 22, 2022 which was referenced in a November 28, 2022 press release from the judiciary which announced that a series of community forums was planned by the Commission. The op-ed was published as a Commentary in VT Digger.
- December 2022
 - Commission Co-chair Justice Nancy Waples was interviewed about the work of the Commission by Vermont Public on November 29. The interview aired December 1, 2022.
- November 2022 – June 2023
 - Coverage of the Commission's work, with a focus on the forums, was provided by VT Digger (two articles), the Bennington Banner, the Brattleboro Reformer, the Manchester Journal, the Caledonian Record, the Rutland Herald (two articles), the Barre Montpelier Times-Argus (one article), and other news outlets and platforms.