



**WORKING GROUP ON RACIAL EQUITY
IN NEW YORK STATE COURTS**

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CHAIR
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June 15, 2021

By Email

Honorable Shirley Troutman, Co-Chair
Honorable Troy K. Webber, Co-Chair
Mary Lynn Nicolas-Brewster, Esq., Executive Director
Franklin H. Williams Judicial Commission
25 Beaver Street – Room 861
New York, New York 10004

Re: May 19, 2021 Williams Commission Meeting with New York City Family Court Stakeholders

Dear Justice Troutman, Justice Webber and Ms. Nicolas-Brewster:

We write on behalf of the New York City Bar Association Working Group on Racial Equity in New York State Courts, which is comprised of a diverse group of thirty-four (34) City Bar members who work and participate meaningfully in the New York State Court system, primarily in New York City, including judges, other court personnel, attorneys and advocates at legal services organizations, and members of the private bar.¹ Many of our members work in the New York City Family Court on a daily basis. The formation of this working group is a direct follow up to Secretary Jeh Johnson's Equal Justice in the State Courts report, which was published on

¹ The attached list of the Working Group's members indicates the various City Bar committees represented on the Working Group, demonstrating the diverse range of practice areas, extensive knowledge and particularized context of the relevant issues. This letter was reviewed and approved by the Working Group and by the City Bar's Council on Children (Dawne Mitchell, Chair), Family Court and Family Law Committee (Michelle Burrell, Chair), and Pro Bono and Legal Services Committee (Jennifer K. Brown and Nicole L. Fidler, Co-Chairs).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

October 1, 2020,² and the Council on Judicial Administration's letter providing input and recommendations, dated September 1, 2020.³ Our Working Group started its work in early 2021 and we had the pleasure to meet recently with the Williams Commission on May 5, 2021. Pursuant to your invitation, many of our members attended the Williams Commission meeting with New York City Family Court stakeholders on May 19, 2021. In response to the May 19, 2021 meeting, we provide the Williams Commission with our feedback and comments as detailed herein.

We note initially that we believe the May 19, 2021 meeting was extremely productive and a thoughtful approach to addressing the issue of systemic racism in a meaningful manner by hearing from the advocates who spend so much time in the Family Court on a daily basis. We believe the speakers accurately represented the reality of the Family Court, which we know from first-hand experience is all too often a toxic and broken culture for litigants and their counsel. In this regard, we observe that, while there may be short-term, medium-term and long-term solutions, there are no quick solutions. A deeply problematic and racist culture that has existed for decades in the Family Court cannot be fixed quickly. That said, we are delighted to know that the Williams Commission and others within the management of the Office of Court Administration ("OCA") recognize the hard work that is required on this long journey to reform the culture. We offer our support to your efforts and each of our members is willing to contribute meaningfully to the mission of the Williams Commission to eradicate racism and to create a fair, just and dignified court process for all.

Given the nature of our Working Group, and the diverse interests of our members, we limit our recommendations to the following, but support the full panoply of views that were shared with the Williams Commission on May 19, 2021. We sincerely hope that we can work collaboratively to have each of these recommendations implemented and recognize the difficulty of this work.

Our recommendations are as follows:

1. OCA and jurists must confront and eliminate the dehumanizing culture that exists in the Family Court.

First and foremost, jurists need to set the right example. Among many things, they should act professionally and with a proper judicial temperament, including calling litigants by their names; always refraining from yelling or shouting; and respecting all legal positions, even those with which the jurist disagrees.

As an example, one of our members recounted this experience with a trial in front of a jurist in Bronx County Family Court (support part):

It was obvious that the jurist did not like my African American client, who was a hard-working, diligent mother. The court never called her by her name and treated her time and time again when I made

² Report from the Special Adviser on Equal Justice in the New York State Courts, <http://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

³ Available at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/racial-inequities-in-nys-courts>.

applications for relief for her like we were asking the jurist for something special. In the middle of my case, the jurist told my client that she should not be in the court, and he told me that I was only going to be given 10 more questions to ask of the respondent father even though we were in the middle of trial. I told the jurist that I could not do that, and he told me he was giving me a break and when he recalled the case, he expected to see the 10 questions on my notepad. I obviously did not comply, and incurred his wrath, but this is typical of how litigants are treated.

2. The Family Court must create procedural rules that govern all parts so there is uniformity, particularly as virtual courtrooms seem to be here for the long-term.

Judges cannot set their own rules that vary from part to part. Varying and ad hoc rules allow for dehumanizing conduct to persist because there are no set standards for how jurists and court personnel should conduct proceedings. Requiring uniform rules relating to procedure does not interfere in any way with the discretion of jurists to run their courtrooms. To the contrary, it instills confidence, particularly in the litigants, that they will be treated fairly and respectfully because they know what to expect and their fate is not left in the hands of the assignment wheel that selects their jurist for them.⁴

3. The Family Court must either grant UCMS access to all attorneys with cases in the court, or preferably, create an electronic filing system, e.g., a NYSCEF model, so there is dignity and formality to filings and the processing of cases.

Without a dignified and professional filing and docketing system, litigants are often left in the dark about their cases, and even those that have counsel are disadvantaged if their counsel are among the many who do not have access to UCMS. The court system has demonstrated that its resources allow litigants in other courthouses across New York State to have access to a modern, electronic filing system, and the Family Court should not be different. The families who come before the Family Court are entitled to the same level of respect and professionalism as litigants in any other New York State court.

4. Jurists must confront and eliminate explicit bias and unprofessional behavior in the Family Court.

Ultimately, judges, referees and support magistrates manage and control their courtrooms. They must set a proper tone and root out unprofessional, disrespectful and racist conduct, whatever its source. One of our members offered this example of a court's failure to exert such control.

A court officer in Bronx County Family Court told me that I “don’t f---- know what I’m doing” because I advocate for my client and push back against disrespectful conduct. The jurist knows that this court officer mutters expletives and disrespects clients and lawyers as the officer does when she sees the member. But nothing is done

⁴ The Working Group is working on a proposal draft of uniform Family Court rules and we anticipate submitting it as an addendum to this letter in the coming weeks.

time and time again to keep the court officer under control. Thus, the toxic culture permeates.

In this capacity, jurists should feel supported in their efforts to respond effectively to and exert control over any behavior in their courtrooms that creates a disrespectful and unprofessional environment.

5. Observation and feedback for jurists from colleagues/supervisors.

Unless there is some particularly egregious incident that is called to the attention of supervisory personnel, jurists generally do not receive any feedback about their courtroom demeanor or behavior until they are seeking reappointment. As a result, they may actually be unaware of incidental or habitual conduct that is plainly inappropriate or, at the very least, a product of implicit bias and susceptible to significant improvement. We thus recommend that a system be implemented whereby a judge is regularly observed in the courtroom by his or her colleagues and supervisors who can then discuss their observations, highlight issues they spotted and offer remedial recommendations. We are also cognizant that judges may not be able or feel comfortable to provide open and honest feedback to colleagues for a variety of reasons. As a result, any peer observation group would need adequate training and guidelines to streamline a mechanism that ensures accountability.

6. Polling of litigants.

As a corollary, litigants and attorneys should be encouraged to report issues to supervisory judicial personnel, who should address such reports with the individual jurist in a manner that will assure that the reporter will not be subject to express or implied retribution by the subject of the criticism. Polling of litigants' experiences in the courtroom should be encouraged and can be effectuated through non-legal staff (perhaps even social workers) who are culturally competent and relatable, and who can interpret and explain for litigants, while also assisting in processing complaints, if any, *i.e.*, incidents of bias, racism, unprofessionalism, or disparate treatment, like those shared in the May 19, 2021 meeting and incidents expressed by our members in our own internal meetings. The mechanism would ensure a channel to promote accountability, educate jurists and court staff, and most significantly, help litigants not feel so helpless while engaged in the already anxiety-provoking process of litigation.

7. UCS should create an ombudsman system to investigate and address incidents of bias and unprofessional behavior immediately after their occurrence.

Too often, litigants, attorneys, and witnesses experience inappropriate and uncomfortable exchanges with judges, or court personnel, in and around the courtroom. Typically, such incidents go undetected and unreported because lawyers and litigants alike fear retaliation, or that simply raising a concern will instigate formal action. Moreover, litigants and lawyers often wait before filing a formal complaint, at which point an offender may no longer be able to be identified or disciplined, or exchanges with an offender may have intensified and worsened.

To address these issues, we recommend the creation of an Ombudsman Program, where a designated group of neutral personnel sit on-site at every courthouse, and offer a safe and confidential place for attorneys, court staff, litigants, and members of the public to report any

inappropriate conduct as soon as it happens. Furthermore, designated ombudsmen could clarify courthouse policies and procedures for escalating complaints, and offer informal interventions to resolve complaints, conflicts, or problems in a timely and discreet manner.⁵

8. Full transparency for the Inspector General's Office for Bias Matters.

More accessible reporting to the Inspector General's Office for Bias Matters is important but it is not enough to create an atmosphere of equity and respect. Those reporting bias or harassment must also be told what, if anything, will be done to address a substantiated complaint. As recently as this February 2021, a substantiated report letter was sent to a complainant. However, when the complainant wrote back to obtain information on OCA's response to the substantiated report against a court officer, the complainant received no substantive response. This is almost worse than previous delays of months and years spent investigating reports. If a report is substantiated, a complainant must have access to information regarding what will be done to respond. If bias exists and a complainant is left to believe that nothing will be done to address it, the entire court system is implicated in the act of bias or harassment itself.⁶

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As an organization whose membership includes thousands of attorneys and members of the judiciary within New York City, it is our sincerest hope that the Williams Commission continues to engage in honest and productive discussions such as the meeting on May 19, 2021. In our many discussions with various stakeholders and court personnel, a recurring theme has become notably apparent – there exists a disheartening lack of support and resources for a court system that is overburdened. As we have steadfastly committed ourselves over these past several months, the Working Group intends to focus our collective efforts in creating and supporting mechanisms to effectuate a more equitable culture in our Family Courts and State Court System at large. We hope that the OCA will take swift action to ensure that becomes a reality and most notably for the poor people of color who disproportionately are the litigants in our Family Court in New York City.

Respectfully,

/s/ *Vidya Pappachan*
Vidya Pappachan, Chair

Cc: Hon. Edwina G. Mendelson
Karlene A. Davis
Kim Stephens

⁵ The Ombudsman Program would be distinct from the Inspector General's Office. The latter is a more formalized process subject to internal protocols and limitations. And, with its limited the IG's Office is less able to offer direct avenues for communication at a grassroots level. The idea behind an Ombudsman Program is that it could offer a less formal manner to address complaints and, if necessary, collaborate with the IG's office.

⁶ On June 8, 2021, our Working Group engaged in a productive discussion with Inspector General Sherrill Spatz and Inspector General of Bias Matters, Kay-Ann Porter Campbell.

Working Group on Racial Equity in New York State Courts

Working Group Chair, Vidya Pappachan
Working Group Secretary, Amanda Raines
Council on Judicial Administration Chair, Michael Regan

| Member | Committee |
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| Natasha Major | ADR |
| Judge Kathleen Waterman | Civil Courts Committee |
| Judge Leslie A. Stroth | Civil Courts Committee |
| Susan Shin | Civil Courts Committee |
| Jessica Caruso | Civil Courts Committee |
| Shirin Mahakamova | Civil Rights Committee |
| Judge Ron Richter | Council on Children |
| Nila Natarajan | Council on Children |
| Adnan Sultan | Criminal Courts Committee |
| Danielle Jackson | Criminal Justice Operations Committee |
| Wail Alnwisser | Disability Law Committee |
| Katherine Carroll | Disability Law Committee |
| Nadia Hernandez | DV Committee |
| Lisa Alexander | DV Committee |
| Michelle Burrell | Family Court and Family Law Committee, Chair |
| Judge Daniel Turbow | Family Court and Family Law Committee |
| Sara Wagner | Housing Court Committee, Chair |
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| Fredda Monn | Juvenile Justice Committee |
| Lisa Salvatore | Juvenile Justice Committee |
| Cecilia Shepard | Juvenile Justice Committee |
| Jawad Muaddi | Litigation Committee |
| Jose Abrigo | LGBTQ Rights Committee |
| Danielle (Danny) King (she) | LGBTQ Rights Committee, Co-Chair |
| Judge Alicea Elloras-Ally | Minority in the Courts Committee |
| Christopher Wilds | Minority in the Courts Committee |
| Rhonda Singer | Pro Bono & Legal Services committee |
| Hamra Ahmad | Pro Bono & Legal Services Committee |
| Rene Kathawala (he) | Pro Bono & Legal Services Committee |
| Rachel Haskell | State Courts Committee |