NEW YORK STATE JUDICIAL COMMITTEE ON WOMEN IN THE COURTS

Gender Survey

2020

This project was supported by Subgrant No. SV19-9652-168 awarded by the state administering office for the Office on Violence Against Women, U.S. Department of Justice's STOP Formula Grant Program. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the state or the U.S. Department of Justice.

Preface

In 1986, The New York Task Force on Women in the Courts issued a report, which detailed the treatment and experiences of women litigants, attorneys, and court employees in New York State courts. They found gender bias in the courts to be a pervasive problem with grave consequences where women were often denied equal justice, equal treatment, and equal opportunity.

The Task Force stated that with leadership there would be change, that reform would depend on the willingness of bench and bar to engage in intense self-examination and on the public's resolve to demand a justice system more fully committed to fairness and equality.

* * *

In 2019, the New York State Judicial Committee on Women in the Courts undertook another study, by way of a survey, to see what, if anything, had changed and what challenges and opportunities remain to create a more aware and just bench and bar and ultimately a justice system free of bias on the basis of gender. The import of the answers and multiple individual comments received in response to this survey, indicate that the treatment of women in our court system has improved markedly over the years since the original report was issued in 1986 but that significant areas of bias and untoward treatment in our court system still remains.

Just as compliance with the ameliorative steps recommended in the original report helped to bring about the presently improved atmosphere, we are sanguine that the remaining vestiges of inappropriate treatment of women in our court system can and will be eliminated by the fulfillment of the many recommendations directed to court administration, judges, attorneys, bar associations, and other relevant entities.

NEW YORK STATE JUDICIAL COMMITTEE ON WOMEN IN THE COURTS

New York State Judicial Committee on Women in the Courts

CHAIR

Hon. Betty Weinberg Ellerin

VICE CHAIR

Fern Schair

MEMBERS

Hon. Rosalie Stoll Bailey

Maria Cortese, Esq.

Elizabeth Cronin, Esq.

Hon. Matthew D'Emic

Hon. Bruna DiBiase

Patricia Ann Fersch, Esq.

Hon. Sylvia O. Hinds-Radix

Hon. Maria P. Hirsh

Hon. Allen Hochberg

Hon. Deborah A. Kaplan

Hon. Judy Harris Kluger

Marjorie Lesch, Esq.

Caroline Levy, Esq.

Hon. Amy C. Martoche

Hon. Renee Forgensi Minark

Hon. Juanita Bing Newton

Hon. Marilyn Hoffman O'Connor

Hon. Terry Jane Ruderman

Hon. Toko Serita

Hon. Denise Sher

Hon. Carol Sherman

Hon. Jeffrey Sunshine

Hon. John Sweeny, Jr.

Judith E. White, Esq.

Cheryl Zimmer, Esq.

EXECUTIVE DIRECTOR

Charlotte A. Watson

Acknowledgements

This report would not have been possible without the dedicated work, expertise, insight, and support of numerous individuals and organizations.

Hon. Janet DiFiore, Chief Judge of the State of New York, and **Hon. Lawrence K. Marks**, Chief Administrative Judge of the State of New York, provided unwavering support for the work of the Committee, and their dedication to equal treatment of women within the court system is of critical importance.

Hon. Betty Weinberg Ellerin, Chair, New York State Judicial Committee on Women in the Courts, former Presiding Justice of the Appellate Division, First Department, now Senior Counsel to Alston & Bird LLP, demonstrated constant leadership, critical judgement, and insight throughout every step of the process to develop the survey and write the report.

The New York State Judicial Committee on Women in the Courts, Gender Bias Survey Subcommittee worked tirelessly, devoting countless hours and contributing decades of experience to drafting and editing the survey and this report.

Subcommittee Co-Chairs

Hon. Renee Minarik, Acting Supreme Court Justice, Court of Claims Judge
Hon. Marilyn Hoffman O'Connor (Ret.), former Family Court Judge

Subcommittee Members

Hon. Rosalie Stoll Bailey, (Ret.), former Family Court Judge, **Caroline Levy, Esq., Hon. Juanita Bing Newton**, Dean, New York State Judicial Institute, **Hon. Terry Jane Ruderman**, Justice, Supreme Court, Associate Justice, Appellate Term of the Supreme Court, 9th & 10th Judicial Districts, **Fern Schair, Esq.**, Chair, Fordham Law School's Feerick Center for Social Justice, and **Cheryl Zimmer, Esq.**

Charlotte A. Watson, Executive Director, tirelessly provided invaluable vision, dedication, and guidance, which made this report possible.

Hon. Deborah A. Kaplan, Administrative Judge, Supreme Court, New York County, Civil Term, **Patricia Ann Fersch, Esq.**, and **Judith E. White, Esq.**, offered important contributions and insight pertaining to matrimonial cases.

Hon. Carol Sherman, New York City Chief Family Court Magistrate and retired Family Court Judge was an invaluable resource in the realm of Family Court matters.

Hon. Edwina G. Mendelson, Deputy Chief Administrative Judge for Justice Initiatives, former Administrative Judge, New York City Family Court, lent her unique insight and expertise to this endeavor.

The Local Gender Fairness Committees in every Judicial District across the state, through their committee chairs, contributed to the discussion during review of the survey data and development of recommendations.

Lynn Hecht Schafran, Esq., Director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP), provided wise counsel to the committee.

Philip Ferrara, PhD and **Choe Shannon**, Principal Court Analyst, served as consultants and provided indispensable assistance and insight in the drafting of the survey and analysis and compilation of the survey results.

Cathleen McDonald, designed the report cover, formatted the report, and patiently worked through the many drafts leading to the final report.

Doris A. Taylor, PhD, provided invaluable insight and proofreading.

Alston & Bird LLP generously extended the use of their facilities to the Committee.

The New York State Bar Association, the Women's Bar Association of the State of New York, and various city and local bar associations throughout the state encouraged their members to participate in the survey which contributed to significant participation.

The Survey Participants, the thousands of attorneys statewide from the bench and bar who took time in their professional lives to share with the Committee what they had experienced or witnessed directly and their opinions regarding the treatment of women in our courts.

Table of Contents

Introduction 1

Executive Summary 7

I. Courthouse Environment/Sexual Harassment 8
II. Credibility and Court Interaction 10
III. Domestic Violence 11
IV. Domestic Violence and Custody, Support, and Visitation 12
V. Child Support 13
VI. Equitable Distribution and Maintenance Guidelines 14
VII. Gender-Based Violence 14
VIII. Appointments and Fee-Generating Positions 15
IX. Negligence and Personal Injury 16
X. Court Facilities 16

The Gender Bias Survey 19

Survey Findings and Recommendations 21

I. Courthouse Environment/Sexual Harassment 21
II. Credibility and Court Interaction 27
III. Domestic Violence 34
IV. Domestic Violence and Custody, Support, and Visitation 42
V. Child Support 46
VI. Equitable Distribution and Maintenance Guidelines 49
VII. Gender-Based Violence 53
VIII. Appointments and Fee-Generating Positions 57
IX. Negligence and Personal Injury 62
X. Court Facilities 64

End Note 69

Appendices 71

A. Chairs of Local Gender Bias and Gender Fairness Committees 72
B. New York State Unified Court System Judicial District Map 75
C. Press Release and New York Law Journal Article 76
D. Correspondence from Chief Judge Janet DiFiore and Justice Betty Weinberg Ellerin, Chair 81
E. Views from Where You Sit: Attorney & Judicial Assessments of the Status of Women in the Courts 2017 83
F. Gender Survey 84
G. Survey Respondent Demographic Data 88
H. Survey Questions and Response Data 92
I. Breakdown by Judicial District in Regard to Available Services and Facilities 109
J. Survey Report Recommendations 113
K. Women in The New York State Judiciary 1986, 1996, 2006, 2016 & 2020 124

Introduction

Historical Overview

In response to respected academic studies that seriously questioned whether women were being fairly and justly treated in our nation's court systems, in May 1983, then Chief Judge of the State of New York, Hon. Lawrence H. Cooke appointed a "Task Force on Women In the Courts" composed of highly respected representatives from major bar associations, the legislature, academia and the greater community, who were charged with a sweeping mandate to review

---

> ***"all aspects of the [court] system, both substantive and procedural" and to ascertain whether 'there are statutes, rules, practices, or conduct that work unfairness or undue hardship on women in the courts and, if found, make recommendations for its alleviation".***

The Task Force undertook an intensive course of inquiry that included in-depth review of relevant articles, public hearings and listening sessions throughout the state and numerous meetings with judges and lawyers at local bar associations both upstate and downstate. The inquiry also focused on certain practices in the Court System such as fee-generating appointments, particularly in Surrogates' Courts, and assignments as counsel in both civil and criminal matters.

In light of the paucity of women judges on benches at every level, attention was also directed to the judicial selection process (and those who were the decision makers) that resulted in such a sharp gender imbalance despite the sizeable numbers of available highly qualified women lawyers.

Finally, a questionnaire consisting of 107 questions, formulated on the basis of the issues raised in the course of the foregoing activities, was distributed to lawyers throughout New York with the assistance of various statewide and local bar associations ultimately resulting in the receipt of 1,790 responses from a cross-section of lawyers from all sections and demographics of the state.

After collating all the information garnered from the survey questionnaires and other avenues of inquiry, the Task Force issued a detailed 274-page Report, with supporting Exhibits, that meticulously documented

---

> ***"the pervasiveness of gender bias in our court system with grave consequences that denied women equal justice, equal treatment and equal opportunity".***

Report Focus

The Report focused on three major areas:

1. The status of women litigants in various contexts including domestic violence and rape, the courts' treatment of women's economic rights, particularly with respect to property rights and maintenance and child support awards upon the dissolution of a marriage and emphasized the lack of respect accorded to women litigants and witnesses, particularly with regard to credibility;

2. The status and treatment of women attorneys; and

3. The status and treatment of women court employees.

Consistent with the Task Force's recognition that ***"the courts have a special obligation to reject—not reflect—society's irrational prejudices"*** specific recommendations were made in the Task Force Report for corrective action in each of these areas, directed as relevant, to Judges, Court Administration, Bar Associations, Police Departments, District Attorneys, Law Schools, the Legislature and Judicial Screening Panels.

When the Report was presented to successor Chief Judge Sol Wachtler in March 1986, he made clear that implementation of the corrective actions recommended by the Task Force to address the inequities suffered by women in our court system would be a top priority. And, indeed, consistent with the Report's emphasis on "the institutionalizing of reform and monitoring progress" he immediately appointed a permanent "Committee to Implement the Recommendations of the New York Task Force on Women in the Courts" that was later renamed by successor Chief Judge Judith S. Kaye as presently entitled.

The initial Chair of the Committee, appointed by Judge Wachtler, was the late Judge Kathryn McDonald, then the Administrative Judge of the NYC Family Courts. It was a truly inspired choice. During her 15-year tenure she oversaw the formation of local gender fairness committees in every judicial district and was responsible for setting the Committee on a course that has enabled it to pursue the mandate contemplated by the original Task Force. Our gratitude for her incomparable leadership is boundless.

Early in the Committee's history it was very fortunate to have as its Counsel, Jill Laurie Goodman, an extremely gifted writer with great expertise in all aspects of gender bias issues. She made many remarkable contributions to the growth and effectiveness of the Committee's work until her retirement in 2013 for which we are most appreciative.

From its beginnings, the Committee and its local satellites have worked for the implementation of the manifold recommendations in the Report including the sponsoring and presenting of a broad spectrum of educational programs for Judges, court employees and others regarding bias and gender issues.

Various helpful pamphlets were issued including one entitled "Fair Speech" that is still a frequently requested primer on gender-neutral language and another entitled "On the Bench" that offers judges various possible ways in which to handle gender-biased incidents. These pamphlets and other Committee publications are available on the New York State Judicial Committee on Women in the Courts website.

The Committee also successfully served as a catalyst for the creation by Court Administration of specialized court parts for matrimonial and domestic violence cases with access to ameliorative services as well as continuously urging and encouraging the recruitment of qualified women for traditionally male-occupied positions in the court system such as court officers, court clerks and senior supervisory personnel.

In many instances the Committee expanded recommendations to address practical realities that affect women in the court setting such as the need for a part-time, flex-time employment option for employees with family obligations (primarily women), the critical need for Children's Centers when their caretakers have court appearances, the need for supervised visitation resources and the need for private lactation spaces. The issues of Children's Centers, supervised visitation and lactation spaces are still works in progress.

The Committee also focused early on the problems of immigrant women litigants, particularly with regard to the deficiencies in the courts' interpreting services. This resulted in the creation of an Advisory Committee on Court Interpreters by Court Administration that promulgated corrective plans and protocols.[1]

The Committee has always kept abreast of significant issues and practices affecting women generally and more particularly in the court setting. To help us achieve that goal we not only receive and review annual reports from our local committees at an Annual Meeting, but we also maintain relationships with relevant organizations and agencies that deal with issues involving the safety and welfare of women including Sanctuary for Families, the NYS Office of Victim Services, and the Judicial Commission on Promoting Racial and Ethnic Fairness in the Courts, among others.

Significantly, the 1986 Report pointed out that its focus was limited to matters that appeared ***at that time*** "to have the most profound effect on the welfare of the greatest number of women". In making these choices, the Task Force recognized that areas other than those studied were "also worthy of scrutiny". The Committee has taken that acknowledgment literally and has taken note of various problems seriously affecting women that have in recent years received increased public attention such as the many facets of sexual harassment, and sex trafficking and its intersection with

---

1. ***The Committee was represented in that endeavor by its Vice-chair Fern Schair who was the catalyst for formation of the Advisory Committee, served as its Co-chair, and was instrumental in the corrective steps taken.***

prostitution. The Committee has been very active in urging our Court System to recognize that the victims of sex trafficking are "victims" and should be treated accordingly in special court parts. We continue to urge for the expansion of those parts throughout the state.[2]

The history of providing Children's Centers or waiting rooms in courthouses throughout the state demonstrates the need for on-going monitoring by a permanent Committee as was wisely recommended in the 1986 Report. The Committee was initially successful in urging Court Administration to establish such Centers in all parts of the State, although we were concerned with the limited hours of availability at many of the Centers. This markedly changed with the budget crisis in 2008 when many Centers were closed, and hours curtailed at most of those remaining. We have continued to advocate strenuously to re-open those that have been closed or curtailed and are working to find possible alternative funding mechanisms, using the Suffolk County Center that has successfully integrated community involvement as an example.[3]

The Committee has periodically held conferences at significant milestones since issuance of the original Report to somewhat informally take stock both of areas of progress and areas of concern with regard to women's treatment in our courts at each particular juncture.

One consistent area of extraordinary progress, based on statistical records, is the steadily increasing percentage of women judges in all courts throughout the state as well as in judicial administrative positions throughout the Court System, including two extraordinary Chief Judges, Hon. Judith Kaye and Hon. Janet DiFiore (*See* Appendix K). Moreover, the numbers of women court employees who fill traditionally male occupied positions in the Court System such as court officers, court clerks, and supervisory personnel have steadily been on an upward trajectory.

Unfortunately, no similar statistical information is available for many of the other more subjective areas that impact on the treatment and experiences of women in the Court System and conclusions in that regard have been predicated largely on random anecdotal exchanges. After the annual conference held to commemorate the 30th Anniversary of the issuance of the original Report, extended discussions were held by our Committee, with input from our local chapters and others knowl-

---

2. ***The Committee gratefully acknowledges the crucial role of former Chief Administrative Judge and later Chief Judge, Hon. Jonathan Lippman, in implementing many of the Committee's recommendations including the flex time-part time option and the specialized parts for Domestic Violence, Sex-Trafficking, and Integrated Domestic Violence cases.***

3. ***A bright spot in this picture is New York County where the Children's Center that had previously served the Civil/Housing Court and Criminal Courts was completely closed after the budget crisis and the space allocated to other uses. After meeting with the Chair of the Committee, New York District Attorney Cyrus Vance immediately took steps to utilize forfeiture funds for reconstructing space to serve as a Children's Center and to fund the project for 3 years.***

edgeable about women's issues, regarding personal experiences and impressions as to the nature of the current treatment accorded to women in the Court System, leading us to seriously question the extent of progress we have ***really*** made in eradicating biased treatment of women in our courts.

Moreover, it was obvious that it was necessary to document what progress has been made and to what extent the current multi-faceted conduct constituting sexual harassment that had only been tangentially touched upon in the original survey currently impacts women lawyers, litigants, and witnesses. Accordingly, the Committee unanimously concluded that another study was necessary to credibly establish the extent to which any bias based on gender currently exists in our Court System and, if so, what further remedial steps are necessary to eradicate such biased conduct.

In that context, the Committee believed that such information could most reliably, and cost effectively, be obtained by seeking responses from lawyers throughout the state to a survey questionnaire covering, in some detail, the areas of concern that had been articulated at our various meetings and conferences. The responses to that questionnaire constitute the basis for the Report that follows.

We note that we have received the strong support and encouragement of our Chief Judge, Hon. Janet DiFiore and Chief Administrative Judge, Hon. Lawrence Marks throughout this endeavor and are most grateful for their invaluable assistance.

Executive Summary

"....The courts have a special obligation to reject—not reflect—society's irrational prejudices."

That quotation is from the original 1986 Report of the Task Force on Women in the Courts, which was published just 100 years after the first woman was admitted to practice in the State of New York. That Report gave credibility and dimension to the problem of gender bias in the courts, with compelling evidence that ***"…gender bias against women litigants, attorneys and court employees is a pervasive problem with grave consequences…".***

Somewhat more than thirty years after that report was issued, the Judicial Committee on Women in the Courts (created as one ameliorative step in response to the Task Force findings) began to discuss undertaking another survey. The goal would be to assess the current status and treatment of women litigants, attorneys, and court employees. Under the leadership of its Chair Hon. Betty Weinberg Ellerin, and with the strong support of Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence Marks, the Judicial Committee engaged an expert consultant, conducted some preliminary steps with questionnaires and round table discussions, and composed and widely distributed a new survey which received 5,340 responses (much larger than the 1,790 received in the 1986 survey). Not only was that number of responses to an emailed survey a statement in itself, the number of responders who took extra time to write comments and suggestions was remarkable.

In many key areas, evidence of improvement since the earlier survey was clear. From Chief Judge Lawrence Cooke, who created the Task Force, to Chief Judges Sol Wachtler, Judith Kaye, Jonathan Lippman, and Janet DiFiore, each one of whom took important substantive steps that made a real difference, New York's court administration has worked hard to diminish the faults and weaknesses found in the earlier report. While not specifically covered in survey questions, one area of great progress is the number of women judges now on the bench; with particular improvement in the numbers of women administrative judges and members of the Appellate Courts of New York. Similarly, great improvement has taken place with respect to the number of women employed at various levels in positions which had been traditionally occupied by male employees in the courts.

While similar numbers of males and females responded to the survey, perceptions of differential treatment of women between male and female responders remained widely at variance. In an overwhelming number of areas, male attorneys did not view the same behaviors and the adverse consequences on women attorneys in the same way as their female colleagues.

One area highlighted in this survey is that of sexual harassment in its many guises and subtleties. The Committee could not ignore the importance of current societal concern in this area. Such behavior, particularly inappropriate physical contact, has become of increased and expanding public concern.

The following sections set forth brief reports of the data and responses provided, while the full report has in-depth analysis of each area of the survey, including its methodology and administration. We hope all interested parties will read the full report, which also makes specific Recommendations for improvement in each section. Additionally, the full set of recommendations is listed in the Appendices (*see* Appendix J) under the roles of those responsible for implementation.

I. Courthouse Environment/Sexual Harassment

As stated above, one of the concerns tangentially explored in the earlier survey that has attracted more significant attention today is sexual harassment. In this context, the questions revolved around whether there appears to exist within court facilities inappropriate and demeaning conduct which would create a hostile or offensive work environment. The conduct surveyed includes "physical" (unwelcome touching, hugging, pinching, up to and including physical violence), "verbal" (jokes and/or inappropriate commentary on age, appearance and/or gender, up to and including requests for sexual favors or making work-related threats), and "non-verbal" (including obscene gestures).

Some patterns that emerged indicated significant differences in perceptions between male and female responders, and in all forms of harassment, the evidence of continuing issues affecting women. The highest percentage of problems reported occurred with other attorneys; next with non-judicial personnel, and least with judges.

The answers to the question of whether female attorneys experience unwelcome physical contact varied widely by which group were the actors in such harassment. The group of most concern was other attorneys; 10% of female attorney responders reported that unwelcome physical contact by other attorneys occurred very often or often, and another 36% reported it sometimes happened. Therefore, for too many of the female responders, unwelcome physical contact from other attorneys was to some degree part of the court environment. Male attorneys also reported this occurring, though to a lesser extent: 3% reported this happened very often/often, and another 16% said this occurred sometimes.

In the next group of actors, nonjudicial personnel, both male and female attorneys reported this occurring to a lesser degree: 5% of female attorneys reported this occurring very often/often, and 17% acknowledged this happened sometimes; while 1% of male attorneys reported this occurred often and 9% sometimes.

By contrast, both male and female attorneys reported almost no problem when it came to female attorneys experiencing unwelcome physical contact by judges—90% of female attorneys and 96% of male attorneys reported this rarely or never occurred.

When attorneys were asked whether female attorneys experience inappropriate or offensive verbal comments, jokes or obscene gestures, again the most significant area of concern applied to other attorneys. A troubling 23% of all female respondents reported such behavior as occurring often or very often, and an additional 44% reported this happening sometimes.

Again, there was a significant difference in the perception of male attorneys; though 5% reported it happening very often/often and 27% additionally reporting it occurring sometimes.

With respect to the inappropriate or offensive verbal behavior of nonjudicial personnel, again there appears to be less of a problem than with other attorneys. The survey found that 12% of female attorneys reported this occurring very often/often, and another 28% reported it occurring sometimes; with male attorneys reporting respectively 3% and 19%.

The responses concerning judges, while presenting much less of a problem than with other attorneys and nonjudicial personnel, was not quite as positive as the question regarding unwelcome physical conduct. Only 70% of female responders and 87% of male responders reported that these offensive verbal comments occurred rarely or never from judges.

Female attorneys reported that female litigants and/or witnesses experience inappropriate or offensive verbal comments from attorneys (often/very often (14%) or sometimes (36%); and male attorneys agreed (2% very often/often and 18% sometimes). Such conduct by non-judicial personnel was reported as occurring very often/often (9%) and sometimes (23%). The corresponding number for male attorneys were 2% and 14%.

Again, responders reported a lower level of issues with judges—78% of female responders and 92% of male responders reported such conduct towards female litigants and/or witnesses occurs rarely or never. (It might be noted that, since most vulnerable litigants and witnesses appear without attorneys, the numbers of concerns in an attorney survey may not give the full picture of the treatment of female litigants and witnesses).

When it came to the reporting of sexual harassment in all its forms, only 31% of female attorneys and 49% of male attorneys indicated they knew how, when, and where to report a claim related to misconduct in a Unified Court System (UCS) facility. More than three quarters (76%) of all women and more than half (51%) of all men felt that the information provided to all court users in a courthouse was inadequate regarding to whom to report a sexual harassment claim.

Nearly all attorneys agreed that a court user who has experienced sexual harassment would be more likely to report a claim if the report could be made anonymously. The full report makes recommendations to address this issue.

This section on Courthouse Environment/Sexual Harassment garnered the most individual comments of all sections of the Survey. Throughout the comments submitted by female attorneys, there was a pattern indicating a range of behaviors that create a problematic and uncomfortable culture —from the use of terms of endearment, to jokes, putdowns, solicitation for personal information, various forms of sexual harassment, and physical touching.

A number of comments by women attorneys stated that, although they had not experienced such behavior by judges, there were comments that indicated concern that judges looked the other way and allowed such behavior by male attorneys or court officers to go unchecked. Some commented that judges set the tone and provide the leadership in the courthouse, and that they should embrace their authority and responsibility to set and enforce limits.

Another often repeated sentiment in the comments emphasized the need for easier, more transparent reporting procedures, with much stronger enforcement.

Based upon the survey data regarding courthouse environment and sexual harassment, buttressed by a number of individual comments, it appears that there is all too often an atmosphere of inappropriate behavior experienced by female lawyers, litigants, and witnesses that continues to infect our courthouses and legal proceedings to varying degrees requiring significant remedial efforts.

II. Credibility and Court Interaction

It has long been acknowledged that the credibility afforded to the attorneys, litigants, or witnesses within the courtroom is reflected by the seriousness and respect shown to them by the judges, attorneys, and court personnel.

This section of the survey looked at attorneys' perceptions of whether and how gender affects credibility in the courts. Results continued to consistently show differences in perceptions by male and female attorneys.

Significantly, more than half (51%) of female attorneys reported that they agreed with the statement that male judges appear to give more credibility to the statements/arguments of male attorneys than female attorneys; 13% of male attorneys agreed. There appeared to be less concern with female judges, although 29% of female responders agreed that female judges also appeared to give more credibility to male than female attorneys.

When asked about witnesses, 27% of female attorneys agreed that male judges appeared to give more credibility to male witnesses than female witnesses, whereas the number was only 16% with female judges.

The next issue also yielded significant results. To the question whether female attorneys were being addressed by first names or terms of endearment by other attorneys, while male attorneys were addressed by surname or title, almost one third (32%) of female attorneys reported it occurring very

often, and another 37% answered that it did occur sometimes. These data demonstrate the untoward frequency of such inappropriate behavior raising justifiable concerns.

There was slightly less concern expressed regarding such differential and demeaning behavior from non-judicial personnel. About one quarter of female attorneys reported such behavior occurred very often, and another 30% reported it occurring sometimes.

In contrast, 59% of female attorneys and 84% of male attorneys reported that judges rarely or never exhibited such behavior.

Data were generally similar regarding treatment of female litigants, though it is noted that attorneys are often not present when the most vulnerable (often unrepresented) females are testifying.

But some final questions in this section raised again the issue of behavior from the bench. Over 60% of the female attorneys reported that in cases of negative or demeaning conduct by others, judges rarely or never intervene. Male attorneys again had a different view, though 29% also reported that judges rarely or never intervened when confronted with negative or demeaning conduct towards women.

Based upon the survey data and comments regarding credibility and court interaction, it appears that there still remains a significant strain of bias against female lawyers, litigants, and witnesses that adversely impacts the fairness of their treatment in the judicial process which must be vigorously addressed.

III. Domestic Violence

There are many types of Family Court, Supreme Court, and Criminal Court proceedings that address conduct that falls under this broad topic where the court plays a critical role. The survey looked at how Orders of Protection and other matters are adjudicated by the respective courts.

The first subsection addresses cases where a family offense is alleged in Family Court. Questions were directed at the non-judicial influence, including probation and law enforcement, on complainants/petitioners. These data show more than 36% of female attorneys reported that law enforcement rarely or never discouraged domestic violence complainants from seeking Orders of Protection, while 24% reported that it occurred often or very often. Non-judicial court personnel were slightly less likely to discourage such complaints.

Attorneys also reported that, when responding to a domestic violence call, law enforcement often or very often encourage the use of Family Court over Criminal Court (62% of female lawyers and 38% of male lawyers).

There was general agreement between male and female lawyers in some areas concerning Temporary Orders of Protection. First, all substantially agreed that when a petitioner seeks such an order, judges rarely or never inquire whether the petitioner is also seeking a Temporary Order of Support.

Another area of agreement, showing great improvement since the 1986 Report, was that when a request for such order is granted, the court directs the sheriff or local law enforcement to serve the order often or very often.

One area of concern that emerged for both Family Courts and Criminal Courts is the need for further safety provisions for alleged victims. To the question of whether there is a safe place within the courthouse where the alleged victim can wait for the Family Court case to be called, more than one third of the female attorneys and 20% of male attorneys reported the absence of a safe place. An even more definitive response came in the answer to the question whether there is any provision made for the safety of the alleged victim in the courthouse upon return on the first appearance date after an order has been granted. An overwhelming 64% of female attorneys and 33% of male attorneys reported provisions are being made rarely or never.

Also, in Criminal Court, 56% of female attorneys and 38% of male attorneys reported there is rarely or never provision made for the safety of the alleged victim in the courthouse upon return on the appearance date.

There were further questions addressing how domestic violence is handled in the criminal context by law enforcement, prosecutors and courts. Potential domestic violence complainants are rarely discouraged by law enforcement or probation, or by nonjudicial personnel from seeking Orders of Protection in Criminal Courts. Female and male attorneys strongly agreed that district attorneys are more reluctant to prosecute without the victim's cooperation.

Both male and female attorneys also substantially agreed that Criminal Court complainants are granted Orders of Protection *ex parte* when warranted. In another sign of progress since the 1986 Report, complainants appeared to be less likely to be asked about the lack of visible injuries.

While the signs of progress are positive, there is strong agreement that the need for increased attention to the safety of complainants in all courthouses is significant.

While there has been marked improvement in the way law enforcement and the courts address domestic violence in terms of the issuance and enforcement of Orders of Protection, there still remain many areas requiring improvement to provide safety and recourse to the victims of this scourge.

IV. Domestic Violence and Custody, Support, and Visitation

The survey looked at the extent to which one parent's violence toward the other parent impacted the determination of custody. More than 1/3 of female attorneys and nearly half of male attorneys believe that the father's violence ***is*** a determining factor in who is awarded custody. This is an area in which there is demonstrated improvement over the 1986 survey.

An inquiry was made about the importance of support awards in cases involving domestic violence, and as to whether support awards to domestic violence victims and their children are enforced. Half of female attorneys and almost 3/4 of male attorneys feel that such support awards are often or very often enforced.

One area of concern showing no improvement since the 1986 survey was that of supervised visitation. The availability of free, neutral supervised visitation services is very limited; nearly half of all survey respondents reported that such services were never or rarely available.

While the survey indicates that the percentage of custody awards that disregard a father's violence against the mother has significantly decreased since the Task Force Report in 1986, there are still a substantial number of such awards (female attorneys 20%; male attorneys 7%) that continue to disregard such conduct raising concerns that should be addressed.

The urgent need for safe, accessible supervised visitation programs that are free or affordable is self-evident and cries out for relief.

V. Child Support

This section dealt with the subject of child support more broadly.

Among all respondents, almost 17% reported that awards deviated from the presumptive Child Support Standards Act often or very often; and another 51% reported this happened sometimes. About 28% reported that such awards are often lower than the standard, while about one-third reported that often or very often support is awarded on income above the income cap.

One area of concern which emerged was the report by almost 20% of respondents that judges order the parties to share equally the add-on expenses (often substantial, such as childcare and unreimbursed medical or educational expenses), even with a disparity in income between the parties.

Another area to be noted was that 35% of all attorneys responding reported that in Supreme Court matrimonial cases, *pendente lite* orders of child support are never or rarely decided within 30 days of final submission.

One positive note was the overall perception of a great improvement in the effectiveness of the courts in enforcing child support awards since the 1986 Report.

Problems as to the adequacy and enforcement of child support awards continue. Particular concern remains regarding the failure to decide pendente lite awards within the mandated timeframe.

VI. Equitable Distribution and Maintenance Guidelines

This section sought to measure the implementation of the 2015 Legislation which significantly impacted equitable distribution and maintenance awards—particularly its impact on the non-monied spouse. A substantial number (40%) of all attorneys statewide reported that the maintenance guidelines adversely affected the non-monied spouse where income was less than $60,000 for a household of four; and the lower the income, the more that spouse is adversely affected.

While the extent of harm was slightly less, the perceptions in these data also indicated that the maintenance guidelines had adverse consequences for the non-monied spouses in middle- and higher-income families in New York City and suburban counties.

Approximately 60% of all attorneys responded that in cases where durational maintenance was ordered, the court often or very often grants maintenance for the time periods indicated in the ranges of the Advisory Chart. However, further questioning revealed that the amounts set were likely to be at the middle or lower end of the ranges suggested—rarely at the higher end.

Finally, only a quarter of all attorney respondents were of the view that judges will often or very often depart from the Advisory Chart when the facts warrant.

Problems remain in a substantial number of matrimonial cases involving equitable distribution and maintenance awards as to amount and in the case of the latter duration, which negatively impact economically upon women of limited employability due to age and years of homemaking and/or child rearing activities.

VII. Gender-Based Violence

(Note: The survey was completed prior to enactment of the Criminal Justice Reform Act.)

This section sought input on specific subtopics relevant to the treatment of domestic violence, rape, and prostitution cases in Criminal Court and the criminal term of Supreme Court.

The survey looked at how rape and other sex crimes are handled where the parties know one another. Female attorneys reported that bail in rape and other sex crime cases where parties know one another is set lower than the cases where parties are strangers, very often or often (32%) or sometimes (36%). Male attorneys also reported this occurred very often or often (19%) or sometimes (43%).

It appears that some societal attitudes linger such that rape occurring in marriage or when the parties know each other is considered as less pernicious than rape involving strangers.

Female attorneys reported that sentences in rape and other sex crimes are very often or often (35%) shorter when parties know one another than in cases where parties are strangers, while male attorneys (18%) reported this as the case. Attorneys (female 42%; male 40%) indicated this sometimes occurs.

Both female and male attorneys were also concerned that jurors, more so than judges or prosecutors, possess the same attitudes.

As to prostitution, female attorneys were likely to agree that judges (64%), prosecutors (56%) and law enforcement (65%) treat the John or patron with less severity than the prostituted person. Male attorneys were only somewhat less likely to agree (42%, 37% and 44% respectively).

Although there has been some improvement, it appears that some societal attitudes persist considering rape occurring within marriage or when the parties know each other as less pernicious than rape involving strangers - and to some degree impact upon the prosecution of these cases.

VIII. Appointments and Fee-Generating Positions

In its 1986 Report, the Task Force noted the public hearing testimony and attorney survey responses asserting that women attorneys were disproportionately denied the most desirable and lucrative assigned counsel positions. Thereafter, Part 36 of the Rules of the Chief Judge governing fiduciary appointments was promulgated and amended, broadening the eligibility for appointment and establishing procedures to promote accountability and transparency in the attorney selection process. Effective October 2019, Parts 26 and 36 of the Rules of the Chief Judge were further amended and a new Fiduciary Case Management System (FCMS) was established to track fees awarded and the number and types of appointments of individual judges.

This survey sought to better understand the current climate and consistency in the awarding of such fees. However, the vast majority of those responding to the survey found the issues not applicable to their own situation; they were not eligible to receive appointments in many cases. For those who were eligible for appointments, slightly more female attorneys were appointed to a fee-generating case within the last three years compared to male attorneys.

Of those who had been appointed to a fee-generating case within the past 3 years, 36% of female attorneys and 5% of male attorneys agreed that judges more often appointed male attorneys to more lucrative cases. Furthermore, 24% of female attorneys and only 1% of male attorneys responded that female attorneys are more often awarded lower fees. In both of those areas, however, large numbers of all attorneys responded that they did not know or had no opinion about these issues.

While there has been great improvement in the number of assignments to women since the 1986 report, a substantial number of female attorneys still believe that there is disparity in the monetary value of cases assigned to women. The data indicate that appears to be the case at least with regard to violent felony assignments. Female attorneys (24%) and male attorneys (7%) agree that such is the case with over half of those responding having no knowledge of the issue.

Court leadership and administration deserve great credit for the marked improvement in this area through its rulemaking authority. Although there is still some perception that female attorneys receive lesser fee awards for similar work when such awards are within judicial discretion, any perceived inequities in fee awards should be further ameliorated by the most recent 2019 Rule requiring detailed filings that will provide the degree of transparency that engenders fairness by decision makers.

IX. Negligence and Personal Injury

This section sought opinions regarding awards for pain and suffering, loss of consortium, or disfigurement, as well as gender differences for awards to homemakers.

The responses continued to show a great disparity between the perceptions of male and female attorneys. In the area of whether males receive higher awards for pain and suffering than females, 24% of female attorneys agreed while 4% of male attorneys felt that was the reality. The same pattern of small numbers of female attorneys and even considerably smaller agreement from male attorneys existed in responding to the questions of whether husbands receive higher awards for loss of consortium from judges or juries, and whether females receive higher awards for disfigurement from judges or juries.

Much higher numbers of both female and male attorneys agreed that female homemakers receive lower awards than males who work outside of the home—from both judges and juries.

These data indicate that awards in a significant number of personal injury cases assign lower monetary damages to women than to men for similar injuries and disabilities and also largely undervalue the import of homemaker services. This is all to the economic detriment of women who wrongfully suffer injuries and disabilities.

X. Court Facilities

It has long been acknowledged that addressing the basic needs of litigants and witnesses can make a difference in their being able to participate fully in their case or court appearance. In this survey, information was sought about 3 key facilities—Children's Centers, lactation facilities, and baby changing stations.

Responses to questions about Children's Centers made clear that in too many places such Centers do not presently exist, and that having such a Center would improve the calendaring of cases. Similar sentiments were reported concerning the absence of and inadequacy of lactation facilities in many courthouses and the inadequate number of baby changing stations in public restrooms. They are all considered by many as having a negative impact on court calendaring and efficiency.

Both male and female attorneys commented on the need to update many court facilities to improve attorney conference space and to prevent attorney conferences from being held in either small private rooms with no outside visibility implicating safety concerns, or in crowded public hallways.

The efficiency and effectiveness of court proceedings are negatively impacted by the lack of facilities including Children's Centers, lactation spaces, and baby changing stations that prevent various participants in the process from being readily available during the proceedings and also cause an unfair hardship upon those requiring such facilities.

Conclusion

The over 5,000 attorneys who took the time to respond to this Survey, as well as the many comments they added, speak loudly of the continuing concern by so many attorneys of the extent of gender bias continuing to be a detrimental influence in the New York courts.

The late Chief Judge Cooke, the original Task Force members, and succeeding Court Administrations would take great pride in the fact that the current Survey demonstrates that their hard work and multiple efforts have in substantial measure ameliorated the scope and extent of bias that had unfairly impacted women participants in our justice system. For this, great credit must also be given to Court Administration under the leadership of former Chief Judges Wachtler, Kaye, Lippman, and current Chief Judge DiFiore, for demonstrating unswerving commitment to promoting the Task Force recommendations and indeed expanding the recommendations to meet unanticipated challenges. In this they were greatly assisted by dedicated Chief Administrative Judges, trial and appellate judges, court personnel, and varying bar associations, legislators, and law enforcement leaders.

Unfortunately, despite these intensive efforts over the years, the data elicited by the Survey demonstrate that there remain substantial areas of inequitable treatment of women lawyers, litigants and witnesses. Most disheartening are the data on Courthouse Environment/Sexual Harassment, particularly with regard to the inappropriate conduct of far too many lawyers. Concerns also stem from the data on Credibility and Court Interaction, which although improved, continues to reflect some bias against women participants in the judicial process that cannot, and should not, be countenanced. Amongst other areas of concern, these data also demonstrate the economic inequalities women face upon termination of marriage as well as the inadequate and inequitable valuation in the litigation context of the work or services they traditionally perform.

We conclude on an optimistic note; the Committee believes that the goal of truly equal treatment for women in our justice system is well within reach. We urge all of the constituents in that system to join in continuing the progress that has been made toward that goal.

The Gender Bias Survey

Overall Design

The survey contained several sections covering a broad range of experiences encountered in the court system regardless of the survey participant's particular practice area, such as credibility and court interaction, courthouse environment including sexual harassment, court facilities, and demographics. Other sections directed to specific areas of practice and substantive law were made available only to those who indicated they practiced in that area including fee-generating appointments and assignments. The survey also contained questions regarding the availability and impact of courthouse Children's Centers where litigants and other court users can safely leave their children while they attend to court matters, baby changing tables in public restrooms, and lactation facilities.

Survey participants were instructed to select the responses that best reflected their opinions based upon their own recent experiences or direct knowledge in the New York State courts. Appendix H contains the full set of questions and response data from all survey participants. These data are shown separately for those questions where there were significant differences in the responses between women and men.

At the end of each section, respondents were given the opportunity to offer comments and suggestions. The comments added color and insight into some of the data.

Survey Methodology Summary[4]

The Committee worked with Court Administration professionals as well as experts in survey design to develop and administer a cost-effective online survey that would reliably capture the experiences and views of attorneys who practice in the New York State Courts. To reach a broad spectrum of practicing attorneys, the survey methodology utilized the New York State Attorney Registration database. The potential pool of survey participants included only those active and retired attorneys in the registration database that had a deliverable email address on file resulting in a final pool of 67,862 attorneys. (*See* Appendix F).

4. *See* appendix for more detail including demographic characteristics and representativeness of survey respondents.

Survey Administration

The Attorney Survey on Gender Bias in the New York State Courts was announced in a November 13, 2018 press release from the New York State Office of Court Administration. An article discussing the survey and the work of the New York State Judicial Committee on Women in the Courts appeared in the New York Law Journal published on November 16, 2018.

Invitations to participate in the survey were sent on behalf of Chief Judge Janet DiFiore to all 67,862 attorneys during the period November 14, 2018 to December 10, 2018. Each invitation contained a unique link to the survey which prevented multiple submissions. Survey participants were informed that their responses would be confidential and aggregated with others who respond. A total of 5,340 responded, much larger than the 1,790 in 1986, enabling the research team to conduct extensive statistical analysis of the survey questions by various demographic variables and by different geographic regions within New York State.

The estimates derived from the survey based upon a sampling of the population studied are accurate within a range of from 1 to 3 percent.

Survey Findings and Recommendations

I. Courthouse Environment/Sexual Harassment

The original survey focused on inappropriate conduct in the court system by judges, attorneys, and court employees directed to women lawyers and litigants. Since that time, society has more clearly defined such conduct as one facet of sexual harassment. The culture that generated the current survey views the issue far more expansively as to the types of conduct constituting sexual harassment. Thus, the Committee expanded this survey to probe deeper and wider in evaluating the impact of sexual harassment on today's court environment.

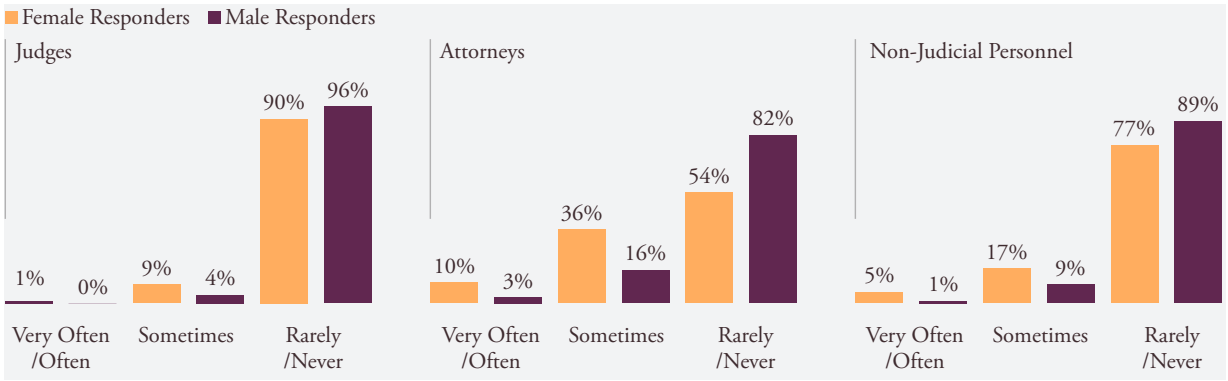
For the purpose of this survey, sexual harassment is defined as conduct that creates a hostile or offensive work environment in a court facility. The conduct can be physical, verbal and/or non-verbal. "Physical" conduct includes unwelcome touching, hugging, pinching, up to and including physical violence. "Verbal" conduct includes "jokes" and/or inappropriate commentary on age, appearance and/or gender up to and including requests for sexual favors or making work-related threats. "Non-verbal" conduct includes obscene gestures.

Findings

When attorneys were asked whether female attorneys experience unwelcome physical contact, significant gender differences were observed as is shown in the charts below. For example, female attorneys responded that this occurred very often/often by other attorneys (10%), by non-judicial personnel (5%), and by judges (1%), that it sometimes occurred by other attorneys (36%), by non-judicial personnel (17%), and by judges (9%). Female attorneys reported the occurrence of unwelcome physical contact in every category at a rate more than double that of male attorneys' estimation of female attorneys experiencing unwelcome physical contact. This was reflected throughout the comments as well.

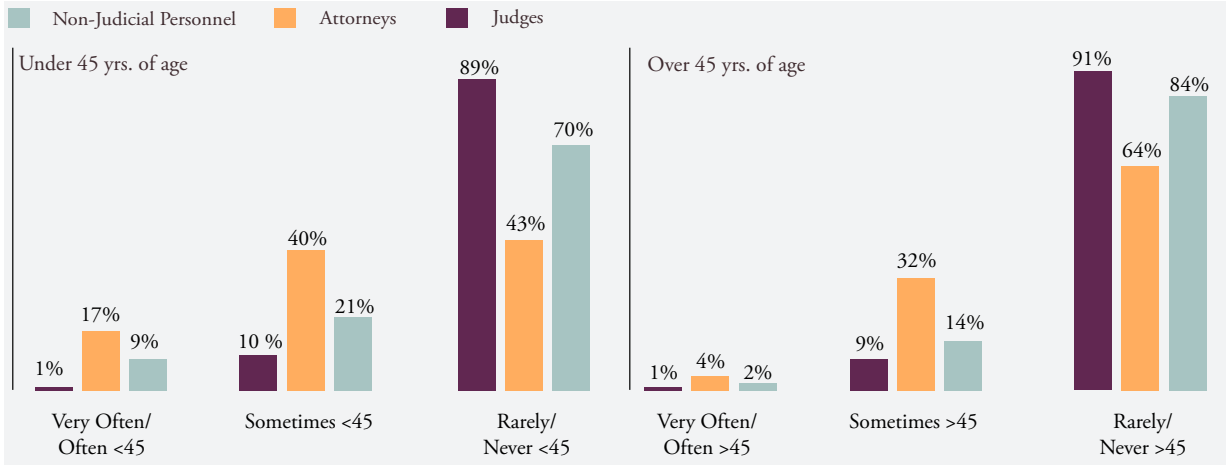
On a somewhat more positive note, both women (90%) and men (96%) responded that this rarely/never occurred by judges. Women (77%) and men (89%) also responded that it rarely/never occurred by non-judicial personnel. Both women and men agreed, albeit to a markedly different degree, that attorneys have the highest rates of engaging in such misconduct. This survey addresses the issue of misconduct against women in the courts in greater depth than what was done in the 1986 survey.

Female attorneys experience unwelcome physical contact by:



Upon further analysis of those numbers, it appears that female attorneys under the age of 45 were more likely to often or very often (17%) or sometimes (40%) experience unwanted physical contact by attorneys than those age 45 or over (4% or 32% respectively). The younger attorneys also experienced more unwelcome physical contact often or very often (9%) or sometimes (21%) by non-judicial personnel than the older attorneys (2% or 14% respectively).

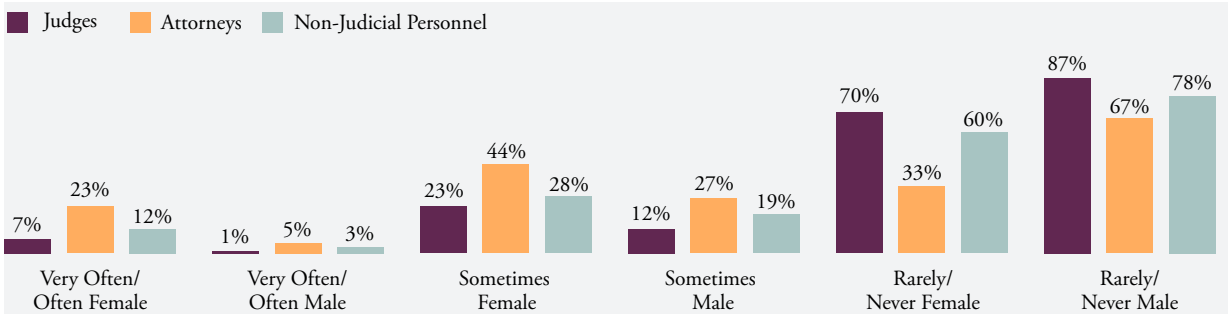
Female attorneys experience unwelcome physical contact by:



As shown by the graphs below, when attorneys were asked whether female attorneys experience inappropriate or offensive verbal comments, jokes, or obscene gestures, again significant gender differences were observed. For example, female attorneys opined that with respect to attorneys this occurred very often/often (23%), sometimes (44%) by other attorneys; by non-judicial personnel this occurred very often/often (12%) and sometimes (28%); by judges this occurred very often/often (7%) and sometimes

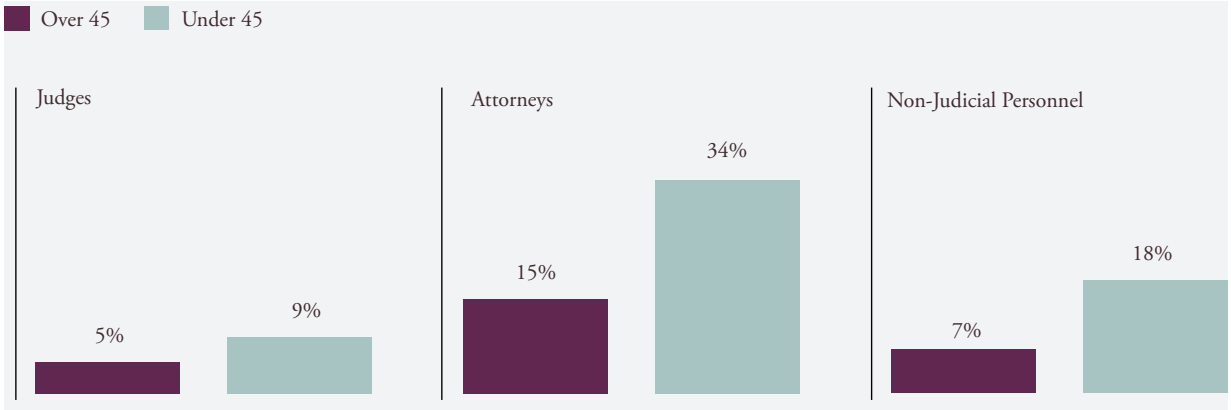
occurred (23%). Male attorneys opined that this occurred to female attorneys very often/often (5%), sometimes (27%) by other attorneys; by non-judicial personnel this occurred very often/often (3%) and sometimes (19%); by judges this occurred very often/often (1%) and sometimes occurred (12%).

Female attorneys experience inappropriate or offensive verbal comments, jokes, or obscene gestures by:



Again, female attorneys under the age of 45 were more likely to often or very often (9%) experience inappropriate or offensive verbal comments (including about personal appearance), jokes, or obscene gestures by judges than those age 45 or over (5%); by attorneys (34% vs 15%); by non-judicial personnel (18% vs 7%).

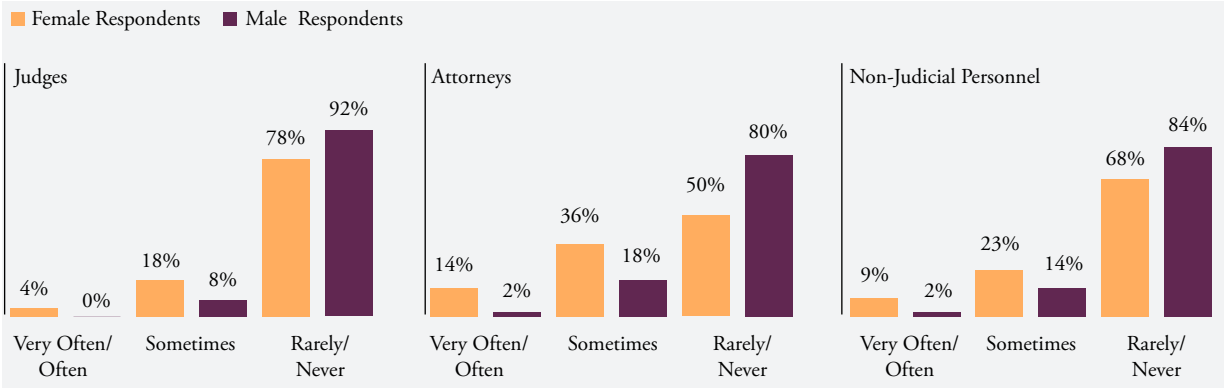
Female attorneys experience inappropriate or offensive verbal comments, (including about personal appearance), jokes, or obscene gestures by:



Among male attorneys who commented on courthouse environment, a third of these attorneys said they had not seen any of the reported behavior above toward female attorneys. Several male attorneys noted that as a man, they felt they might not recognize such behavior if it were to occur in front of them.

When attorneys are asked whether female litigants and/or witnesses experience inappropriate or offensive verbal comments, jokes or obscene gestures by other attorneys, non-judicial personnel, or judges, significant gender differences were again observed as is shown in the charts below. For example, female attorneys reported this occurred often or very often by other attorneys (14%), by non-judicial personnel (9%), and by judges (4%). Over 80% of men reported this rarely or never occurs and acknowledge that when this does happen, it is more likely to occur among attorneys than non-judicial personnel or judges.

Female litigants and/or witnesses experience inappropriate or offensive verbal comments (including about personal appearance), jokes, or obscene gestures, by:



The Courthouse Environment section generated a substantial number of individual comments. A number of female attorneys described a culture that tolerates such behaviors as the use of terms of endearment[5] to subtly intimidate female attorneys. Inappropriate jokes, putdowns, solicitation for personal information, various types of sexual harassment, and physical touching were also identified in the survey responses.

A few female attorneys commented that they did not think that sexual harassment existed, in contrast to a substantial number of male attorneys who indicated they had not witnessed the behaviors above. A few male attorneys said the questions were *"silly," "a witch-hunt," "more imagined than real,"* while others reported they suspected that being male prevented them from recognizing the experiences of their female colleagues.

Specific behavior mentioned by female attorneys emphasized continued existence of an "old boys' network" among male judges, male staff, and male attorneys. Additionally, concern was expressed in a few comments about verbal threats and physical touching or assault by male attorneys coupled with a concern about retaliation or retribution if they reported harassment of any type.

5. Addressing female attorneys, witnesses, and litigants by first names or terms of endearment is treated in detail at Pg. 30 as part of the survey's results on Credibility.

Reporting Sexual Harassment

When it came to the knowledge of how, when, and where to report sexual harassment, 69% of female attorneys and 51% of male attorneys indicated they did not know how, when, and where to report a claim related to misconduct in a NYS Unified Court System facility. Approximately 3 out of 4 women (76%) and half of all men (51%) felt that the information provided to all court users in a courthouse was inadequate regarding to whom to report a sexual harassment claim related to misconduct in that courthouse. Also, a large proportion of female attorneys (44%) felt that the Court [UCS] website provides information for all court users that is inadequate regarding to whom to report a sexual harassment claim related to misconduct in a courthouse.

Many respondents commented they were unaware that the New York State Unified Court System's sexual harassment policy and rules applied to attorneys and all others in the courthouse. Other respondents emphasized the need for an easier, more transparent reporting process, greater dissemination of the UCS discrimination and harassment policies, and better directions on how to make a complaint. It was also suggested that there should be mandatory training and education on implicit gender-based bias.[6]

Nearly all attorneys (89% female; 84% male) agreed or strongly agreed that a court user who has experienced sexual harassment would be more likely to report a claim if s(he) could do so anonymously. When asked whether they have experienced or observed work related threats or promises of rewards in order to solicit sexual favors in the court environment, 9% of female attorneys and 3% of male attorneys agreed or strongly agreed.

Among the individual comments, the issue of anonymous complaints was discussed by both female and male attorneys. At a rate of four female attorneys to each male attorney commenting, female attorneys indicated that having a way to report bad behavior anonymously would be a useful tool to identify problems. "I think there has to be an anonymous way to raise issues because otherwise I would be concerned that it would impact my pending cases." Male attorneys were more than three times as likely to object across the board to anonymous reporting than were female attorneys. Some male attorneys thought it would be helpful but would raise insurmountable due process concerns.

Based upon the survey data regarding courthouse environment and sexual harassment, buttressed by a number of individual comments, it appears that there is all too often an atmosphere of inappropriate behavior experienced by female lawyers, litigants, and witnesses that continues to infect our courthouses and legal proceedings to varying degrees requiring significant remedial efforts.

---

6 In 2018, the New York State Legislature amended Labor Law Section 201-G requiring the development of a model sexual harassment prevention policy that meets or exceeds minimum legal standards. NYS Unified Court System met the statutory requirements and created a policy consistent with Labor Law 201-G. Note: All Unified Court System employees received the interactive training component during the last quarter of 2019. This educational program will be repeated on an annual basis.

Recommendations

FOR COURT ADMINISTRATION

a. Effectively publicize the procedure for filing sexual harassment and other types of complaints and the process for adjudication and follow-up which shall include notification to the complainant.

b. Prominently display the Office of the Inspector General's Toll-Free Bias Complaint Number in every courthouse and on the home page of the New York Courts website.

c. Ensure all judges and court personnel in all state and local courts comply with the NYS Labor Law 201-G which requires training as to how to effectively address sexual harassment and other inappropriate behavior.

d. Require regular training for all judges and court employees designed to make them aware of, and to recognize, gender bias and how to take appropriate immediate action when such behavior appears or is reported.

e. Require that the training for judges on how to control their courtrooms include ways in which judges can address inappropriate gender-biased conduct on the part of attorneys and court personnel.

f. Prepare and circulate a bi-annual report containing

- the types and number of complaints, including those received anonymously, per type filed with the UCS Office of the Inspector General including the gender of the complainant, e.g., sexual harassment, gender bias, discrimination, and how such complaints were resolved.
- any changes in NYS Unified Court System policies or procedures regarding such complaints.

g. Promulgate specific uniform rules of the Chief Administrative Judge delineating how complaints should be handled administratively within the court system. Absent a showing of good cause, complaints shall be fully resolved within six months of the filing of a complaint with written notification to all parties.

h. Create protocols to reduce the fear of reporting complaints by providing protective procedures for those who report instances of sexual harassment, bias, and other inappropriate behavior.

FOR JUDGES AND QUASI-JUDICIAL EMPLOYEES

Set the tone and affirmatively communicate expectations regarding civility, how to address inappropriate behavior, and how to engage equally with all parties, eschewing familiarity, and how to treat women attorneys as equal participants in the legal process.

FOR BAR ASSOCIATIONS

a. Effectively publish the procedure for filing complaints with the NYS Unified Court System Office of the Inspector General regarding sexual harassment, bias, and other inappropriate behavior in the court system.

b. Generate programs for attorneys emphasizing civility and professional behavior at all times that includes the treatment of women as equal participants in the profession and the obligation to intercede when observing inappropriate behavior.

FOR ATTORNEY DISCIPLINARY COMMITTEES

Publish an annual report on attorney disciplinary complaints similar to that listed above for Court Administration and specifically detailing the number of complaints based upon allegations of sexual harassment, gender bias, discrimination, and how such complaints were resolved.

II. Credibility and Court Interaction

One of the most critical elements affecting a litigant, witness, expert or attorney in the courtroom is being shown respect. The credibility afforded attorneys, litigants, or witnesses is reflected by how seriously they are treated by the judge, attorneys, and court personnel. This section of the survey sought attorneys' perceptions of whether, and how gender affects credibility in the courts.

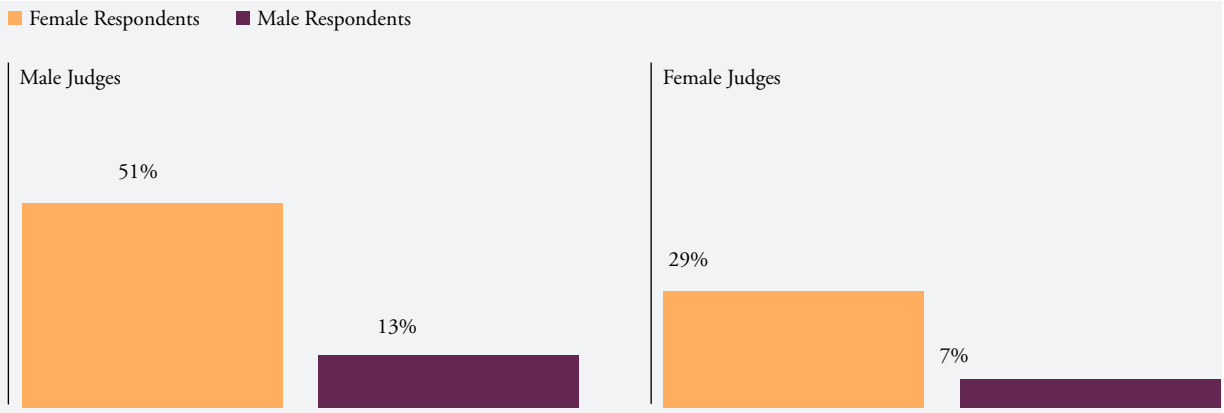
The initial questions focused on the extent to which male or female judges accord more credibility to the statements and arguments of male attorneys than to those of female attorneys, as well as, whether judges impose a greater burden of proof on female litigants and witnesses than on male litigants and witnesses. Responses to these questions are summarized in the charts below.

Findings

Female and male attorneys responded differently to the statement: "Male judges appear to give more credibility to the statements/arguments of male attorneys than to those of female attorneys," with male attorneys being far less likely to agree to it than female attorneys (13% of male attorneys agree, vs. 51% of female attorneys).

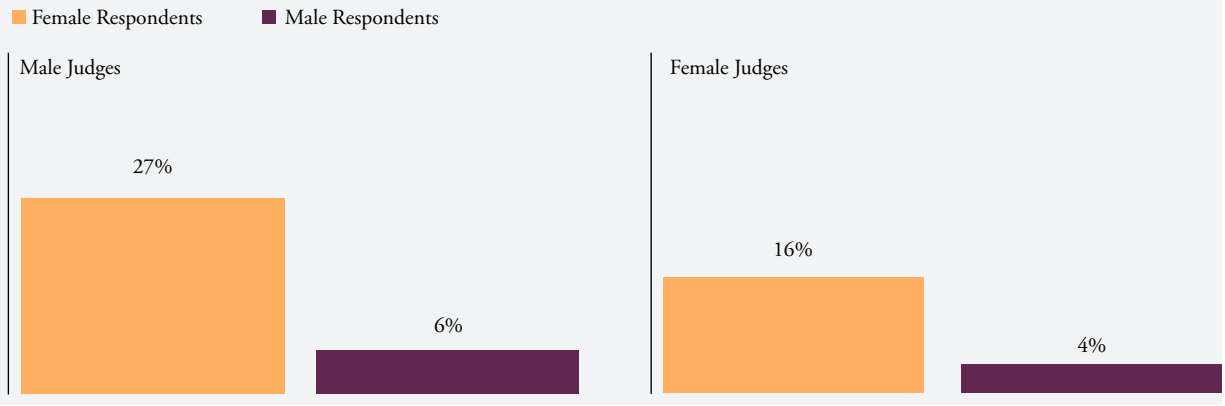
While this same pattern was observed when attorneys were asked this same question specifically about female judges, substantially fewer female attorneys (29%) as well as male attorneys (7%) agreed or strongly agreed that female judges appear to give more credibility to the statements and arguments of male attorneys than to those of female attorneys.

Judges appear to give more credibility to the statements/arguments of male attorneys than female attorneys:

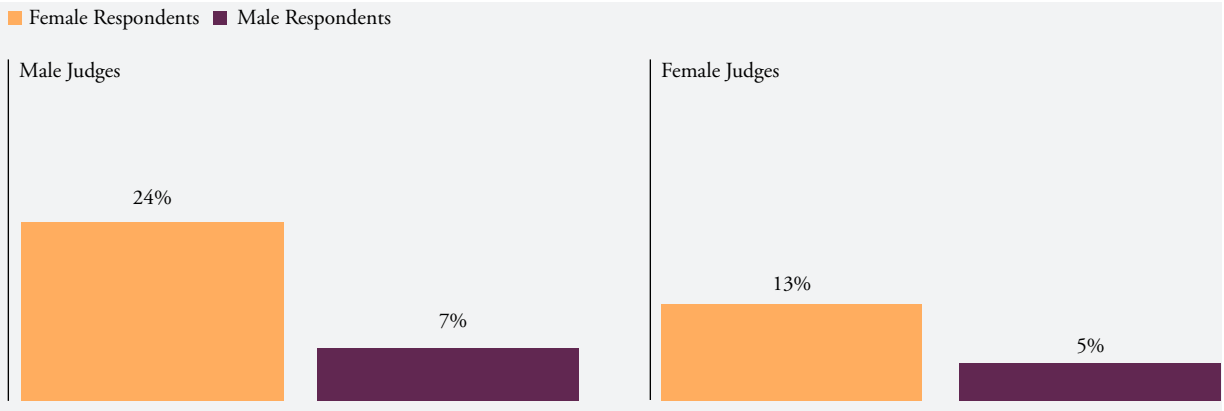


Among female attorney respondents, 27% agreed or strongly agreed that male judges appeared to give more credibility to the testimony of male witnesses than female witnesses, and another 24% agreed that male judges appear to give less credibility to female expert witnesses than to male expert witnesses. Again, agreement with these statements was considerably lower among female attorneys (16% and 13% respectively) when similarly asked about female judges. Male attorney respondents did not agree with these statements nor did they report any appreciable differences between the credibility afforded by either male or female judges. See the chart below for comparison.

Judges appear to give more credibility to the testimony of male witnesses than female witnesses:

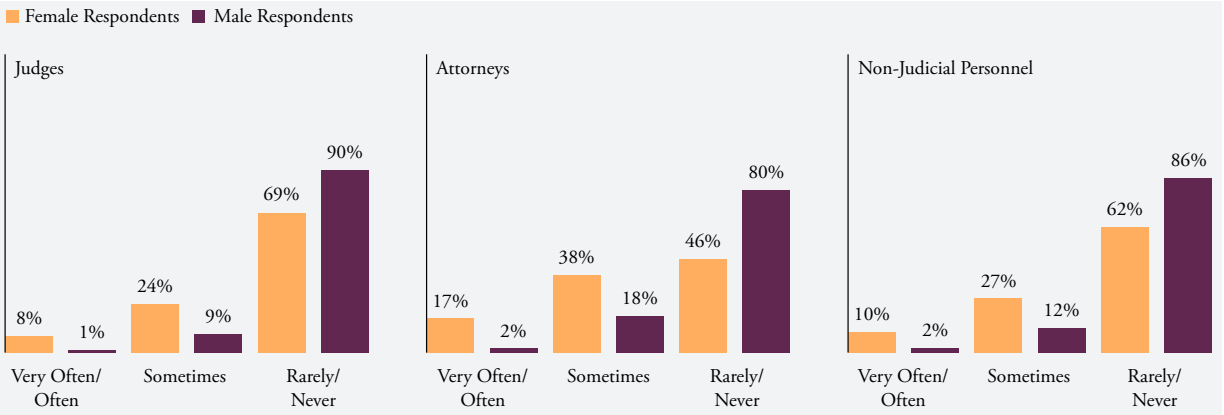


Judges appear to give less credibility to female expert witnessses than male expert witnesses:



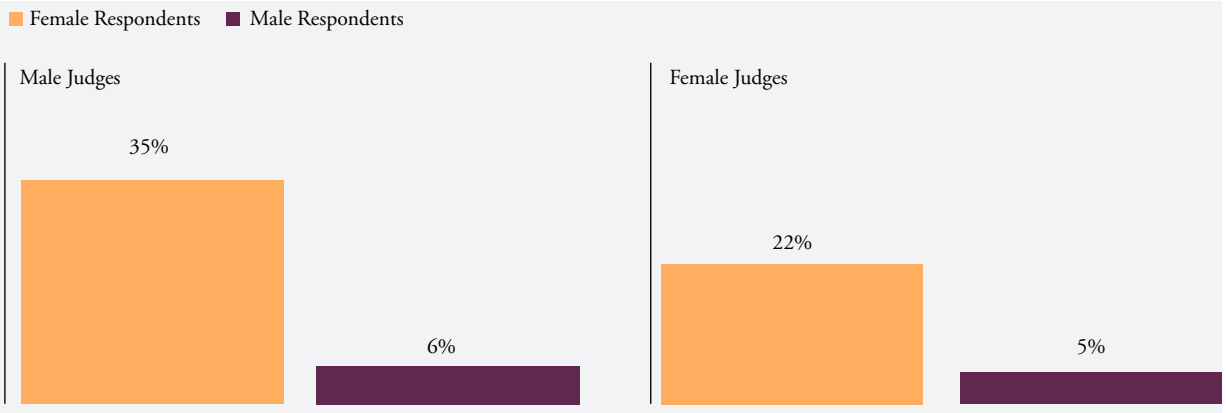
When attorneys are asked whether female litigants and/or witnesses are addressed by first names or terms of endearment while male litigants or witnesses are addressed by surname or title, significant gender differences were observed as is shown in the charts below. For example, female attorneys reported this occurred most often by other attorneys (17%), by non-judicial personnel (10%), and by judges (8%). Male attorneys reported this behavior rarely occurs regardless of the group.

Female litigants and/or witnesses are addressed by first names or terms of endearment while male litigants and/or witnesses are addressed by surname or title, by:



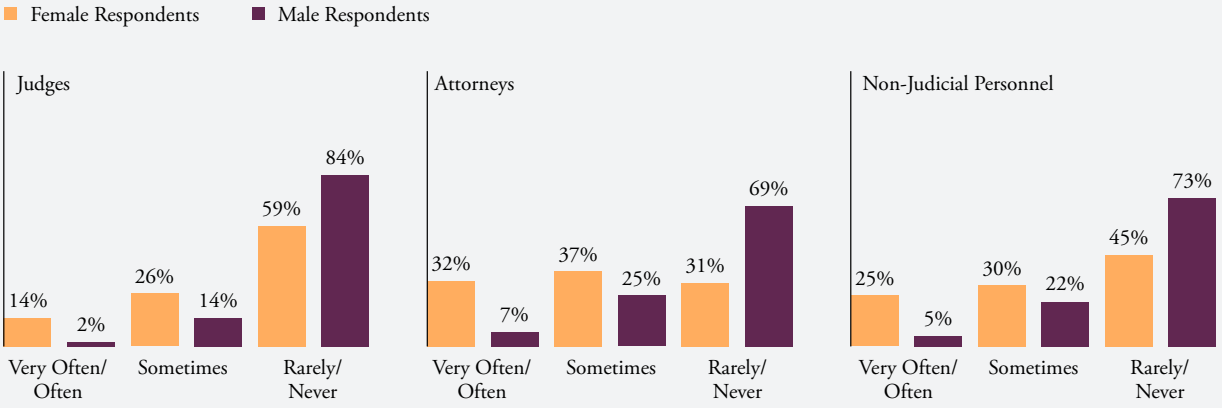
Another question in this section concerned the extent to which male and female judges impose a greater burden of proof on female litigants than on male litigants. Here, approximately 35% of female attorney respondents held the view that male judges impose a greater burden of proof on female litigants than on male litigants. Nearly one in four (22%) of these women attorneys agreed that this applied to female judges as well. Virtually all the male attorney respondents were in disagreement with these statements as to both male and female judges.

Judges appear to impose a greater burden of proof on female litigants than on male litigants:



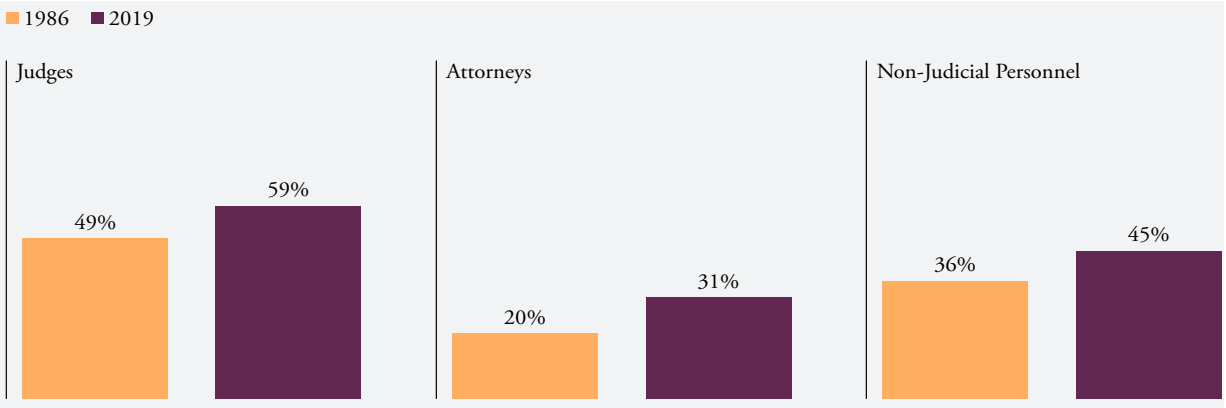
When attorneys are asked whether female attorneys are addressed by first names or terms of endearment while male attorneys are addressed by surname or title, significant gender differences were observed as is shown in the charts below. For example, among female attorneys, this occurred most often by other attorneys (32%), by non-judicial personnel (25%), and by judges (14%).

Female attorneys are addressed by first names or terms of endearment while male attorneys are addressed by surname or title, by:

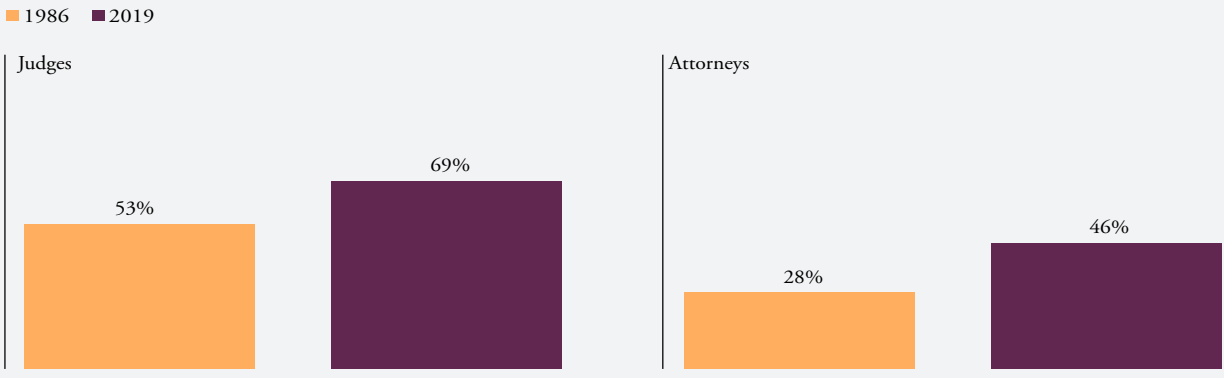


A comparison of the female survey responses from 1986 and 2019 showed that female attorneys in 2019 were less likely to be addressed by first names or terms of endearment by judges, attorneys, and non-judicial personnel than was the case in the earlier survey. Similar findings were also observed across the two survey periods when attorneys were asked about how female litigants and witnesses were addressed. These same positive trends were observed regarding female litigants and/or witnesses as shown below.

Female attorneys are never/rarely addressed by first names or terms of endearment, by:

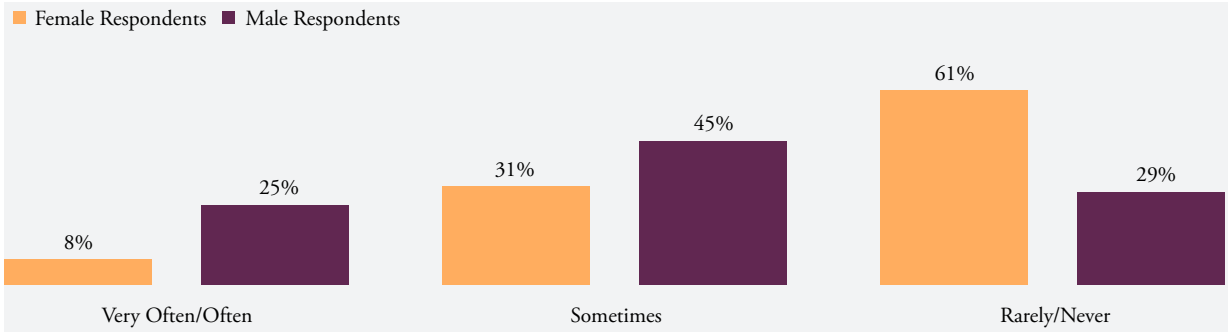


Female litigants and/or witnesses are never/rarely addressed by first names or terms of endearment, by:

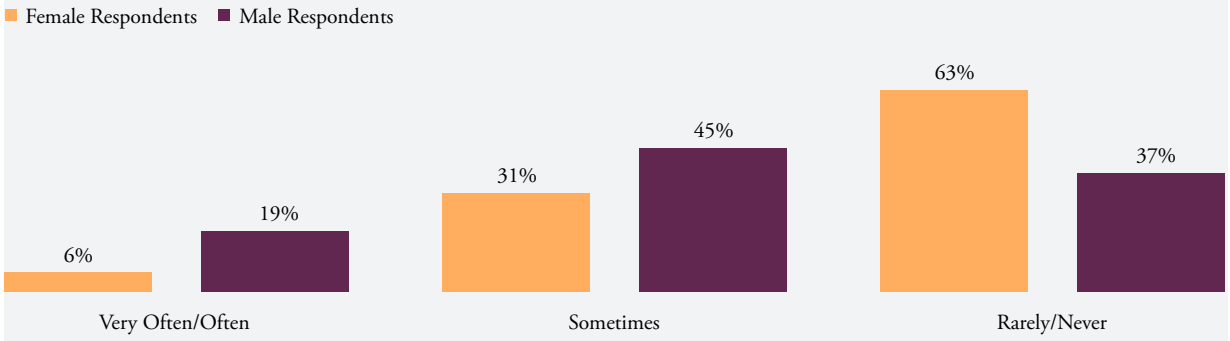


The final two questions in this section concerned the extent to which judges and attorneys would intervene to correct any negative conduct toward women. While only 25% of male attorneys indicated that judges often intervened to correct any negative conduct toward women, even fewer female attorneys (8%) felt similarly. Comparable gender differences were also noted for the question of whether attorneys would intervene to correct any negative conduct toward women. These data are shown in the two charts below.

Judges intervene to correct any negative conduct toward women:



Attorneys intervene to correct any negative conduct toward women:



Female attorneys generally commented about male attorneys interrupting them, talking over them, and belittling them without any judicial intervention. Many of the comments suggested judges should control their courtrooms and set a tone where this behavior would not be tolerated. Many of them also mentioned the feeling of an old boys' club where male judges would appear familiar with male attorneys, joking together, discussing their golf game, and so on. While some felt this was a generational issue that would self-eliminate as these judges retire, others commented that they see this happening with younger attorneys as well.

Several female attorneys reported a reluctance to lodge complaints. However, women also reported the view that system-wide there has been great improvement in areas of bias while some individual courts and judges are still acting inappropriately. Women attorneys suggested that mandatory training is needed for all judges, court attorneys, court officers, and others to raise sensitivity levels and address unconscious biases. Male attorneys frequently commented that they had not observed any gender bias, however, they did report a lack of civility and courtesy.

Based upon the survey data and comments regarding credibility and court interaction, it appears that there still remains a significant strain of bias against female lawyers, litigants, and witnesses that adversely impacts the fairness of their treatment in the judicial process which must be vigorously addressed.

Recommendations

FOR COURT ADMINISTRATION

a. Regular education and training should be required for all judges and UCS employees on implicit bias addressing gender, age, and race.

b. Charge all Administrative and Supervising Judges with the responsibility of actively promoting a bias-free culture within their respective jurisdictions which includes the obligation to root out bias and ensure the meaningful inclusion of women in court proceedings on an equal footing. They should each be required to file an annual report with the Chief Administrative Judge detailing the specific programs and efforts undertaken to achieve these goals.

c. Require judges to participate in education and training on their responsibility to promote civility, courtesy, and professionalism in their courtrooms with a particular focus on equal treatment of women as participants in the process.

d. Provide readily visible multi or bi-lingual signage about where to complain at every entrance to the building. Use all available technology to advise court users and staff of such information.

FOR JUDGES

a. Actively promote civility, courtesy, professionalism, and equal treatment for all in the courtrooms.

b. When instances of improper conduct arise, including gender bias, the judge shall appropriatly intervene.

FOR BAR ASSOCIATIONS

a. Statewide Bar Associations including, the New York State Bar Association, Women's Bar Association of the State of New York, and the New York State Trial Lawyers Association, should develop toolkits, including educational modules addressing civility, comportment, and professional attire, and make available for bar associations of different sizes.

b. Provide frequent CLE accredited educational programs addressing civility, comportment, professional attire, and bias-free behavior.

FOR LAW SCHOOLS

Integrate content regarding civility, comportment, professional appearance, and bias-free behavior into curriculum.

III. Domestic Violence

There are many types of Family Court, Supreme Court, and Criminal Court proceedings that address conduct that falls under this broad topic where the court plays a critical role. Input was sought on specific subtopics relevant to family law and matrimonial law practice. These categories include Orders of Protection and Custody, Support, and Visitation.

Domestic Violence and Orders of Protection

In New York, there is not a distinct crime labeled domestic violence. The law defines the types of relationships that qualify under the definition of "family member"[7]. If a family member commits an act which would constitute one or more of the crimes enumerated in Section 812 of the Family Court Act, it is considered a "family offense"[8]. The Family Court and the Criminal Court have concurrent jurisdiction over family offenses. A party alleging a family offense may appear in either or both courts. Supreme Court may also issue an Order of Protection in a matrimonial proceeding when a family offense has been committed.

Of historic note, prior to 1977, the Family Court, except for limited circumstances, had exclusive jurisdiction over family offense cases with a stated goal of keeping the family together. In September 1977, the Family Court and Criminal Court were granted concurrent jurisdiction. The alleged victim was granted the "right of election" to proceed in only one of the courts and was allowed a 72-hour window to change the court within which they wished to proceed. In 1994, passage of the Family Protection and Domestic Violence Intervention Act allowed a family offense case to be heard in either or both of these two types of courts.

The survey looked at how Orders of Protection and other matters are adjudicated by the respective courts. This section is divided into two areas. The first subsection addresses cases where a family offense is alleged in Family Court. The second subsection addresses cases alleging a family offense in the Criminal Court.

---

7. "Family member" is defined as individuals related by blood or marriage, individuals who were formerly married, or individuals who are unrelated but have a child together; and individuals who are unrelated who are or have been in an intimate relationship.

8. Family offenses include disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, unlawful dissemination or publication of an intimate image, menacing, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation, assault or attempted assault, stalking, criminal mischief, identity theft, grand larceny, or coercion.

Findings Regarding Family Court

As shown in the table below, the questions were directed at the non-judicial influence on petitioners. While female attorneys (36%) reported that law enforcement or probation officers never or rarely discourage domestic violence complainants from seeking Orders of Protection, twenty-four percent reported that law enforcement or probation officers often or very often discourage seeking an Order of Protection. Female attorneys (62%) and male attorneys (38%) reported that law enforcement officers were to a greater extent likely to encourage the use of Family Court over the Criminal Court.

Non-judicial Influence on Complainants/Petitioners			Never	Rarely	Some-times	Often	Very Often
27a	Potential domestic violence complainants are discouraged by law enforcement or probation from seeking Orders of Protection	F	10.8	25.7	39.5	12.6	11.4
		M	28.0	37.6	28.0	4.4	2.0
27b	Potential domestic violence complainants are discouraged by non-judicial personnel from seeking Orders of Protection	F	24.2	33.2	32.9	6.4	3.4
		M	43.4	35.7	17.6	2.7	0.5
27c	When responding to a domestic violence call, law enforcement encourages the use of Family Court over Criminal Court	F	1.8	6.4	30.0	30.0	31.8
		M	10.6	14.3	37.0	24.3	13.8

The next series of questions in the survey examined the seeking and obtaining of Family Court Orders of Protection and judicial determinations. Female and male attorneys agreed to varying degrees that Family Court petitioners are granted Temporary Orders of Protection even when a matrimonial action is pending.

It appears that judges are less likely to issue an Order of Exclusion against the respondent when the relief is sought by a petitioner who is out of the home even due to domestic violence. Female attorneys are more likely than male attorneys to report that judges rarely or never inquire about whether the petitioner is also requesting an Order of Support.

Seeking and Obtaining Orders of Protection			Never	Rarely	Some-times	Often	Very Often
27d	Family Court petitioners are granted *ex parte* Temporary Orders of Protection when warranted	F	0.5	0.5	21.1	34.9	43.0
		M	0.7	0.3	12.2	28.0	58.7

Seeking and Obtaining Orders of Protection			Never	Rarely	Some-times	Often	Very Often
27h	Family Court will grant a Temporary Order of Protection when there is a pending matrimonial action	F	1.2	10.3	46.4	24.6	17.4
		M	2.6	8.8	31.3	24.7	32.6
27i	Temporary or Final Orders of Protection directing respondents to stay away from the home are granted when petitioners are endangered and seek such relief	F	0.3	2.0	26.6	31.6	39.6
		M	0.3	1.7	13.4	27.2	57.2
27l	When a petitioner is out of the family home because of domestic violence, judges also will issue an Order of Exclusion against respondent when such relief is sought	F	14.7	21.6	30.9	18.3	14.4
		M	2.5	13.1	29.1	23.6	31.7
27m	When a petitioner seeks a Temporary Order of Protection, the judge inquires whether the petitioner is also seeking a Temporary Order of Support	F	29.4	41.6	18.4	6.9	3.8
		M	16.7	29.0	32.1	13.6	8.6

Additional questions were asked pertaining to the issuance and effectiveness of mutual Orders of Protection. Female attorneys held different views from male attorneys about the effectiveness of mutual Orders of Protection. Female attorneys (43%) and male attorneys (23%) reported that mutual Orders of Protection are rarely or never effective.

Attorneys overall indicated that the court directs law enforcement to serve Temporary Orders of Protection, a great improvement over the situation addressed in the 1986 report. Both female and male attorneys overwhelmingly reported that the terms of the Order are read into the record by the judge or issuing authority.

Male attorneys (26%) are more likely than female attorneys (15%) to agree that violating an Order of Protection results in incarceration.

Executing and Enforcing Orders of Protection			Never	Rarely	Some-times	Often	Very Often
27e	When a Family Court Temporary Order of Protection is granted, the court directs the sheriff or local law enforcement to serve the Order on the respondent	F	3.5	5.4	16.9	24.8	49.3
		M	2.0	5.5	15.2	21.5	55.9
27j	The terms of the Temporary or Final Order of Protection are clearly read into the record by the judge or other issuing authority	F	3.1	12.7	22.5	27.6	34.1
		M	1.1	7.0	18.5	24.4	49.1
27o	Mutual Orders of Protection are issued in cases involving a family offense	F	6.3	22.6	53.8	12.5	4.9
		M	9.3	28.4	47.4	12.7	2.2
27p	Mutual Orders of Protection are effective in family offense cases	F	16.2	26.9	42.9	10.1	3.9
		M	7.5	15.8	50.2	15.4	11.1
27q	Violating an Order of Protection results in incarceration	F	6.5	42.3	36.3	9.0	6.0
		M	0.7	25.2	48.6	17.7	7.8

With respect to victims of domestic violence in Family Court proceedings, attorneys were asked if there is a safe place within the courthouse where the alleged victim can wait for the case to be called. Approximately 36% of female attorneys and 20% of male attorneys reported that there is rarely or never a safe place.

Likewise, 64% of female attorneys and 33% of male attorneys reported there is rarely or never a provision made for the safety of the alleged victim in the courthouse upon return on the appearance date when a Temporary Order of Protection has been granted. A female attorney commented, "I think the court should be more sensitive to how stressful and potentially dangerous it is for the litigants to share the same waiting room. The availability and ease to use the safe waiting spaces should be advertised and promoted." *(Note: Upon inquiry to New York City Family Court administrative personnel, the Committee was advised that there are safe spaces available for domestic violence victims after the initial return date.)* (*See* Appendix H, Pg 100, Question 27n)

On a positive note, four out of five attorneys observed that bilingual Orders of Protection are available and used when appropriate (sometimes 21%; often 23%; very often 35%). (*See* Appendix H, Pg 99, Question 27k)

Among all attorneys who commented, there was agreement that there is a need for a more streamlined adjudicative process with quicker return dates on Temporary Orders of Protection and fewer adjournments. A number complained of a lack of enforcement of Orders of Protection by law enforcement especially in cases where the violation was not a physical assault. Some indicated that judges were reluctant to impose meaningful consequences for violating Orders of Protection and pointed to the need for training for judges and law enforcement personnel in this area.

Findings Regarding Criminal Court

(Note: The survey was completed prior to enactment of the Criminal Justice Reform Act which significantly impacted the types of cases in which cash bail could be applied.)

This section addresses how domestic violence is handled in the criminal context by law enforcement, prosecutors, and courts. As shown in the table below, the first set of questions was directed at the non-judicial influence on complainants. A small percentage of female attorneys (15%) and even fewer male attorneys (6%) reported that law enforcement officers continue to discourage domestic violence complainants from seeking Orders of Protection in the Criminal Court.

Female and male attorneys agreed or strongly agreed (78% and 85% respectively) that District Attorneys will prosecute domestic violence cases but are more reluctant to prosecute without the victim's cooperation (45% and 43% respectively).

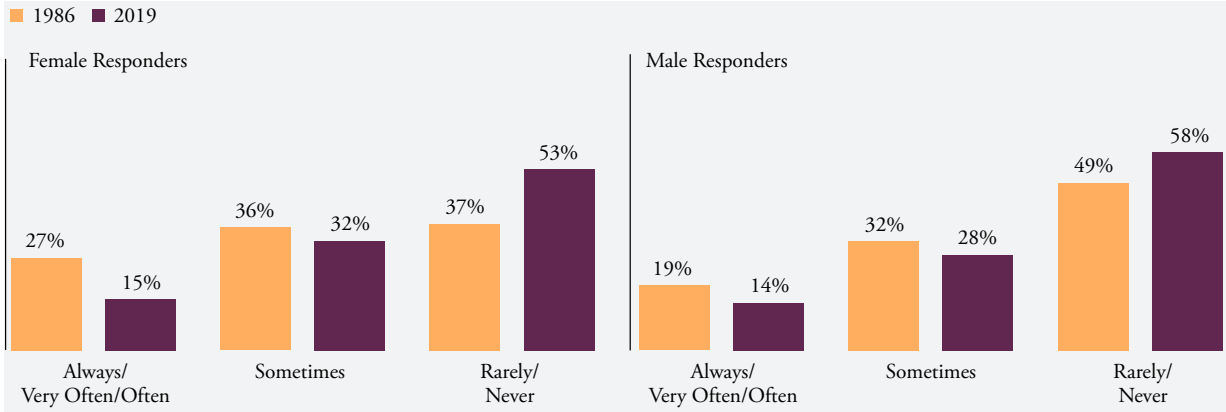
Non-Judicial Influence on Complainants			Never	Rarely	Sometimes	Often	Very Often
38a	Potential domestic violence complainants are discouraged by law enforcement or probation from seeking Orders of Protection in Criminal Courts	F	25.0	34.2	25.4	9.6	5.9
		M	41.8	36.4	16.2	4.0	1.7
38b	Potential domestic violence complainants are discouraged by non-judicial personnel from seeking Orders of Protection in Criminal Courts	F	31.1	38.6	17.8	9.1	3.3
		M	49.0	34.0	13.1	3.3	0.7
38h	District Attorneys will prosecute domestic violence complaints	F	0.0	5.1	17.2	25.1	52.7
		M	0.0	1.4	14.0	22.1	62.4
38i	District Attorneys will prosecute domestic violence cases without the victim's cooperation	F	2.9	16.1	35.7	19.9	25.4
		M	2.2	18.2	36.7	23.9	19.0

The next series of questions in the survey examined obtaining and enforcing Orders of Protection and judicial determinations in the Criminal Courts regarding such Orders. Female and male attorneys agreed to varying degrees (63% and 78% respectively) that Criminal Court complainants are granted Orders of Protection *ex parte* when warranted. It appears that judges are likely to clearly read the terms of an Order of Protection into the record. Female attorneys are more likely than male attorneys to report that judges rarely or never incarcerate a defendant for violating an Order of Protection.

Obtaining and Enforcing Orders of Protection			Never	Rarely	Some-times	Often	Very Often
38c	Complainants in criminal cases are granted *ex parte* Orders of Protection when warranted	F	6.4	10.1	20.8	25.5	37.2
		M	3.2	4.3	14.2	27.3	50.9
38d	The terms of the Temporary or Final Order of Protection are clearly read into the record by the judge or other issuing authority	F	1.5	12.3	27.0	25.8	33.3
		M	2.5	9.1	16.9	23.2	48.2
38e	Complainants in criminal cases are asked why they have no visible injuries	F	26.6	26.6	31.8	6.9	8.0
		M	32.1	25.9	27.6	8.2	6.2
38g	Violating an Order of Protection results in incarceration	F	2.8	23.6	44.2	16.2	13.1
		M	0.2	14.2	48.0	20.3	17.2

On an encouraging note, complainants are less likely to be asked about the lack of visible injuries now than they were in 1986.

Complainants in criminal cases are asked why they have no visible injuries



Similar to findings in Family Court, in the Criminal Court, 56% of female attorneys and 38% of male attorneys reported there is rarely or never a provision made for the safety of the alleged victim in the courthouse upon return on the appearance date when a Temporary Order of Protection has been granted. (*See* Appendix H, Pg 104, Question 38f)

While there has been marked improvement in the way law enforcement and the courts address domestic violence in terms of the issuance and enforcement of Orders of Protection, there still remain many areas requiring improvement to provide safety and recourse to the victims of this scourge.

Recommendations Regarding Orders of Protection

FOR JUDGES

a. The terms of a Temporary Order of Protection must be clear, explicit, and read into the record in the courtroom at the time of issuance.

b. Upon issuing a Temporary Order of Protection, inquire as to whether the petitioner also needs an Order of Support.

c. When the defendant/respondent is before the court, ensure that the defendant understands the terms of the Temporary Order and consequences for its violation.

d. Promptly set a hearing date for alleged violations of Orders of Protection.

e. Consider establishing compliance calendars to address defendant's/respondent's adherence to the Court's Orders of Protection.

f. In a matrimonial case where a prior Family Court Order is in place, including exclusion from the home, the matrimonial court shall hold a hearing as soon as possible before altering that Order or issuing a new Order.

FOR COURT CLERKS

When a Temporary Order of Protection petition is submitted to the clerk, the clerk shall inquire of the petitioner whether the petitioner is also seeking an Order of Support. If so, the clerk must provide the appropriate form to the petitioner and assist in completing the form if necessary.

FOR ATTORNEYS

a. Attorneys should promptly bring violations of Orders of Protection to the attention of the court.

b. When a Family Court Temporary or Final Order of Protection is granted and where a matrimonial case is pending, or subsequently filed, require the attorneys to disclose the existence of the Family Court Order of Protection in the matrimonial filing.

c. Attorneys must disclose to the matrimonial judge and opposing counsel any Family Court Temporary or Final Order of Protection granted during the pendency of the matrimonial action.

FOR LAW ENFORCEMENT

Require officers to remain neutral in referring a complainant to a particular court.

FOR PROSECUTORS

Develop protocols to ensure Orders of Protection are extended through the pendency of a proceeding on a claim of a violation of the Order.

Recommendations Regarding Domestic Violence Generally

FOR COURT ADMINISTRATION

a. Provide funds in the UCS budget for a dedicated domestic violence resource coordinator for every domestic violence and integrated domestic violence court to assist the Court in any case involving domestic violence.

b. Promulgate a rule requiring that family offense cases involving domestic violence be heard without delay.

c. To enhance safety, provide petitioners/complainants in domestic violence cases with a safe waiting area separate and inaccessible from respondents/defendants.

d. In any court that hears cases involving family offenses, provide and require annual specialized education/training for all judges and non-judicial personnel regarding the dynamics of the crime of domestic violence and its impact upon the victims.

FOR JUDGES

Calendar domestic violence cases promptly.

FOR LAW ENFORCEMENT

Require comprehensive education and training for all law enforcement officers on all aspects of domestic violence.

FOR PROSECUTORS

a. Require education and training for prosecutors, paralegals, investigators, and intake staff on all aspects of domestic violence.

b. Provide complainants with a victim's rights notice that includes information about the role of the prosecutor versus a private attorney and referral to victim advocacy services where appropriate.

FOR THE LEGISLATURE

a. Establish a funding stream dedicated to providing victim advocates in every Family Court and Criminal Court to assist domestic violence victims.

b. Elevate family offenses to an aggravated form of the underlying crime to bump up the penalty one level. For example, an assault would be charged as an aggravated assault where the parties involved meet the statutory relationship definition for a family offense. The relationship should create an aggravating factor. Require a family offense indicator in the criminal history record.

FOR LAW SCHOOLS

Ensure that courses provide accurate information about the dynamics of the crime of domestic violence.

IV. Domestic Violence and Custody, Support, and Visitation

The survey looked at the extent to which one parent's violence toward the other parent impacted the determination of custody.

Custody

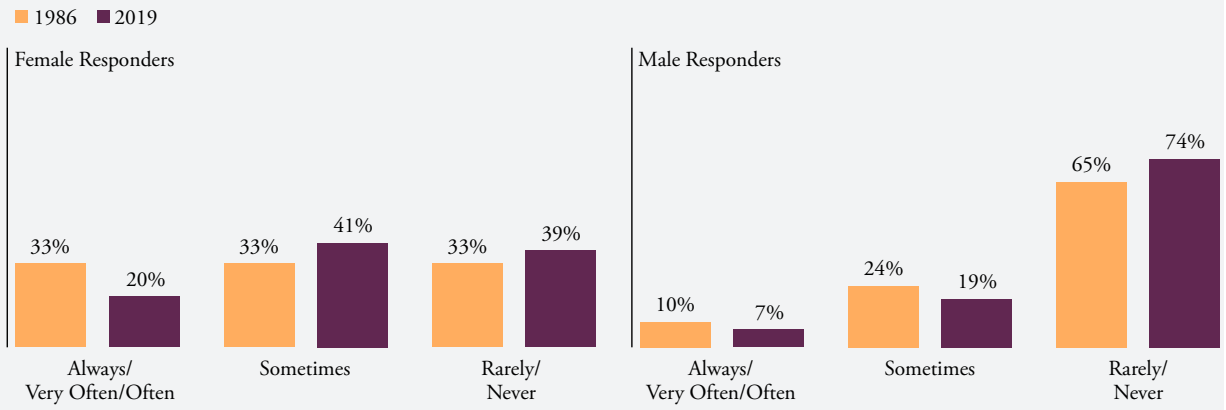
Findings

Twenty percent (20%) of female attorneys and 7% of male attorneys indicated that custody awards disregard the father's violence against the mother. However, another 34% of female attorneys and nearly half (49%) of male attorneys believe that the father's violence ***is*** a determining factor in who is awarded custody.

Responding to Allegations of Violence in Custody Determinations			Never	Rarely	Some-times	Often	Very Often
29a	Custody awards disregard father's violence against mother	F	10.2	28.8	40.8	13.5	6.6
		M	28.8	45.3	19.1	5.0	1.8
29b	Custody awards disregard mother's violence against father	F	8.9	29.2	43.4	12.6	5.8
		M	16.8	28.7	31.9	8.6	14.0
29c	Father's violence against mother is a determining factor in who is awarded custody	F	1.2	9.9	55.2	20.8	12.9
		M	1.1	6.0	44.0	24.8	24.1
29d	Mother's violence against father is a determining factor in who is awarded custody	F	1.5	19.1	54.7	15.8	8.9
		M	5.8	25.6	43.7	15.2	9.7

When comparing attorney responses from the 1986 survey to the 2019 survey, courts are now more likely to consider the father's violence against the mother for purposes of custody.

Custody awards disregard father's violence against mother



While the survey indicates that the percentage of custody awards that disregard a father's violence against the mother has significantly decreased since the Task Force Report in 1986, there are still a substantial number of such awards (female attorneys 20%; male attorneys 7%) that continue to disregard such conduct raising concerns that should be addressed.

Recommendations

FOR OFFICE OF COURT ADMINISTRATION

Provide for judges and other court personnel who are involved in custody proceedings education and training on

- implicit bias, domestic violence, and the impact of the use of power and control tactics in an intimate relationship
- the immediate and long-term impact of domestic violence on the children and other members of the household
- best practices for presiding over cases with pro se litigants
- best practices for presiding over cases with interpreters.

FOR THE LEGISLATURE

Amend DRL 240.1(a) and FCA Article 6 regarding child custody determinations as follows: where the court has found by a preponderance of the evidence that a family offense has occurred, this finding shall create a rebuttable presumption that it is not in the best interest of the child to be placed in sole custody, legal custody, or shared physical custody with the parent found to have committed a family offense. Such presumption may be rebutted if a preponderance of the evidence shows that such presumptive custody award would not be in the best interest of the child.

Support

Findings

The survey inquired about support awards in cases involving domestic violence including whether support awards to victims and their children are enforced. Female attorneys are more likely than male attorneys to report that judges rarely or never inquire about whether the petitioner is also requesting an Order of Support in Family Court. *See* Appendix H, Pg 99, Question 27m. Half (49%) of female attorneys and three-quarters (72%) of male attorneys feel that support awards are often enforced. *See* Appendix H, Pg 100, Question 29e.

A female attorney commented, “Having the alleged abuser leave the home, and issuing a temporary order of support will make it more likely that the abused party will not withdraw their petition for financial reasons or because they do not want to stay in a shelter.”

Supervised Visitation

The availability of free, neutral, supervised visitation services are very limited with nearly half of all the survey respondents reporting such services are never or rarely available.

Findings

Among female attorneys, nearly two-thirds indicated that existing neutral supervised visitation programs in their jurisdictions do not have adequate capacity to meet the need.

Supervised Visitation Programs			Never	Rarely	Some-times	Often	Very Often
29g	In my jurisdiction, free, neutral, supervised visitation services are available	F	24.3	24.9	27.2	10.8	12.7
		M	14.9	21.7	27.7	17.3	18.5
29h	There is adequate capacity at neutral supervised visitation programs available in my jurisdiction	F	29.7	33.7	22.4	9.9	4.4
		M	15.4	29.4	26.2	18.2	10.7
29i	The supervised visitation program(s) staff in my jurisdiction have adequate knowledge and experience regarding domestic violence	F	7.7	16.1	31.8	23.1	21.3
		M	5.0	10.0	30.6	30.6	23.9
29k	In my jurisdiction, there are readily available safe exchange services where a petitioner/ plaintiff and respondent can safely meet visitation requirements	F	17.1	31.6	25.6	16.5	9.1
		M	9.7	21.1	27.8	24.2	17.2

Among all attorneys responding, 42% indicated that a request for supervised visitation is never or rarely refused or ignored in a case where a family offense has been alleged. (*See* Appendix H, Pg 100, Question 29f).

Recommendations

FOR COURT ADMINISTRATION AND LEGISLATIVE LEADERS

Work together to establish accessible, supervised visitation and safe exchange programs at no cost for indigent and low and middle income litigants in all jurisdictions statewide.

The urgent need for safe, accessible supervised visitation programs that are free or affordable is self-evident and cries out for relief.

V. Child Support

This section addresses child support generally.

Findings

When asked whether child support awards deviate from the presumptive Child Support Standards Act amounts, attorneys responded that such awards often or very often (28%) deviate lower than the presumptive amount (female attorneys 30%; male attorneys 26%).

Thirty-five percent (35%) of all respondents reported that child support is awarded above the income cap either often or very often (female attorneys 32%; male attorneys 38%).

Child Support Standards			Never	Rarely	Some-times	Often	Very Often
31a	Child support awards deviate from the presumptive Child Support Standards Act amount	F	1.1	26.2	55.0	12.7	5.0
		M	3.6	34.3	47.7	9.4	5.1
31b	When child support awards deviate from the presumptive Child Support Standards Act amount, they are lower than the presumptive amount	F	5.4	17.9	46.9	18.8	11.0
		M	3.5	22.0	48.6	18.9	6.9
31c	Child support is awarded on income above the income cap	F	3.6	21.1	42.9	21.8	10.6
		M	0.8	14.9	46.3	20.4	17.6

One area of concern which emerged was the report by almost 20% of respondents that judges order the parties to share equally the add-on expenses (often substantial, such as childcare and unreimbursed medical or educational expenses), even with a disparity in income between the parties.

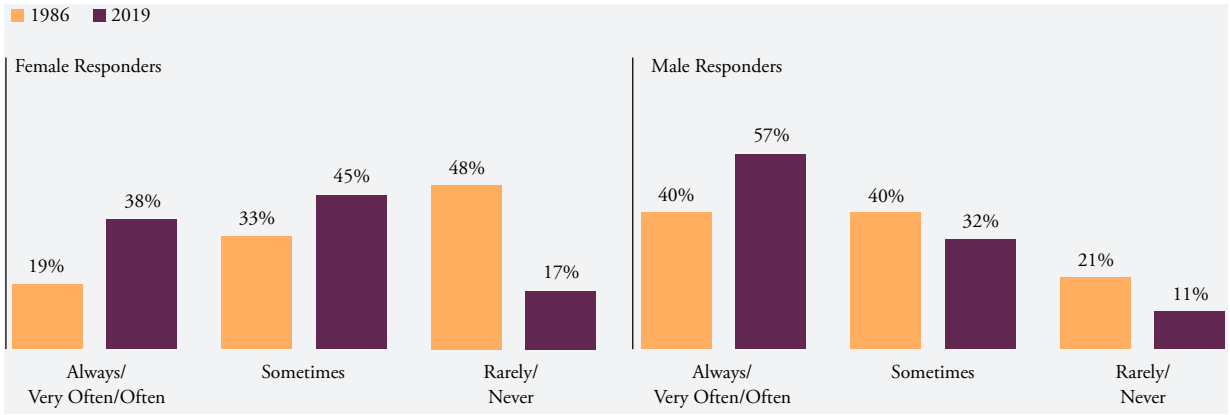
Child Support Standards			Never	Rarely	Some-times	Often	Very Often
31d	Judges order the parties to share equally add-on expenses, such as child care, unreimbursed medical and educational expenses, etc., notwithstanding a disparity in the parties' income	F	6.4	33.4	38.4	15.1	6.7
		M	9.7	34.3	41.4	9.3	5.2
31f	When ordering maintenance under the statutory guidelines, judges order a downward modification of child support paid to the custodial parent	F	5.4	23.6	45.9	18.1	6.9
		M	5.3	27.9	51.0	11.1	4.8

Overall, a third (35%) of attorneys reported that in Supreme Court, *pendente lite* orders of child support in a matrimonial action are never or rarely decided within 30 days of final submission (female attorneys 42%; male attorneys 31%).

Judicial Orders and Court Services			Never	Rarely	Sometimes	Often	Very Often
31e	In Supreme Court, pendente lite orders of child support in a matrimonial action are decided within 30 days of final submission	F	10.2	31.3	37.7	12.8	7.9
		M	4.6	26.5	30.6	21.5	16.9
31h	Income execution orders issued by the court are effective	F	0.6	8.1	36.2	33.2	21.9
		M	1.2	3.9	32.3	34.3	28.3
31j	The court has services available to assist respondents in fulfilling child support obligations	F	23.8	37.6	26.2	7.1	5.3
		M	14.7	28.4	24.0	21.1	11.8

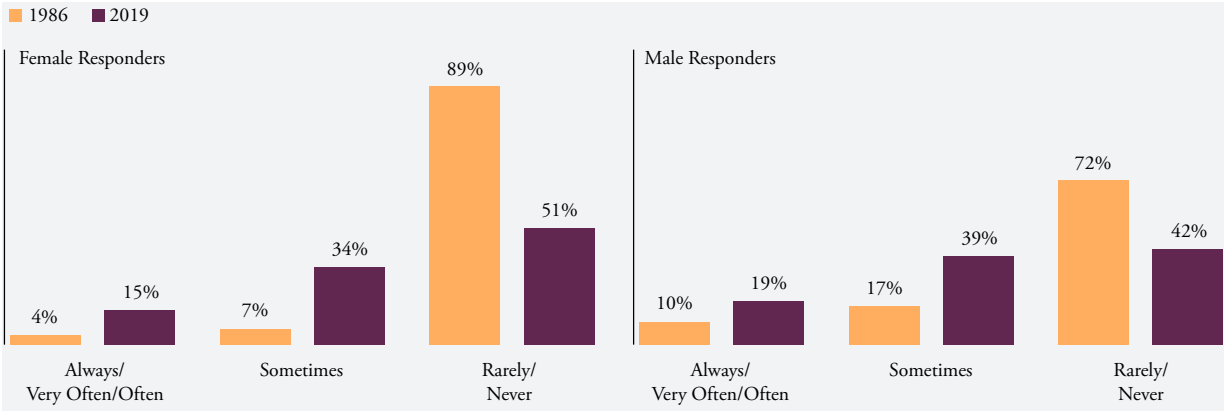
While gender differences remain among attorneys, dramatic improvements can be observed in the overall perception of the effectiveness of the courts in enforcing child support awards since 1986, as shown in the chart below.

Courts effectively enforce child support awards



Similarly, significant change was found regarding whether respondents who intentionally fail to abide by court orders for child support are jailed for civil contempt. For example, among women, nearly 90% in 1986 reported that this rarely occurred as compared to 51% in 2019.

Respondents who intentionally fail to abide by court orders for child support are jailed for civil contempt



Although there has been some improvement, problems as to the adequacy and enforcement of child support awards still continue. Particular concern remains regarding the failure to decide pendente lite awards within the mandated timeframe.

Recommendations

FOR OFFICE OF COURT ADMINISTRATION

a. Take more rigorous measures to ensure that all *pendente lite* child-support decisions are rendered in compliance with the 30 days from the date of submission rule.

b. Provide education and training for matrimonial judges, referees, and support magistrates on

- the economic realities of raising children of various age groups
- how to impute income in cases of small or cash businesses
- accounting practices to address hidden sources of income and how to evaluate lifestyle spending practices
- relevant Department of Labor regional statistics to assist in determining reasonable income expectations and business valuations.

VI. Equitable Distribution and Maintenance Guidelines

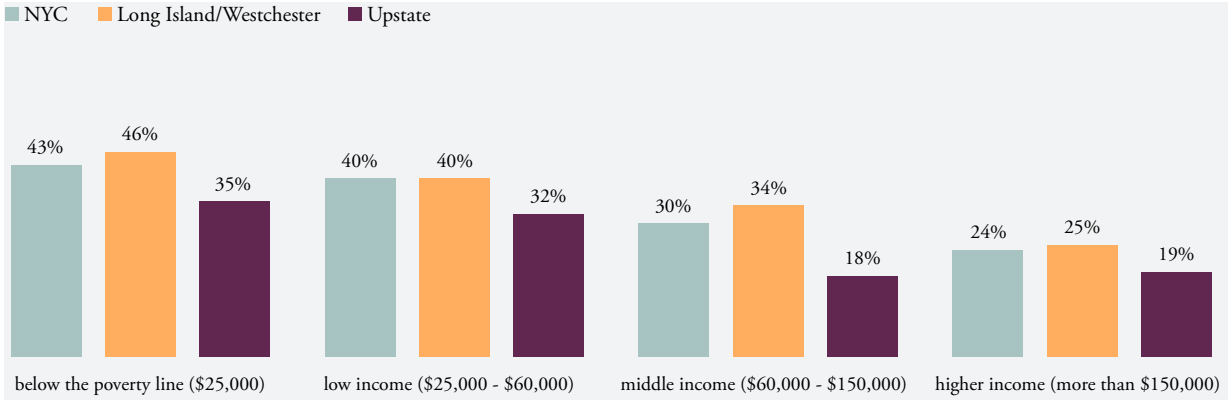
In 2015, the New York State legislature amended the Domestic Relations Law in a manner that significantly impacted equitable distribution and maintenance awards. Maintenance guidelines were adopted to guide judges in setting these awards with the stated intent of leveling the playing field across the spectrum of incomes. This section sought to generally measure the implementation of these guidelines and their impact on the non-monied spouse, usually a woman.

The survey explored the extent to which the maintenance guidelines adversely impact the non-monied spouse in a divorce action across different family income levels in accordance with state and federal guidelines.

Findings

Nearly 40% of all attorneys statewide reported that the maintenance guidelines adversely affected the non-monied spouse where income was less than $60,000 for a household of four. The lower the family income the more the non-monied spouse is adversely affected. However, similar adverse consequences were also noted in New York City and suburban counties for the non-monied spouses in middle income families ($60,000 – 150,000) and even in higher income families (more than $150,000), albeit to a lesser extent.

The Maintenance Guidelines often/very often adversely impact the non-monied spouse in a divorce where the combined income for a family of four is:



Twenty percent (20%) of female attorneys and 21% of male attorneys responded that even when a party establishes the award is unjust or inappropriate, judges never or rarely deviate from the maintenance guidelines and adjust awards upon request on income up to the cap ($184,000). When income exceeds the cap, 31% of female attorneys and 18% of male attorneys reported judges never or rarely award maintenance on the payor's income above the cap.

Equitable Distribution & Maintenance			Never	Rarely	Some-times	Often	Very Often
34a	Judges deviate from the maintenance guidelines and adjust awards on income up to the cap ($184,000) when a party establishes the award is unjust or inappropriate and requests an adjusted amount	F	2.4	17.3	58.7	15.9	5.8
		M	2.1	18.4	56.8	16.8	5.8
34b	Judges award maintenance to be paid on the payor's income that exceeds the cap ($184,000)	F	6.0	25.1	48.2	14.1	6.5
		M	1.6	15.9	59.3	17.6	5.5

Female and male attorneys' views diverged on whether judges divide assets equally, including business assets. Female attorneys reported this as occurring never or rarely (25%) and sometimes (47%). Male attorneys reported this as occurring never or rarely (13%) and sometimes (44%).

Equitable Distribution & Maintenance			Never	Rarely	Some-times	Often	Very Often
34c	Judges divide the assets equally, including business assets	F	1.7	22.8	47.4	19.4	8.6
		M	1.4	11.1	44.4	30.9	12.1

A series of questions asked attorneys about their experience with post-divorce durational maintenance and more specifically, how the court grants maintenance in accordance with the ranges within the Advisory Schedule as set forth in DRL 236B(6)(f). More than 60% of all attorneys (female attorneys 51%; male attorneys 71%) responded that in cases where durational maintenance is ordered, the court often or very often grants maintenance for the time periods indicated in the ranges of the Advisory Chart.

Equitable Distribution & Maintenance			Never	Rarely	Some-times	Often	Very Often
34g	In cases where durational maintenance is ordered, the court grants maintenance for the time periods indicated in the ranges of the Advisory Chart DRL 236B(6)(f)	F	0.5	5.4	42.9	39.9	11.3
		M	0.0	1.7	27.8	47.2	23.3

Attorneys were then asked whether the duration is set at the low, middle, or high end of each of the ranges within the Advisory Chart. Essentially, the same proportion (38%) of female attorneys indicated that the duration is often or very often set at either the middle of the range or at the low end. Among male attorneys practicing in this area, 42% indicated that the court will set the duration in the middle of the range and only 12% at the low end of the Advisory Chart range. About half (51%) of the female attorneys and 23% of their male colleagues indicated that the court would never or rarely set the duration at the high end of the range within the schedule. Finally, 16% of all attorney respondents (female attorneys 21%, male attorneys 12%) were of the view that judges will never or rarely depart from the Advisory Chart ranges even when the facts warrant. *See* Appendix H, Pg 103, Question 35a-c; 36a.

Female attorneys (54%) and male attorneys (35%) indicated that non-durational (permanent) maintenance is never or rarely awarded in long-term marriages of 20 years or more. This is so even in cases where the non-monied spouse has very limited work skills or employability, female attorneys (51%) and male attorneys (26%) indicated that non-durational maintenance was not awarded.

Non-Durational Maintenance			Never	Rarely	Some-times	Often	Very Often
34a	Judges deviate from the maintenance guidelines and adjust awards on income up to the cap ($184,000) when a party establishes the award is unjust or inappropriate and requests an adjusted amount	F	2.4	17.3	58.7	15.9	5.8
		M	2.1	18.4	56.8	16.8	5.8
34d	In cases where the marriage is 20 years or more, nondurational (permanent) maintenance is ordered	F	11.9	42.0	36.3	8.8	0.9
		M	3.2	31.9	49.5	12.2	3.2
34e	In cases where the non-monied spouse has limited work skills and employability, nondurational maintenance is ordered	F	12.2	38.7	39.6	6.3	3.2
		M	4.6	21.1	53.6	16.0	4.6

Spouses Out of Workforce for Extended Period			Never	Rarely	Some-times	Often	Very Often
34f	The durational period realistically provides support for a non-monied spouse who has been out of the workforce for an extended period, including by reason of raising the family's children	F	4.4	27.2	49.1	15.4	3.9
		M	0.5	18.1	45.2	26.1	10.1
36b	Judges impute income to the spouse who has been out of the work force for an extended period to raise the child(ren) when calculating maintenance and child support	F	4.4	15.6	38.7	26.2	15.1
		M	4.8	22.3	48.9	17.0	6.9

The numerous comments and data from both female and male responders suggest durational maintenance to the non-monied spouse/homemaker/child-rearer is unrealistically limited. Others noted that the frequent unequal division of marital assets also indicates a continuing undervaluing of homemaker contributions to the marriage. Thus, problems remain involving equitable distribution and maintenance awards as to amount and in the case of the latter duration, which result in a negative impact on women of limited employability due to age and years of homemaking and/or child rearing activities.

Recommendations

FOR COURT ADMINISTRATION

Consistent with education recommended in the Child Support section, mandate education and training for judges on the imputation of income and accounting practices, including in cases of small or cash businesses, as well as, addressing hidden sources of income, evaluating lifestyle spending practices, and recognizing the economic realities of raising children of various age groups.

FOR JUDGES

a. The contributions of a spouse-homemaker should expressly be credited as a factor in determining equitable distribution and in awarding maintenance.

b. In determining the amount and duration of maintenance, judges should expressly consider the impact of domestic violence on the issue of the spouse-victim's employability.

FOR THE LEGISLATURE

a. Amend the Domestic Relations Law maintenance formula to account for the change in the federal tax law which disallows the deduction of maintenance by the payor.

b. Amend the Domestic Relations Law to increase upwards the guidelines durational limits, and expressly include the option of non-durational maintenance, to enable judges, in making such awards, to take into account the realities of a spouse's limited employability prospects due to domestic violence as well as the other criteria currently listed in the statute.

VII. Gender-Based Violence

There are many types of conduct that fall under this broad topic where the criminal courts play a critical role. This section sought input on specific subtopics relevant to the treatment of domestic violence, rape, and prostitution cases in Criminal Court and the Criminal Term of Supreme Court.[9]

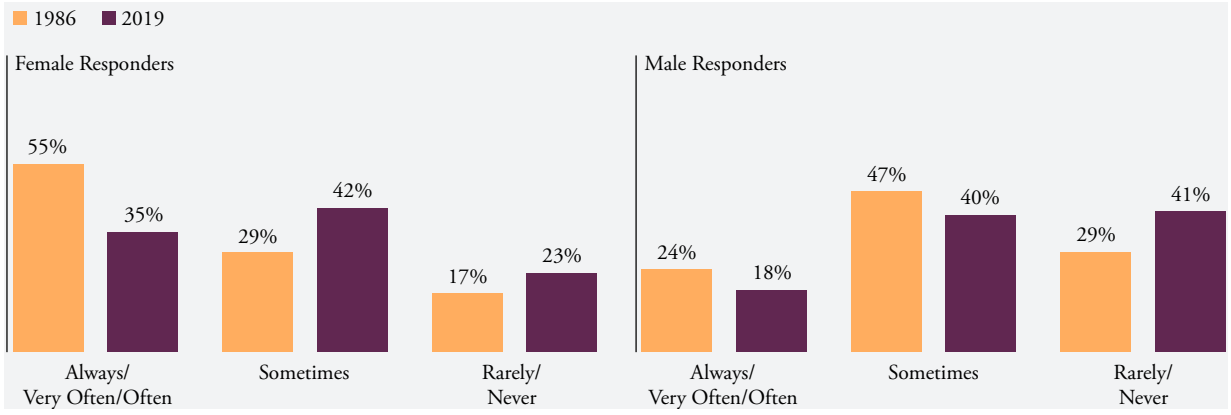
Findings

RAPE AND OTHER SEX CRIMES

The survey looked at how rape and other sex crimes are handled where the parties know one another. Female attorneys (32%) and male attorneys (19%) reported that very often or often bail in rape and other sex crime cases where parties know one another is set lower than in cases where parties are strangers. On average, 39% of all attorneys responded that such is the case sometimes.

When asked if sentences in rape and other sex crime cases are shorter when parties know one another than in cases where parties are strangers, female attorneys (35%) and male attorneys (18%) reported that such is the case very often or often, while 41% of all attorneys responded that this is sometimes the case.

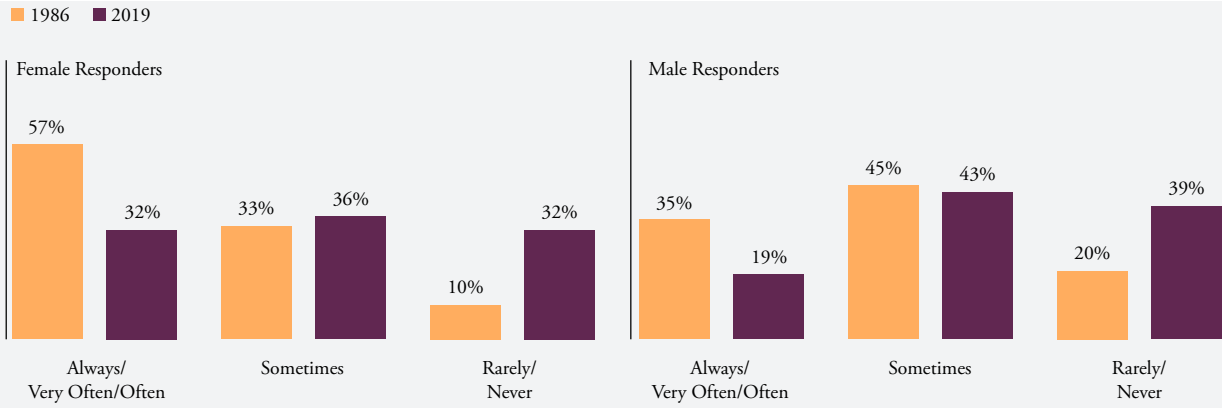
Sentences in rape and other sex crimes cases are shorter when parties know one another than in cases where parties are strangers



These questions were further analyzed by gender comparing attorney responses from 1986 to present day. The current survey demonstrates that both bail and sentencing determinations are significantly less impacted by the parties knowing each other than they were in 1986.

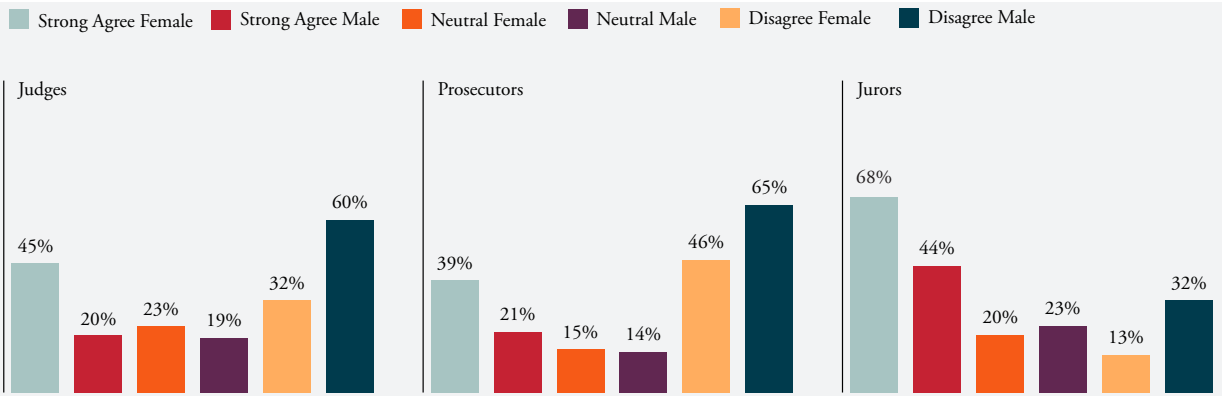
9. Information specific to addressing some domestic violence in the Criminal Court was reported above in Section III. Domestic Violence.

Bail in rape and other sex crimes cases where parties know one another is set lower than in cases where parties are strangers



The survey inquired about the extent to which judges or prosecutors showed less concern about rape cases where parties have a current or past relationship/acquaintance. Female attorneys are far more likely to agree (45%) when compared to male attorneys (20%) that judges show less concern. Similarly, female attorneys are far more likely to agree (39%) than male attorneys (21%) that prosecutors show less concern. Female attorneys agreed (68%) and male attorneys agreed (44%) that there is also less concern about such cases on the part of jurors.

There is less concern about rape cases where parties have a current or past relationship/ acquaintance on the part of:



Female attorneys (42%) and male attorneys (59%) indicated that when there is improper questioning about the complainant's prior sexual conduct, judges often or very often invoke the rape shield law sua sponte if the prosecutor does not.

Female attorneys (51%) and male attorneys (37%) agree that rape in the context of marriage is never or rarely addressed with the same severity as rape outside of marriage.

Criminal Court: Rape and Other Sex Crimes			Never	Rarely	Some-times	Often	Very Often
40d	Rape in the context of marriage is addressed with the same severity as rape outside of marriage	F	11.9	39.4	24.8	13.3	10.6
		M	6.3	31.1	30.7	17.7	14.2

PROSTITUTION

Overall, female attorneys were more likely to agree that judges (64%), prosecutors (56%), and law-enforcement (65%) treat the john or patron with less severity than the prostituted person than did male attorneys (42%, 37%, 44% respectively). *See* Appendix H, Pg 105, Question 42a-c.

Although there has been some improvement, it appears that some societal attitudes persist considering rape occurring within marriage or when the parties know each other as less pernicious than rape involving strangers - and to some degree impact upon the prosecution of these cases.

Recommendations

FOR COURT ADMINISTRATION

a. Ensure that every judge receives comprehensive and ongoing education and training on all aspects of sexual assault, including but not limited to the identification of special issues in cases of date rape, marital rape, and assault between those who know each other. The training should offer information supported by the latest research in the area.

b. In a skill-based setting, educate judges on the difference between vigorous cross-examination that protects the defendant's rights and questioning that includes improper stereotyping and harassment of the victim.

c. Establish Human Trafficking Intervention Courts throughout the state.

FOR JUDGES

a. Treat acquaintance or intimate partner rape with the same seriousness and severity as rape involving strangers throughout the pendency of the case from arraignment through sentencing. Include instructions for jurors to apply the same standard.

b. When appropriate, consider exercising the authority to invoke, sua sponte, Criminal Procedure Law Sec. 60.42, known as the Rape Shield Law when there is improper questioning about the complainant's prior sexual conduct in the event the prosecution fails to do so.

c. In sentencing, take into consideration victim impact statements.

FOR PROSECUTORS

a. Ensure that all prosecutors receive education and training as to the particular areas recommended for judges as well as in how to engage victims to increase their cooperation and willingness to proceed against the defendant.

b. Establish procedures that permit rape victims to deal with only one assistant district attorney through all stages of the proceedings where possible.

c. Treat acquaintance or marital (intimate partner) rape with the same seriousness as rape involving strangers throughout the pendency of the case from arraignment through sentencing.

d. Consider the availability of the rape shield law in response to improper questioning about the complainant's prior sexual conduct.

e. Routinely prosecute patrons of prostitution, as well as, the traffickers and promoters.

f. Work collaboratively with the Human Trafficking Intervention Court (where available).

FOR LAW ENFORCEMENT

a. Ensure that all law enforcement officers and policy makers receive the education and training on the dynamics of sexual assault and on the best practices for gathering and preserving crime scene evidence in such cases.

b. Ensure that all rapes, whether by a stranger, acquaintance, intimate partner, or family member, are treated with equal seriousness.

c. Maintain specialized units or a dedicated, specifically trained officer to deal sensitively with sex offenses.

FOR HOSPITALS AND MEDICAL FACILITIES

a. Ensure that all emergency room and other relevant staff are trained in gathering and preserving evidence including rape kit collection and storage as well as ascertaining whether the alleged rape is committed by an acquaintance, intimate partner, or family member.

b. Encourage the victim to submit to a forensic rape exam.

c. Inform the victim that the forensic rape exam may be paid for through the New York State Office of Victims Services.

FOR THE LEGISLATURE

a. Require and fund every emergency room to be equipped with the ability to identify, examine, and treat any victim of rape or sexual assault and to administer a rape kit.

b. Define all sex crimes as aggravated where the parties meet the statutory definition for intimate relationship in family offense cases. The relationship should constitute an aggravating factor. This shall include an intimate partner harming any child in the family whether or not the child is the alleged offender's biological child.

VIII. Appointments and Fee-Generating Positions

Some types of court proceedings require that the judge or judicial officer assign an attorney either when the party is indigent, or the case requires a particular appointment and thereafter the awarding of attorney fees for services rendered. Such appointments are made in Surrogate's Court, Supreme Court, Criminal Court, and Family Court where appropriate.[10]

The March 1986 Report of the New York Task Force on Women in the Courts set forth that public hearing witnesses and survey respondents asserted that women attorneys were disproportionately denied such assignments and rarely received the most desirable and lucrative assigned counsel positions, the appointments for which were vested in the discretion of individual judges.

In April 1986, Part 36 of the Rules of the Chief Judge was promulgated governing certain fiduciary appointments in the courts. On June 1, 2003, the rules were repealed and a new Part 36 was promulgated, creating a system with the goal of broadening the eligibility for appointment to a wide range of applicants well-trained in their category of appointment and establishing procedures to promote accountability and transparency in the selection process, insulating that process from the

10. Appointments made pursuant to Part 36 of the Rules of the Chief Judge or Article 18B of the County Law include but are not limited to: guardians; guardians ad litem; attorneys for the child; court evaluators; attorneys for alleged incapacitated persons; court examiners; supplemental needs trustees; receivers; referees; specified persons performing services for guardians or receivers; and assigned counsel in criminal or Family Court cases.

appearance of favoritism, nepotism or politics. The names of appointees, appointing judges, and the amounts of approved compensation were made subject to periodic publication by the Chief Administrator of the Courts. Since 2003, Part 36 has been further amended.

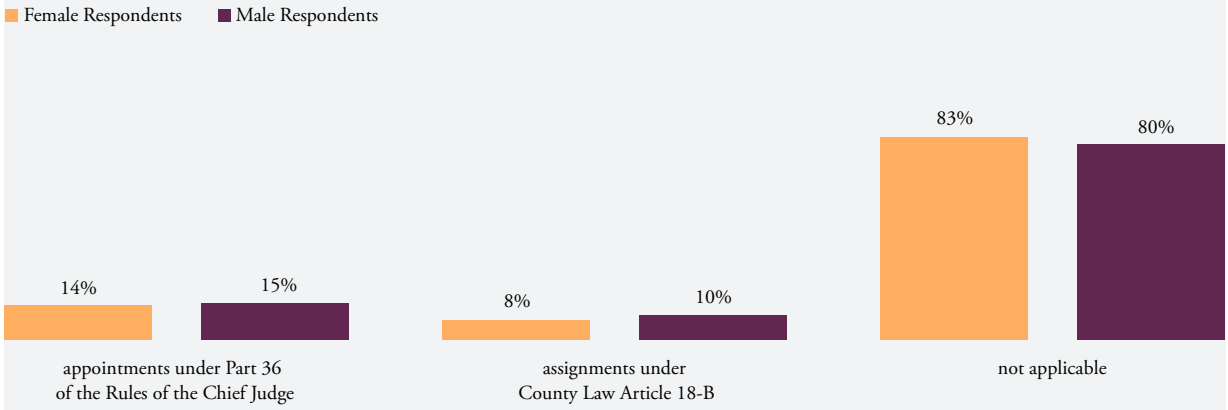
In October 2019, the Office of Court Administration released a new Fiduciary Case Management System (FCMS), reflecting amendments to Part 36 and Part 26 of the Rules of the Chief Judge. According to the FCMS Training Manual, the new system provides enhanced reporting, tracking and notification affording greater transparency on many issues, including the amount of fees generated by individual attorneys, the amount of fees granted by a judge, and the number of, and types of, appointments made by specific judges.

The 2019 survey sought to better understand the current climate and consistency in the awarding of attorney fees for similar work and the assignment of attorneys for representation.

Findings

Attorneys were asked if they were eligible to receive appointments under Part 36 of the Rules of the Chief Judge or Article 18B of the County Law. Male and female attorneys indicated that they were eligible for appointments under Part 36 and assignments under Article 18B at essentially similar rates, as shown in the chart below.

I am eligible for:



Of those who indicated that they were eligible for appointments under Part 36 of the Rules of the Chief Judge, more female attorneys (65%) were appointed to a fee-generating case within the last three years compared to male attorneys (57%). *See* Appendix H, Pg 95, Question 14).

Most Frequent Appointment Types Assigned in Past 3 Years

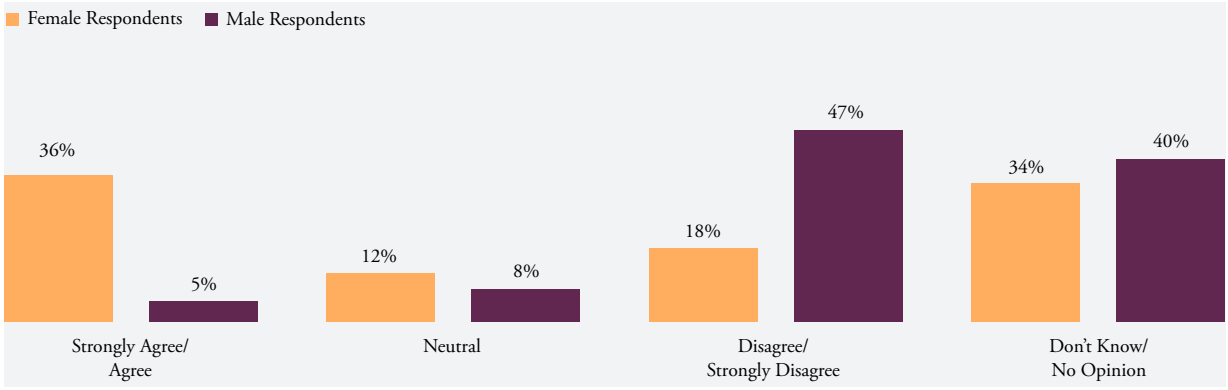
F			M		
Rank Ordered Appointment Type	*% appointed	**Average # Assignments	Rank Ordered Appointment Type	*% appointed	**Average # Assignments
1. Guardian Ad Litem	63%	3.1	1. Referee	79%	3.8
2. Referee	60%	3.8	2. Guardian Ad Litem	52%	3.1
3. Court Evaluator	45%	3.2	3. Court Evaluator	42%	2.6
4. Attorney for Alleged Incapacitated Person	40%	2.5	4. Attorney for Alleged Incapacitated Person	37%	2.2
5. Guardian	40%	2.8	5. Guardian	35%	2.8
6. Attorney for the Child	30%	3.5	6. Counsel	23%	2.5
7. Counsel	17%	3.1	7. Receiver	22%	1.9
8. Receiver	11%	2.0	8. Attorney for the Child	12%	3.5

* This reflects the percentage of attorneys who received at least one appointment in the past 3 years.

** The Average # Assignments provides the average number of assignments per appointment type only for those who indicated that they had received at least one assignment, as indicated in the "% with at least one assignment" column.

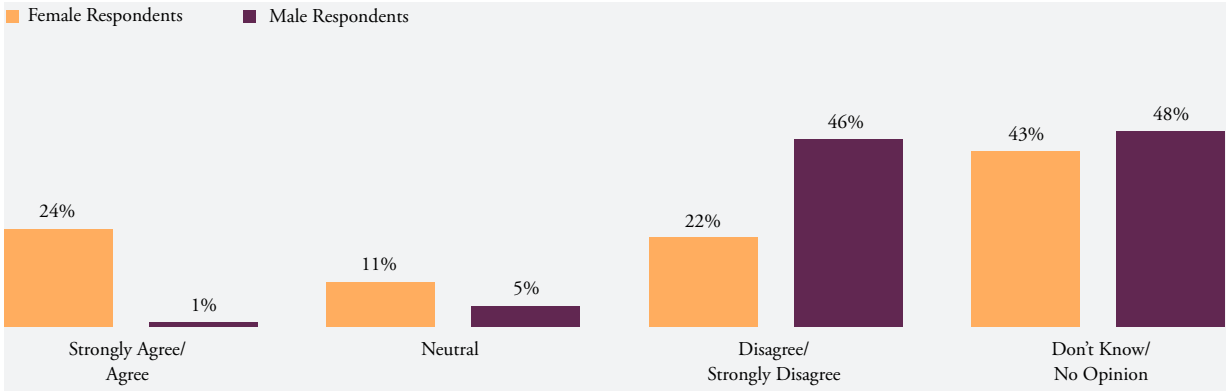
When asked whether judges more often appoint male attorneys to more lucrative cases than female attorneys, female attorneys who had received at least one appointment within the past three years strongly agree/agree (36%) or disagree/strongly disagree (18%) while such male attorneys strongly agree/agree (5%) or disagree/strongly disagree (47%).

Judges more often appoint male attorneys to more lucrative cases than female attorneys:



When the fee awarded falls within judicial discretion, female responses (for those who received at least one appointment within the past three years) were almost equally divided with 24% agreeing that female attorneys are more often awarded lower attorney fees by the court than male attorneys for similar work while 22% disagree that such is the case. Of male attorneys who had received at least one appointment within the past three years, (46%) disagreed that such is the case.

When the fee awarded falls within judicial discretion, female attorneys are more often awarded lower attorney fees by the court than male attorneys for similar work:



While there has been great improvement in the number and range of assignments to women since the 1986 report, a substantial number of female attorneys still believe that there is disparity in the monetary value of cases assigned to women. These data indicate that appears to be the case at least with regard to violent felony assignments. Female attorneys (24%) and male attorneys (7%) agree that such is the case with over half of those responding having no knowledge of the issue.

See data in the chart below regarding assignments in felony cases.

Assigned Panels			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	DNK
21	Female attorneys on assigned panels are assigned more often to represent women and/or children than are male attorneys on such panels	F	15.3	16.6	16.6	12.1	5.7	33.8
		M	22.9	17.1	11.2	9.8	2.4	36.6
22	Female attorneys on assigned panels receive fewer violent felony assignments than male attorneys on such panels	F	5.8	9.0	9.6	12.2	11.5	51.9
		M	18.9	13.1	7.3	5.8	1.0	53.9

Assigned Panels			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	DNK
23	Female attorneys on assigned panels receive more assignments of rape and other sex crime cases than male attorneys on such panels	F	6.3	15.8	15.8	2.5	1.3	58.2
		M	18.7	14.3	9.4	3.0	0.0	54.7

The relevant data demonstrate that female attorneys currently, in contrast to the situation reported in 1986, do (for the most part) have equal access to and receive court assignments of all types with limited exceptions, e.g., certain felony assignments.

Court leadership and administration deserve great credit for the marked improvement in this area through its rulemaking authority. Although there is still some perception that female attorneys receive lesser fee awards for similar work when such awards are within judicial discretion, any perceived inequities in fee awards should be ameliorated by the most recent 2019 Rule requiring detailed filings that will provide the degree of transparency that engenders fairness by decision makers.

Recommendations

FOR COURT ADMINISTRATION

a. Distribute FCMS customized reports that list fiduciary appointments and fees awarded by judges in each judicial district to relevant judges through the district offices. A new electronic system has been put in place that will allow such reporting going forward.

b. Provide professional networking opportunities for judges to become acquainted with the members of the various panels that list those who are qualified for appointments.

FOR BAR ASSOCIATIONS

a. Provide professional networking opportunities for judges to become acquainted with panel members.

b. Establish a mentoring program to assist female attorneys in building the skills and recognition to receive violent felony assignments.

IX. Negligence and Personal Injury

This section sought input regarding awards for pain and suffering, loss of consortium, or disfigurement, as well as gender differences for awards to homemakers.

Findings

Only 4% of male attorneys compared to 24% of female attorneys indicated that males often or very often receive higher awards than females for pain and suffering from judges. Seventy-three percent (73%) of male attorneys, however, indicated males never or rarely received higher awards than females for pain and suffering from judges as compared to 35% of the female respondents. The responses to this particular question generated one of the largest disparities between male and female attorneys in this survey.

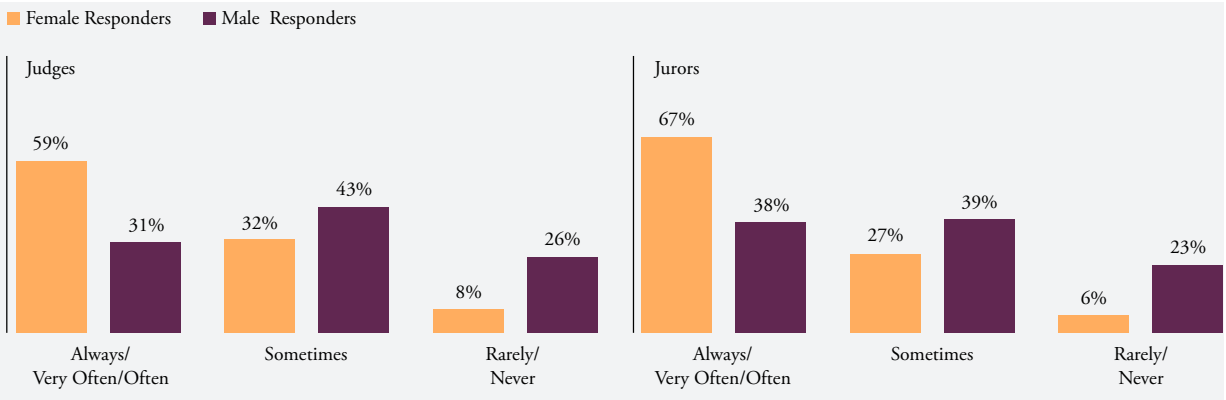
With regard to awards made by juries, women were equally divided as to whether such is the case while male attorneys overwhelmingly indicated that males did not receive higher awards.

When attorneys were asked if husbands receive higher awards than wives for loss of consortium from judges or juries, female attorneys felt this occurred far more often than male attorneys. Female attorneys (41%) and male attorneys (54%) felt that females received higher awards for disfigurement from judges. A similar pattern was found with respect to awards made by juries on this issue, as shown in the table below.

			Never	Rarely	Some-times	Often	Very Often
44a	Males receive higher awards than females for pain and suffering from judges	F	11.1	23.7	41.5	15.9	7.7
		M	43.7	28.9	23.0	2.9	1.5
44b	Males receive higher awards than females for pain and suffering from juries	F	8.8	21.3	41.0	19.2	9.6
		M	35.2	28.5	30.0	3.7	2.6
45a	Husbands receive higher awards than wives for loss of consortium from judges	F	11.7	28.3	32.8	18.9	8.3
		M	41.1	33.2	22.4	2.3	1.0
45b	Husbands receive higher awards than wives for loss of consortium from juries	F	10.3	21.5	37.9	20.5	9.7
		M	33.7	34.3	26.8	3.0	2.1
46a	Females receive higher awards than males for disfigurement from judges	F	3.5	9.6	46.1	27.2	13.6
		M	10.1	6.6	29.1	31.0	23.3
46b	Females receive higher awards than males for disfigurement from juries	F	2.6	4.9	42.5	32.3	17.7
		M	6.4	5.0	23.3	35.7	29.5

As shown in the chart below, female attorneys more often than male attorneys reported that female homemakers receive lower awards than males who work outside the home from both judges (female attorneys 59%; male attorneys 31%) and juries (female attorneys 67%; male attorneys 38%).

Female homemakers receive lower awards than males who work outside the home from:



The data indicate that awards in a significant number of personal injury cases assign lower monetary damages to women than to men for similar injuries and disabilities and also largely undervalue the import of homemaker services. This is all to the economic detriment of women who wrongfully suffer injuries and disabilities.

Recommendations

FOR COURT ADMINISTRATION

The pattern jury instructions should be modified to emphasize the monetary value of homemaker services.

FOR BAR ASSOCIATIONS

Offer CLE courses that provide guidance on the evidence necessary to establish the monetary value of homemaker services.

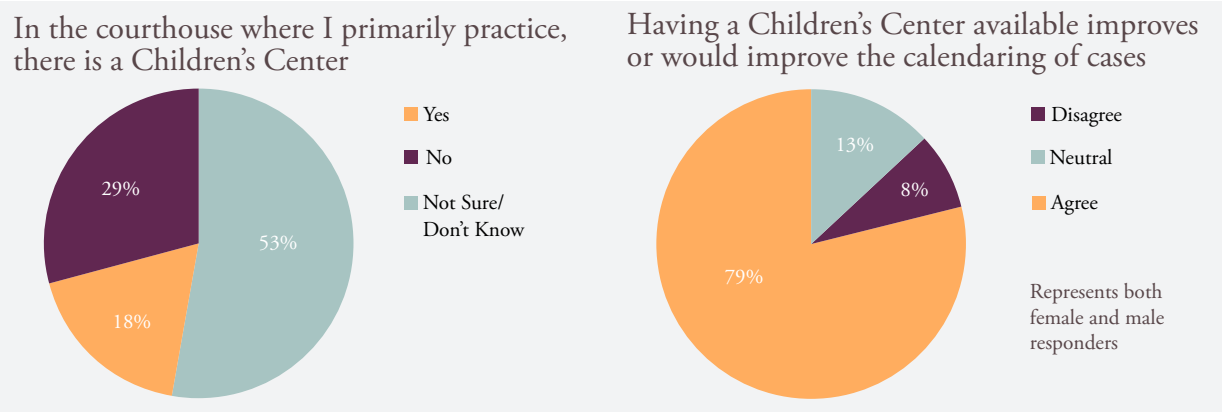
X. Court Facilities

Addressing the basic needs of litigants, witnesses, and attorneys can make a difference in their ability to participate fully in their case or court appearance. This section sought information related to court-based Children's Centers, lactation facilities for breastfeeding women who appear or work in the courts, and baby changing stations. As previously noted, there is a need for separate, safe waiting areas in courts where family offenses are heard. Those concerns are addressed in the Domestic Violence section of this report.

Findings

When asked about the availability of Children's Centers, lactation space, or baby changing tables, the response from survey participants documents the need to provide these facilities and make them accessible. Questions for each topic asked whether having a particular type of facility improves or would improve court calendaring. Especially among female respondents, the answer was strongly affirmative as illustrated in the charts below.

Children's Centers

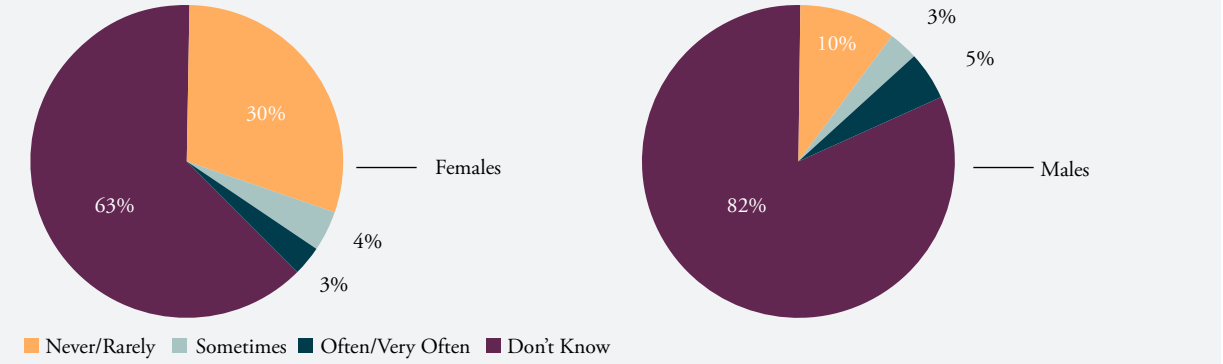


See the appendix for a breakdown by Judicial District.

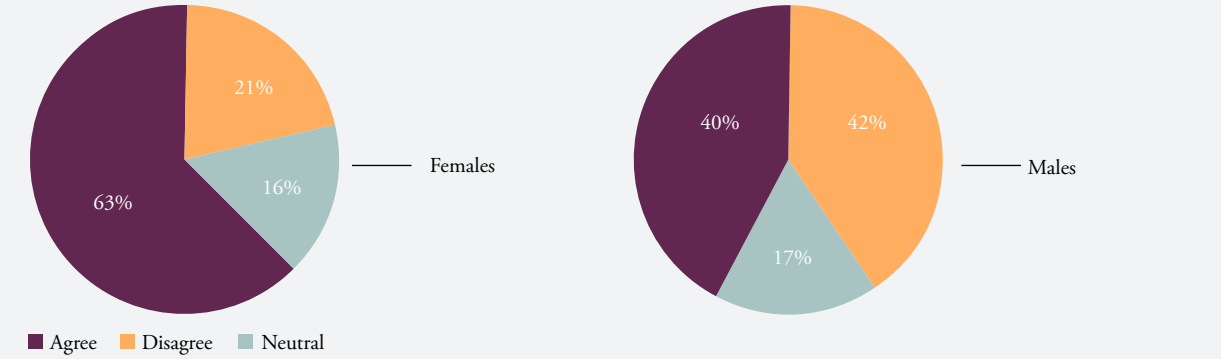
The majority of attorneys responding (73% female, 65% male) indicated that litigants will never or rarely leave a child in a Children's Center located in a court facility different from the facility where their case is being heard. Attorneys disagreed or strongly disagreed (77% female, 53% male) that Children's Centers in Family Courts will admit children of non-Family Court litigants. For these data as well as other questions related to Children's Center operations, see Appendix H, Pg 107, Question 49-53g.

Lactation Facilities

In the courthouse(s) where you practice, onsite lactation facilities are available to court users, including attorneys, litigants, witnesses, and jurors:

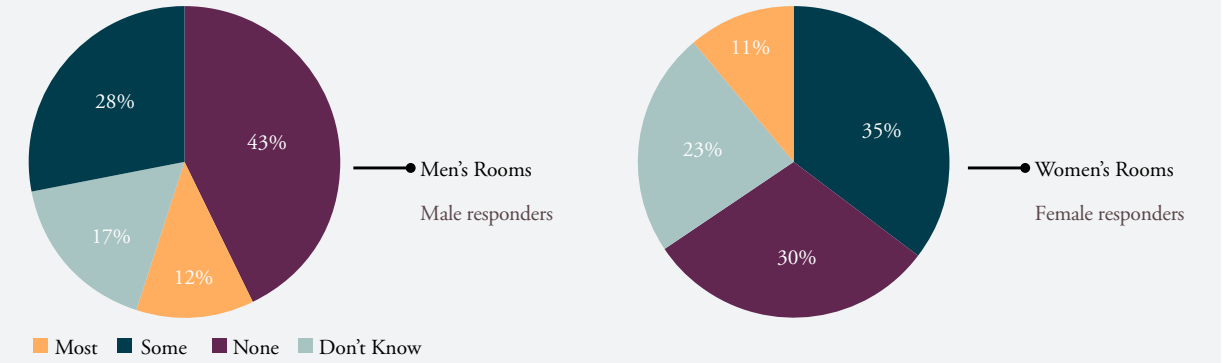


Court calendaring is impacted by the lack of lactation facilities:

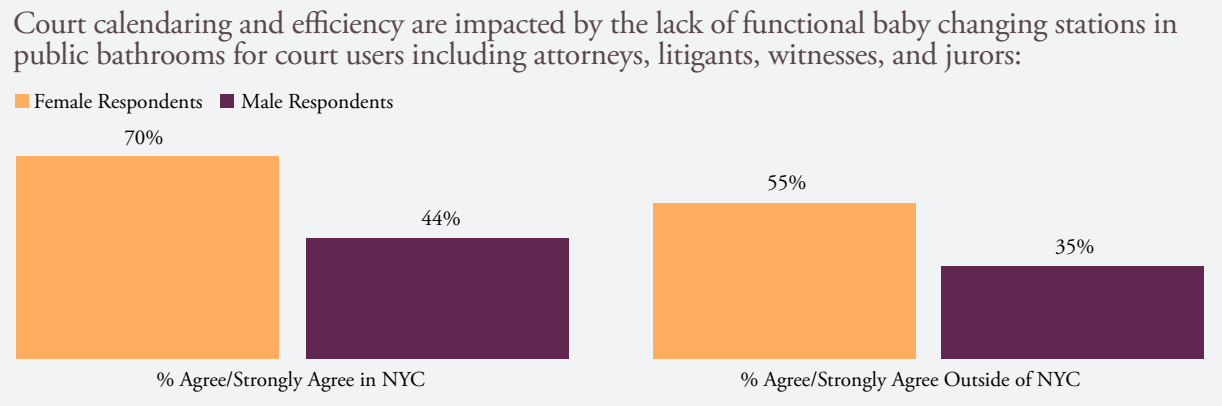


Baby Changing Stations in Public Restrooms

In the courthouse(s) where you practice, there are public restrooms that have functional baby changing stations in:



See the appendix for a breakdown by Judicial District.



In addition to the need for changing stations in public restrooms, female attorneys also commented on the need for updated, clean restrooms. "Courthouse bathrooms need to be more female-friendly. Many women's bathroom stalls do not have waste bins for female hygiene products. At the court where I practice, the only waste bin is outside the bathroom…."

Additionally, both male and female attorneys commented on the need for court facilities to be updated to provide safe and appropriate space for attorney conferences.

The efficiency and effectiveness of court proceedings are negatively impacted by the lack of facilities including Children's Centers, lactation spaces, and baby changing stations. This prevents litigants, witnesses, and attorneys from being readily available during the proceedings and results in unfair hardships for those requiring such facilities.

Recommendations

Children's Centers

FOR COURT ADMINISTRATION

a. Provide a fully staffed, accessible Children's Center in every courthouse. The Children's Center hours should mirror the hours of court operations. The Center should provide age-appropriate programming and information regarding appropriate outside services.

b. Ensure no child is turned away from a Children's Center or forced to wait in hallways until his or her parents' case is called. Center rules regarding hours of operation, usage, and age limitation should be flexible, accessible, and inclusive.

FOR COURT ADMINISTRATION AND LEGISLATIVE LEADERS

Work together to establish free, accessible Children's Centers in all courthouses statewide.

Lactation

FOR COURT ADMINISTRATION

a. Provide a committed space in every courthouse statewide for lactation/breast-feeding use that meets New York State Department of Health regulations. This space may include commercially available pods designed for this purpose only where more appropriate space cannot be located in the courthouse or UCS facility. The amount of space available should be adequate to meet the demand by court personnel and court users. Notice of lactation/breast-feeding space shall be posted.

b. Educate judges, district executives, and chief clerks about the law requiring time allowances and space for employees to address lactation needs.

Restrooms and Baby Changing Stations

FOR COURT ADMINISTRATION

Work collaboratively and aggressively with municipalities to:

- update courthouse bathrooms, ensure sanitary conditions, provide feminine hygiene products, and inside each stall provide: hooks, working locks, and receptacles for waste.
- provide baby changing stations in all bathrooms including women's, men's, gender neutral, and family bathrooms.

General

FOR COURT ADMINISTRATION

a. Provide appropriate multi or bilingual signage in the court houses and educate the public through the UCS website as to the designated areas for Children's Centers, lactation, and diaper changing stations. Incorporate such information into any future technological programming for mapping courthouses to improve public access to such facilities.

b. Educate judges and non-judicial staff regarding appropriate accommodations for the needs of pregnant and nursing mothers and as to the availability of Children's Centers, lactation facilities, and baby changing tables in the courthouses.

c. As future courthouse renovations or buildings are planned, incorporate space for Children's Centers, lactation facilities, and include baby changing tables in every public restroom.

d. Ensure that comment cards are readily available in every courthouse and that the online link to the comment card is publicized in courthouses.

e. Produce and distribute an informational brochure(s) in multiple languages for people entering the courthouse. This should include the right to be treated fairly and respectfully. The brochure should inform court users about the location of the Children's Center, lactation space, and baby changing tables. In addition, information should be made available regarding how to file a complaint of sexual harassment and/or bias or any other inappropriate behavior, as well as, the right to language access and how to request an interpreter.

f. Court clerks and other designated court personnel should be responsible for providing the information. Such information should be effectively disseminated and prominently displayed in the court facility. A link to the brochure should also be on the UCS website main page in multiple languages. Incorporate such information into any future technological programming designed to inform court users about the courthouse.

End Note

This survey by the New York State Judicial Committee on Women in the Courts was undertaken with a dual purpose. First, to ascertain whether the many detailed and specific recommendations made in 1986 by the New York Task Force to eliminate the bias against women in our legal system had succeeded and, if not, what vestiges of bias still remain. In that second event, what can and should be done to eliminate any lingering remnants of bias that continue to infect our court proceedings.

The late Chief Judge Cooke and the original Task Force members would take great pride in the fact that the current survey demonstrates that their hard work and efforts have in substantial measure ameliorated the scope and extent of bias that had unfairly impacted women in our judicial system. For this, great credit must also be given to Court Administration under the leadership of former Chief Judges Wachtler, Kaye, Lippman, and current Chief Judge DiFiore, for demonstrating unswerving commitment to promoting the Task Force recommendations and indeed expanding the recommendations to meet unanticipated challenges. In this, they were greatly assisted by dedicated Chief Administrative Judges, trial and appellate judges, court personnel, bar associations, and other participants in the judicial process such as law enforcement and various branches of government.

Unfortunately, despite these intensive efforts over the years, the data elicited by the current survey, as briefly summarized at the conclusion of each section, demonstrate that notwithstanding great improvement overall there remain substantial areas of inequitable treatment of women lawyers, litigants and witnesses. Most disheartening are the data on "Courthouse Environment (Sexual Harassment)", particularly with regard to the inappropriate conduct of far too many lawyers which shows little improvement since the original survey. This is, of course, unacceptable in a legal system predicated upon fundamental fairness to all participants, especially when practiced by those who are bound by a Code of Professional Conduct that expressly precludes such conduct. Concerns also stem from the data on "Credibility and Court Interaction" which although much improved continue to reflect a strain of bias against women participants in the judicial process that cannot be countenanced.

While marked improvement is evident, for example, in cases involving domestic violence, these data demonstrate that women who are victims of violence continue to face adversity in the court system. These data also demonstrate the economic inequities women face upon termination of marriage as well as the inadequate and inequitable valuation in the litigation context for the work or services traditionally performed by women. We have made very specific and particularized recommendations for corrective actions.

As made clear by Chief Judge DiFiore, expeditious resolution of the cases brought in our courts is the bedrock of excellence in the operation of our system of justice. While Court Administration, judges, court personnel and lawyers are critical to bringing about that result, there are auxiliary factors that can greatly assist in that regard such as facilities that enable litigants and others to participate in legal proceedings without delays. These include Children's Centers, baby-changing stations, and lactation spaces, all of which require the active assistance and participation of relevant legislative and local executive branch leaders. We urge their assistance in this endeavor at the earliest possible time.

We conclude on an optimistic note. The survey reveals a far more positive landscape regarding the status of women as part of our legal system than was the case in 1986. The great number of women judges of diverse backgrounds currently serving on all courts throughout the state, including at the highest appellate levels, as well as holding significant administrative positions in courts of almost every type where non-judicial female court employees occupy supervisory and other positions that were previously the sole province of male employees, is truly heartening. We are further encouraged by the increasing number of women lawyers actively practicing in every area of our court system and note that where court administrative action has played a significant role, as in the case of fee-generating assignments, women lawyers have participated on substantially equal footing.

This Committee believes that the goal of truly equal treatment for women lawyers and other women participants in our judicial system is well within reach and we urge all the constituents in that system to join in helping to achieve that goal which is critical to a fair and vibrant system of justice.

Appendix

A. Chairs of Local Gender Bias and Gender Fairness Committees 72

B. New York State Unified Court System Judicial District Map 75

C. Press Release and New York Law Journal Article 76

D. Correspondence from Chief Judge Janet DiFiore and Justice Betty Weinberg Ellerin, Chair 81

E. Views from Where You Sit: Attorney & Judicial Assessments of the Status of Women in the Courts 2017 83

F. Gender Survey 84

G. Survey Respondent Demographic Data 88

H. Survey Questions and Response Data 92

I. Breakdown by Judicial District in Regard to Available Services and Facilities 109

J. Survey Report Recommendations 113

K. Women in The New York State Judiciary 1986, 1996, 2006, 2016 & 2020 124

Chairs of Local Gender Bias and Gender Fairness Committees

Courts Outside New York City

THIRD JUDICIAL DISTRICT GENDER FAIRNESS COMMITTEE

Hon. Rachel L. Kretser, Chair
Albany City Court (Ret.)
RLK1ATT@yahoo.com

John Caher, Vice Chair
Senior Advisor for Strategic Communication
Office of Court Administration
518-453-8669
JCaher@nycourts.gov

FOURTH JUDICIAL DISTRICT GENDER FAIRNESS COMMITTEE

Hon. Polly A. Hoye, Chair
Fulton County Office Building
Room 216

Tatiana Coffinger, Vice Chair
Warren County Supreme Court
1340 State Route 9, Lake George, NY 12845
518-761-6547
TCoffing@nycourts.gov

Elena Jaffe Tastenson, Esq., Vice Chair
376 Broadway, Suite 16, Saratoga Springs, NY 12866
518-587-4419
ejt@ejtlaw.com

FIFTH JUDICIAL DISTRICT COMMITTEE

Hon. Deborah Karalunas, Chair
Supreme Court Onondaga County Courthouse
401 Montgomery Street, Room 401, Syracuse, NY 13202
315-671-1106
DKaralun@nycourts.gov

SIXTH JUDICIAL DISTRICT COMMITTEE

Hon. Julie A. Campbell, Chair
Cortland County Supreme and County Court
46 Greenbush Street, STE 301, Cortland, NY 13045
607-218-3343
JACampbe@nycourts.gov

SEVENTH JUDICIAL DISTRICT COMMITTEE

Hon. Teresa Johnson, Chair
Rochester City Court Hall of Justice
99 Exchange Blvd., Rochester, NY 14614
585-428-1904
TJohnson@nycourts.gov

Mary A. Aufleger, Chair
Deputy District Executive
Seventh Judicial District Hall of Justice
99 Exchange Blvd., Rochester, New York 14614
585-371-3436
MAuflege@nycourts.gov

EIGHTH JUDICIAL DISTRICT GENDER & RACIAL FAIRNESS COMMITTEE

Hon. E. Jeannette Ogden, Chair
Erie County Supreme Court
50 Delaware Avenue. Buffalo, NY 14202
716-845-2796
EOgden@nycourts.gov

NINTH JUDICIAL DISTRICT COMMITTEE TO PROMOTE GENDER FAIRNESS IN THE COURTS

Hon. Terry Jane Ruderman, Chair
Supreme Court
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, NY 10601
914-824-5790
TRuderma@nycourts.gov

NASSAU COUNTY JUDICIAL COMMITTEE ON WOMEN IN THE COURTS

Hon. Julianne Capetola, Chair
Nassau County Supreme Court
100 Supreme Court Drive, Mineola, NY 11501
516-493-3152
JCapetola@nycourts.gov

SUFFOLK COUNTY WOMEN IN THE COURTS COMMITTEE

Mary Porter
Court Attorney Referee
John P. Cohalan Jr. Courthouse
400 Carleton Avenue, Central Islip, NY 11722
631-208-5610
MPorter@nycourts.gov

Sheryl Randazzo, Esq.
464 New York Avenue #100, Huntington, NY 11743
Sheryl@randazzolaw.com

Courts Within New York City

NYC FAMILY COURT COMMITTEES

Bronx County
Hon. Alma Gomez
Bronx Family Court
900 Sheridan Ave., Bronx, NY 10451
718-618-2260
AGomez@nycourts.gov

New York County
Hon. Emily Olshansky
NY County Family Court
60 Lafayette Street, New York, NY 10016
646-386-5118
EOlshans@nycourts.gov

Kings County
Vacant
Kings County Family Court
330 Jay Street, Brooklyn, NY 11201

Queens County
Hon. Elizabeth Fassler, Chair
Queens Family Court
151-20 Jamaica Ave., Jamaica, NY 11432
EFassler@nycourts.gov

Richmond County
Hon. Karen A. Wolff
Richmond County Family Court
100 Richmond Terrace, Staten Island, NY 10301
718-675-8870
KWolff@nycourts.gov

BRONX COUNTY COMMITTEES

Gender Fairness Committee of the Twelfth Judicial District, Supreme Court Committee
Hon. Doris M. Gonzalez, Co-Chair
851 Grand Concourse, Bronx, NY 10451
718-618-1432
DMGonzal@nycourts.gov

Bronx County Civil Court Committee
Hon. Elizabeth Taylor, Co-Chair
Bronx County Civil Court
851 Grand Concourse, Bronx, NY 10451
718-618-2548
ETaylor@nycourts.gov

Hon. Eddie J. McShan, Co-Chair
Bronx County Civil Court
851 Grand Concourse, Bronx, NY 10451
718-618-2540
EMcShan@nycourts.gov

NEW YORK COUNTY COMMITTEES

Gender Fairness Committee, New York County, Supreme Court, Civil Branch
Hon. Deborah Kaplan
Supreme Court
60 Centre Street, New York, NY 10007
646-386-5567
DKaplan@nycourts.gov

Gregory Testa, Esq.
Supreme Court Law Dept.
60 Centre Street, New York, NY 10007
646-386-3617
GTesta@nycourts.gov

New York County Civil Court Committee
Hon. Leticia Ramirez
111 Centre Street, New York, NY 10013
646-386-3173
LRamirez@nycourts.gov

Gender Bias Committee, New York County, Supreme Court, Criminal Term
Hon. Erika Edwards
Supreme Court
100 Centre Street, New York, NY 10013
646-386-4411
EEdwards@nycourts.gov

Lisa M. White-Tingling
Supreme Court
100 Centre Street, New York, NY 10013
646-386-4163
LWhite@nycourts.gov

New York County Criminal Court Committee
Hon. Charlotte Davidson, Co-Chair
CHDavids@nycourts.gov

Hon. Ilana Marcus, Co-Chair
100 Centre Street, New York, NY 10013
IMarcus@nycourts.gov

KINGS COUNTY COMMITTEES

Kings County Gender Fairness Committee
Hon. Miriam Cyrulnik
Kings County SupremeCourt, Criminal
320 Jay Street, Brooklyn, NY 11201
347-296-1536
MCyrulni@nycourts.gov

Kings County Civil Court Committee
Hon. Consuelo Mallafre
Kings County Civil Court
141 Livingston Street, Brooklyn, NY 11201
347-404-9163
CMallafr@nycourts.gov

Kings County Criminal Court Committee
Hon. Abena Darkeh
Criminal Court
120 Schermerhorn Street, Brooklyn, NY 11201
347-404-9849
ADarkeh@nycourts.gov

QUEENS COUNTY COMMITTEES

Queens County, Supreme Court, Civil & Criminal Terms Committee
Hon. Marguerite A. Grays, Co-Chair
Supreme Court
88-11 Sutphin Blvd., Jamaica, NY 11435
718-298-1212
MGrays@nycourts.gov

Hon. Marcia Hirsch, Co-Chair
Queens Supreme Court
125-01 Queens Blvd., Kew Gardens, NY 11415
718-298-1435
MHirsch@nycourts.gov

Queens County Criminal Court Committee
Hon. Gia Morris
125-01 Queens Blvd., Kew Gardens, NY 11415
718-298-0852
GMorris@nycourts.gov

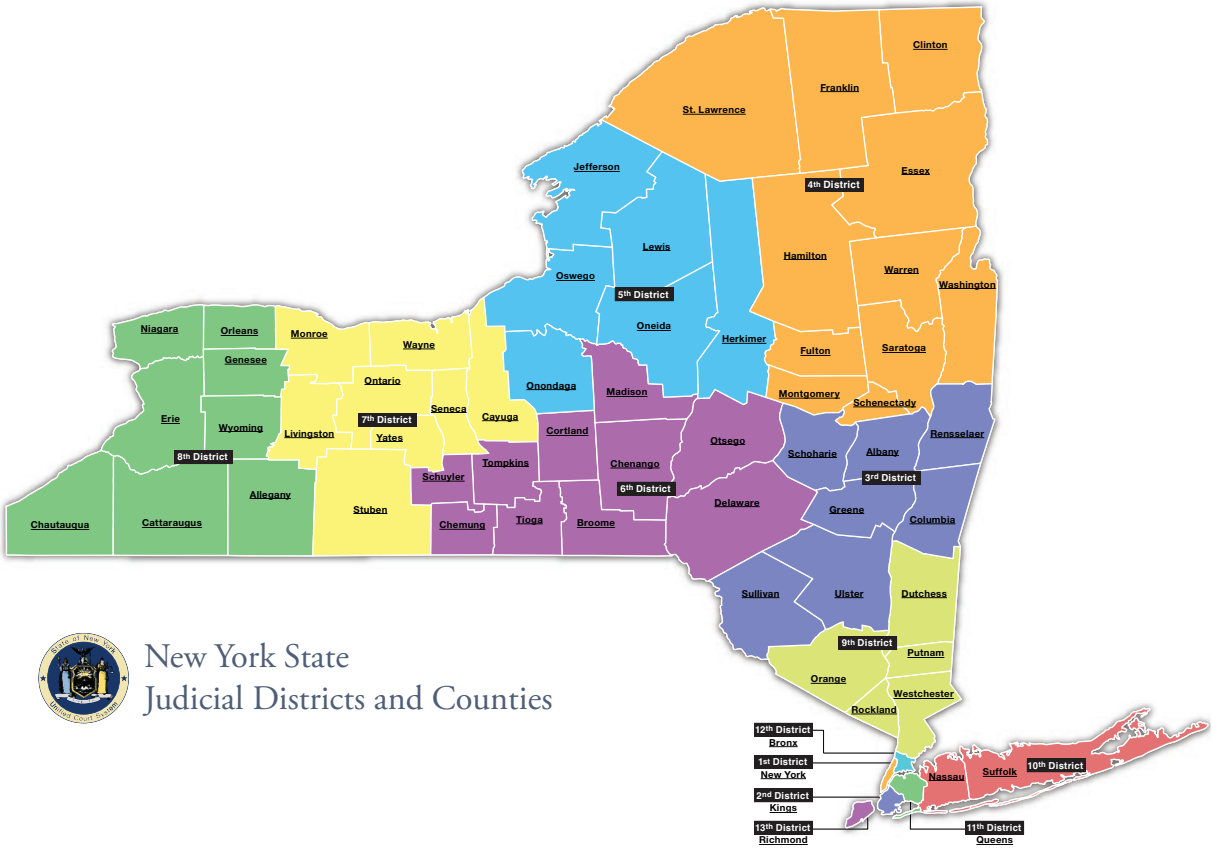
Queens County Civil Court Committee
Hon. Sally Unger
89-17 Sutphin Boulevard, Jamaica, New York 11435
718-262-7373
SUnger@nycourts.gov

STATEN ISLAND COMMITTEE

Hon. Barbara I. Panepinto, Co-Chair
Supreme Court
18 Richmond Terrace, Staten Island, NY 10301
718-876-6424
BPanepin@nycourts.gov

Hon. Karen A. Wolff, Co-Chair
Richmond County Family Court
100 Richmond Terrace, Staten Island, NY 10301
718-675-8870
KWolff@nycourts.gov

New York State Unified Court System Judicial District Map



New York State
Judicial Districts and Counties

Press Release and New York Law Journal Article

PRESS RELEASE

New York State
Unified Court System

Hon. Lawrence K. Marks
Chief Administrative Judge

Contact:
Lucian Chalfen, Public Information Director
Arlene Hackel, Deputy Director
(212) 428-2500

www.nycourts.gov/press

Date: November 13, 2018

NYS Judicial Committee on Women in the Courts to Survey Attorneys, Including Judges and Nonjudicial Employees, Eliciting Their Insights on Gender Fairness in the New York State Courts

New York – Some 32 years since the New York Task Force on Women in the Courts released its groundbreaking report on gender bias in the courts–based in part on the results of a survey soliciting attorneys' experiences–the New York State Judicial Committee on Women in the Courts, an outgrowth of the Task Force, is conducting a new poll of lawyers, judges and court personnel to examine the progress made and work ahead in eliminating gender disparities in the courts.

The new poll builds on the original survey and other research conducted by the Task Force, which was established by the then Chief Judge of the New York State court system in 1984 in response to respected academic studies that questioned whether women were being fairly and justly treated in our nation's court systems. The Task Force study focused primarily on three areas: the status and treatment of women litigants in various contexts including domestic violence and rape; the status and treatment of female attorneys; and the status and treatment of female court employees.

Following its comprehensive 22-month investigation, the Task Force reported "the pervasiveness of gender bias in our court system with grave consequences that denied women

equal justice, equal treatment and equal opportunity," proposing specific recommendations for corrective action. The Committee was created to implement and monitor these reforms.

Led by the Hon. Betty Weinberg Ellerin (Alston & Bird LLP) and comprising a distinguished group that includes judges and attorneys from around the state, the Committee has worked vigorously to secure equal justice, treatment and opportunity in the courts: serving to establish a broad spectrum of educational programs for judges and court employees on gender and bias issues; promoting the recruitment of qualified women for senior management and other court positions that had traditionally been filled by males; and acting as a catalyst for the creation of specialized courts to help ensure equal justice in matrimonial matters and domestic violence cases, among other measures.

The group has also expanded upon the Task Force's recommendations to address practical realities affecting women in the court setting, such as pay parity, sexual harassment, private lactation areas, and the intersection of prostitution with sex trafficking, with the latter spurring the establishment of a statewide network of human trafficking intervention courts.

More recently, the Committee members found themselves frequently engaged in discussion on the extent of the actual progress made in eradicating bias against women in the courts since the 1986 release of the Task Force report. These conversations led to a unanimous vote to conduct another survey to examine issues surrounding gender fairness in the courts, including further remedial steps to be taken.

The Committee has been working with experts to develop and distribute the survey, which will be emailed to a large, random sample of attorneys who have been admitted to practice law in New York State. Those attorneys selected will be able to complete the survey online. Their responses will be confidential and aggregated with others who respond. The Committee is also working with the State's various bar associations to raise awareness about the survey and encourage attorneys, if selected, to participate.

The survey will address the experiences of attorneys and other court users. Some survey sections cover a broad range of experiences that may be encountered in the court system regardless of the survey participant's practice area. Other sections ask about specific areas of practice and substantive law, such as family law, matrimonial law and criminal law.

Among the more general questions, the survey will query participants on whether and how gender affects courtroom interactions, the courthouse environment (sexual harassment) and

fee-generating appointments and assignments. The survey also contains questions regarding the availability and impact of courthouse children's centers–where litigants and other court users can safely leave their children while they attend to court matters–baby-changing tables in public restrooms and lactation facilities.

Survey participants will be instructed to select the responses that best reflect their opinions based upon their own recent experiences or direct knowledge while handling matters in the New York State courts. At the end of each section, respondents will be given the opportunity to offer comments and suggestions.

"While we have come a long way in eliminating gender bias in the courts since the release of the Task Force's seminal report, our work is not yet finished. We must continue, through study, education and reform, to open the doors of opportunity and tear down barriers to justice. This survey, combined with the many other efforts of the Committee, will help us identify and address the range of ongoing and emerging court-related concerns faced by women of diverse needs," said Chief Judge Janet DiFiore.

"The New York State Judicial Committee on Women in the Courts has made tremendous strides over the past several decades to broaden opportunities for women in the courts and improve how women–whether court employees, attorneys, litigants, witnesses or other court users–are treated throughout the court system. I am grateful to Justice Ellerin and the Committee members for their ongoing efforts in the pursuit of justice for all and look forward to the survey findings and the reforms they will help spawn," said Chief Administrative Judge Lawrence K. Marks.

"I believe the time is ripe for another survey, as the Committee looks to a new generation of attorneys for their insights–based on firsthand experiences and knowledge–to gauge the current state of gender fairness in the courts. The information to be gleaned from the survey will prove invaluable in guiding the Committee forward on the path to equal justice. In that regard, I want to especially thank the subcommittee that spearheaded this project, co-chaired by Court of Claims Judge Renee Minarik and retired Family Court Judge Marilyn O'Connor, both of Rochester, who worked tirelessly on the project, along with the other subcommittee members, including Judge Juanita Bing Newton, Dean of the New York Judicial Institute, Fern Schair, Vice Chair of the Committee, Westchester County Supreme Court Justice Terry Ruderman and attorneys Caroline Levy and Cheryl Zimmer, both of Suffolk County. Special thanks go to Charlotte Watson, Executive Director of the Committee, who has been of invaluable assistance to all of us," said Justice Ellerin.

The survey will be administered online over a four to six-week period starting this month. It will take approximately 20 minutes to complete, depending on the attorney's area of specialty. The Committee will begin to review the survey responses in the first quarter of 2019, followed by a preliminary report of findings and recommendations.

NY LAW JOURNAL
Friday, Nov. 16, 2018
p. 1, col. 3

OCA to Survey Attorneys About Sex Harassment, Gender Bias in Courts

BY ANDREW DENNEY

More than 30 years since the release of a landmark report detailing pervasive discrimination against women in New York courts, an Office of Court Administration committee of judges and attorneys tapped to address bias issues is conducting a new survey to get a comprehensive look at gender fairness in the courts.

Starting this month, the New York State Judicial Committee on Women in the Courts will administer an online survey to a random sample of attorneys to see what progress has been made in eliminating gender bias in the courts and if there is more work to be done, according to a release from the OCA.

When conducting its survey on bias in the courts more than three decades ago, the task force that eventually gave rise to the women's committee focused its energies on assessing the treatment of women litigants, attorneys and court employees.

This time, the committee will focus on facility issues that affect female attorneys, such as making accommodations for lactation; and sexual harassment, said committee chairwoman Betty Weinberg Ellerin, a retired state Supreme Court justice who served on the Appellate Division, First Department and who is now senior counsel at Alston & Bird.

Over the past year, since the #MeToo movement has led to the ouster of powerful people in a wide array of institutions, sexual harassment and abuse has become a top priority in many workplaces.

New York's court system has not seen the kind of high-profile exits that have shaken up Hollywood and Washington, D.C., though as the Law Journal reported earlier this month, the court system, with more than 16,000 employees, has not gone without its own allegations of sexual misconduct.

Since the task force conducted its work in the mid-1980s, society has reframed its views of what is considered inappropriate behavior in the workplace.

"The fact is that in many instances the same kind of conduct maybe existed in the 80s," Ellerin said.

The women's committee is building off of work started by a task force created in 1984 at the behest of Sol Wachtler, then the chief judge of the state Court of Appeals, to study

how women are treated in the courts—as employees, judges, attorneys and litigants—and launched a 22-month investigation into the matter.

When the task force handed over its report in 1986, the picture it painted for what women endured in the court system was a dark one: bias against women was rampant, the report states, and women disproportionately faced a "climate of condescension, indifference and hostility."

At the time, physical abuse was cited as the reason for divorces granted in almost 40 percent of cases, the report states. Yet some Family Court judges on the bench back then seemed underinformed about domestic violence. It was not uncommon for victims to be blamed for provoking attacks against them, and not to be believed that they were being abused unless their injuries were visible.

As for female attorneys, while their numbers were growing in the mid-1980s, with some reporting significant improvements in the way they're treated, there was a "widespread perception" that judges, male attorneys and court employees did not treat female attorneys with the same dignity as their male counterparts.

The most commonly cited examples of inappropriate conduct toward female attorneys were being subjected to being addressed in familiar terms, comments about their appearance or sexual advances, according to the task force report.

"While we have come a long way in eliminating gender bias in the courts since the release of the task force's seminal report, our work is not yet finished," said Chief Judge Janet DiFiore in the news release. "We must continue, through study, education and reform, to open the doors of opportunity and tear down barriers to justice."

Reprinted with permission from the November 16, 2018 edition of the New York Law Journal © 2020 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited, contact 877-257-3382 or reprints@alm.com.

Correspondence from Chief Judge Janet DiFiore and Justice Betty Weinberg Ellerin, Chair

From: Chief Judge Janet DiFiore <invites@mailer.surveygizmo.com>
To:
Subject: Survey on Gender Fairness in the New York State Courts

Dear Member of the New York State Bar:

Our courts have come a long way in promoting gender fairness since 1986 when the New York State Task Force on Women in the Courts issued a report concluding that "gender bias against women litigants, attorneys and court employees is a pervasive problem with grave consequences." Much of the progress we have made is attributable to the New York State Judicial Committee on Women in the Courts, which has worked tirelessly to promote equal justice, treatment and opportunity through educational programs and other measures designed to change attitudes, perceptions, laws and policies.

Now, more than three decades later, the Committee has developed a confidential online survey both to ascertain the actual progress we have made in eliminating gender bias and to identify the challenges that remain. I strongly encourage you to take a few minutes away from your busy schedule to complete this important survey. We rely on your prompt response within the next week. Your experiences and views will help us understand the extent to which gender bias remains a problem in our courts, and enable us to formulate appropriate solutions to guide us forward on the path to equal justice.

Please click here to begin the survey.

I thank you in advance for your cooperation.

Sincerely,
Janet DiFiore
Chief Judge of the State of New York

For more information regarding this survey, you may refer to:

Denny, A. (2018, Nov 15). Court System to Survey Attorneys About Sexual Harassment, Gender Bias in Courts. New York Law Journal, Retrieved from https://www.law.com/newyorklawjournal/2018/11/15/court-system-to-survey-attorneys-about-sexual-harassment-gender-bias-in-courts/

New York State Unified Court System. (2018, Nov 13). NYS Judicial Committee on Women in the Courts to Survey Attorneys, Including Judges and Nonjudicial Employees, Eliciting Their Insights on Gender Fairness in the New York State Courts [Press release]. Retrieved from http://ww 2.nycourts.gov/sites/default/files/document/files/2018-11/PR18_18.pdf

From: Hon. Betty Weinberg Ellerin <invites@mailer.surveygizmo.com>
To:
Subject: Final Reminder: Survey on Gender Fairness in the New York State Courts

Dear Member of the New York State Bar:

If you practice in the New York state courts, I write as a final reminder to encourage you to complete the Attorney Survey on Gender Fairness in the Courts. If you have already completed the survey, please accept our gratitude. Your opinions and experiences are very important and are being sought at the highest levels of our judiciary. The beginning sections of the survey have been crafted to reflect an attorney survey from 1985 to allow us a means of measuring progress. Subsequent sections include new issues and focus on more practical considerations.

We know this a very busy time of year and ask that you please complete this fifteen-minute survey at your earliest convenience by clicking the link below. This link will expire by the end of the year. (We recognize that some of you do not practice in the New York state courts. If such is the case, please disregard this request.)

Please click here to begin the survey.

Again, thank you for your assistance. We wish you the very best holiday season.

Very truly yours,
Hon. Betty Weinberg Ellerin, (ret.)
Chair, NYS Judicial Committee on Women in the Courts

For more information regarding this survey, you may refer to:

Denny, A. (2018, Nov 15). Court System to Survey Attorneys About Sexual Harassment, Gender Bias in Courts. New York Law Journal, Retrieved from https://www.law.com/newyorklawjournal/2018/11/15/court-system-to-survey-attorneys-about-sexual-harassment-gender-bias-in-courts/

New York State Unified Court System. (2018, Nov 13). NYS Judicial Committee on Women in the Courts to Survey Attorneys, Including Judges and Nonjudicial Employees, Eliciting Their Insights on Gender Fairness in the New York State Courts [Press release]. Retrieved from http://ww 2.nycourts.gov/sites/default/files/document/files/2018-11/PR18_18.pdf

Views from Where You Sit: Attorney & Judicial Assessments of the Status of Women in the Courts 2017

Summary

In 2017, the New York State Judicial Committee on Women in the Courts sought to determine the extent to which the issues examined in the 1986 Report of the New York State Task Force on Women in the Courts remained relevant. The Committee drafted an informal survey and distributed it electronically throughout local Gender Bias/ Gender Fairness Committees to determine the current status of the concerns raised originally. The survey received 203 responses from across 25 counties.

In the survey findings, the topics that remained of concern in March 2017 were ranked and used to guide development of an updated, more extensive survey than that deployed in 1985. While respondents noted in the comments that much progress had been made, it was clear from the comments and the ranking of the items that much remained to be done. Court interaction, violence against women, opportunities for advancement, women's credibility, and Children's Centers topped the list of concerns.

Gender Survey

Survey Methodology

The Committee worked with court administration professionals as well as experts in survey design to develop and administer a cost-effective online survey that would reliably capture the experiences and views of attorneys who practice in the New York State Unified Court System. To reach a broad spectrum of practicing attorneys, the survey methodology utilized the New York State Attorney Registration Data Base, which as of November 2018 had approximately 171,000 attorneys in "active or retired" status residing or with a place of business in New York, New Jersey, or Connecticut.

However, to administer the survey electronically via an online survey tool, the potential pool of survey participants included only those attorneys in the registration data base that had an email address on file. This resulted in a pool of 70,241 attorneys overall which included 61,075 attorneys from New York, as well as 7,022 from New Jersey and 2,144 from Connecticut, all locations where attorneys may reside and/or maintain a legal practice that involves the New York State Unified Court System. The final eligible pool of attorneys was further reduced to 67,862 after taking into consideration deliverable email addresses.

It is important to note that many attorneys who are registered in New York practice in a variety of workplace settings and courts outside the New York State Court System. Thus, it could not be determined in advance whether an attorney contacted to participate in the survey actually practiced and had direct knowledge and personal experience with the New York State Courts. To reach as many attorneys as possible with such experience, including capturing the experiences of attorneys working in different geographic regions and areas of practice, the invitation to participate in the survey was sent to all 67,862 attorneys or approximately 40% of the universe of active and retired attorneys registered in New York.

Survey Administration

The Attorney Survey on Gender Bias in the New York State Courts was announced in a November 13, 2018 press release from the New York State Office of Court Administration. An article discussing the survey and the work of the New York State Judicial Committee on Women in the Courts appeared in the New York Law Journal published on November 16, 2018.

Invitations to participate in the survey were sent on behalf of Chief Judge Janet DiFiore to all 67,862 attorneys during the period November 14, 2018 to December 10, 2018. Each invitation contained a unique link to the survey which prevented multiple submissions. Survey participants were informed that their responses would be confidential and aggregated with others who respond. Two reminder emails followed the initial invitation; one from Chief Judge Janet DiFiore and one from Committee Chair Judge Betty Weinberg Ellerin. Each reminder email contained the same unique link to the online survey.

During early December the Committee contacted all Bar Associations statewide requesting they encourage their members who received an invitation to complete the survey and to check if their invitation may have been diverted to a spam folder due to their organizations IT structure, although this was rarely reported. The NYS Bar Association also sent the Notice to Bar Associations to their local bar association contacts statewide and included it in their weekly emails to members.

The survey submission period ended on January 21, 2019 with a total of 5,340 New York State registered attorneys having participated in the survey. As expected, varying numbers of attorneys responded to the different sections of the survey depending on their area of practice and the type of substantive law covered by the survey. Many attorneys submitted comments and made recommendations on the matters covered in the survey as well as other issues related to gender fairness such as work employment policies and working conditions, training and career opportunities, as well as specific challenges they encounter when representing their clients in cases in the New York State Courts.

The large sample of 5,340 attorneys responding to the survey, much greater than the 1,790 in 1985, enabled the research team to conduct extensive statistical analysis of the survey questions by various demographic variables and by different geographic regions within New York State. Although a very large pool of attorneys registered to practice in New York were invited to participate in the survey and chose not to, many of these attorneys may not regularly visit or even practice in the New York State Unified Court System. Furthermore, other factors that limit the survey response include a general reluctance of individuals to complete surveys, as well as, the extent to which the topic covered by the survey is of particular personal interest. For example, while more male attorneys responded to this survey overall, proportionally more female attorneys participated in this survey than would be expected based upon their relative composition among all attorneys registered in New York.

The estimates derived from the survey based upon a sampling of the population studied are accurate within a range of from 1 to 3 percent with 95% confidence depending on the subgroup studied. No differences were observed in the survey responses of those attorneys who responded after their first invitation of the survey compared to those responding after multiple follow-up communications, thus providing strong support for the stability of the findings.

Demographic Characteristics of Survey Respondents

Nearly 75% of the survey participants also responded to the various demographic questions that were in the final section of the survey. These questions were designed to assess the degree to which the survey participants were representative of the larger pool of members of the New York Bar, as well as, to allow for further interpretation of the survey findings. Appendix G contains the complete array of participant demographic data collected on the survey.

Representativeness of Survey Respondents

By examining the geographic location where attorneys practice as well as information on the number of years since being admitted to practice, a comparison was made between the survey participants and the larger pool of 70,241 attorneys who are registered to practice in New York and invited to participate in the survey. The table below shows these relevant comparisons. More upstate attorneys responded than those who practice in New York City. More older attorneys than younger attorneys and more female than male attorneys responded proportionally.

	Survey Respondents	Attorney Registration Database
Practice Location	(n=3,981)	(N=70,241)
New York State	94%	87%
Outside New York State	6%	13%
NYS Practice Region	(n=3616)	(N=70,241)
New York City - All Boroughs	52%	64%
Suburban:		
Judicial Districts 9, 10N, 10S	23%	21%
Upstate	25%	15%
Years Since Admitted	(n=3,995)	(N=70,241)
5 or less	11%	17%
6-10	12%	15%
11-15	10%	12%
16-20	10%	11%
21-25	11%	11%
Over 25	46%	34%

Demographics

Approximately 94% reported that the location of their primary place of business or primary place of practice is in New York State. Among this group, approximately 52% practice in the New York City area with nearly 33% of these attorneys indicating that their practice is in New York County (Manhattan). In the larger New York City metropolitan area, Nassau and Suffolk Counties combined represented 14% and Westchester 6% of the attorney respondents. For the upstate areas, 6% of the attorneys indicated that they practice in Erie County and another 5% in Albany County.

When attorneys were asked about their employment in the past 3 years, 67% reported private practice, 20% government, 9% a public interest or not-for-profit organization, and 8% an in-house corporate setting. Among attorneys in private practice about a third (34%) reported being sole practi-

tioners and another 31% reported working in small firms of from 2-10 attorneys. Among government attorneys 37% worked for a public agency, 25% were prosecutors, and 6% worked in the role of public defender. Another 23% were UCS attorneys and 13% were judges.

Nearly three out of four attorneys (73%) reported being a member of a bar association, with many indicating that they held membership in multiple bar associations. Significant participation was found for the NYS Bar Association, various County Bar Associations, the New York City Bar, as well as a variety of other bar groups such as the NYS Trial Lawyers Association and various women's bar and minority bar associations.

Survey participants were asked how often they appeared in court or chambers within the New York State Unified Court System during the past three years. While 43% of the total sample reported having appeared either daily or weekly, a similar percent (44%) indicated that they appeared either monthly or a few times a year during this same three-year period. Another 13% reported not appearing in the New York Courts at all over the past three years but were still respondents to the survey.

Finally, equal numbers of both men (51%) and women (49%) responded to the survey. However, among each group there were a number of salient differences. Nearly 45% of female attorneys and only 22% of male attorneys reported being admitted to practice in the past 15 years. This pattern is also apparent when examining the age range of the survey participants. For example, 44% of the female respondents were less than 45 years of age as compared with only 19% of their male colleagues. Also, while 94% of the male respondents identified their race as White, for female respondents 89% identified as White and another 5% identified as Black, 4% Asian, and 2% two or more races. Regarding ethnicity, 3% of male respondents and 7% of female respondents identified as Hispanic or Latino. These demographics are consistent with the increasing participation of both women and minorities entering the legal profession.

Survey Respondent Demographic Data

Note: The section numbers in the tables below relate to the survey structure and will vary from the Gender Survey report section numbers.

Gender	N	%
Female	1921	49%
Male	2017	51%
Unknown	1401	n/a

	Female		Male		Total	
Age	N	%	N	%	N	%
Under 35	316	17%	129	6%	450	11%
35-44	513	27%	254	13%	774	20%
45-54	442	23%	372	19%	828	21%
55-64	456	24%	615	31%	1088	27%
Over 65	185	10%	636	32%	837	21%

Number of years admitted to practice law in New York

	Female		Male		Total	
Years	N	%	N	%	N	%
5 or less	273	14%	141	7%	422	11%
6-10	333	17%	150	8%	487	12%
11-15	257	13%	146	7%	408	10%
16-20	226	12%	180	9%	414	10%
21-25	231	12%	206	10%	445	11%
Over 25	597	31%	1185	59%	1819	46%

During the past three years, how often have you appeared in court or chambers within the New York State Unified Court System?

	Female		Male		Total	
	N	%	N	%	N	%
Daily	398	21%	299	15%	706	18%
Weekly	498	26%	484	24%	1003	25%
Monthly	355	19%	384	19%	749	19%
Few times a year	438	23%	532	27%	985	25%
Not at all	215	11%	304	15%	531	13%

	Female		Male		Total	
Race	N	%	N	%	N	%
American Indian	2	0%	5	0%	7	0%
Asian	75	4%	28	1%	103	3%
Black	86	5%	42	2%	129	3%
Native Hawaiian Pacific Islander	2	0%	2	0%	4	0%
White	1601	89%	1773	94%	3422	92%
Two or More	37	2%	33	2%	71	2%

	Female		Male		Total	
Ethnicity	N	%	N	%	N	%
Not Hispanic	1792	93%	1951	97%	3839	95%
Hispanic	128	7%	67	3%	196	5%

What is the location of your primary place of business or primary place of practice?

	Female		Male		Total	
	N	%	N	%	N	%
New York State	1824	96%	1846	92%	3736	94%
Outside New York State	84	4%	156	8%	245	6%

Judicial District

	N	%
1	1196	33%
2	286	8%
3	221	6%
4	76	2%
5	150	4%
6	69	2%
7	143	4%
8	249	7%
9	339	9%
10N	283	8%
10S	207	6%
11	195	5%
12	158	4%
13	44	1%

Most Populated Counties

	N	%
New York County (Manhattan)	1196	33%
Kings County (Brooklyn)	286	8%
Nassau County	283	8%
Erie County	209	6%
Suffolk County	207	6%
Westchester County	217	6%
Queens County	195	5%
Albany County	170	5%
Bronx County	158	4%
Monroe County	108	3%
Onondaga County	105	3%

Are you a member of a Bar Association?

	N	%
Yes	2883	73%
No	1055	27%

Employment during the last three years (select all that apply)

	Female		Male		Total	
	N	%	N	%	N	%
Private Practice	1163	61%	1509	75%	2717	67%
# of Attorneys in Firm (Only for those who selected 'Private Practice')						
One - Self	341	30%	564	38%	923	34%
2-10	375	33%	454	31%	842	31%
11-40	182	16%	196	13%	385	14%
41-70	64	6%	61	4%	125	5%
Over 70	190	17%	214	14%	411	15%
Corpo-rate/In-House	144	8%	168	8%	317	8%
Government	473	25%	307	15%	794	20%

Employment during the last three years (select all that apply)

	Female		Male		Total	
	N	%	N	%	N	%
Role in Government (Only for those who selected 'Government')						
Unified Court System Attorney	119	26%	60	20%	179	23%
Unified Court System Judge	49	11%	46	15%	98	13%
Public Defender	28	6%	20	7%	49	6%
Prosecutor	111	25%	70	24%	186	25%
Public Agency	169	38%	109	37%	281	37%
Public Interest/Nonprofit	275	14%	87	4%	368	9%
Law School Faculty or Administrator	34	2%	27	1%	64	2%
Retired	27	1%	76	4%	104	3%
Not Currently Employed	5	0%	11	1%	16	0%

Bar Association Memberships

	N	%
NYS Bar Association	1913	66%
County Bar	1305	45%
New York City Bar	573	20%
Women's Bar of NYS	335	12%
County Women's Bar	296	10%
American Bar Association	241	8%
NYS Trial Lawyers Association	231	8%
Out of State Bar	76	3%
Federal Bar Associations	56	2%
Ethnic Bar Associations	52	2%
LGBTQ-Related Bar Associations	18	0.6%
Local Bar Associations	11	0.4%

Survey Questions and Response Data

Note: The section numbers in the tables below relate to the survey structure and will vary from the body of the Gender Survey report section numbers.

I. Credibility and Court Interaction

			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
1a	Male judges appear to give more credibility to the statements/ arguments of male attorneys than to those of female attorneys	F	6.4	24.8	17.5	36.0	15.2
		M	34.4	39.2	13.3	10.9	2.3
1b	Male judges appear to give more credibility to the testimony of male witnesses than to that of female witnesses	F	7.4	29.0	36.8	19.9	6.9
		M	38.6	38.7	16.5	5.1	1.0
1c	Female judges appear to give more credibility to the statements/ arguments of male attorneys than to those of female attorneys	F	8.8	36.0	26.1	22.0	7.2
		M	36.2	43.3	13.3	5.5	1.6
1d	Female judges appear to give more credibility to the testimony of male witnesses than to that of female witnesses	F	9.6	37.9	36.8	12.2	3.5
		M	38.5	42.0	15.6	2.8	1.0
1e	Male judges appear to give less credibility to female expert witnesses than to male expert witnesses	F	8.7	28.5	38.5	18.4	5.8
		M	37.5	37.7	17.9	5.5	1.3
1f	Female judges appear to give less credibility to female expert witnesses than to male expert witnesses	F	10.4	35.2	41.2	11.1	2.1
		M	38.1	39.7	17.6	3.5	1.1
1g	Male judges appear to impose a greater burden of proof on female litigants than on male litigants	F	8.5	32.2	24.7	24.8	9.9
		M	41.7	39.9	12.7	4.4	1.3
1h	Female judges appear to impose a greater burden of proof on female litigants than on male litigants	F	9.7	36.3	31.6	16.1	6.4
		M	41.5	40.3	13.6	3.5	1.1

I. Credibility and Court Interaction

			Never	Rarely	Some-times	Often	Very Often
2	Judges intervene to correct any negative conduct toward women	F	19.9	40.8	31.5	5.3	2.5
		M	5.8	23.5	45.3	14.9	10.5
3	Attorneys intervene to correct any negative conduct toward women	F	19.3	43.9	30.5	5.0	1.3
		M	5.5	31.2	44.7	11.9	6.7
5a	Female attorneys are addressed by first names or terms of endearment while male attorneys are addressed by surname or title, by judges	F	25.4	34.0	26.4	8.9	5.3
		M	50.6	33.2	14.1	1.5	0.5
5b	Female attorneys are addressed by first names or terms of endearment while male attorneys are addressed by surname or title, by attorneys	F	11.1	20.3	36.7	19.3	12.6
		M	35.4	33.3	24.7	5.3	1.3
5c	Female attorneys are addressed by first names or terms of endearment while male attorneys are addressed by surname or title, by non-judicial personnel	F	17.5	27.8	29.9	14.5	10.2
		M	40.2	32.6	21.8	4.1	1.4
6a	Female attorneys experience unwelcome physical contact by judges	F	65.0	24.9	9.1	0.8	0.2
		M	78.3	17.9	3.6	0.1	0.1
6b	Female attorneys experience unwelcome physical contact by attorneys	F	28.9	25.5	35.5	6.5	3.6
		M	56.5	25.0	15.8	2.3	0.4
6c	Female attorneys experience unwelcome physical contact by non-judicial personnel	F	50.8	26.6	17.3	3.1	2.2
		M	67.8	21.5	9.2	1.3	0.2
7a	Female attorneys experience inappropriate or offensive verbal comments (including about personal appearance), jokes, or obscene gestures by judges	F	41.5	28.6	23.2	4.5	2.2
		M	60.1	26.9	11.6	1.1	0.3
7b	Female attorneys experience inappropriate or offensive verbal comments (including about personal appearance), jokes, or obscene gestures by attorneys	F	13.4	19.6	43.8	14.0	9.2
		M	36.5	30.9	27.4	4.0	1.2
7c	Female attorneys experience inappropriate or offensive verbal comments (including about personal appearance), jokes, or obscene gestures by non-judicial personnel	F	33.6	26.3	28.1	7.6	4.4
		M	51.3	26.7	18.6	2.6	0.8

I. Credibility and Court Interaction

			Never	Rarely	Some-times	Often	Very Often
8a	Female litigants and/or witnesses are addressed by first names or terms of endearment while male litigants and/ or witnesses are addressed by surname or title, by judges	F	39.6	29.4	23.5	5.3	2.2
		M	62.9	26.9	9.1	0.6	0.5
8b	Female litigants and/or witnesses are addressed by first names or terms of endearment while male litigants and/or witnesses are addressed by surname or title, by attorneys	F	20.9	24.8	37.8	11.8	4.7
		M	48.5	31.7	17.8	1.7	0.4
8c	Female litigants and/or witnesses are addressed by first names or terms of endearment while male litigants and/or witnesses are addressed by surname or title, by non-judicial personnel	F	34.4	28.0	27.3	7.3	3.0
		M	57.6	28.0	12.3	1.6	0.6
9a	Female litigants and/or witnesses experience unwelcome physical contact by judges	F	75.1	21.1	3.4	0.3	0.0
		M	84.0	14.3	1.7	0.0	0.1
9b	Female litigants and/or witnesses experience unwelcome physical contact by attorneys	F	51.2	27.6	17.7	2.2	1.2
		M	70.9	21.7	6.5	0.6	0.3
9c	Female litigants and/or witnesses experience unwelcome physical contact by non-judicial personnel	F	62.8	24.8	10.4	1.2	0.9
		M	76.3	18.3	4.7	0.4	0.3
10a	Female litigants and/or witnesses experience inappropriate or offensive verbal comments (including about personal appearance), jokes, or obscene gestures by judges	F	50.1	28.3	18.0	2.3	1.3
		M	68.8	23.1	7.7	0.3	0.1
10b	Female litigants and/or witnesses experience inappropriate or offensive verbal comments (including about personal appearance), jokes, or obscene gestures by attorneys	F	25.8	23.7	36.5	9.4	4.6
		M	49.1	31.3	17.7	1.6	0.3
10c	Female litigants and/or witnesses experience inappropriate or offensive verbal comments (including about personal appearance), jokes, or obscene gestures by non-judicial personnel	F	41.3	26.7	23.0	6.0	3.0
		M	59.8	24.7	13.9	1.5	0.2

II. Courthouse Environment

			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
11a	I know how, when, and where to report a sexual harassment claim related to misconduct in a NYS Unified Court System facility	F	19.7	40.1	9.1	23.0	8.0
		M	11.2	28.7	11.1	34.9	14.0
11b	Adequate information is provided to all court users in a courthouse regarding to whom to report a sexual harassment claim related to misconduct in that courthouse	F	26.4	49.5	12.9	8.7	2.5
		M	14.2	36.6	21.0	19.9	8.4
11c	The Court website provides adequate information to all court users regarding to whom to report a sexual harassment claim related to misconduct in a courthouse	F	16.6	26.9	29.5	22.2	4.8
		M	6.7	17.5	26.2	35.4	14.2
11d	A court user who has experienced sexual harassment would be more likely to report a claim if s(he) could do so anonymously	F	2.4	1.9	6.6	41.4	47.8
		M	3.4	2.7	10.3	50.4	33.2
11e	I have experienced or observed work-related threats or promises of rewards in order to solicit sexual favors in the court environment	F	59.8	25.3	5.9	6.3	2.8
		M	78.5	15.5	2.7	1.7	1.6

III. Fee-Generating Appointments and Assignments

13. I am eligible for: (check all that apply)

	Female		Male	
	N	%	N	%
appointments under Part 36 of the Rules of the Chief Judge	258	14%	305	15%
assignments under County Law Article 18-B	158	8%	206	10%
not applicable	1,558	83%	1,573	80%

14. Has a judge appointed you to a fee-generating case within the last three years?

	Female		Male	
	N	%	N	%
Yes	168	65%	172	57%
No	90	35%	128	43%

15. For each of the following Part 36 categories, how many appointments have you received in the last three years?

	None		1-2		3-4		5 or more	
	N	%	N	%	N	%	N	%
Guardian								
Female	71	60%	26	22%	10	8%	12	10%
Male	73	65%	22	20%	7	6%	10	9%
Guardian Ad Litem								
Female	46	37%	30	24%	31	25%	18	14%
Male	60	48%	26	21%	21	17%	17	14%
Attorney for the Child (Privately Paid)								
Female	83	70%	13	11%	6	5%	17	14%
Male	96	88%	5	5%	1	1%	7	6%
Court Evaluator								
Female	68	55%	20	16%	19	15%	16	13%
Male	67	58%	27	24%	15	13%	6	5%
Attorney for Alleged Incapacitated Person								
Female	72	60%	31	26%	9	8%	8	7%
Male	72	63%	29	25%	12	11%	1	1%
Court Examiner								
Female	102	90%	0	0%	1	1%	10	9%
Male	92	87%	5	5%	3	3%	6	6%
Supplemental Needs Trustee								
Female	101	91%	9	8%	1	1%	0	0%
Male	95	93%	5	5%	2	2%	0	0%
Receiver								
Female	100	89%	10	9%	1	1%	1	1%
Male	83	78%	19	18%	3	3%	1	1%
Referee								
Female	56	40%	20	14%	18	13%	46	33%
Male	31	21%	29	19%	25	17%	66	44%
Counsel								
Female	93	83%	10	9%	1	1%	8	7%
Male	82	77%	16	15%	4	4%	5	5%

16. Where the amount of the fee awarded falls within judicial discretion, how many appointments have you received in the last three years?

	Female		Male	
	N	%	N	%
None	38	23%	51	30%
1-2	30	18%	40	23%
3-5	38	23%	33	19%
5 or more	60	36%	47	28%

III. Fee-Generating Appointments and Assignments

			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	DNK
17	Judges more often appoint male attorneys to more lucrative cases than female attorneys	F	5.4	7.8	12.8	22.1	15.9	36.0
		M	26.6	13.8	10.5	3.9	0.7	44.6
18	When the fee awarded falls within judicial discretion, female attorneys are more often awarded lower attorney fees by the court than male attorneys for similar work	F	5.8	10.1	11.7	18.7	7.8	45.9
		M	27.9	11.8	7.2	1.3	0.3	51.5
21	Female attorneys on assigned panels are assigned more often to represent women and/or children than are male attorneys on such panels	F	15.3	16.6	16.6	12.1	5.7	33.8
		M	22.9	17.1	11.2	9.8	2.4	36.6
22	Female attorneys on assigned panels receive fewer violent felony assignments than male attorneys on such panels	F	5.8	9.0	9.6	12.2	11.5	51.9
		M	18.9	13.1	7.3	5.8	1.0	53.9
23	Female attorneys on assigned panels receive more assignments of rape and other sex crime cases than male attorneys on such panels	F	6.3	15.8	15.8	2.5	1.3	58.2
		M	18.7	14.3	9.4	3.0	0.0	54.7
24	When the assignment is within the judge's discretion, male attorneys are more often selected than female attorneys for a similar assignment	F	7.0	13.4	12.1	15.9	10.8	40.8
		M	30.1	14.1	9.7	6.3	1.5	38.3

IV. Family Court: Domestic Violence

			Never	Rarely	Some-times	Often	Very Often
27a	Potential domestic violence complainants are discouraged by law enforcement or probation from seeking Orders of Protection	F	10.8	25.7	39.5	12.6	11.4
		M	28.0	37.6	28.0	4.4	2.0
27b	Potential domestic violence complainants are discouraged by non-judicial personnel from seeking Orders of Protection	F	24.2	33.2	32.9	6.4	3.4
		M	43.4	35.7	17.6	2.7	0.5
27c	When responding to a domestic violence call, law enforcement encourages the use of Family Court over Criminal Court	F	1.8	6.4	30.0	30.0	31.8
		M	10.6	14.3	37.0	24.3	13.8
27d	Family Court petitioners are granted *ex parte* temporary Orders of Protection when warranted	F	0.5	0.5	21.1	34.9	43.0
		M	0.7	0.3	12.2	28.0	58.7
27e	When a Family Court Temporary Order of Protection is granted, the court directs the sheriff or local law enforcement to serve the Order on the respondent	F	3.5	5.4	16.9	24.8	49.3
		M	2.0	5.5	15.2	21.5	55.9
27f	There is a safe place within the courthouse where the alleged domestic violence victim can wait for the case to be called	F	13.4	22.7	23.0	13.4	27.6
		M	7.7	11.9	17.0	17.4	46.0
27g	When alleging a family offense in a petition for an Order of Protection, petitioners are asked why they have no visible injuries	F	30.6	24.5	35.4	5.7	3.8
		M	35.6	27.7	25.7	7.3	3.7
27h	Family Court will grant a Temporary Order of Protection when there is a pending matrimonial action	F	1.2	10.3	46.4	24.6	17.4
		M	2.6	8.8	31.3	24.7	32.6
27i	Temporary or Final Orders of Protection directing respondents to stay away from the home are granted when petitioners are endangered and seek such relief	F	0.3	2.0	26.6	31.6	39.6
		M	0.3	1.7	13.4	27.2	57.2
27j	The terms of the Temporary or Final Order of Protection are clearly read into the record by the judge or other issuing authority	F	3.1	12.7	22.5	27.6	34.1
		M	1.1	7.0	18.5	24.4	49.1

IV. Family Court: Domestic Violence

			Never	Rarely	Some-times	Often	Very Often
27k	Bilingual Court Orders of Protection are available and used when appropriate	F	11.1	15.8	24.5	20.9	27.7
		M	4.0	11.4	15.9	23.3	45.5
27l	When a petitioner is out of the family home because of domestic violence, judges also will issue an Order of Exclusion against respondent when such relief is sought	F	14.7	21.6	30.9	18.3	14.4
		M	2.5	13.1	29.1	23.6	31.7
27m	When a petitioner seeks a Temporary Order of Protection, the judge inquires whether the petitioner is also seeking a Temporary Order of Support	F	29.4	41.6	18.4	6.9	3.8
		M	16.7	29.0	32.1	13.6	8.6
27n	When a Temporary Order of Protection is granted, provision is made for the safety of the alleged victim in the courthouse upon the return appearance date	F	27.2	36.7	20.1	9.5	6.6
		M	11.0	22.4	24.1	19.7	22.8
27o	Mutual Orders of Protection are issued in cases involving a family offense	F	6.3	22.6	53.8	12.5	4.9
		M	9.3	28.4	47.4	12.7	2.2
27p	Mutual Orders of Protection are effective in family offense cases	F	16.2	26.9	42.9	10.1	3.9
		M	7.5	15.8	50.2	15.4	11.1
27q	Violating an Order of Protection results in incarceration	F	6.5	42.3	36.3	9.0	6.0
		M	0.7	25.2	48.6	17.7	7.8

IV. Family Court: Custody, Support and Visitation

			Never	Rarely	Some-times	Often	Very Often
29a	Custody awards disregard father's violence against mother	F	10.2	28.8	40.8	13.5	6.6
		M	28.8	45.3	19.1	5.0	1.8
29b	Custody awards disregard mother's violence against father	F	8.9	29.2	43.4	12.6	5.8
		M	16.8	28.7	31.9	8.6	14.0
29c	Father's violence against mother is a determining factor in who is awarded custody	F	1.2	9.9	55.2	20.8	12.9
		M	1.1	6.0	44.0	24.8	24.1
29d	Mother's violence against father is a determining factor in who is awarded custody	F	1.5	19.1	54.7	15.8	8.9
		M	5.8	25.6	43.7	15.2	9.7
29e	Support awards to domestic violence victims and their children are enforced	F	0.6	9.0	40.8	28.9	20.8
		M	1.1	2.3	24.4	32.1	40.1
29f	A request for supervised visitation is refused or ignored in a case where a family offense has been alleged	F	7.2	30.3	46.0	11.6	4.9
		M	10.6	38.1	40.7	8.4	2.2
29g	In my jurisdiction, free, neutral, supervised visitation services are available	F	24.3	24.9	27.2	10.8	12.7
		M	14.9	21.7	27.7	17.3	18.5
29h	There is adequate capacity at neutral supervised visitation programs available in my jurisdiction	F	29.7	33.7	22.4	9.9	4.4
		M	15.4	29.4	26.2	18.2	10.7
29i	The supervised visitation program(s) staff in my jurisdiction have adequate knowledge and experience regarding domestic violence	F	7.7	16.1	31.8	23.1	21.3
		M	5.0	10.0	30.6	30.6	23.9
29j	Judges consider who pays for the supervision as a factor in deciding to grant an order for supervised visitation	F	13.9	23.7	39.1	17.4	6.0
		M	19.6	23.3	37.0	11.4	8.7
29k	In my jurisdiction, there are readily available safe exchange services where a petitioner/plaintiff and respondent can safely meet visitation requirements	F	17.1	31.6	25.6	16.5	9.1
		M	9.7	21.1	27.8	24.2	17.2

IV. Family Court: Child Support

			Never	Rarely	Some-times	Often	Very Often
31a	Child support awards deviate from the presumptive Child Support Standards Act amount	F	1.1	26.2	55.0	12.7	5.0
		M	3.6	34.3	47.7	9.4	5.1
31b	When child support awards deviate from the presumptive Child Support Standards Act amount, they are lower than the presumptive amount	F	5.4	17.9	46.9	18.8	11.0
		M	3.5	22.0	48.6	18.9	6.9
31c	Child support is awarded on income above the income cap	F	3.6	21.1	42.9	21.8	10.6
		M	0.8	14.9	46.3	20.4	17.6
31d	Judges order the parties to share equally add-on expenses, such as child care, unreimbursed medical and educational expenses, etc., notwithstanding a disparity in the parties' income	F	6.4	33.4	38.4	15.1	6.7
		M	9.7	34.3	41.4	9.3	5.2
31e	In Supreme Court, pendente lite orders of child support in a matrimonial action are decided within 30 days of final submission	F	10.2	31.3	37.7	12.8	7.9
		M	4.6	26.5	30.6	21.5	16.9
31f	When ordering maintenance under the statutory guidelines, judges order a downward modification of child support paid to the custodial parent	F	5.4	23.6	45.9	18.1	6.9
		M	5.3	27.9	51.0	11.1	4.8
31g	Courts effectively enforce child support awards	F	1.6	15.7	44.8	23.4	14.6
		M	1.8	9.4	31.7	30.9	26.3
31h	Income execution orders issued by the court are effective	F	0.6	8.1	36.2	33.2	21.9
		M	1.2	3.9	32.3	34.3	28.3
31i	Respondents who intentionally fail to abide by court orders for child support are jailed for civil contempt	F	8.9	41.9	33.8	8.1	7.3
		M	3.6	38.5	38.9	10.5	8.4
31j	The court has services available to assist respondents in fulfilling child support obligations	F	23.8	37.6	26.2	7.1	5.3
		M	14.7	28.4	24.0	21.1	11.8

V. Equitable Distribution & Maintenance

			Never	Rarely	Some-times	Often	Very Often
33a	The Maintenance Guidelines adversely impact the non-monied spouse in a divorce where the combined income for a family of four is below the poverty line ($25,000)	F	8.8	18.4	32.0	17.0	23.8
		M	13.2	20.8	28.9	20.1	17.0
33b	The Maintenance Guidelines adversely impact the non-monied spouse in a divorce where the combined income for a family of four is low income ($25,000 - $60,000)	F	5.7	13.8	43.4	19.5	17.6
		M	10.9	18.8	38.8	17.6	13.9
33c	The Maintenance Guidelines adversely impact the non-monied spouse in a divorce where the combined income for a family of four is middle income ($60,000 - $150,000)	F	4.6	15.0	46.2	22.0	12.1
		M	11.7	24.6	47.4	7.6	8.8
33d	The Maintenance Guidelines adversely impact the non-monied spouse in a divorce where the combined income for a family of four is higher income (more than $150,000)	F	7.7	24.9	39.8	14.4	13.3
		M	16.8	31.2	33.5	11.6	6.9
34a	Judges deviate from the maintenance guidelines and adjust awards on income up to the cap ($184,000) when a party establishes the award is unjust or inappropriate and requests an adjusted amount	F	2.4	17.3	58.7	15.9	5.8
		M	2.1	18.4	56.8	16.8	5.8
34b	Judges award maintenance to be paid on the payor's income that exceeds the cap ($184,000)	F	6.0	25.1	48.2	14.1	6.5
		M	1.6	15.9	59.3	17.6	5.5
34c	Judges divide the assets equally, including business assets	F	1.7	22.8	47.4	19.4	8.6
		M	1.4	11.1	44.4	30.9	12.1
34d	In cases where the marriage is 20 years or more, nondurational (permanent) maintenance is ordered	F	11.9	42.0	36.3	8.8	0.9
		M	3.2	31.9	49.5	12.2	3.2
34e	In cases where the non-monied spouse has limited work skills and employability, nondurational maintenance is ordered	F	12.2	38.7	39.6	6.3	3.2
		M	4.6	21.1	53.6	16.0	4.6

V. Equitable Distribution & Maintenance

			Never	Rarely	Some-times	Often	Very Often
34f	The durational period realistically provides support for a non-monied spouse who has been out of the workforce for an extended period, including by reason of raising the family's children	F	4.4	27.2	49.1	15.4	3.9
		M	0.5	18.1	45.2	26.1	10.1
34g	In cases where durational maintenance is ordered, the court grants maintenance for the time periods indicated in the ranges of the Advisory Chart DRL 236B(6)(f)	F	0.5	5.4	42.9	39.9	11.3
		M	0.0	1.7	27.8	47.2	23.3
35a	When the duration is within the Advisory Chart range, it is set at the low end	F	0.5	11.1	50.8	25.9	11.6
		M	2.4	17.7	68.3	6.7	4.9
35b	When the duration is within the Advisory Chart range, it is set at the middle	F	0.5	4.7	58.3	25.0	11.5
		M	0.6	1.2	56.3	30.5	11.4
35c	When the duration is within the Advisory Chart range, it is set at the high end	F	6.9	44.1	45.2	3.2	0.5
		M	1.2	22.1	68.1	4.9	3.7
36a	Judges depart from the Advisory Chart ranges when the facts warrant	F	1.0	19.5	58.0	14.5	7.0
		M	1.1	10.6	59.3	24.9	4.2
36b	Judges impute income to the spouse who has been out of the work force for an extended period to raise the child(ren) when calculating maintenance and child support	F	4.4	15.6	38.7	26.2	15.1
		M	4.8	22.3	48.9	17.0	6.9

VI. Criminal Court: Domestic Violence

			Never	Rarely	Some-times	Often	Very Often
38a	Potential domestic violence complainants are discouraged by law enforcement or probation from seeking Orders of Protection in Criminal Courts	F	25.0	34.2	25.4	9.6	5.9
		M	41.8	36.4	16.2	4.0	1.7
38b	Potential domestic violence complainants are discouraged by non-judicial personnel from seeking Orders of Protection in Criminal Courts	F	31.1	38.6	17.8	9.1	3.3
		M	49.0	34.0	13.1	3.3	0.7
38c	Complainants in criminal cases are granted *ex parte* Orders of Protection when warranted	F	6.4	10.1	20.8	25.5	37.2
		M	3.2	4.3	14.2	27.3	50.9
38d	The terms of the Temporary or Final Order of Protection are clearly read into the record by the judge or other issuing authority	F	1.5	12.3	27.0	25.8	33.3
		M	2.5	9.1	16.9	23.2	48.2
38e	Complainants in criminal cases are asked why they have no visible injuries	F	26.6	26.6	31.8	6.9	8.0
		M	32.1	25.9	27.6	8.2	6.2
38f	When a Temporary Order of Protection is granted, provision is made for the safety of the alleged victim in the courthouse upon the return appearance date	F	24.3	31.8	24.7	11.7	7.5
		M	8.9	28.7	25.3	15.7	21.5
38g	Violating an Order of Protection results in incarceration	F	2.8	23.6	44.2	16.2	13.1
		M	0.2	14.2	48.0	20.3	17.2
38h	District Attorneys will prosecute domestic violence complaints	F	0.0	5.1	17.2	25.1	52.7
		M	0.0	1.4	14.0	22.1	62.4
38i	District Attorneys will prosecute domestic violence cases without the victim's cooperation	F	2.9	16.1	35.7	19.9	25.4
		M	2.2	18.2	36.7	23.9	19.0

VI. Criminal Court: Rape and Other Sex Crimes

			Never	Rarely	Some-times	Often	Very Often
40a	Bail in rape and other sex crime cases is set lower than that of other felonies in the same class	F	24.5	39.8	28.6	4.8	2.2
		M	40.8	43.1	11.4	3.6	1.0
40b	Bail in rape and other sex crime cases where parties know one another is set lower than in cases where parties are strangers	F	9.9	22.4	35.7	20.2	11.8
		M	16.5	22.2	42.8	14.5	4.0
40c	Sentences in rape and other sex crime cases are shorter when parties know one another than in cases where parties are strangers	F	6.7	16.5	42.4	19.6	14.9
		M	13.8	27.6	40.4	13.8	4.4
40d	Rape in the context of marriage is addressed with the same severity as rape outside of marriage	F	11.9	39.4	24.8	13.3	10.6
		M	6.3	31.1	30.7	17.7	14.2
40e	When there is improper questioning about the complainant's prior sexual conduct, judges invoke the rape shield law sua sponte if the prosecutor does not	F	5.0	20.6	32.2	17.8	24.4
		M	1.7	10.5	28.5	25.5	33.9
41a	There is less concern about rape cases where parties have a current or past relationship/ acquaintance on the part of judges	F	14.1	17.8	23.2	34.1	10.9
		M	32.6	27.6	19.3	17.1	3.4
41b	There is less concern about rape cases where parties have a current or past relationship/acquaintance on the part of prosecutors	F	19.4	26.6	14.5	31.1	8.3
		M	34.3	30.7	14.0	17.0	4.0
41c	There is less concern about rape cases where parties have a current or past relationship/ acquaintance on the part of jurors	F	4.3	8.2	19.6	43.5	24.3
		M	16.8	15.4	23.4	33.6	10.8
42a	In prostitution cases, judges treat the john or patron with less severity than the prostituted person	F	7.1	18.6	10.0	34.9	29.4
		M	20.4	21.4	15.8	31.9	10.5
42b	In prostitution cases, prosecutors treat the john or patron with less severity than the prostituted person	F	10.3	23.4	10.3	28.2	27.8
		M	21.6	25.5	16.3	28.0	8.5
42c	In prostitution cases, law enforcement treats the john or patron with less severity than the prostituted person	F	6.5	18.6	10.3	30.8	33.8
		M	18.2	21.5	16.4	32.1	11.7

VII. Negligence & Personal Injury

			Never	Rarely	Some-times	Often	Very Often
44a	Males receive higher awards than females for pain and suffering from judges	F	11.1	23.7	41.5	15.9	7.7
		M	43.7	28.9	23.0	2.9	1.5
44b	Males receive higher awards than females for pain and suffering from juries	F	8.8	21.3	41.0	19.2	9.6
		M	35.2	28.5	30.0	3.7	2.6
45a	Husbands receive higher awards than wives for loss of consortium from judges	F	11.7	28.3	32.8	18.9	8.3
		M	41.1	33.2	22.4	2.3	1.0
45b	Husbands receive higher awards than wives for loss of consortium from juries	F	10.3	21.5	37.9	20.5	9.7
		M	33.7	34.3	26.8	3.0	2.1
46a	Females receive higher awards than males for disfigurement from judges	F	3.5	9.6	46.1	27.2	13.6
		M	10.1	6.6	29.1	31.0	23.3
46b	Females receive higher awards than males for disfigurement from juries	F	2.6	4.9	42.5	32.3	17.7
		M	6.4	5.0	23.3	35.7	29.5
47a	Female homemakers receive lower awards than males who work outside the home from judges	F	2.6	5.7	32.5	36.0	23.2
		M	15.3	10.5	43.1	20.1	11.0
47b	Female homemakers receive lower awards than males who work outside the home from juries	F	1.9	4.5	26.9	41.3	25.4
		M	12.1	10.6	39.3	26.4	11.6

VIII. Court Facilities

			Yes	No			
49	In the courthouse where I primarily practice, there is a Children's Center	F	36.4	63.6			
		M	40.6	59.4			
			Never	Rarely	Some-times	Often	Very Often
50	Litigants will leave a child in a Children's Center located in a court facility different from the facility where their case is being heard	F	52.1	20.6	16.7	6.2	4.4
		M	41.5	23.7	20.1	7.4	7.4
51	In the courthouse where I practice, the Children's Center will not accept children of litigants with cases being heard in a different courthouse	F	36.2	8.6	7.8	8.6	38.8
		M	41.8	15.2	11.4	7.6	24.1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
52	Having a Children's Center available improves or would improve the calendaring of cases	F	3.3	2.3	10.6	40.6	43.3
		M	5.2	5.5	15.3	48.3	25.6
53a	Litigants are informed about the existence of and how to access the children's center	F	6.9	21.2	11.2	43.8	16.9
		M	5.8	14.5	14.0	44.2	21.5
53b	The Center's capacity is sufficient	F	13.1	35.7	13.6	28.6	9.0
		M	5.3	26.3	23.3	28.6	16.5
53c	The Center's hours of operation are sufficient	F	14.3	28.6	16.1	33.5	7.6
		M	6.8	26.4	14.2	36.5	16.2
53d	The Center is flexible as to when the child(ren) can be left and picked up	F	18.9	30.0	21.6	22.1	7.4
		M	6.8	24.8	19.7	30.8	17.9
53e	Children's Centers in family courts will admit children of non-family court litigants	F	43.2	33.9	11.0	11.0	0.8
		M	22.8	29.8	14.0	15.8	17.5
53f	The Center is adequately staffed	F	7.9	19.1	25.7	38.8	8.6
		M	5.1	16.2	23.2	42.4	13.1
53g	The Center is sufficiently set up for a broad age range of children	F	10.3	16.1	25.8	34.8	12.9
		M	4.2	16.7	24.0	43.8	11.5

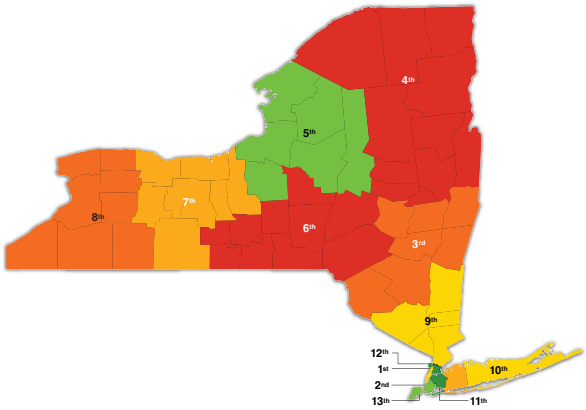
VIII. Court Facilities

			Never	Rarely	Some-times	Often	Very Often
55	In the courthouse(s) where I practice, onsite lactation facilities are available to court users including attorneys, litigants, witnesses, and jurors	F	65.2	16.4	10.5	5.2	2.7
		M	39.8	16.0	18.8	13.4	12.0
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
56	Court calendaring and efficiency are impacted by the lack of onsite lactation facilities for court users including attorneys, litigants, witnesses, and jurors	F	7.3	13.4	16.1	40.5	22.7
		M	21.2	21.2	17.4	31.0	9.3
			Most	Some	None	Don't Know/ No Opinion	
57a	In the courthouse(s) where you practice, there are public restrooms that have functional baby changing stations in men's rooms	F	1.4	2.6	9.6	86.4	
		M	11.9	16.6	28.4	43.1	
57b	In the courthouse(s) where you practice, there are public restrooms that have functional baby changing stations in women's rooms	F	11.3	23.2	30.4	35.1	
		M	6.0	3.9	2.7	87.4	
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
58	Court calendaring and efficiency are impacted by the lack of functional baby changing stations in public bathrooms for court users including attorneys, litigants, witnesses, and jurors	F	7.6	14.7	21.8	38.4	17.5
		M	18.6	27.9	19.9	26.4	7.3

Breakdown by Judicial District in Regard to Available Services and Facilities

In my jurisdiction, free, neutral supervised visitation services are available

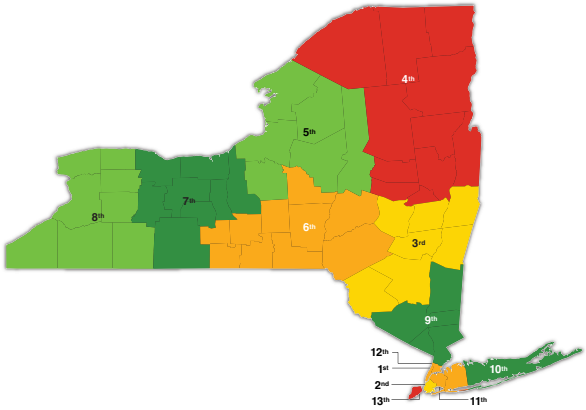
Judicial District	Never/ Rarely	Some-times	Often/ Very Often
1st	33.8%	38.0%	28.2%
2nd	25.0%	41.7%	33.3%
3rd	50.0%	34.1%	15.9%
4th	70.8%	12.5%	16.7%
5th	45.7%	19.6%	34.8%
6th	63.0%	25.9%	11.1%
7th	50.0%	27.8%	22.2%
8th	63.9%	8.2%	27.9%
9th	46.3%	26.3%	27.5%
10th N	58.5%	15.1%	26.4%
10th S	45.3%	26.4%	28.3%
11th	13.5%	32.4%	54.1%
12th	23.8%	33.3%	42.9%
13th	22.2%	44.4%	33.3%



Colors represent "Often/Very Often" percentages

Children's Centers

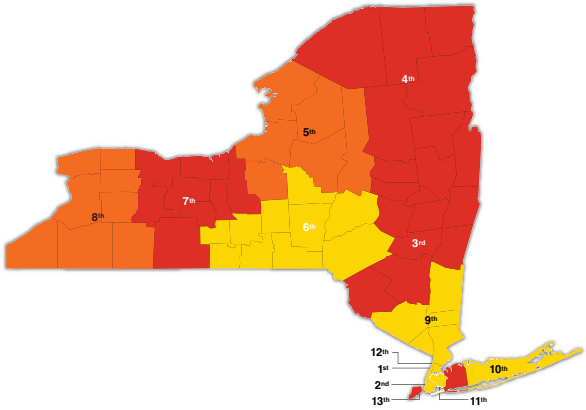
Judicial District	Percentage that were aware	Percentage that said yes
1st District	28%	25%
2nd District	59%	38%
3rd District	55%	30%
4th District	68%	6%
5th District	61%	47%
6th District	70%	23%
7th District	64%	58%
8th District	58%	47%
9th District	51%	68%
10th N District	48%	30%
10th S District	59%	64%
11th District	53%	31%
12th District	54%	31%
13th District	66%	17%



Colors represent "Often/Very Often" percentages

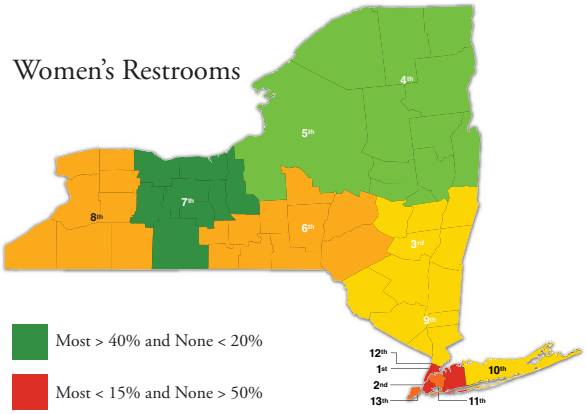
Lactation Facilities

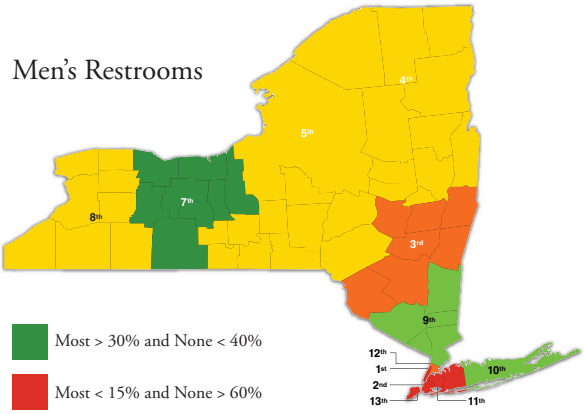
Judicial District	Never/ Rarely	Some-times	Often/ Very Often
1st District	65.3%	21.3%	13.4%
2nd District	73.1%	18.5%	8.4%
3rd District	79.1%	7.5%	13.4%
4th District	77.1%	11.4%	11.4%
5th District	70.6%	11.6%	17.6%
6th District	69.4%	5.6%	25.0%
7th District	80.4%	4.3%	15.2%
8th District	76.3%	11.3%	12.5%
9th District	70.5%	13.6%	15.9%
10th N District	82.5%	7.5%	10.0%
10th S District	75.9%	3.7%	20.4%
11th District	70.3%	18.8%	10.9%
12th District	68.3%	15.0%	16.7%
13th District	100.0%	0.00%	0.00%



Colors represent "Often/Very Often" percentages

Baby Changing Stations





Colors represent "Often/Very Often" percentages

Women's			Men's	
Most	**None**	**Judicial District**	**Most**	**None**
11%	53%	1st District	9%	65%
13%	59%	2nd District	13%	69%
30%	26%	3rd District	17%	55%
26%	16%	4th District	16%	41%
46%	27%	5th District	28%	44%
32%	35%	6th District	21%	43%
44%	20%	7th District	48%	24%
20%	40%	8th District	17%	45%
40%	29%	9th District	38%	39%
12%	53%	10th N District	12%	62%
36%	23%	10th S District	39%	32%
22%	57%	11th District	11%	65%
15%	51%	12th District	22%	62%
39%	35%	13th District	11%	61%

Survey Report Recommendations

I. Courthouse Environment/Sexual Harassment

FOR COURT ADMINISTRATION

a. Effectively publicize the procedure for filing sexual harassment and other types of complaints and the process for adjudication and follow-up which shall include notification to the complainant.

b. Prominently display the Office of the Inspector General's Toll-Free Bias Complaint Number in every courthouse and on the home page of the New York Courts website.

c. Ensure all judges and court personnel in all state and local courts comply with the NYS Labor Law 201-G which requires training as to how to effectively address sexual harassment and other inappropriate behavior.

d. Require regular training for all judges and court employees designed to make them aware of, and to recognize, gender bias and how to take appropriate immediate action when such behavior appears or is reported.

e. Require that the training for judges on how to control their courtrooms include ways in which judges can address inappropriate gender-biased conduct on the part of attorneys and court personnel.

f. Prepare and circulate a bi-annual report containing

- the types and number of complaints, including those received anonymously, per type filed with the UCS Office of the Inspector General including the gender of the complainant, e.g., sexual harassment, gender bias, discrimination, and how such complaints were resolved.
- any changes in NYS Unified Court System policies or procedures regarding such complaints.

g. Promulgate specific uniform rules of the Chief Administrative Judge delineating how complaints should be handled administratively within the court system. Absent a showing of good cause, complaints shall be fully resolved within six months of the filing of a complaint with written notification to all parties.

h. Create protocols to reduce the fear of reporting complaints by providing protective procedures for those who report instances of sexual harassment, bias, and other inappropriate behavior.

FOR JUDGES AND QUASI-JUDICIAL EMPLOYEES

Set the tone and affirmatively communicate expectations regarding civility, how to address inappropriate behavior, and how to engage equally with all parties, eschewing familiarity, and how to treat women attorneys as equal participants in the legal process.

FOR BAR ASSOCIATIONS

a. Effectively publish the procedure for filing complaints with the NYS Unified Court System Office of the Inspector General regarding sexual harassment, bias, and other inappropriate behavior in the court system.

b. Generate programs for attorneys emphasizing civility and professional behavior at all times that includes the treatment of women as equal participants in the profession and the obligation to intercede when observing inappropriate behavior.

FOR ATTORNEY DISCIPLINARY COMMITTEES

Publish an annual report on attorney disciplinary complaints similar to that listed above for Court Administration and specifically detailing the number of complaints based upon allegations of sexual harassment, gender bias, discrimination, and how such complaints were resolved.

II. Credibility and Court Interaction

FOR COURT ADMINISTRATION

a. Regular education and training should be required for all judges and UCS employees on implicit bias addressing gender, age, and race.

b. Charge all Administrative and Supervising Judges with the responsibility of actively promoting a bias-free culture within their respective jurisdictions which includes the obligation to root out bias and ensure the meaningful inclusion of women in court proceedings on an equal footing. They should each be required to file an annual report with the Chief Administrative Judge detailing the specific programs and efforts undertaken to achieve these goals.

c. Require judges to participate in education and training on their responsibility to promote civility, courtesy, and professionalism in their courtrooms with a particular focus on equal treatment of women as participants in the process.

d. Provide readily visible multi or bi-lingual signage about where to complain at every entrance to the building. Use all available technology to advise court users and staff of such information.

FOR JUDGES

a. Actively promote civility, courtesy, professionalism, and equal treatment for all in the courtrooms.

b. When instances of improper conduct arise, including gender bias, the judge shall appropriatly intervene.

FOR BAR ASSOCIATIONS

a. Statewide Bar Associations, including the New York State Bar Association, Women's Bar Association of the State of New York, and the New York State Trial Lawyers Association, should develop toolkits, including educational modules addressing civility, comportment, and professional attire, and make available for bar associations of different sizes.

b. Provide frequent CLE accredited educational programs addressing civility, comportment, professional attire, and bias-free behavior.

FOR LAW SCHOOLS

Integrate content regarding civility, comportment, professional appearance, and bias-free behavior into curriculum.

III. Domestic Violence

Regarding Orders of Protection

FOR JUDGES

a. The terms of a Temporary Order of Protection must be clear, explicit, and read into the record in the courtroom at the time of issuance.

b. Upon issuing a Temporary Order of Protection, inquire as to whether the petitioner also needs an Order of Support.

c. When the defendant/respondent is before the court, ensure that the defendant understands the terms of the Temporary Order and consequences for its violation.

d. Promptly set a hearing date for alleged violations of Orders of Protection.

e. Consider establishing compliance calendars to address defendant's/respondent's adherence to the Court's Orders of Protection.

f. In a matrimonial case where a prior Family Court Order is in place, including exclusion from the home, the matrimonial court shall hold a hearing as soon as possible before altering that Order or issuing a new Order.

FOR COURT CLERKS

When a Temporary Order of Protection petition is submitted to the clerk, the clerk shall inquire of the petitioner whether the petitioner is also seeking an Order of Support. If so, the clerk must provide the appropriate form to the petitioner and assist in completing the form if necessary.

FOR ATTORNEYS

a. Attorneys should promptly bring violations of Orders of Protection to the attention of the court.

b. When a Family Court Temporary or Final Order of Protection is granted and where a matrimonial case is pending, or subsequently filed, require the attorneys to disclose the existence of the Family Court Order of Protection in the matrimonial filing.

c. Attorneys must disclose to the matrimonial judge and opposing counsel any Family Court Temporary or Final Order of Protection granted during the pendency of the matrimonial action.

FOR LAW ENFORCEMENT

Require officers to remain neutral in referring a complainant to a particular court.

FOR PROSECUTORS

Develop protocols to ensure Orders of Protection are extended through the pendency of a proceeding on a claim of a violation of the Order.

Domestic Violence Generally

FOR COURT ADMINISTRATION

a. Provide funds in the UCS budget for a dedicated domestic violence resource coordinator for every domestic violence and integrated domestic violence court to assist the Court in any case involving domestic violence.

b. Promulgate a rule requiring that family offense cases involving domestic violence be heard without delay.

c. To enhance safety, provide petitioners/complainants in domestic violence cases with a safe waiting area separate and inaccessible from respondents/defendants.

d. In any court that hears cases involving family offenses, provide and require annual specialized education/training for all judges and non-judicial personnel regarding the dynamics of the crime of domestic violence and its impact upon the victims.

FOR JUDGES

Calendar domestic violence cases promptly.

FOR LAW ENFORCEMENT

Require comprehensive education and training for all law enforcement officers on all aspects of domestic violence.

FOR PROSECUTORS

a. Require education and training for prosecutors, paralegals, investigators, and intake staff on all aspects of domestic violence.

b. Provide complainants with a victim's rights notice that includes information about the role of the prosecutor versus a private attorney and referral to victim advocacy services where appropriate.

FOR THE LEGISLATURE

a. Establish a funding stream dedicated to providing victim advocates in every Family Court and Criminal Court to assist domestic violence victims.

b. Elevate family offenses to an aggravated form of the underlying crime to bump up the penalty one level. For example, an assault would be charged as an aggravated assault where the parties involved meet the statutory relationship definition for a family offense. The relationship should create an aggravating factor. Require a family offense indicator in the criminal history record.

FOR LAW SCHOOLS

Ensure that courses provide accurate information about the dynamics of the crime of domestic violence.

IV. Domestic Violence and Custody, Support, and Visitation

Custody

FOR OFFICE OF COURT ADMINISTRATION

Provide for judges and other court personnel who are involved in custody proceedings education and training on

- implicit bias, domestic violence, and the impact of the use of power and control tactics in an intimate relationship
- the immediate and long-term impact of domestic violence on the children and other members of the household
- best practices for presiding over cases with pro se litigants
- best practices for presiding over cases with interpreters.

FOR THE LEGISLATURE

Amend DRL 240.1(a) and FCA Article 6 regarding child custody determinations as follows: where the court has found by a preponderance of the evidence that a family offense has occurred, this finding shall create a rebuttable presumption that it is not in the best interest of the child to be placed in sole custody, legal custody, or shared physical custody with the parent found to have committed a family offense. Such presumption may be rebutted if a preponderance of the evidence shows that such presumptive custody award would not be in the best interest of the child.

Supervised Visitation

FOR COURT ADMINISTRATION AND LEGISLATIVE LEADERS

Work together to establish accessible, supervised visitation and safe exchange programs at no cost for indigent and low and middle income litigants in all jurisdictions statewide.

V. Child Support

FOR OFFICE OF COURT ADMINISTRATION

a. Take more rigorous measures to ensure that all *pendente lite* child-support decisions are rendered in compliance with the 30 days from the date of submission rule.

b. Provide education and training for matrimonial judges, referees, and support magistrates on

- the economic realities of raising children of various age groups

- how to impute income in cases of small or cash businesses
- accounting practices to address hidden sources of income and how to evaluate lifestyle spending practices
- relevant Department of Labor regional statistics to assist in determining reasonable income expectations and business valuations.

VI. Equitable Distribution and Maintenance Guidelines

FOR COURT ADMINISTRATION

Consistent with education recommended in the Child Support section, mandate education and training for judges on the imputation of income and accounting practices, including in cases of small or cash businesses, as well as, addressing hidden sources of income, evaluating lifestyle spending practices, and recognizing the economic realities of raising children of various age groups.

FOR JUDGES

a. The contributions of a spouse-homemaker should expressly be credited as a factor in determining equitable distribution and in awarding maintenance.

b. In determining the amount and duration of maintenance, judges should expressly consider the impact of domestic violence on the issue of the spouse-victim's employability.

FOR THE LEGISLATURE

a. Amend the Domestic Relations Law maintenance formula to account for the change in the federal tax law which disallows the deduction of maintenance by the payor.

b. Amend the Domestics/Relations Law to increase upwards the guidelines durational limits, and expressly include the option of non-durational maintenance, to enable judges, in making such awards, to take into account the realities of a spouse's limited employability prospects due to domestic violence as well as the other criteria currently listed in the statute.

VII. Gender-Based Violence

FOR COURT ADMINISTRATION

a. Ensure that every judge receives comprehensive and ongoing education and training on all aspects of sexual assault, including but not limited to the identification of special issues in cases of date rape, marital rape, and assault between those who know each other. The training should offer information supported by the latest research in the area.

b. In a skill-based setting, educate judges on the difference between vigorous cross-examination that protects the defendant's rights and questioning that includes improper stereotyping and harassment of the victim.

c. Establish Human Trafficking Intervention Courts throughout the state.

FOR JUDGES

a. Treat acquaintance or intimate partner rape with the same seriousness and severity as rape involving strangers throughout the pendency of the case from arraignment through sentencing. Include instructions for jurors to apply the same standard.

b. When appropriate, consider exercising the authority to invoke, sua sponte, Criminal Procedure Law Sec. 60.42, known as the Rape Shield Law when there is improper questioning about the complainant's prior sexual conduct in the event the prosecution fails to do so.

c. In sentencing, take into consideration victim impact statements.

FOR PROSECUTORS

a. Ensure that all prosecutors receive education and training as to the particular areas recommended for judges as well as in how to engage victims to increase their cooperation and willingness to proceed against the defendant.

b. Establish procedures that permit rape victims to deal with only one assistant district attorney through all stages of the proceedings where possible.

c. Treat acquaintance or marital (intimate partner) rape with the same seriousness as rape involving strangers throughout the pendency of the case from arraignment through sentencing.

d. Consider the availability of the rape shield law in response to improper questioning about the complainant's prior sexual conduct.

e. Routinely prosecute patrons of prostitution, as well as, the traffickers and promoters.

f. Work collaboratively with the Human Trafficking Intervention Court (where available).

FOR LAW ENFORCEMENT

a. Ensure that all law enforcement officers and policy makers receive the education and training on the dynamics of sexual assault and on the best practices for gathering and preserving crime scene evidence in such cases.

b. Ensure that all rapes, whether by a stranger, acquaintance, intimate partner, or family member, are treated with equal seriousness.

c. Maintain specialized units or a dedicated, specifically trained officer to deal sensitively with sex offenses.

FOR HOSPITALS AND MEDICAL FACILITIES

a. Ensure that all emergency room and other relevant staff are trained in gathering and preserving evidence including rape kit collection and storage as well as ascertaining whether the alleged rape is committed by an acquaintance, intimate partner, or family member.

b. Encourage the victim to submit to a forensic rape exam.

c. Inform the victim that the forensic rape exam may be paid for through the New York State Office of Victims Services.

FOR THE LEGISLATURE

a. Require and fund every emergency room to be equipped with the ability to identify, examine, and treat any victim of rape or sexual assault and to administer a rape kit.

b. Define all sex crimes as aggravated where the parties meet the statutory definition for intimate relationship in family offense cases. The relationship should constitute an aggravating factor. This shall include an intimate partner harming any child in the family whether or not the child is the alleged offender's biological child.

VIII. Appointments and Fee-Generating Positions

FOR COURT ADMINISTRATION

a. Distribute FCMS customized reports that list fiduciary appointments and fees awarded by judges in each judicial district to relevant judges through the district offices. A new electronic system has been put in place that will allow such reporting going forward.

b. Provide professional networking opportunities for judges to become acquainted with the members of the various panels that list those who are qualified for appointments.

FOR BAR ASSOCIATIONS

a. Provide professional networking opportunities for judges to become acquainted with panel members.

b. Establish a mentoring program to assist female attorneys in building the skills and recognition to receive violent felony assignments.

IX. Negligence and Personal Injury

FOR COURT ADMINISTRATION

The pattern jury instructions should be modified to emphasize the monetary value of homemaker services.

FOR BAR ASSOCIATIONS

Offer CLE courses that provide guidance on the evidence necessary to establish the monetary value of homemaker services.

X. Court Facilities

Children's Centers

FOR COURT ADMINISTRATION

a. Provide a fully staffed, accessible Children's Center in every courthouse. The Children's Center hours should mirror the hours of court operations. The Center should provide age-appropriate programming and information regarding appropriate outside services.

b. Ensure no child is turned away from a Children's Center or forced to wait in hallways until his or her parents' case is called. Center rules regarding hours of operation, usage, and age limitation should be flexible, accessible, and inclusive.

FOR COURT ADMINISTRATION AND LEGISLATIVE LEADERS

Work together to establish free, accessible Children's Centers in all courthouses statewide.

Lactation

FOR COURT ADMINISTRATION

a. Provide a committed space in every courthouse statewide for lactation/breast-feeding use that meets New York State Department of Health regulations. This space may include commercially available pods designed for this purpose only where more appropriate space cannot be located in the courthouse or UCS facility. The amount of space available should be adequate to meet the demand by court personnel and court users. Notice of lactation/breast-feeding space shall be posted.

b. Educate judges, district executives, and chief clerks about the law requiring time allowances and space for employees to address lactation needs.

Restrooms and Baby Changing Stations

FOR COURT ADMINISTRATION

Work collaboratively and aggressively with municipalities to:

- update courthouse bathrooms, ensure sanitary conditions, provide feminine hygiene products, and inside each stall provide: hooks, working locks, and receptacles for waste.
- provide baby changing stations in all bathrooms including women's, men's, gender neutral, and family bathrooms.

General

FOR COURT ADMINISTRATION

a. Provide appropriate multi or bilingual signage in the court houses and educate the public through the UCS website as to the designated areas for Children's Centers, lactation, and diaper changing stations. Incorporate such information into any future technological programming for mapping courthouses to improve public access to such facilities.

b. Educate judges and non-judicial staff regarding appropriate accommodations for the needs of pregnant and nursing mothers and as to the availability of Children's Centers, lactation facilities, and baby changing tables in the courthouses.

c. As future courthouse renovations or buildings are planned, incorporate space for Children's Centers, lactation facilities, and include baby changing tables in every public restroom.

d. Ensure that comment cards are readily available in every courthouse and that the online link to the comment card is publicized in courthouses.

e. Produce and distribute an informational brochure(s) in multiple languages for people entering the courthouse. This should include the right to be treated fairly and respectfully. The brochure should inform court users about the location of the Children's Center, lactation space, and baby changing tables. In addition, information should be made available regarding how to file a complaint of sexual harassment and/or bias or any other inappropriate behavior, as well as, the right to language access and how to request an interpreter.

f. Court clerks and other designated court personnel should be responsible for providing the information. Such information should be effectively disseminated and prominently displayed in the court facility. A link to the brochure should also be on the UCS website main page in multiple languages. Incorporate such information into any future technological programming designed to inform court users about the courthouse.

Women in The New York State Judiciary 1986, 1996, 2006, 2016 & 2020

Court	1986	1996	2006	2016	2020
Court of Appeals	14%	30%	57%	57%	43%
Appellate Division	14%	19%	13%	44%	54%
Administrative Judges	5%	23%	35%	33%	34%
Supreme Court	8%	12%	27%	36%	37%
Acting Supreme Court*	16%	30%	30%	37%	44%
Surrogates Court	7%	15%	28%	35%	34%
Court of Claims Judges	10%	15%	16%	29%	36%
County Court (Outside NYC)**	4%	5%	10%	15%	20%
Family Court (Outside NYC)	10%	22%	48%	57%	62%
District Court (Nassau / Suffolk)	7%	11%	41%	34%	32%
City Court (Outside NYC)***	5%	12%	17%	23%	27%
NYC Family	54%	58%	71%	63%	70%
NYC Civil Court	20%	42%	48%	59%	71%
NYC Criminal Court	21%	48%	40%	43%	50%
Housing Court	20%	40%	49%	65%	60%
Statewide Totals	11%	20%	29%	38%	42%

* Judges from other trial level courts who are designated to sit in Supreme Court.

** Judges who sit in County Court only and judges who combine service on the County Court with service on Family and/or Surrogates Court.

*** City Court Judges, Acting City Court Judges, and Chief Judges of the City Court.
Breakdown by Judicial District in Regard to Available Services and Facilities

Women in the New York State Judiciary Leadership 2006 to 2020

	2020			2016			2006		
Administrative Judges	**Total**	**Women**	**% Women**	**Total**	**Women**	**% Women**	**Total**	**Women**	**% Women**
Presiding Justices Appellate Division	4	1	25%	3	1	33%	4	1	25%
Presiding Justice Court of Claims	1	0	0%						
Administrative Judges NYC	11	5	45%	12	3	25%	10	3	30%
Administrative Judges Upstate Judicial Districts 3 thru 9	7	2	29%	7	2	29%	7	2	29%
Administrative Judges 10th Judicial District Nassau/Suffolk	2	0	0%	2	0	0%	2	0	0%
Total	25	8	32%	24	6	25%	23	6	26%

Court and District Officals and Administrators

	2020			2016			2006		
Officals/Administrators	**Total**	**Women**	**% Women**	**Total**	**Women**	**% Women**	**Total**	**Women**	**% Women**
County Clerks	5	2	40%	5	2	40%	5	2	40%
Clerk Court of Appeals	1	0	0%	1	0	0%	1	0	0%
Clerk of the Court Appellate Division	4	2	50%	4	3	75%	4	2	50%
Chief Clerk Appellate Term (1st & 2nd Dept.)	2	0	0%	2	0	0%	2	0	0%
Chief Clerk Court of Claims	1	1	100%	1	1	100%	1	0	0%
District Executives	9	2	22%	8	2	25%	7	3	43%
Chief Clerks NYC	20	8	40%	18	8	44%	16	4	25%
Chief Clerks - Upstate, Nassau, Suffolk	222	186	84%	216	181	84%	228	180	79%
Chief Clerk IV (JG-32)	27	14	52%	28	13	46%	34	18	53%
Chief Clerk III (JG-28)	32	22	69%	34	25	74%	33	23	70%
Chief Clerk II (JG-25)	59	50	85%	53	47	89%	68	57	84%
Chief Clerk I (JG-21)	104	100	96%	101	96	95%	93	82	88%

NYCOURTS.GOV

Cases of Mistaken Identity: Female Judge Told 'I'd Rather Wait for the Judge'

New York Law Journal

February 6, 2019 Wednesday

Copyright 2019 ALM Media Properties, LLC All Rights Reserved Further duplication without permission is prohibited

New York Law Journal

Section: OFF THE FRONT; Pg. p.1, col.3; Vol. 261; No. 25

Length: 757 words

Byline: SUSAN DESANTIS

Body

AS WAS the custom, Justice Sallie Manzanet-Daniels wasn't wearing her robes because she didn't have a jury sitting that day. "How can I help you?" she asked.

"Really ma'am I don't want to be rude but I don't want to repeat myself when the judge comes down," the lawyer replied.

She tried to make it clear to the lawyer that he was already dealing with the judge. "I would rather just wait for the judge," he repeated.

"After the third time, I kind of tapped my hand on the bench and said 'I am the judge!' His mouth dropped open. His eyes popped wide open," said Manzanet-Daniels who is now an appellate justice in Manhattan but was then a Civil Court judge.

"In the three decades that I have been in the business, I've seen great strides and great movement forward but it's still there and it needs to be called out every time it surfaces," she said.

Even if it's subtle, she said it's important to expose stereotypes. Manzanet-Daniels, who is of Puerto Rican descent, said it's hard sometimes to tell whether she's being treated a certain way because of her gender or ethnicity. When she was a criminal defense attorney, for instance, she would often be mistaken for the interpreter.

Other times, she wondered whether lawyers didn't take her seriously because of her gender or because of her youth.

"If I made a ruling, I would sometimes get from the older attorneys the 'When I was in law school' kind of speech. I don't think male lawyers got the same kind of pushback," she said.

Judges all over the country are sharing such stories since Michigan attorney Marie Reimers tweeted out her frustration over being confused for a paralegal Wednesday.

Texas Supreme Court Justice Eva Guzman could relate.

"This evening I was once again told, 'You don't look like a judge,'" Guzman wrote, prompting Michigan Judge Qiana Lillard to share a similar anecdote.

Supreme Court Justice Doris Ling-Cohan, who serves on the Appellate Term, First Department in Manhattan and is of Asian descent, can relate.

"I remember as an attorney going into criminal court and I was the prosecutor and the judge asked me if I was an interpreter," she said.

After Sept. 11 when she went through the downtown police blockade below Canal Street she had trouble getting through despite a police placard, a badge and her judge's ID.

"One day, my husband drives me to work, with me in the passenger seat, and the police not only do not bother asking him for ID but they run to lift the barricade for him," she said.

Other times when representing clients, she was mistaken for the defendant. When she ran for election to the Supreme Court in 1995, she was frequently told she didn't look like a judge. "I have to fight through people's perceptions of what judges look like," she said.

But some things have improved, she said. In the early 2000s when she was a Civil Court judge, she said, "I remember looking at this huge courtroom with hundreds of lawyers and there were no females. And that's changed."

Certainly, that's true in the Appellate Division, First Department. Since Supreme Court Justice Ellen Gesmer was elevated to that court in 2016 along with two other colleagues, the First Department became more female than male.

"What I think happens that is more subtle is when I ask a question lawyers will adapt a condescending tone that I don't think they'd use with male colleagues," she said. "My sense is there's a little more of that with women judges."

When Gesmer was a young lawyer, she said the sexism was more overt. She would say something in a meeting and no one would respond. Yet. when a male lawyer would say the say thing later in the meeting, everyone would say what a good idea it was.

"I haven't had anything directly sexist in quite a while which I say with a caveat because some of it is stuff you get inured to," she said.

She tells the story of letting her boss at legal services know that she was pregnant.

"He said, 'You're kidding.' I don't think it occurred to him that lawyers could get pregnant," she said.

Cori Rosen, an associate at Rosenberg & Estis who is on maternity leave with her second child, was returning to her Third Avenue office with her papers in a litigation bag. In the elevator, she encountered a lawyer who worked for another firm.

He asked her at which court transcription service did she work. When she said she wasn't a transcriber, he assumed that she was a legal secretary. She told him she was a litigator.

"There was no apology," she said. "It was just awkward."

@| Susan DeSantis can be reached at *sdesantis@alm.com* Twitter: @sndesantis

Load-Date: February 6, 2019

End of Document

MARYLAND
THE DAILY RECORD
YOUR TRUSTED SOURCE OF BUSINESS, LEGAL AND GOVERNMENT NEWS SINCE 1888.

Female judges overcame challenges to break down barriers

By: Special to The Daily Record Meg Tully September 20, 2018

Wanda Keyes Heard, Chief Judge for the Eigth Judicail Circuit Court of Maryland. Photo by Maximilian Franz

Before she was sworn in as the first female chief judge in the Baltimore City Circuit Court, Wanda Keyes Heard was a little girl in a class of mostly white children.

Her parents, who lived in New York, sued the school system to desegregate the schools.

The school was forced to create one classroom with mixed-race students, and Keyes Heard was the only African-American girl in the class. Most other African-American students at the "integrated" school were put in segregated classrooms.

That experience put her on the path to leadership, going to college in Maryland and joining the city bench in 1999. She attributes much of her success to the early support of her father, who was an educator.

"There were no African-American women lawyers that I knew of," Heard said. "But yet he encouraged me and told me that I could do anything I wanted to do with an education. I put my head to the grindstone, I worked hard, I took opportunities to do things in the law."

The number of women judges in Maryland has been growing, to about 41 percent in 2018, compared to about 29 percent in 2008, according to a report produced by Forster-Long and the National Association of Women Judges. Still, those numbers trend under what is reflected in the general population.

For instance, a report by progressive group The American Constitution Society, "Gavel Gap," found that Maryland state court judges as of December 2014 were 39.7 percent women, compared with 51.5 percent women in the state population. Women of color were even less represented, 17 percent female judges "of color" compared to 25 percent of the population.

Heard, who became chief judge as the most senior judge, said that she hopes her holding the role will dispel any "nonsense" that a woman, or a black woman, can't be a chief judge and conduct ceremonies in a professional and judicial way.

"I hope that I do leave an impact that might help further the view of women as judges," Heard said. "Not to say that it's solely because I'm a woman but that they grow to understand that women are capable of being and standing in the roles where men traditionally have stood."

The women who have risen through the ranks of judges in Maryland today are leading innovative programs, going out of their way to speak to community groups and inspire young people to follow their dreams. They haven't been deterred during years of being one of the only women in a room.

'Forefront of change'

Even more recent appointments are still breaking barriers.

Hon. Donine Marie Carrington

Judge Donine Carrington was appointed to the bench in October 2017 and is the first African-American woman to serve on the Charles County Circuit Court.

"I believe that it is still difficult for women as evidenced by me being the first African-American woman judge but progress and change is among us and I am humbled to be at the forefront of this change," Carrington stated in an email.

She has started a kiddie court program where elementary school girls come to her courtroom and role play a jury trial of "Who stole the milk and cookies?" in addition to more traditional internship and shadow programs for older students.

Apply anyway

Hon. Cathleen Vitale

Judge Cathleen Vitale of the Anne Arundel Circuit Court is a self-described "law geek" who, upon taking the bench, immediately read the "Maryland Rules" cover to cover.

Vitale, a former Anne Arundel County Council member and state delegate, met U.S. Rep. Marjorie Holt when she was in junior high school. She was the first woman lawyer she knew. Holt encouraged her, pushing her in law school to apply for competitive clerkships and opportunities at the state's attorney's office. She told her about her own experience as a woman serving on the House Armed Services Committee and told Vitale not to give up.

"She just had this way of making me very comfortable and really bolstering me to believe I could do and go after anything I wanted to," Vitale said.

Becoming a leader from **the judiciary branch**

Hon. Nicole Pastore-Klein

Judge Nicole Pastore-Klein of the Baltimore City District Court heard it over and over once she started sitting on the bench: The defendants couldn't find a job. They had applied and applied but were standing before her again with no job and a new criminal charge.

After the unrest of April 2015, Pastore-Klein spent a year researching and then created the District Court Re-entry Project, which offers job training and job search assistance to people referred through the district court.

People need to face consequences for their actions, Pastore-Klein said. But they can also turn their lives around.

"You have to be there to aid and assist and do what we can do to help people become productive members of society," she said.

In October, the program will celebrate its fifth graduation, and has had 92 graduates thus far. Of those 92, only one has reoffended. In Maryland generally, about half of the offenders released from prison return within three years of their release, Pastore-Klein stated in a law review article on the project.

In her own career, Pastore-Klein was the first attorney in her family and the first one to go to college. She interned for Judge Arrie Davis on the Court of Special Appeals and found that to be a critical connection. As a result, she has

started an internship program at her high school, Notre Dame Preparatory School, that connects young women with similar internship experiences in law, medicine and business.

Speaking out

Hon. Sharon Burrell

Judge Sharon V. Burrell speaks at graduations, cotillions, the church she grew up in, career days — she takes those opportunities to speak to groups to give back and serve as a role model.

"I've been given a great honor and responsibility and I take it seriously," Burrell said.

A public school student in Washington D.C., her parents stressed the importance of an education. She was the first person in her family to graduate from college and went on to earn her J.D. from Harvard Law School.

She clerked for Judge Harry A. Cole, the first African American to serve on the Maryland Court of Appeals. For 21 years, she served in the Montgomery County Attorney's Office. About 10 years ago, she was the first African-American female judge appointed to the Circuit Court for Montgomery County.

"The bench should reflect society, a community that you serve. You bring your experiences with you to the bench," Burrell said. "I think it's helpful to have people of varying experiences and you definitely should have female judges."

THE DAILY RECORD Women WHO LEAD

This article is featured in The Daily Record's Women Who Lead: A Woman's Guide To Business. The mission of the Women Who Lead (formerly Path to Excellence) magazine is to give our readers the opportunity to meet successful women of all ages, backgrounds and beliefs and learn how they define success. Read more from Women Who Lead.

Tweet Email Share 804 Share Print

To purchase a reprint of this article, contact reprints@thedailyrecord.com.

Copyright © 2023 Maryland Daily Record | 200 Saint Paul Street, Suite 2480, Baltimore, MD 21202 | (443) 524-8100 | ISSN 2474-784X

Harvard
Business
Review

Gender

Female Supreme Court Justices Are Interrupted More by Male Justices and Advocates

by Tonja Jacobi and Dylan Schweers

April 11, 2017

Summary. A new, empirical study shows that male Supreme Court justices interrupt the female justices approximately three times as often as they interrupt each other during oral arguments. Conservative justices interrupt the liberal justices more than twice as often as vice... **more**

During the Senate hearings on whether he should become the next associate justice of the Supreme Court, Neil Gorsuch maintained iron discipline in refusing to commit himself to any

position that could count against him. Gorsuch maintained a steadfastly calm demeanor, but he showed his cards in one regard: He could not help repeatedly interrupting the liberal female senators. In this way, he proved himself to be well qualified to sit on the highest judicial bench. Our new empirical study shows that the male justices interrupt the female justices approximately three times as often as they interrupt each other during oral arguments. And the conservative justices interrupt the liberal justices more than twice as often as vice versa.

We examined the transcripts of 15 years of Supreme Court oral arguments, finding that women do not have an equal opportunity to be heard on the highest court in the land. In fact, as more women join the court, the reaction of the male justices has been to increase their interruptions of the female justices. Many male justices are now interrupting female justices at double-digit rates per term, but the reverse is almost never true. In the last 12 years, during which women made up, on average, 24% of the bench, 32% of interruptions were *of* the female justices, but only 4% were *by* the female justices.

These results are not limited to the current Supreme Court. We conducted an in-depth analysis of the 1990, 2002, and 2015 terms to see whether the same patterns held when there were fewer female justices on the court. We found a consistently gendered pattern: In 1990, with one woman on the bench (former Justice Sandra Day O'Connor), 35.7% of interruptions were directed at her; in 2002, 45.3% were directed at the two female justices (O'Connor and Ruth Bader Ginsburg); in 2015, 65.9% of all interruptions on the court were directed at the three female justices on the bench (Ginsburg, Sonia Sotomayor, and Elena Kagan). With more women on the court, the situation only seems to be getting worse.

Prior research in linguistics and psychology has shown that women are routinely interrupted by men, be it in one-on-one conversations or in groups, at work or in social situations.

Interruptions are attempts at dominance, and so the more powerful a woman becomes, the less often she should be interrupted. Yet even though Supreme Court justices are some of the most powerful individuals in the country, female justices find themselves consistently interrupted not only by their male colleagues but also by their subordinates: the male advocates who are attempting to persuade them.

Despite strict rules mandating that advocates stop talking immediately when a justice begins speaking, interruptions by male advocates account for approximately 10% of all interruptions that occur in court (excluding justices interrupting advocates, which is standard procedure). In contrast, interruptions by female advocates account for approximately 0%. The problem was particularly observable when, in 2015, male advocates interrupting Justice Sotomayor was the most common form of interruptions of any justice, accounting for 8% of all interruptions in the court. Justice Sotomayor is also the court's only woman of color.

Can this pattern be explained by other factors? Of the 113 justices to have served on the Supreme Court, only four have been women, and three of those four were appointed by Democratic presidents. We expected that partisan differences could account for some portion of the interruptions. Since justices do not always vote in accordance with the party of their nominating president, we used Martin-Quinn scores, the most common way to analyze judicial ideology, to determine how liberal or conservative each justice was. We found that conservative justices disproportionately interrupt liberal justices: 70% of interruptions were of liberals; only 30% were of conservatives. In addition, advocates interrupt liberal justices more than they interrupt conservative justices. Despite this pattern, gender is the stronger factor in interruption: In 1990 the moderately conservative Justice O'Connor was interrupted 2.8 times as often

as the average male justice. (It is worth noting that the results were not driven by Antonin Scalia, despite his reputation as a particularly pugnacious justice.)

Two of the three sitting female justices, Kagan and Sotomayor, are the most junior justices on the court. But, once again, seniority does not explain the gender pattern. Although senior justices do interrupt junior justices more frequently than vice versa, and the difference is statistically significant, gender is approximately 30 times more powerful than seniority. The most junior justice on the court will now be Gorsuch, and we expect the greater importance of gender over seniority to become even more apparent.

Length of tenure does matter in one particular respect: Time on the court gives women a chance to learn how to avoid being interrupted — by talking more like men. Early in their tenure, female justices tend to frame questions politely, using prefatory words such as “May I ask,” “Can I ask,” “Excuse me,” or the advocate’s name. This provides an opportunity for another justice to jump in before the speaker gets to the substance of her question.

We found that women gradually learn to set aside such politeness. All four of the female justices have reduced their tendency to use this polite phrasing. Justice Sotomayor adjusted within just a few months. Justices O’Connor and Ginsburg gradually became less and less polite over decades on the court, eventually using the polite phrases approximately one-third as much as they did initially. Justice Kagan is still learning: She uses polite language more than twice as often as the average man, although half as often as she did in 2010. We do not see a similar trend with the men, because male justices rarely use these polite speech patterns, even when they first enter the court. It is the women who adapt their speech patterns to match those of the men.

These behavior patterns are important, as oral arguments shape case outcomes. When a female justice is interrupted, her concern is often left unaddressed, which limits her ability to influence the outcome of the case. Women changing their questioning techniques should not be the only response to this problem. The chief justice should play a larger role as referee, enforcing the rule that prohibits advocates from interrupting the justices, and preventing an interrupting justice from continuing.

Our research aligns with previous research that has shown that women get talked over much more often than men in all sorts of settings, likely due to unconscious bias. What our findings additionally suggest is that there is no point at which a woman is high-status enough to avoid being interrupted.

TJ

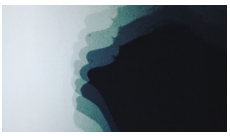
Tonja Jacobi is a professor at Northwestern Pritzker School of Law.

DS

Dylan Schweers is a J.D. candidate at Northwestern Pritzker School of Law.

Recommended For You

Why Hillary Clinton Gets Interrupted More than Donald Trump



How to Identify - and Fix - Pay Inequality at Your Company

How to Advance in Your Career When Your Boss Won't Help

PODCAST
The Art of Claiming Credit

Sign up for our newsletter

Politics

Two years in, Biden has prioritized nominating women of color as judges

The 19th took a closer look at how Biden's administration is shaping the federal bench, as well as how his judicial appointments compare to Trump and Obama.

By Candice Norwood, Jasmine Mithani

Published January 26, 2023, 12:10 p.m. ET

We're answering the "how" and "why" of politics news. Subscribe to our daily newsletter.

President Joe Biden entered the White House two years ago this month, bringing with him a promise to help diversify the nation's highest court by nominating a Black woman.

He fulfilled that commitment in June when Justice Ketanji Brown Jackson became the first Black woman to sit on the U.S. Supreme Court. While Jackson's historic confirmation was the most visible sign of systemic change in the judiciary, the president has prioritized diversity throughout the federal court system. Biden's judicial appointees are the most diverse of any U.S. president to date in terms of race, gender and professional background.

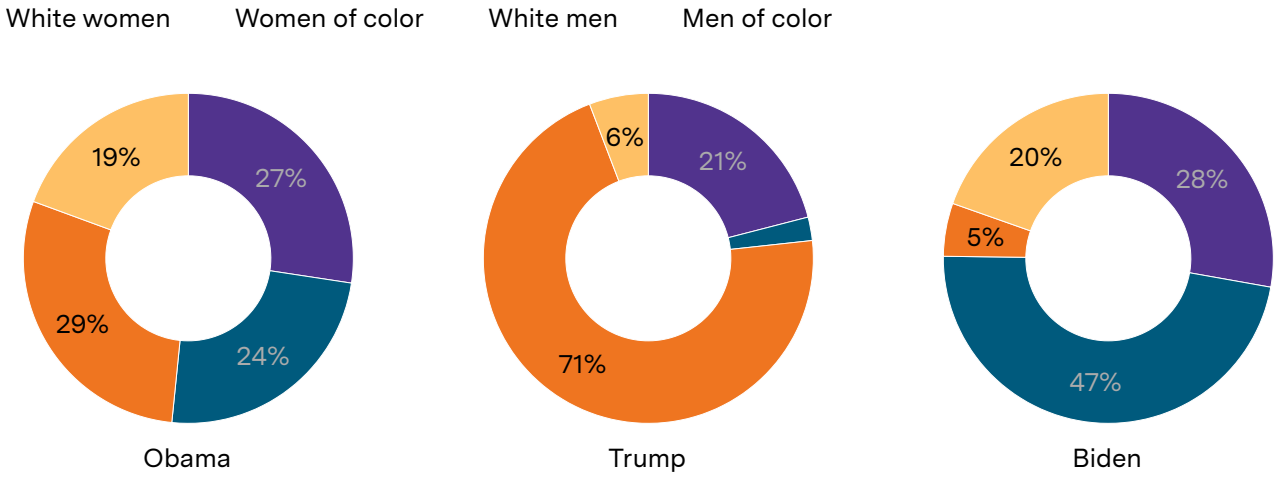
Of the judges appointed by Biden in the past two years, 75 percent are wo
47 percent are women of color and 67 percent are people of color. This sta
stark contrast to his predecessor, former President Donald Trump, who two years into his presidency had appointed 85 judges, 92 percent of whom were White, 23 percent were women and 2 percent were women of color, according to analysis by The 19th. Biden has also prioritized nominating lawyers from professional backgrounds that are underrepresented in the federal judiciary.

The 19th took a closer look at how Biden's administration is shaping the federal bench, as well as how his judicial appointments compare to former Presidents Trump and Barack Obama.

The data included throughout the article and graphics focus on full-time "Article III judges" who make up the U.S. Supreme Court, federal courts of appeals, federal district courts and the U.S. Court of International Trade.

Comparing judges' gender and race 2 years in

Number of Article III judges confirmed by each president, by race and gender, two years into his presidency



Source: Federal Judicial Center
Chart: Jasmine Mithani

The 19th · 19thnews.org

The majority of Biden's judicial appointees have been women and people color. This includes Florence Pan, who in 2021 became the first Asian-Am woman to serve as a federal district court judge in Washington, D.C. A year later, Pan was confirmed to the prestigious federal appellate court in D.C., the seat Jackson occupied before moving to the Supreme Court.

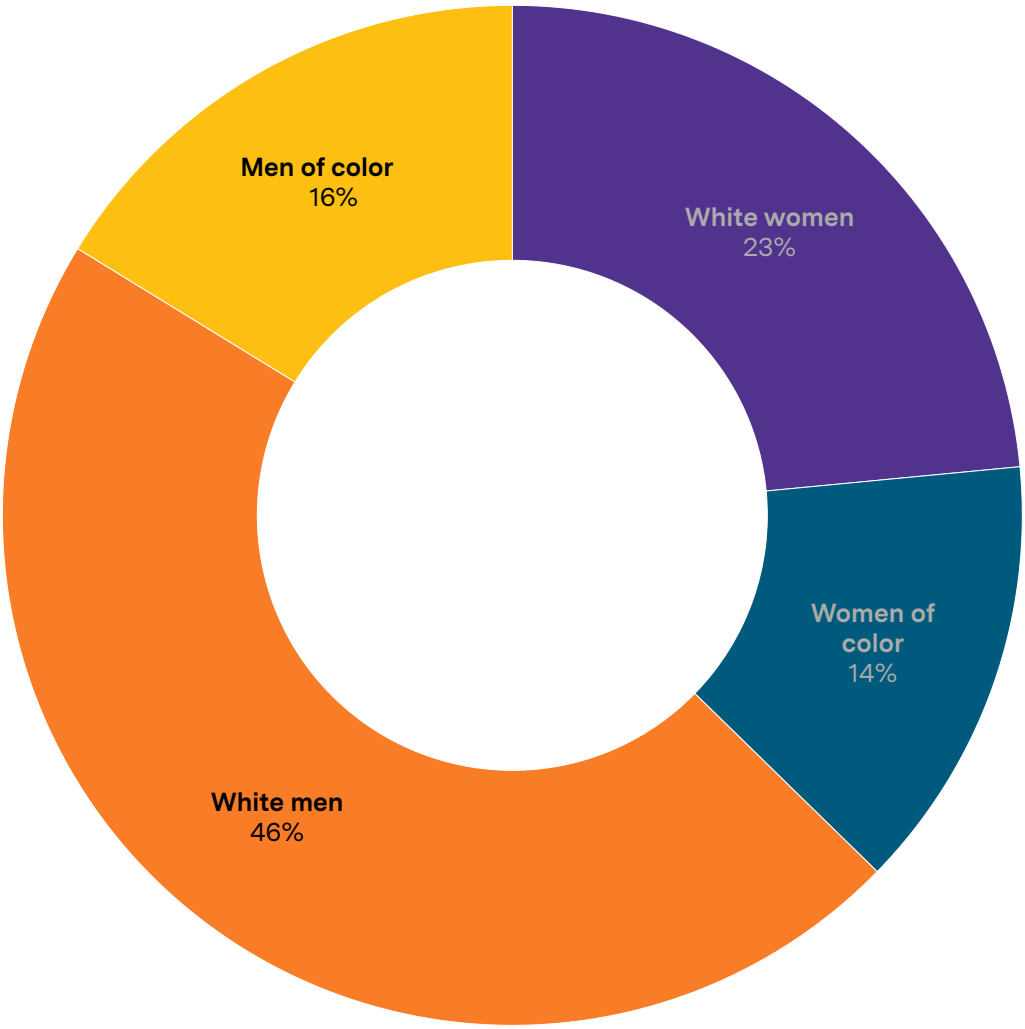
Two years into his presidency, Biden has appointed 97 federal judges compared with the 85 judges Trump had confirmed and the 62 judges confirmed under Obama by this point in their presidencies. But Trump's role in shaping the federal judiciary was extensive. By the end of his only four-year term, he had 234 confirmed judges. Obama had 329 judges confirmed over eight years and former President George W. Bush had 328 judges confirmed during his eight years in office, according to figures from the Administrative Office of the U.S. Courts.

In August Biden had appointed more federal judges than any president since John F. Kennedy at this point in his presidency, but throughout 2022 Senate Democrats faced pressure from judicial advocacy groups like Alliance for Justice and Demand Justice to speed up the pace of his judicial confirmations for fear that his nominations would expire at the end of the year. A number of vacancies remain on the federal courts, which slows down their ability to move through the docket of cases, advocates said.

"That means that you're not having our citizens get the justice that they need because of backlogs in courthouses," Kimberly Humphrey, legal director for federal courts at Alliance for Justice, previously told The 19th.

The federal judiciary is still largely White men

Currently serving Article III judges by race and gender, excluding those with senior status, as of January 25, 2023



When a judge is conferred senior status, their seat is considered vacant.

Source: Federal Judicial Center
Chart: Jasmine Mithani

The 19th • 19thnews.org

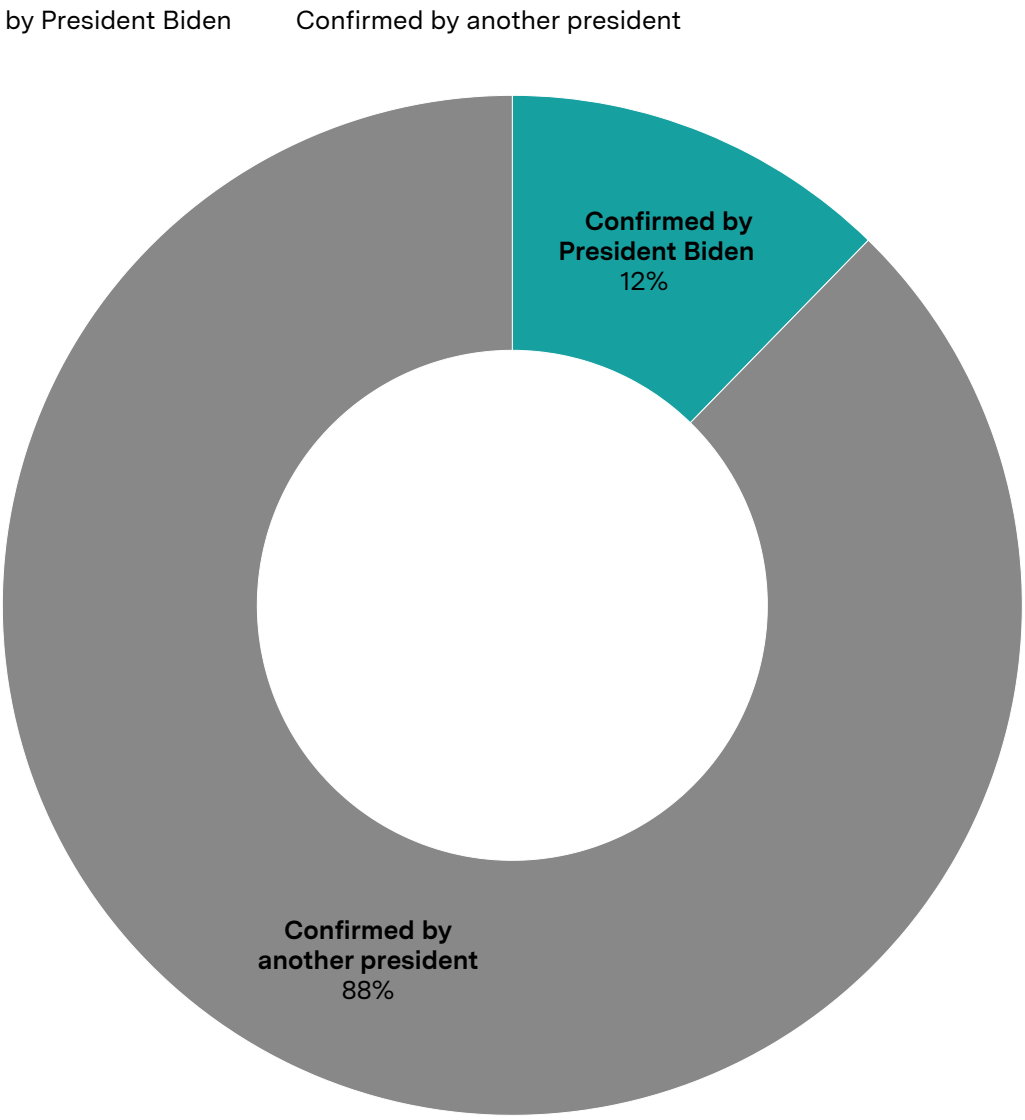
The federal judiciary has historically been dominated by White men. Though the judiciary was established in 1789, the first progress toward a more diverse judiciary began in 1928, according to previous reporting from The 19th. A jump in diversity numbers among federal judges occurred in the 1970s under President Jimmy Carter, who increased the appointments of women and people of color to the bench.

Even with the added diversity under Presidents Obama and Biden, the lar demographic currently serving on the federal court system remains White Within the federal judiciary – about 800 judges active judges in total – 37 percent are women and about one-third are people of color. Over the years, some advocacy organizations have pushed to raise awareness about the importance of judicial confirmations and diversity within the federal bench.

Federal judges are involved in a range of both civil and criminal cases, and hear cases concerning the constitutionality of policies implemented around the country such as those that seek to restrict the rights of transgender people and access to abortion or birth control.

Biden's judicial picks are a drop in the bucket

Share of current Article III judges, excluding those with senior status, who were confirmed by President Biden as of January 25, 2023



When a judge is conferred senior status, their seat is considered vacant.

Source: Federal Judicial Center
Chart: Jasmine Mithani

The 19th • 19thnews.org

In addition to racial and gender diversity, Biden has also focused on professional diversity; the president has confirmed the most federal judges to appellate courts who have previously worked as public defenders.

"In the same way that our courts have been dominated by White men, they been dominated by prosecutors and corporate lawyers who have spent the careers representing the government or the rich and the powerful," Christopher Kang, cofounder and chief counsel of Demand Justice, told The 19th last year. "It's incredibly important to have lawyers who have experience sitting at the table with real life people and understanding their needs and defending their rights."

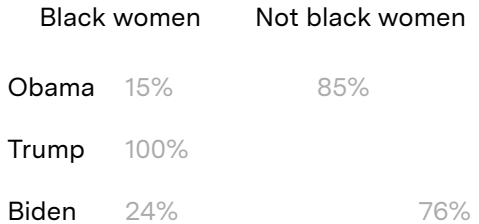
Research indicates that judges with public defender backgrounds are less likely to give sentences that involve incarceration and may instead assign community service or probation. Former public defenders are more likely to give shorter sentences in cases when they do sentence people to incarceration, according to a 2022 paper from researchers at Yale and Harvard.

Even with the expanded diversity under Biden, his 97 judges represent just 12 percent of the total federal judiciary. Advocates for judicial diversity told The 19th they are hopeful that Biden will be able to match or surpass Trump's number of judicial appointments and leave a strong legacy on the federal judiciary for years to come.

"There's certainly an opportunity for Biden to match Trump, but it's not a given that just because Democrats have control of the Senate that they're going to be able to take all of the judicial vacancies," Kang said in November.

Biden has prioritized nominating Black women judges

Share of Article III judges confirmed in the first two years of each presidency who were Black women



Each judge is only counted once, even if confirmed to multiple seats (e.g. Justice Ketanji Brown Jackson).

Source: Federal Judicial Center
Chart: Jasmine Mithani

The 19th • 19thnews.org

The number of Black women appointed during Biden's first two years, particularly to federal appellate courts, has been significant. The federal appellate courts are the second-highest level under the Supreme Court and viewed as a stepping stone to a Supreme Court appointment. Prior to Biden's presidency, eight Black women total had served on a federal appellate court. With 10 appointments of Black women to courts of appeals over the past two years, Biden more than doubled that number.

Black women not only face challenges breaking into coveted legal positions at every level of the industry, but those who do ultimately reach the level of being nominated to federal judge positions are also more likely to experience skepticism from senators about their political bias and past work experience, according to Dr. Taneisha Means, a professor of political science at Vassar College who spoke with The 19th last year.

Even with the credentials that accompany the Black women such as Jackson who are nominated to a federal judgeship, Means' research indicates these nominees face longer delays by the Senate before they are confirmed and are seen as more partisan or radical than White nominees.

The public could see evidence of this in the framing of certain questions asked of Jackson during her Supreme Court confirmation hearings. At one point, Republican Sen. Ted Cruz of Texas asked Jackson if she believes babies can be racist.

As Jackson and other Black women continue to advance in judicial positions, they bring to the table their underrepresented perspectives and critical thinking about the law and the country's institutions.

"We know from research that diverse groups bring about better outcomes because people bring a range of issues for the group to consider," Angela C. Robinson, a retired Connecticut Superior Court Judge, told The 19th last year. "When you bring different life experiences, you can bring things to the dialogue that some people may not know."

The 19th

The 19th is a 501(c)(3) tax-exempt organization. Our stories are free to republish in accordance with these guidelines.

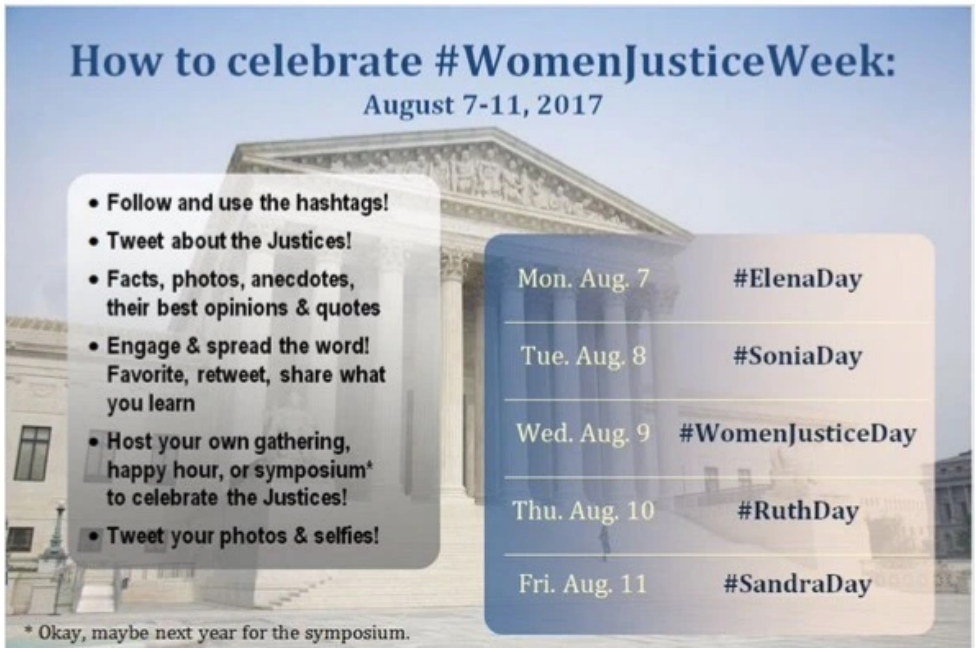
AUGUST 13, 2017 BY ROB ROSBOROUGH

The Trailblazing Women Judges of the Court of Appeals

If you haven't followed the hashtags #WomenJusticeWeek and #WomenJusticeDay on Twitter, you really should. For this past week, Jack Metzler (@SCOTUSPlaces) and the other #AppellateTwitter denizens have been paying tribute to the distinguished women Justices of the Supreme Court and the approximately 125 women Justices of the State high courts.

Supreme Court Places
@SCOTUSPlaces

Reminder: It's #WomenJusticeWeek! Celebrate the women on the Supreme Court.



Included in that celebration are the three current women Judges of the Court of Appeals: Chief Judge Janet DiFiore, Associate Judge Jenny Rivera, and Associate Judge Leslie Stein, which were well covered by Naveen Kabir (@NaveenKabirEsq) in this thread:

Naveen Kabir @NaveenKa... · 12h

Replying to @NaveenKabirEsq

Chief Judge Janet DiFiore was nominated by @NYGovCuomo in 2015 then confirmed & sworn in in 2016
#WomenJusticeDay
#WomenJusticeWeek

Naveen Kabir @NaveenKa... · 12h

Replying to @NaveenKabirEsq

Associate Judge Jenny Rivera has been on the Court since 2013 & is the 2nd Hispanic woman to serve
#WomenJusticeDay
#WomenJusticeWeek

The history of women on the Court of Appeals, however, began well before the three distinguished women Judges now on the Court. In fact, Judges DiFiore, Rivera, and Stein are actually the 5th (Rivera), 7th (Stein), and 8th women (DiFiore) Judges on the Court.

Blazing the trail before them were the still unmatched Judith Kaye, who was appointed as the first woman Associate Judge of the Court of Appeals in 1983 and then elevated as the first woman Chief Judge in 1993, Carmen Beauchamp Ciparick, Victoria Graffeo, Susan Phillips Read, and Shelia Abdus-Salaam. Each has made her mark on the Court and New York law, and deserve to be included in the celebration.

Chief Judge Judith Kaye

Chief Judge Kaye is one of the most remarkable women to ever serve on the bench. She was born to Jewish Polish immigrants in Monticello, NY, and grew up on a small farm. She graduated high school at 15, yes 15, and moved on to Barnard College to pursue a journalism degree. When she wasn't getting the opportunities she wanted in journalism, she decided to pursue the law.

Chief Judge Kaye worked as a copy editor during the day and attended NYU Law at night, two full time jobs. She graduated sixth in her class of nearly 290, only ten of which were women. After law school, Chief Judge Kaye became a respected commercial litigator in NYC, first with Sullivan & Cromwell and later as the first woman named partner at Olwine, Connelly, Chase, O'Donnell & Weyher.

After a first vacancy occurred on the Court of Appeals in 1983, no women made it on the list of 7 sent to Governor Mario Cuomo, who had made it a campaign promise to appoint a woman to the Court. For the next vacancy that same year, two women made the final list: Justice Betty Weinberg Ellerin of State Supreme Court, who was a former president of the Women's Bar Association, and Chief Judge Kaye. The Women's Bar Association, however, rated Chief Judge Kaye as not qualified. Governor Cuomo ignored the rating and

appointed her anyway.

And did Chief Judge Kaye ever prove the Governor right. While on the Court of Appeals, Chief Judge Kaye was a distinguished jurist who was well ahead of her time in many respects. For example, Chief Judge Kaye's dissent in Hernandez v Robles, a same sex marriage case in 2006, remains one of the most powerful opinions written by a member of the Court. As she wrote,

Chief Judge Kaye (dissenting). Plaintiffs (including petitioners) are 44 same-sex couples who wish to marry. They include a doctor, a police officer, a public school teacher, a nurse, an artist and a

state legislator. Ranging in age from under 30 to 68, plaintiffs reflect a diversity of races, religions and ethnicities. They come from upstate and down, from rural, urban and suburban settings. Many have been together in committed relationships for decades, and many are raising children–from toddlers to teenagers. Many are active in their communities, serving on their local school board, for example, or their cooperative apartment building board. In short, plaintiffs represent a cross-section of New Yorkers who want only to live full lives, raise their children, better their communities and be good neighbors.

For most of us, leading a full life includes establishing a family. Indeed, most New Yorkers can look back on, or forward to, their wedding as among the most significant events of their lives. They, like plaintiffs, grew up hoping to find that one person with whom they would share their future, eager to express their mutual lifetime pledge through civil marriage. Solely because of their sexual orientation, however–that is, because of who they love–plaintiffs are denied the rights and responsibilities of civil marriage. This State has a proud tradition of affording equal rights to all New Yorkers. Sadly, the Court today retreats from that proud tradition.

Her cutting edge opinions also included novel issues concerning whether an agreement between a husband and wife during their marriage controls the disposition of frozen, stored pre-embryos after their divorce (*see* *Kass v Kass*, 91 NY2d 554 [1998]):

we agree that the informed consents signed by the parties unequivocally manifest their mutual intention that in the present circumstances the pre-zygotes be donated for research to the IVF program.

The conclusion that emerges most strikingly from reviewing these consents as a whole is that appellant and respondent intended that disposition of the pre-zygotes was to be their joint decision. The consents manifest that what they above all did not want was a stranger taking that decision out of their hands. Even in unforeseen circumstances, even if they were unavailable, even if they were dead, the consents jointly specified the disposition that would be made. That sentiment explicitly appears again and again throughout the lengthy documents. Words of shared understanding—"we," "us" and "our"—permeate the pages. The overriding choice of these parties could not be plainer:

"We have the principal responsibility to decide the disposition of our frozen pre-zygotes. Our frozen pre-zygotes will not be released from storage for any purpose without the written consent of both of us, consistent with the policies of the IVF Program and applicable law " (emphasis added).

Chief Judge Kaye's opinions on standing and the State Environmental Quality Review Act standard of review remain the most cited precedent in those areas (*see Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761 [1991] [standing]; *Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400 [1986] [SEQRA]). She also heavily emphasized the unique rights granted under the New York Constitution, especially in high stakes cases like the education funding cases (*see Campaign for Fiscal Equity v State of New York*, 100 NY2d 893 [2003]).

Chief Judge Kaye also went to bat for the all of the State's Judges when she joined with other judges from across the State to sue the New York Legislature for impermissibly tying a judicial pay increase to unrelated legislative matters (*see Matter of Maron v Silver*, 14 NY3d 230 [2010]), and the Court of Appeals agreed with her that the "independence of the Judiciary is improperly jeopardized by the current judicial pay crisis and this constitutes a violation of the Separation of Powers Doctrine," though it declined to adopt any remedy for the state constitutional violation (*id.* at 244).

What struck me most about Chief Judge Kaye was not her attempts to convince her colleagues to speak with one voice on important issues, or her administrative reforms of the New York court system that are far too many to list, but her kindness and how she treated the Court and everyone who worked there as family. Chief Judge Kaye's last day on the Court was December 31, 2008, forced off by the New York Constitution's mandatory retirement provision. My clerkship at the Court began just a few months earlier, but what I remember most vividly was the lengths she went to know everyone's name and give all of us her time. During after the first argument session in September 2008, Chief Judge Kaye stopped up to the Central Staff offices to talk about the cases that had just been argued and how she viewed her and our place at the Court. This was a regular occurrence. And even just a few days before she left the bench, Chief Judge Kaye stopped up once again to reflect with us on her 25 years as a Judge of the Court of Appeals and what it meant to her. She was genuine, brilliant, kind, and a jurist and administrator still unmatched at the Court.

Associate Judge Carmen Beauchamp Ciparick

Associate Judge Carmen Beauchamp Ciparick was the second woman and first Hispanic appointed to the Court of Appeals. Unlike Chief Judge Kaye's upbringing on a small farm, Judge Ciparick's began in Washington Heights. Her parents were two of the earliest Puerto Rican immigrants to that narrow stretch of upper Manhattan. While her father was a civil servant in the US Army Corps of Engineers, her mother stayed home to raise her and her older sister, Myrna. Every winter, they would brave the cold for the Christmas show at Radio City Music Hall and every summer, they headed for the shore to the Rockaways or New Jersey's Point Pleasant.

After graduating from George Washington High School, Judge Ciparick attended the all-women Hunter College tuition free, where she majored in History and Political Science and developed her interest in the law. Although her parents initially opposed her decision to go to law school, they eventually came around to the idea, and Judge Ciparick signed up for night classes at St. John's University School of Law. During the day, she worked full time as a history and physical education teacher at a junior high and at night, she went to law school. Talk about a long day.

Judge Ciparick was one of only eight women in her law school class in 1963. Women in law school were so rare, in fact, that they were often singled out by professors. In Judge Ciparick's torts class, for example, the professor once questioned her at length on whether a lady's evening gown was an inherently dangerous instrument. Judge Ciparick endured and graduated in 1967, and was admitted to the bar later that year.

Judge Ciparick's early years of practice were as a Staff Attorney with The Legal Aid Society in the South Bronx, a poor, predominately Spanish-speaking area. It was the only job she wanted and applied for out of school. And she loved it. Although she was often mistaken for a secretary or an interpreter, because she grew up in a bilingual household and spoke fluent Spanish, Judge Ciparick relished representing the underserved in numerous civil matters, including landlord-tenant disputes, divorces, adoptions, personal bankruptcies, and various administrative proceedings.

Two years later, she joined the court system as Assistant Counsel to the Judicial Conference of the State of New York, the predecessor to the Office of Court Administration. By 1972, she had risen to the supervising attorney of the New York City criminal courts, overseeing a pool of 40 attorneys who were providing legal assistance to the criminal court judges. While the supervising attorney, Judge Ciparick made significant efforts to hire women and minority attorneys into the pool.

In 1978, at the young age of 36, Judge Ciparick joined the bench when NYC Mayor appointed her to the Criminal Court of the City of New York. She was the first Puerto Rican woman to serve on the bench in New York State history and one of the youngest judges in the entire State. She was elected to the Supreme Court bench four years later (but almost never made it onto the ballot when the Democratic Party missed the filing deadline, and she had to be elected on the Liberal Party line).

As a Supreme Court judge, Judge Ciparick decided hundreds, if not thousands, of cases, but one stands out in particular. The first was the trilogy of America's Cup cases entitled *Mercury Bay Boating Club Inc. v. San Diego Yacht Club.* In the cases, Judge Ciparick presided over a dispute concerning whether the catamaran used by the San Diego Yacht Club to defend its sailing title in the world famous races complied with the specifications set forth in the deed of gift that governed the America's Cup. She said that it didn't, and disqualified the San Diego, handing the title to New Zealand. Although a divided Appellate Division reversed, the Court of Appeals dismissed the case entirely, saying it should be resolved by the sailing community, not the courts. The cases garnered Judge Ciparick international attention, as she was called a heroine by the London Times, received fan mail from New Zealand, and hate mail from California, with one sailor particularly claiming that her name would live on, "synonymous with Benedict Arnold in drag."

In 1993, on the strength of her Supreme Court service, Governor Mario Cuomo nominated Judge Ciparick to the Court of Appeals. She was the second woman on the Court, joining Chief Judge Kaye, and the first Hispanic to serve on the State's high court. She served with distinction for 19 years until she hit mandatory retirement in 2012.

During her time on the Court, Judge Ciparick wrote many, many important opinions, including recognizing disparate impact claims on the basis of sexual orientation under the New York City Human Rights Law (*see Levin v Yeshiva University*, 96 NY2d 484 [2001]), striking down the notice and review procedures of the Sex Offender Registration Act as constitutionally inadequate (*see People v David W.*, 95 NY2d 130 [2000]), and finding that the general prohibition against gambling in the State Constitution's Bill of Rights did not foreclose

the establishment of casinos on Indian lands, the State's lottery, installation of video lottery terminals at racetracks, or the State's entry into a multistate lottery (*see* *Dalton v Pataki*, 5 NY3d 243 [2005]).

Associate Judge Victoria Graffeo

Associate Judge Victoria Graffeo was the third woman appointed to the Court of Appeals. She came from a proud Italian-American family that immigrated to New York in the late 1800s-early 1900s. Her grandfathers both fought for the US in World War I, and her father enlisted in World War II and fought on the shores of Normandy. From this patriotic background, Judge Graffeo's family instilled in her a strong sense of what it meant to have freedom.

Early in her life, Judge Graffeo's father took a job in Western Massachusetts as a surveyor building the Massachusetts Turnpike, and so they bought a small dairy farm that Judge Graffeo roamed as a child. They moved to Schenectady when her father came to help build the Northway, from Albany to the Canadian border, before they eventually settled in the Town of Guilderland, one of Albany's suburbs.

Judge Graffeo attended SUNY Oneonta for college, after turning down a scholarship to Cornell because the private school was beyond her family's means, and majored in political science. She student-taught high school social studies during her senior year of college, but then decided that she wanted to pursue the law. No one in her family had ever been a lawyer before, and so her parents were understandably surprised when she told them she was going to law school.

Because her family could not financially assist her legal endeavors, Judge Graffeo decided that she would attend Albany Law School while living at home and working part time to cover the cost of attendance. During her 1L year, she worked several jobs even though the Law School barred outside employment. One day, Judge Graffeo was called down to the registrar's officer and unceremoniously lectured about devoting all of her time to the study of law. Although Judge Graffeo changed her habits to hide her outside employment better, she never did stop working throughout law school. During 2L and 3L years, she began working at a law firm that was one of the few in Albany that was even interested in hiring women. That experienced proved invaluable going forward, and Judge Graffeo became an associate at the firm with eight other male lawyers.

Only three years after she graduated from Albany Law and was admitted to the bar, Judge Graffeo found herself arguing a case before the very Court of Appeals that she would later join. In the case, she represented a

contractor challenging a NYS Department of Labor prevailing wage claim, and she won.

Judge Graffeo's early years as a lawyer, extraordinary as they were, certainly were not without mistreatment. For example, in one case that she was trying against a bank represented by a former judge, the judge frequently referred to Judge Graffeo as "my little friend" in front of the jury in an effort to undermine her effect. He failed, however, and after Judge Graffeo finished her direct case, the former judge offered her client a settlement much larger than they had anticipated.

Judge Graffeo began her government service as an assistant counsel at the New York State Division of Alcoholism and Alcohol Abuse, and served there until she was approached to become the floor counsel for the New York State Assembly Republicans and spent 10 years working in the Legislature. Eventually, Judge Graffeo became Chief Counsel to the Assembly Minority Leader, the first woman to serve in that role, where she was the only woman at the negotiating table with the Governor and his senior staff and the four leaders of the Senate and Assembly.

When George Pataki was elected New York Governor, Judge Graffeo was appointed the Solicitor General of New York. During her time as the Solicitor General, Judge Graffeo managed the State's federal and state appellate caseload and took *Vacco v Quill*, a constitutional challenge to New York's criminal statute banning assisted suicide to the US Supreme Court (*seeVacco v Quill*, 521 US 793 [1997]).

In 1996, Judge Graffeo was nominated to fill a judicial vacancy in the Supreme Court, Albany County bench when Hon. Lawrence Kahn was appointed a federal district court judge. Later that fall, Judge Graffeo ran for election to the bench in a hotly contested race for three seats among six candidates, four of which were incumbents. She was surprised when she won (after suffering a larger than expected defeat in her home county, which was heavily Democratic), and so began Judge Graffeo's long distinguished service on the New York bench.

Judge Graffeo sat on the Supreme Court for two years before she was appointed by Governor Pataki as an Associate Justice of the Appellate Division, Third Department. She debated applying for the position because she was the only woman on the trial court bench at the time (now Presiding Justice of the Third Department Karen Peters was an Associate Justice of that court then). But, she decided that her elevation could encourage more women lawyers, and so she applied. And two years after joining the Appellate Division, Judge Graffeo was nominated again by Governor Pataki, this time to be the third woman to serve on the Court of Appeals.

During Judge Graffeo's 14 years on the Court, she left her mark on the Court and on New York law. The case that I will always remember the most was the case that I was involved in, asking whether local municipalities were preempted by the Environmental Conservation Law from using their zoning powers to ban fracking. It was a very important case at the time for municipalities that feared the long-term impacts of fracking, coming before New York completed its environmental review and banned fracking entirely. Judge Graffeo's reasoned analysis concluding that state law did not preempt local zoning authority was a perfect example of her measured writing tone and the detailed review of authority that were the hallmark of her opinions (*see Matter of Wallach v Town of Dryden*, 23 NY3d 728 [2014]).

Other of Judge Graffeo's important opinions included whether it would violate the public trust doctrine to operate a restaurant in Union Square Park (*see Union Sq. Park Community Coalition v New York City Dept. of Parks & Rec.*, 22 NY3d 648 [2014]), whether the Cayuga Indian Nation's sale of cigarettes could be taxed under New York law (*seeCayuga Indian Nation of N.Y. v Gould*, 14 NY3d 614 [2010]), whether the tort of conversion applies to intangible electronic documents stored on a computer (*see Thyroff v Nationwide Mut. Ins. Co.*, 8 NY3d 283 [2007]), and whether SEQRA applies to annexation actions *(see Matter of City Council of City of Watervliet v Town Bd. of Town of Colonie*, 3 NY3d 508 [2004]).

Associate Judge Susan Phillips Read

Associate Judge Susan Phillips Read was the fourth woman appointed to the Court of Appeals. Born in a small town on the banks of the Ohio River, Judge Read developed her lifelong love of reading, music, swimming, football, and the ballet as a young child. Following a family tradition, she graduated from Ohio Wesleyan University in 1969, and the University of Chicago Law School in 1972.

After law school, Judge Read worked at the US Atomic Energy Agency Commission in Bethesda, Maryland before she married her husband and moved to Albany, New York. Although Judge Read wasn't truly enthused about practicing law outside of a major metropolitan area, her husband was a native upstate New Yorker who, she said, "considered living more than 25 miles from the Saratoga [horse-racing] track a hardship too heavy to bear." Living in Saratoga myself, I certainly understand his sentiment.

Upon her admittance to the New York bar, Judge Read worked as a staff attorney at the Central Administration of the State University of New York, before going in-house at GE. She eventually rose to the position of GE's Chief Environmental Counsel nationwide, a daunting task I'm sure. In 1988, Judge Read left GE to join Bond, Schoeneck & King as a partner in their Albany office, and was in the private practice for the next 7 years. In 1995, she joined Governor Pataki's administration as Deputy Counsel to the Governor, and was appointed as a Judge of the Court of Claims, which hears contract and tort actions against the State, three years later.

After five years on the Court of Claims bench, four of which she spent as the Presiding Judge, Governor Pataki nominated Judge Read to the Court of Appeals. With her confirmation to the Court in 2003, it marked the first time in United States history that a state high court sat with a woman majority, with Judge Read joining Chief Judge Kaye, Judge Ciparick, and Judge Graffeo in the four judge majority. Often referred to as the "Renaissance Judge" for her broad interests, both legal and non-legal, Judge Read served on the Court for 12 year before deciding to retire in 2015.

Judge Read's noteworthy opinions while on the Court include the interpretation of the scope of a brownfield site under the Environmental Conservation Law (*see Matter of Lighthouse Pointe Prop. Assoc. LLC v New York State Dept. of Envtl. Conservation*, 14 NY3d 161 [2010]), issues of Partnership Law (*see Ederer v Gursky*, 9 NY3d 514 [2007]), whether an attorney in a medical malpractice action may interview an adverse party's treating physician privately when the adverse party has affirmatively placed his or her medical condition in controversy (*see Arons v Jutkowitz*, 9 NY3d 393 [2007]), and whether grandparents were entitled to visitation over the parent's objection (*see Matter of E.S. v P.D.*, 8 NY3d 150 [2007], among many others.

Associate Judge Shelia Abdus-Salaam

Associate Judge Shelia Abdus-Salaam was the sixth woman confirmed to the Court of Appeals (only a few months after current Associate Judge Jenny Rivera), and the first African American woman to serve on New York's high court. Judge Abdus-Salaam, who was the direct descendant of a slave from Virginia, grew up in a working class family with six brothers and sisters in Washington, D.C. She attended the D.C. public schools, before going to college at Barnard College.

Judge Abdus-Salaam then continued onto law school at Columbia Law, where she graduated in the same class as former US Attorney General Eric Holder.

Judge Abdus-Salaam began her legal career at the Brooklyn Legal Services, representing the underserved in a wide range of legal matters. She then was hired as an Assistant Attorney General in the civil rights and real estate financing bureaus of the New York Attorney General's Office.

Judge Abdus-Salaam began her career on the bench in the New York City Civil Court, where she served for one year before she was elected to Supreme Court, New York County in 1993. After 16 years on the trial bench, Governor David Paterson elevated Judge Abdus-Salaam to the Appellate Division, First Department, where she sat until her appointment to the Court of Appeals in 2013.

During Judge Abdus-Salaam's short time at the Court of Appeals, she really left her mark on New York law. I discussed the true impact that her decisions had in the wake of her tragic death, but one case in particular should be mentioned again.

Judge Abdus-Salaam's opinion in *Matter of Brooke S.B. v Elizabeth A.C.C.* (28 NY3d 1 [2016]) will likely go down as her most important decision. Prior to the ruling, the Court of Appeals had previously held in *Matter of Alison D. v Virginia M.* (77 NY2d 651 [1991]) that, "in an unmarried couple, a partner without a biological or adoptive relation to a child is not that child's 'parent' for purposes of standing to seek custody or visitation under Domestic Relations Law § 70(a), notwithstanding their 'established relationship with the child.'" *Brooke S.B.*, 28 NY3d at 13. Concluding that the time had come to revisit that 25-year old rule "in light of more recently delineated legal principles," Judge Abdus-Salaam, writing for the unanimous Court, overruled *Alison D.* and held that "where a partner shows by clear and convincing evidence that the parties agreed to conceive a child and to raise the child together, the non-biological, non-adoptive partner has standing to seek visitation and custody under Domestic Relations Law § 70." *Id.* at 14.

Judge Abdus-Salaam's opinion opened visitation and custody rights to same-sex partners, rights that had been previously denied under *Alison D.*, as Chief Judge Judith Kaye had decried in her dissent in that case. As Judge Abdus-Salaam put it,

in the 25 years since Alison D. was decided, this Court has gone to great lengths to escape the inequitable results dictated by a needlessly narrow interpretation of the term "parent." Now, we

find ourselves in a legal landscape wherein a non-biological, non-adoptive "parent" may be estopped from disclaiming parentage and made to pay child support in a filiation proceeding, yet denied standing to seek custody or visitation. By creating a disparity in the support and custody contexts, Alison D. has created an inconsistency in the rights and obligations attendant to parenthood. Moreover, Alison D.'s foundational premise of heterosexual parenting and nonrecognition of same-sex couples is unsustainable, particularly in light of the enactment of same-sex marriage in New York State, and the United States Supreme Court's holding in Obergefell v. Hodges, which noted that the right to marry provides benefits not only for same-sex couples, but also the children being raised by those couples.

Under the current legal framework, which emphasizes biology, it is impossible—without marriage or adoption—for both former partners of a same-sex couple to have standing, as only one can be biologically related to the child. By contrast, where both partners in a heterosexual couple are biologically related to the child, both former partners will have standing regardless of marriage or adoption. It is this context that informs the Court's determination of a proper test for standing that ensures equality for same-sex parents and provides the opportunity for their children to have the love and support of two committed parents.

Id. at 24-25 (cleaned up). Judge Abdus-Salaam's overruling of *Alison D.* signaled a monumental shift in New York law, one that will have many long lasting impacts on children and families across the state.

Each of the women that have served with distinction on the Court of Appeals has left an indelible mark on the Court and the law. Their contributions cannot be overstated, and they all deserve the recognition they have received as phenomenal judges of the Court. Happy #WomenJusticeWeek!

ALM | LAW.COM

Page Printed From:
https://www.law.com/newyorklawjournal/2019/02/13/upstate-nys-female-judges-tell-stories-of-mistaken-identity-isolation/?tokenvalue=61B2F543-D832-4D32-A3CD-C8C8009C4B2B

NOT FOR REPRINT

NEWS

Upstate NY's Female Judges Tell Stories of Mistaken Identity, Isolation

Being a female judge in upstate New York is still a rarity. There are 25 mostly rural upstate counties with no female judges in the state's employ and 10 with just one each.

February 13, 2019 at 02:58 PM

Susan DeSantis

When Supreme Court Justice Bernadette Clark is in her car, residents will notice the judicial plates and say, “Hi judge.” The only problem is they’re talking to her husband.

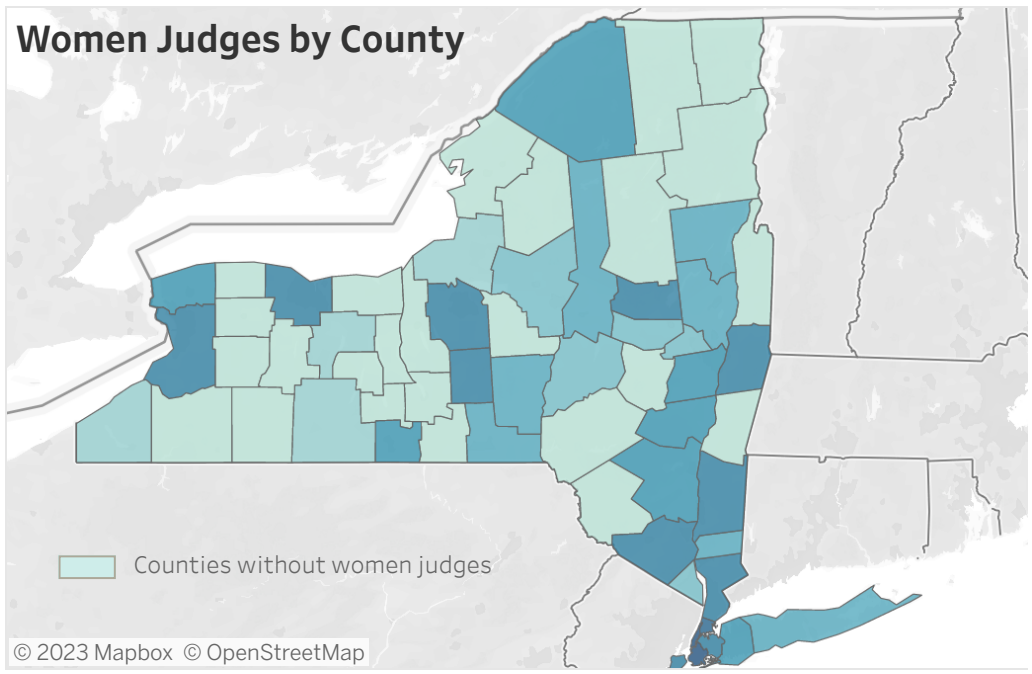
“From my perspective up here, it’s the resistance to even thinking you can run for judge,” the Oneida County jurist said. “They would talk about my hair, my clothes, my makeup, the length of my skirt. I tried to change the conversation. Let’s talk about my qualifications.”

Being a female judge in upstate New York is still a rarity. There are 25 mostly rural upstate counties with no female judges in the state’s employ and 10 with just one each. That compares to the New York City metropolitan area where nearly 400 of the state’s 507 female judges are concentrated, according to state statistics.

Related Story: Cases of Mistaken Identity: Female Judge in NY Told ‘I’d Rather Wait for the Judge’

By those standards, Oneida County, with three female judges on the state payroll, is considered progressive. Still, Clark said, she is often treated with disrespect.

“I have one lawyer still to this day who still calls me ‘ma’am’ although I have asked him to address me as ‘judge’ or ‘your honor,’” she said. “The lawyers in court would say things and act certain ways in my courtroom that they would never think to pull in some of the other judges’ courtrooms.”



The same stories were repeated again and again by New York's upstate female judges.

Lawyers agree to appear in front of a female judge but when a male judge later schedules a matter at the same time, they seek an adjournment from her rather than him. They arrive late in a female judge's courtroom or leave early to attend to a proceeding in a male judge's courtroom. They address a female judge in a tone that they'd never use with the male judge down the hall.

"I do often feel that I get the short end of the stick in terms of getting attorneys if they're double-booked and I do feel attorneys very often will double-book more because they feel they can get away with it," said Family Court Judge Julia Brouillette, who is also in Oneida County.

But, she acknowledges, the discrimination has become less egregious with the passage of time. She points to an experience she had as a young attorney in Texas when appearing in a pants suit in front of an older male judge.

He had her approach the bench. "I'm a judge because I want to see a little leg," he confided. "And I said 'duly noted.'" The next time she appeared before that judge, she recalls with just a little bit of embarrassment that she wore her shortest skirt, a low-cut blouse and a push-up bra. And, lo and behold, the judge sided with her on all her objections that day.

Syracuse City Court Judge Kate Rosenthal remembers that when she first started as a lawyer the male bar association was having an event and wanted to know whether the female bar association would prepare the food.

Such thinking might be a relic of the past but stereotypes still exist. Sometimes, though, Rosenthal is able to see the humor in the stories she tells.

"The defendant kept calling me 'miss' instead of 'your honor' or 'judge,' which is better than some of the names we get called," she recalls. "His lawyer leaned over and said, 'It's judge.' And so he said, 'Miss Judge.'"

But she notes that the treatment of female judges and attorneys has improved since her early days.

"I had one Supreme Court judge say, 'Any time I see you it's nothing but trouble. Why don't you stay home in the kitchen?' And I said, 'Judge, have you ever seen me in your kitchen? Believe me, you don't want to see me in your kitchen.'"

Oswego County Family Court Judge Allison Nelson, who is the only female judge on that court, was assigned to represent a client as a young lawyer. "I was the only person there with a suit and briefcase," she says. "But this judge in front of my client asked me for identification."

Onondaga Supreme Court Justice Deborah Karalunas said being a female judge can make her feel isolated because she's left out of golf outings and other social events. Lawyers take liberties with her too, she complains.

"I feel that lawyers are sometimes attempting to flirt. Don't tell me 'my hair looks nice today.' Is it horrific? No. It just tells me that we are treated differently," she says.

But, upon reflection, she doesn't want anyone to feel sorry for her.

"I have met so many, many wonderful lawyers and judges throughout the state, and forged so many, many cherished friendships," she writes. "And I know that the discrimination I've sustained pales in comparison to that endured by many others in and out of this profession. So I leave you with this: I am truly blessed."

NOT FOR REPRINT

Copyright © 2023 ALM Global, LLC. All Rights Reserved.