



THE NEW MEXICO SUPREME COURT COMMISSION ON EQUITY AND JUSTICE

JUSTICE C. SHANNON BACON

TORRI A. JACOBUS

OCTOBER 8, 2021

WHAT IS THE COMMISSION?

- Created in the wake of the social unrest during the summer of 2020.
- Established by Order on October 19, 2020.
- Initial Steering Committee of 3 attorneys, 3 judges.

Judicial Code of Conduct

- 21-203. Bias, prejudice, and harassment
- 2012

Rules of Professional Responsibility

- 16-804 (G). Misconduct
- 2019

JUDICIAL CODE OF CONDUCT

21-203. BIAS, PREJUDICE, AND HARASSMENT.

A. A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE, INCLUDING ADMINISTRATIVE DUTIES, WITHOUT BIAS OR PREJUDICE.

B. A JUDGE SHALL NOT, IN THE PERFORMANCE OF JUDICIAL DUTIES, BY WORDS OR CONDUCT MANIFEST BIAS OR PREJUDICE, OR ENGAGE IN HARASSMENT, INCLUDING BUT NOT LIMITED TO BIAS, PREJUDICE, OR HARASSMENT BASED UPON RACE, RELIGION, COLOR, NATIONAL ORIGIN, ETHNICITY, ANCESTRY, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL STATUS, SPOUSAL AFFILIATION, SOCIOECONOMIC STATUS, POLITICAL AFFILIATION, AGE, PHYSICAL OR MENTAL HANDICAP OR SERIOUS MEDICAL CONDITION; AND SHALL NOT PERMIT COURT STAFF, COURT OFFICIALS, OR OTHERS SUBJECT TO THE JUDGE'S DIRECTION OR CONTROL TO DO SO.

C. A JUDGE SHALL REQUIRE LAWYERS IN PROCEEDINGS BEFORE THE COURT TO REFRAIN FROM MANIFESTING BIAS OR PREJUDICE, OR ENGAGING IN HARASSMENT, BASED UPON ATTRIBUTES INCLUDING, BUT NOT LIMITED TO, RACE, RELIGION, COLOR, NATIONAL ORIGIN, ETHNICITY, ANCESTRY, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL STATUS, SPOUSAL AFFILIATION, SOCIOECONOMIC STATUS, POLITICAL AFFILIATION, AGE, PHYSICAL OR MENTAL HANDICAP OR SERIOUS MEDICAL CONDITION, AGAINST PARTIES, WITNESSES, LAWYERS, OR OTHERS.

D. THE RESTRICTIONS OF PARAGRAPHS B AND C OF THIS RULE DO NOT PRECLUDE JUDGES OR LAWYERS FROM MAKING LEGITIMATE REFERENCE TO THE LISTED FACTORS, OR SIMILAR FACTORS, WHEN THEY ARE RELEVANT TO AN ISSUE IN A PROCEEDING.

RULES OF PROFESSIONAL CONDUCT 16-804 (G) – MISCONDUCT.

It is professional misconduct for a lawyer to:

G. engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, or marital status in conduct related to the practice of law.

This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 16-116 NMRA. This paragraph does not preclude legitimate advice or advocacy consistent with these rules.



**Except from July 2021
letter from New
Mexico Supreme
Court to New
Mexicans regarding
the need for the
Commission on
Equity and Justice**

- “This trust-that each New Mexican will be treated fairly under the laws of this state-is imperative to the work of the courts. Without it, the justice system erodes and crumbles. But we cannot take your trust for granted. We must eliminate the deleterious effects of the poisons of prejudice, bias and racism. We must serve all persons equally, regardless of race, ethnicity, gender, sexual orientation, income, language, ability, or education.”

WHAT'S THE
PROBLEM?



WHY EQUITY AND JUSTICE?

Equality



Equity



Justice



COMPOSITION OF THE COMMISSION: VOTING MEMBERS

Supreme Court Justice (1)

Court of Appeals Judge (1)

District/Metro Court Judge (one from a small, medium, large court and one at-large)

Magistrate Court Judge (1)

Tribal Court Judge (1)

UNM School of Law representative (1)

Attorneys (4; to include a public defender, DA or AG, and an attorney who practices in children's court and civil court)

COMPOSITION OF THE COMMISSION: VOTING MEMBERS

Community advocate (1)

Human rights/civil rights representative (1)

Mental health advocate (1)

Court staff (1)

Court security officer (1)

Legislative (1)

At-large (2)

COMPOSITION OF THE COMMISSION: EX OFFICIO MEMBERS

- Representatives from the Women's Bar, Hispanic Bar, Black Lawyers Association, LGBTQ+ Bar, New Mexico Indian Bar, Senior Lawyers Division, YLD, NMTLA, NMDLA, Committee on Diversity, Committee on Women in the Legal Profession, and Family Law Section.
- A representative from corrections/probation/pre-trial services.

COMPOSITION OF THE COMMISSION: EX OFFICIO MEMBERS

- A representative from the following Judicial entities:
Judicial Information Division, Judicial Education,
Court CEOs, Court Human Resources, Language
Access Services, Law Library, Board of Bar
Examiners
- A representative from the following organizations:
New Mexico Legal Aid, Center on Law and Poverty,
Southwest Women's Law Center, ACLU-NM, Indian
affairs, homeless advocate

GOAL I

To give New Mexicans
equitable access to the
state's justice system.



A W MARSHALL
DISTRICT JUDGE
1941-1957



GOAL 2

To add transparency to the state's justice system and make sure that all New Mexicans are treated equitably within it.

GOAL 3

To eliminate biases and inequities within New Mexico's justice system that are due to race, ethnicity, color, national or tribal origin, ancestry, citizenship, religion, gender, sexual orientation, gender identity or presentation, indigent status, physical, mental or developmental disability or condition, age, English language proficiency, parenting status or pregnancy, and other characteristics identified by the Commission.

GOAL 4

To provide educational and professional opportunities for prospective lawyers, judges, and employees from underrepresented groups, so that all groups are adequately represented within the state's judiciary and other aspects of its judicial functioning.

INITIAL AREAS OF FOCUS



Training and education (judges and staff)



Review case outcome data



Create a diverse pipeline to the judiciary



Review and reform of all policies, procedures, and jury instructions



Courthouse experience

RECOMMENDATIONS: DATA

- Direct courts to collect specific demographic data points to be collected across ALL case types.
- Review all court forms that collect personal data and modify to include updated options for demographics.
- Create reports to identify areas where additional attention or training is needed.

RECOMMENDATIONS: POLICY

- Select a new and updated training program and materials for judiciary-wide training on harassment, discrimination, and retaliation prevention.
- Implement a training program addressing sexual orientation and gender identity discrimination prevention.
- Propose and implement an Implicit Bias Jury Instruction to the New Mexico Supreme Court and the Uniform Jury Instruction Committee.

RECOMMENDATIONS: POLICY

- Standardize and improve access to self-help legal forms in all district courts.
- Evaluate and make changes to court websites to include the ability to read the content in multiple languages and to address disability access, such as visual impairments.
- Review and update the judiciary employment/job application and process, and update job descriptions to ensure the content and language is easily understandable.
- Review and update judiciary-wide human resource materials such as personnel forms, policies, and rules to modify language that may exclude employees or applicants.

RECOMMENDATIONS: EDUCATION AND TRAINING

- Conduct an inventory of the current equity training through JEC and MCLE approved courses.
- Hire a minimum of two professionals to focus on equity and diversity work within the judiciary.
- Mandate rule changes that would require judges, attorneys, and court staff to complete equity training regularly.
- Implement a curriculum that specifically addresses trauma-responsive courts, implicit bias, and institutional bias, assessing relevant impact.

RECOMMENDATIONS: PIPELINE

- Implement paid internships for law students in our trial courts.
- Propose and implement long-term changes to Judicial Nominating Commissions (JNC) to ensure that all applicants are treated fairly and that the process is fair.
- Increase the pool of potential commissioners for JNCs.
- Pass permanent amendments to the JNC rules.
- Define and develop a pipeline into the UNMSOL, the Bar, and the judiciary.

RECOMMENDATIONS: COURTHOUSES

- Remove historical pictures of previous judges from public areas of courthouses.
- Determine the current perception of users of the court system.
- Enlist courthouse observers throughout the State.
- Develop community outreach programs such as tours and school field trips.
- Identify community speaking engagement opportunities to discuss the courts and answer questions.
- Develop instructional videos on local courts.

RECOMMENDATIONS: ADDITIONAL

- Collaborate routinely with the Tribal-State Judicial Consortium.
- Consider the values of the court system.
- Make actionable recommendations to overcome any shortfalls identified as a result of the work of the Commission.

WHAT'S NEXT



Contact Us

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