

**REPORT OF THE
NEW JERSEY SUPREME COURT
COMMITTEE
ON
WOMEN IN THE COURTS
1994 - 1996 RULES CYCLE**

New Jersey State Library



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DATED: 2/1/96

INTRODUCTION

The Supreme Court Committee on Women in the Courts was appointed in April 1990, "to oversee the implementation work remaining from Task Force recommendations, monitor the Judiciary's progress in achieving gender fairness, and make further recommendations to the Supreme Court in this area". The mandate letter of appointment continued "[t]he Committee will work with the AOC Office of Judicial Education/Staff Training and the National Judicial Education Program to develop educational programs, participate in programs about gender bias for professional and lay audiences, and recommend to the Court procedures and processes to handle complaints from within and outside the system".

This report to the Court describes the work of the Committee during the two year rules cycle 1994-1996. By virtue of its mandate, most Committee work does not involve proposed rules changes. Rather, non-rules recommendations have been made periodically to the Chief Justice and the Administrative Director for consideration and possible implementation during the course of the Committee cycle, and the educational and monitoring work of the Committee is on-going.

In June of 1994 Judge Marilyn Loftus, the pioneering Chair of both the Task Force on Women in the Courts and the Committee, stepped down after 12 years of service in this area. Her

leadership and contributions to the gender bias movement in this state as well as nationally were celebrated at a dinner on October 13, 1994 sponsored by the New Jersey Women Lawyers Association and the National Association of Women Judges, District 3. The Committee on Women in the Courts will continue to draw strength from the goals and ideals Judge Loftus set while addressing and assisting in the resolution of continuing problems of gender bias in the courts.

I. PROPOSED RULE AMENDMENTS RECOMMENDED

There were no rule amendments recommended for adoption by the Committee. The Committee appreciates, however, the work of the other rules committees to remove the remaining gender-biased language from their rules. The Committee strongly recommends that special attention be given to ensure the participation of women and minorities on all Supreme Court Committees, but most particularly on the Committee on Opinions, the Judicial Performance and Evaluation Committees, and the Advisory Committee on Judicial Conduct.

II. PROPOSED RULE AMENDMENTS CONSIDERED AND REJECTED

There were no rule amendments considered and rejected by the Committee.

III. OTHER RECOMMENDATIONS

During this rules cycle a special Subcommittee on Public Education was formed to make recommendations regarding the education of the public about judges, the judiciary, and the judicial selection and evaluation process, particularly within the context of litigant action groups focused on the family court. The report of that Subcommittee, issued in February 1995, has been sent to the Chief Justice and by him to the Family Practice Committee. The recommendations of the Subcommittee are included in this section, and the full report is attached as an Appendix. The Subcommittee concluded that 1) litigants often misunderstand court procedures and misinterpret the need for the court to be neutral and uninvolved as gender bias or indifference and 2) the public does not hear a rebuttal when baseless, vitriolic charges are made against judges, because of the neutral position adopted by the AOC and the judiciary.

In the year following the submission of the Subcommittee Report, personal attacks on judges sitting in the Family Division have escalated. Judges' personal lives have been threatened and disrupted, their reputations attacked in the press and other public vehicles, while they are unable to comment on their own behalf. For these reasons the Committee recommends that the Commentary to Canon 3A.(8) of the Code of Judicial Conduct be amended to authorize Assignment Judges to respond under certain circumstances on behalf of the judge who is the subject of criticism.

A. Recommended Revision to Commentary to Canon 3A.(8) of the Code of Judicial Conduct

Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently ... no change

A. Adjudicative Responsibilities

(8) A judge should abstain from public comment about a pending or impending proceeding in any court and should require similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Commentary: "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by RPC 3.6 of the Rules of Professional Conduct. A judge who is the subject of criticism by a litigant, by or in the media or in any public forum may report the criticism to the Assignment Judge who is authorized to respond, on behalf of the judge, to the media and bar associations. The Assignment Judge will abstain from commenting about the subject matter of any pending matter, except that any facts or issues which are revealed in public may be responded to by the Assignment Judge in a manner that places the actions and/or ruling of the judge in the proper context. The Assignment Judge may publicly discuss the

general nature of any procedural and substantive issue already disclosed by litigants to the extent necessary to assure the public that matters are handled comprehensively, impartially and fairly. Judges who have questions about their personal safety or the safety of their homes and families are to express those concerns to the Assignment Judge who will evaluate the circumstances and seek to provide resources to assure the safety of the judge and the judge's family and home, and to assure that the judge's impartiality is not affected.

B. Recommendations of the Subcommittee on Public Education

Recommendation 1: Modify the existing state-wide program of one mandatory workshop on child custody and mediation to include education on child support, alimony, pendente lite orders, child support guidelines, the methods by which these issues are decided, and the purpose of the Early Settlement Panel. The new workshop would also include a discussion of the objectivity of judges addressing head-on the perception of gender bias and gender stereotypes in the judiciary. The workshop would be mandatory (attorney participation is not necessary), and would occur no later than the earliest of the first day a litigant attends an ESP or a custody workshop, or within three months of the issues having been joined in the case. The workshop would describe and discuss the procedural aspects of determinations of support and custody, and would be developed and presented in each county by the AOC in cooperation with the presiding judge of the Family Part and the county bar association. The procedural aspects of support and custody could be presented in a videotape (in English or Spanish) with facilitators to answer questions of the litigants in person. The New Jersey State Bar Foundation should be approached to fund the video.

Recommendation 2: All local, county and specialty bar associations should be encouraged to take a strong lead in educating the public concerning the operation of the Family Part, and the way custody, child support, alimony and equitable distribution issues are resolved by the courts. Programs could be

offered through the New Jersey Bar Foundation or local community colleges. In addition, local newspapers and television stations could run regular columns and programs on the role and limitations of the court especially in family matters.

Recommendation 3: The AOC should develop for mandatory use state-wide a Family Part Litigants' Pamphlet to educate the public concerning the operation of the Family Part, the process of divorce, and the laws surrounding custody, child support, alimony and equitable distribution. The pamphlet should also address the issues of gender bias and gender stereotypes in the judiciary. The pamphlet should be written by Family Law practitioners, and printing should be paid for by the AOC. Every litigant in the Family Part should be given a copy of the pamphlet upon filing of a Complaint, an Answer, and upon attending ESP and child custody workshops.

Recommendation 4: New Family Part judges should be required to observe sitting Family Part judges to see how different judges handle the issues raised in Family Part, including domestic violence, juvenile justice and pendente lite support, in addition to civil or criminal court orientation. Strong consideration should be given to establishing a mentor program in the Family Part, matching a new judge to a judge who has served in Family Part.

Recommendation 5: Where possible, non-tenured judges who have no experience in the practice of Family Law should not be assigned to sit in the Family Part as their first assignment.

Recommendation 6: Where possible, experienced and tenured judges should be a substantial component of, and assigned to the Family Part.

Recommendation 7: The AOC should implement a program of providing an individual (e.g., an AOC staff member, a member of a bar association committee, a member of a Supreme court evaluation committee) who shall appear in a targeted judge's court room (upon the invitation of the judge) as a witness to what occurs. the judiciary shall be informed that the new service is available on a voluntary basis. Upon the invitation of the judge, the AOC judiciary staff person shall witness what occurs in the court room and prepare a written report of what has occurred in the courtroom, and the surrounding areas, such as picket lines. The written report would be given to the judge requesting the visit.

Recommendation 8: The AOC should assign a member of its staff who will be responsible for gathering information and documents voluntarily presented by any judge targeted by an aggrieved litigant. The information and documents shall be made available for use in educating the public concerning the issues raised by any aggrieved litigant.

Recommendation 9: The Committee recommends that the Chief Justice refer the Report and Recommendations of this Committee to both the Supreme Court Committee on Family Practice and the Supreme Court Committee on Relations with the Media [or other appropriate body] for implementation.

IV. LEGISLATION

The Committee has made no recommendations regarding legislation.

V. MATTERS HELD FOR CONSIDERATION

The Committee work in the subcommittee areas described in Section VI is on-going and will continue for the remainder of this rules cycle as well as into the next.

VI. MISCELLANEOUS MATTERS

A. Subcommittee Work

The work of the Committee has been and continues to be performed primarily through the subcommittees whose work during this rules cycle is summarized below.

Education/Bar Subcommittee

This Subcommittee works with appropriate sections of the N.J.S.B.A., County and specialty Bar Associations and large law firms/prosecutors' offices to sensitize the Bar to problems concerning the treatment of women, whether they be attorneys, secretaries, litigants, witnesses, jurors or judiciary staff, as well as to how bias affects substantive decision-making.

As a result of a recommendation made in the last rules cycle, Judiciary resources were made available to assist in re-shooting the video, "A Day in the Life of a Female Attorney." The first version of this video was produced in 1991 by bar members themselves. It was shown to many groups as described in the 1992-94 Rules Report, and received very high marks for content, but low marks for technical quality. The video portrays five vignettes, including an initial client intake interview, work allocation between two associates, intra-gender bias between a woman associate and a woman secretary, contact between adversaries and court personnel, and the court room. The videotape is used as part of a

one-hour presentation during which a facilitator or facilitators introduce the program, show each vignette and then between vignettes pose questions concerning the issues involved to stimulate audience involvement. The backbone of the program is the dialogue among attendees, and their shared impressions and experiences.

Work on the re-shooting began in the spring of 1995. With the cooperation and assistance of William Mecca, Judiciary video production coordinator, and the volunteer efforts of the cast, the videotape has been substantially improved. On October 25, 1995, the premiere presentation was held at the New Jersey Law Center. The following bar groups co-sponsored the event: Essex County Women Lawyers, Association of Black Women Lawyers, Women Lawyers in Union County, Women Lawyers in Bergen County, American Academy of Matrimonial Attorneys-New Jersey Chapter, Passaic County Women Lawyers, New Jersey State Bar Association Young Lawyers Division, Women Lawyers in Monmouth County, Mercer County Women Lawyers and New Jersey Women Lawyers Association. In all, 90 people attended the premiere. Thirty-four attorneys volunteered to serve as facilitators as the videotape program is presented throughout the state. Additional male facilitators are needed, as experience has shown that having both a male and a female facilitator to present the program is an important aspect of getting people to discuss these issues in an open and frank manner.

The Subcommittee plans to issue press releases concerning the availability of the videotape program for interested groups and

also plans to offer the program to judiciary law clerks. The Subcommittee is also considering how best to follow-up on the program presentation to see if the gender bias discussion continues and has a positive impact within the bar. For example, it may be appropriate to identify a partner or senior associate in each firm who would be available to all attorneys and support staff to discuss any issues which arise and periodically reach out to firm members to ensure that full equality is practiced on a daily basis. This person could also be the liaison between the Supreme Court Committee and the firms/offices so that gender bias discussions are on-going and available to all new attorneys and other employees.

Two members of the Subcommittee made a presentation at the Statewide Ethics Conference in October of 1994. The purpose of this was to sensitize District Ethics Secretaries to the importance of pursuing any violations pursuant to Rule of Professional Conduct 8.4(g) and to stress the need for a uniformly sensitive initial response to complaints.

Education/Judiciary Subcommittee

This Subcommittee has as its mandate to review needs for education of the Judiciary (including Municipal Court Judges) and to recommend specific action to meet those needs, including courses for the Judicial College, programs of orientation for new judges, and new mechanisms of education to address gender bias in substantive areas as well as in general behavior.

Rather than proposing a specific course on gender bias for the

Judicial College, Subcommittee members reviewed the list of proposed courses and determined where it would be possible either to have a member of the Committee as a presenter or contribute material of a substantive nature. Based on the experience of the Committee Chair in presenting a segment on gender bias to the new judges, it is recommended that future segments on this topic be at least one hour in length, in a room setting that is conducive to judicial interaction, and team-taught by both a male and female judge for maximum effectiveness. The Subcommittee also recommends that both the Judicial College and the new judges' program provide opportunities for small groups of judges to discuss problems they may be encountering. Further, there is a need for more women faculty at both events.

Education/Law Schools Subcommittee

This Subcommittee continues to encourage the formation of programs indigenous to the Law Schools to address problems of gender bias experienced by women students and professors at the three New Jersey Law Schools and to foster the inclusion of material on how gender bias affects substantive decision-making in appropriate course material. The work of this Subcommittee is seen as critical to addressing gender bias before attorneys begin practicing law. Included on the Subcommittee is a representative from each school.

Recognizing that the new video would be appropriate to show at

the law schools, the Committee invited a faculty member and student from each school to attend the premiere of the video. The video has since been shown to Rutgers-Camden Law School students in their course on Professional Responsibility. The previous academic year a program was given for the First Year Ethics Series, debating whether the ABA should adopt a rule similar to New Jersey's RPC 8.4(g).

The Subcommittee has met with placement directors at Seton Hall and Rutgers-Newark to discuss problems students are having on job interviews and to identify possible programs to deal with the situation. Seton Hall Law School will have a program in February entitled "Approaching the Recruiting Process From a Woman's Perspective", at which portions of the video will be used.

At Rutgers-Newark, the Women's Rights Law Clinic is working to bring the issues and the videotape to other classes at the school at various stages in the law school career. They have also shown the video at the Judicial Externship Seminar and have worked to sensitize professors by showing them the tape and discussing the issues.

Subcommittee for Research, Development and Planning/Survey

This Subcommittee's purpose is to help formulate the long range work of the Committee in addressing problems of gender bias by identifying areas that require attention through such means as

surveys and other data gathering efforts. During this rules cycle the Subcommittee has been working to develop a process to resurvey the legal community and compare those results to the results of a survey done early in the work of the Task Force on Women in the Courts. Additionally, the survey results would be used to generate new approaches, directions and recommendations based on the results. The results would also provide information for use in the development of a new videotape to assist in the continuing education of judges and court staff, replacing the one done over ten years ago. The Subcommittee has attempted without success thus far to identify any funding sources or other resources that would assist with sampling process, and once responses are received, data entry, analysis and reporting. This work continues into the next rules cycle.

B. Other Committee Work

During this rules cycle the Committee has also paid particular attention to the problem of child care in courthouses, particularly vicinage efforts to provide child care for court users. The Committee encourages the Judiciary to continue to aggressively pursue providing this service. Members are also reviewing reports provided by the Administrative Office of the Courts to determine the status of appointments of women employees in the Judiciary.

CONCLUSION

The members of the Committee on Women in the Courts appreciate the opportunity to serve the Supreme Court in this capacity. The Committee would like to express its thanks and appreciation to the many individuals who have assisted in the successful implementation of Committee work.

Respectfully Submitted,

Hon. Isabel Brawer Stark, Chair
Hon. Elaine L. Davis, Vice-Chair
Hon. Francis L. Antonin
Hon. Philip S. Carchman
Hon. Rosemary Higgins Cass
Hon. Elaine B. Goldsmith
Hon. Vincent Grasso
Hon. Marilyn Rhine Herr
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February 1, 1996

APPENDIX

REPORT

OF THE

SUBCOMMITTEE

ON PUBLIC EDUCATION



NEW JERSEY SUPREME COURT COMMITTEE ON
WOMEN IN THE COURTS

SUBCOMMITTEE ON PUBLIC EDUCATION

REPORT AND RECOMMENDATIONS OF
THE SUBCOMMITTEE

FEBRUARY 1, 1995

Members of the Subcommittee on Public Education:

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INTRODUCTION

The Subcommittee on Public Education was formed by the New Jersey Supreme Court Committee on Women in the Courts at its regular meeting of October 25, 1994. The Subcommittee's mission was to prepare a report and recommendations to be submitted to the Administrative office of the Courts and to the Chief Justice.

This Report and Recommendations contain the Subcommittee's answers to the questions of how to educate the public about Superior Court Judges, the judicial selection process, and the operations of the courts, especially in the area of the Family Part where allegations of gender bias are common. The Recommendations are offered in furtherance of the Committee's overall mission to identify issues of gender bias in the operation of New Jersey courts. Thus, these recommendations are offered with the goals of addressing gender bias, and the perception of gender bias, which have been raised by litigants, action groups and individual litigants in the operation of the Family Part, and of educating the public about the function of the judge in the Family Part.

This Report contains a brief summary of the facts which have been gathered by the Subcommittee from members of the judiciary and from newspaper reports of the actions of members of litigants' action groups. These facts are set forth in Part I, and are the context for the Subcommittee's Recommendations.

The Recommendations of the Subcommittee are offered in two parts. Part II of this Report contains the Recommendations which

concern the administration of the courts. Part III addresses recommended AOC procedures designed to assess, at the request of the judge, the allegations made against any sitting judge who has been targeted by litigants' action groups and individual litigants.

Finally, the Supreme Court Committee on Women on the Courts voted and adopted on these recommendations at the regular meeting scheduled of January 11, 1995. Specifically, the Committee adopted all of the Recommendations, and approved a motion to present the Recommendations to the Chief Justice and to the Administrative office of the Courts.

Part I:

FACTS SURROUNDING ACTIONS
OF LITIGANTS' ACTION GROUPS

On November 17, 1994, the New Jersey Law Journal published in an article, "Pursuing Detente in Family Court" (copy attached hereto in Appendix). "Family court judges have been specifically targeted for bitter attacks begun by non-custodial fathers' rights groups whose members had bad experiences going through divorce, working out custody arrangement or living up to support obligations," the author, Lisa Brennan, reported. The article further discussed the actions of Hon. Robert Fall, Assignment Judge of Ocean County in response to these litigants' action groups. Judge Fall met with the groups and invited them to serve on committees working on "reform" issues. The article reports that Essex County's Judge Thomas Zampino has also met one of these groups.

The article did not describe the details of the actions take by these groups. Attached in the Appendix to this Report are copies of newsletters of "AboutFace NJ, Fathers & Children's Equality-NJ" which was mailed to Judge Vincent Grasso on December 8, 1994. Also attached is a copy of a newsletter from the group, P.A.C.T., "People Against Corruption and Tyranny", which was sent to Judge Graham Ross on November 14, 1994. The newsletters discussed the actions for which the groups take responsibility. Finally, a flyer from the NJ Council on Children's Rights is also attached in the Appendix.

Page Eleven of the AboutFace newsletter reports that the group picketed Judge Vincent D. Segal's home on Sunday, October 30, 1994. The article refers to the judge's wife and daughter by name. It contains photographs of the picketers in front of Judge Segal's home, and the judge's cars in his garage. The newsletter states that on Sunday, January 29, 1995, Super Bowl Sunday, the group will meet in Mount Laurel to demonstrate "at the home of one of our favorite judges." Other picketing episodes have been reported from other judges.

The P.A.C.T. newsletter discusses enforcement of domestic violence laws and refers to certain judges by name, stating, "While the accuser in most DV Complaints cannot substantiate Probable Cause, the judges' words IN FAMILY COURT (sic) are on the transcripts - in such courts as presided over by the REAL animals masquerading as judges - Ross (Somerset), Herman (Gloucester), Segal (Camden), Zampino (Essex), Epstein (Middlesex), Russell (Sussex), Sweeney (Burlington), Cuff (Monmouth), Antonin (Hudson), Fall (Ocean), Parker (Morris)." They writer concludes, "WE, at P.A.C.T., have started our own Data Base, and are building dossiers on ALL these judges (with one or two notable exceptions, they are ALL bad)."

Also attached hereto is a flyer which was distributed at a Somerset County custody workshop. The flyer states that the N.J. Council for Children's Rights "considers Judge Ross to be one of the most biased, most incompetent family court judges in New

Jersey". The flyer also quotes a 14 year old child as stating, "Judge Ross does not care about children of divorce. He instills hostility among the parents and uses children as a weapon against the fathers by restricting visitation I know two small children who want to see their father more than ever other week but Judge Ross doesn't care what they want."

Part II:

**THE COMMITTEE'S RECOMMENDATIONS
CONCERNING PUBLIC EDUCATION**

No. I Issue: Litigants in all courts, but particularly in the Family Part, often misunderstand court procedures and misinterpret the need for the court to be neutral and uninvolved as gender bias or indifference. It is the experience of some of the Committee members that on occasion litigants believe they are treated unfairly because of gender. The public should be educated about the precedents, laws and rules which govern a judge's decision on contested matters.

First Recommendation: Modify the existing state-wide program of one mandatory workshop on child custody and mediation to include education on child support, alimony, pendente lite orders, child support guidelines, the methods by which these issues are decided, and the purpose of the Early Settlement Panel. The new workshop would also include a discussion of the objectivity of judges, addressing head-on the perception of gender bias and gender stereotypes in the judiciary. The workshop would be mandatory (attorney participation is not necessary), and would occur no later than the earliest of the first day a litigant attends an ESP or a custody workshop, or within three months of the issues having been joined in the case. The workshop would describe and discuss the procedural aspects of determinations of support and custody, and would be developed and presented in each county by the AOC in

cooperation with the presiding judge of the Family Part and the county bar association. The procedural aspects of support and custody could be presented in a videotape (in English or Spanish) with facilitators to answer questions of the litigants in person. The New Jersey State Bar Foundation should be approached to fund the video.

Second Recommendation: All local, county and specialty bar associations should be encouraged to take a strong lead in educating the public concerning the operation of the Family Part, and the way custody, child support, alimony and equitable distribution issues are resolved by the courts. Programs could be offered through the New Jersey Bar Foundation or local community colleges. In addition, local newspapers and television stations could run regular columns and programs on the role and limitations of the court especially in family matters.

Third Recommendation: The AOC should develop for mandatory use state-wide a Family Part Litigants' Pamphlet to educate the public concerning the operation of the Family Part, the process of divorce, and the laws surrounding custody, child support, alimony and equitable distribution. The Pamphlet should also address the issues of gender bias and gender stereotypes in the judiciary. The pamphlet should be written by Family Law practitioners, and printing should be paid for by the AOC. Every litigant in the Family Part should be given a copy of the pamphlet upon filing of

a Complaint, an Answer, and upon attending ESP and child custody workshops.

No. 2 Issue: New judges who are often inexperienced in the area of Family Law are frequently assigned to the Family Part as their first assignment in their rotation through the system, and the assignment is frequently viewed by lawyers and judges as undesirable.

Fourth Recommendation: New Family Part judges should be required to observe sitting Family Part judges to see how different judges handle the issues raised in Family Part, including domestic violence, juvenile justice and pendente lite support, in addition to civil or criminal court orientation. Strong consideration should be given to establishing a mentor program in the Family Part, matching a new judge to a judge who has served in Family Part.

Fifth Recommendation: Where possible, non-tenured judges who have no experience in the practice of Family Law should not be assigned to sit in the Family Part as their first assignment.

Sixth Recommendation: Where possible, experienced and tenured judges should be a substantial component of, and assigned to, the Family Part.

Part III

THE COMMITTEE'S RECOMMENDATIONS CONCERNING THE JUDICIARY

No. 1 Issue: Individual judges and the AOC are not in a position to defend the individual members of the judiciary who occasionally are targeted for unfair, personal attacks by litigants' actions groups or other aggrieved litigants, such as those outlined in Part I. Because of the neutral position adopted by the AOC and the judiciary, the public is not informed about the abuse of judges by aggrieved litigants, which are described in detail in Part I. As a result, the public does not hear a rebuttal when baseless, vitriolic charges are made against judges.

Seventh Recommendation: The AOC should implement a program of providing an individual (e.g., an AOC staff member, a member of a bar association committee, a member of a Supreme Court evaluation committee) who shall appear in a targeted judge's court room (upon the invitation of the judge) as a witness to what occurs. The judiciary shall be informed that the new service is available on a voluntary basis. Upon the invitation of the judge, the AOC judiciary support staff person shall witness what occurs in the court room and prepare a written report of what has occurred in the courtroom, and the surrounding areas, such as picket lines. The written report would be given to the judge requesting the visit.

Eighth Recommendation: The AOC should assign a member of its staff who will be responsible for gathering information and documents voluntarily presented by any judge targeted by an aggrieved litigant. The information and documents shall be made available for use in educating the public concerning the issues raised by any aggrieved litigant.

Ninth Recommendation: The committee recommends that the Chief Justice refer the Report and Recommendations of this Committee to both the Supreme Court Committee on Family Practice and the Supreme Court Committee on Relations with the media for implementation.

Respectfully Submitted,



Ellen O'Connell, Chair

The Subcommittee on Public Education

February 1, 1995

APPENDIX