

THE IMPACT OF RACIAL/ETHNIC BIAS ON THE ADMINISTRATION, STAFFING, AND BEHAVIOR OF THE COURT

THE COURT ADMINISTRATION ENVIRONMENT

Race/Ethnic Recommendation VI-1: The Michigan Supreme Court should direct each Chief Judge and Administrator to attend training regarding the role and significance of the executive component to court administration.

Such executive component training should include, at a minimum, the following:

- a. The roles and responsibility of the Chief Judge and Court Administrator in personnel matters, including equal opportunity, and bias-free treatment of the public.**
- b. Treatment of staff, prohibition of racial/ethnic harassment, propriety of special service, intimidation and stereotyping on racial/cultural basis.**

Summary of condition prompting 1989 recommendation:

In reviewing of court employment demographics, the 1989 Task Force found that minorities were under-represented in professional and administrative positions that exercise authority and determine or recommend policy.

It was also clear that many courts lacked formal personnel policies and procedures that would promote an environment in which equal opportunity was protected, bias-free attitudes and treatment were encouraged, and invidious discrimination prohibited.

Testimony and user surveys suggested that there was a perception by individuals from racial/ethnic minority groups, as well as those who used non-standard or accented English, that treatment by some clerical personnel was discriminatory, impatient, or less than helpful.

Research Methodology in 1997:

Review of Supreme Court Administrative Orders

Michigan Judicial Institute Questionnaire

Status of the implementation of the recommendation in 1997:

The Michigan Supreme Court issued AO-1990-3, which endorses many of the recommendations of the 1989 Task Force Reports and directs Michigan courts to commit to the elimination of bias of all types in the judicial system. It does not specifically prohibit inappropriate gender or racial/ethnic comments or actions.

In response, the Michigan Judicial Institute has developed a listing of training programs responding to specific recommendations; such training is mandatory for new judges and magistrates.

Implementation of this recommendation varies widely with a low of fifty-eight percent (58%) to a high of one hundred percent (100%) respondents in Region 1 indicating such training is provided. In those courts where training is not provided, common barriers listed include a lack of money and time for such training. In addition, several respondents indicated “no issues” or not necessary due to small staff size.

The State Court Administrative Office indicated that its Human Resources staff is available to assist with these issues as well.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- The Supreme Court should review the existing method of training offered by the Michigan Judicial Institute and consider mandatory training elements for all chief judges and court administrators.
- The Michigan legislature should increase the amount of money appropriated to the Michigan Judicial Institute so adequate resources are available to conduct such training.

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Race/Ethnic Recommendation VI-2: Each Court should develop written personnel policies and procedures which include, but are not limited to an equal opportunity, recruitment, promotional procedures and disciplinary policies. Of particular importance is the fact that employee grievances must be disposed of expeditiously and fairly.

Summary of condition prompting 1989 recommendation:

Many courts lack formal personnel policies and procedures that would promote an environment in which equal opportunity is protected, bias-free attitudes and treatment are encouraged, and invidious discrimination prohibited.

Research Methodology in 1997:

Circuit Court Chief Judges Questionnaires

District Court Chief Judges Questionnaires

Probate Court Chief Judges Questionnaires

Discussions with State Court Administrative Office personnel

Status of the implementation of the recommendation in 1997:

Questionnaire responses indicate formal personnel policies have been consistently adopted (greater than eighty percent [80%]) in larger courts and generally in excess of two-thirds of smaller courts. Policies with respect to equal opportunity and sexual harassment are more prevalent than those relating to other areas. Written personnel policies and policies relating to expeditious handling of grievances have been widely adopted (nearly ninety percent [90%]), particularly in larger courts.

Typical barriers to the adoption of such policies include collective bargaining, a limited need due to small staff size, limited resources and the fact that county policies cover such areas.

The State Court Administrative Office has developed draft model personnel policies that are available for use by local courts.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- Model personnel policies developed by the State Court Administrative Office should be provided to local chief judges and court administrators.
- The Supreme Court should require mandatory adoption of these policies by all courts.

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Race/Ethnic Recommendation VI-3: The State Court Administrative Office annual survey of Court Employee Compensation should include a section which identifies the existence of such policies, their implementation, and the results achieved, as well as other matters relating to equal opportunity hiring and promotion.

Summary of condition prompting 1989 recommendation:

In 1989, many courts lacked personnel policies and procedures that would promote an environment in which equal opportunity was protected, bias-free attitudes and treatment were encouraged, and invidious discrimination prohibited.

Research Methodology in 1997:

Information obtained from State Court Administrative Office

Status of the implementation of the recommendation in 1997:

The State Court Administrative Office reports that this recommendation has been implemented by the annual Court Employee Demographic Survey.

Recommended Action:

- This recommendation has been fully implemented. No further action is required.

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Race/Ethnic Recommendation VI-4: Each Court should provide for the training of its supervisors and managers in personnel management issues, including the importance of fair and equitable practices in promotion, discipline, and job assignments.

Summary of condition prompting 1989 recommendation:

In 1989, many courts lacked personnel policies and procedures that would promote an environment in which equal opportunity was protected, bias-free attitudes and treatment were encouraged, and invidious discrimination prohibited.

The 1989 Task Force found a perception on the part of racial and ethnic minorities and also of many non-minorities of the justice system's discrimination and insensitivity. There was evidence that such behaviors did exist.

A minority lawyer's ability to attract and service clients is affected by the quality of treatment afforded the lawyer by judges, court personnel and other lawyers. Testimony was received by the 1989 Task Force which indicated that minority lawyers and litigants are treated differently. The apparent ease of access that non-minority lawyers have to judges and court personnel is as detrimental to the minority lawyer as overt negative behaviors and comments.

Research Methodology in 1997:

Circuit Court Chief Judges Questionnaires

District Court Chief Judges Questionnaires

Probate Court Chief Judges Questionnaires

Discussions with State Court Administrative Office personnel

Status of the implementation of the recommendation in 1997:

Implementation of this recommendation varies widely with a low of fifty-eight percent (58%) to a high of one hundred percent (100%) respondents in Region 1 indicating such training is provided. In those courts where training is not provided, common barriers listed include a lack of money and time for such training. In addition, several respondents indicated "no issues" or not necessary due to small staff size.

The State Court Administrative Office indicated their Human Resources staff is available to assist with these issues as well.

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Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- This is a financial resources issue and should be addressed with the state and local funding units.
- The State Court Administrative Office should proactively assist courts where “funding” is an issue.

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THE SERVICE ROLE OF THE COURT

Race/Ethnic Recommendation VI-5: Courts must educate staff on their responsibility to treat all members of the public and officers of the court fairly. Such treatment must avoid the appearance of discrimination.

Summary of condition prompting 1989 recommendation:

A review of court employment demographics in 1989 shows that minorities were under-represented in professional and administrative positions which exercise authority and determine or recommend policy.

Many courts lacked formal personnel policies and procedures that would promote an environment in which equal opportunity was protected, bias-free attitudes and treatment were encouraged, and invidious discrimination prohibited.

Research Methodology in 1997:

Circuit Court Chief Judges Questionnaires

District Court Chief Judges Questionnaires

Probate Court Chief Judges Questionnaires

Michigan Judicial Institute Questionnaire

Status of the implementation of the recommendation in 1997:

Questionnaire responses indicated the highest level of training occurred in Regions 1 and 4 with the lowest levels occurring in Region 3. Training for judges and other court personnel were at roughly comparable levels, with extremely low levels of training for attorneys being reported.

Typical barriers cited included limited resources (time and money), no perceived need, limited staffing and a conclusion that the "court does not train attorneys."

Implementation of this recommendation varies widely with a low of fifty-eight percent (58%) to a high of one hundred percent (100%) respondents in Region 1 indicating such training is provided. In those courts where training is not provided, common barriers listed include a lack of money and time for such training. In addition, several respondents indicated "no issues" or not necessary due to small staff size.

The State Court Administrative Office indicated that its Human Resources staff is available to assist with these issues as well.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- All courts should develop and implement a written policy on fair, equitable treatment. This should be in the form of a local administrative order provided to all new and existing staff.

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THE SERVICE ROLE OF THE COURT

Race/Ethnic Recommendation VI-6: Each Court should develop techniques for employees to use when handling situations involving non-standard English, uncommon dialects or accents.

Summary of condition prompting 1989 recommendation:

Individuals unable to speak or understand English are effectively deprived of equal access to the courts, and, therefore, are limited in the exercise of their right to fully participate in the judicial system.

Research Methodology in 1997:

Circuit Court Chief Judges Questionnaires

District Court Chief Judges Questionnaires

Probate Court Chief Judges Questionnaires

Discussions with State Court Administrative Office personnel

Status of the implementation of the recommendation in 1997:

All regions reported a widespread use of interpreters, more so in criminal than in civil cases. Several interesting approaches were identified to provide such services, including use of the AT&T language line, maintenance of lists of qualified interpreters/translators, or in civil cases requiring the parties to provide them. Several barriers were identified, such as the lack of budget, lack of need and lack of space.

Despite the widespread use of interpreters, most foreign language interpretation is done on an informal basis. Few courts have established policies or standards regulating such interpretation. As a result, it is difficult to assess the quality of interpretation services that are provided in courts across the state.

The State Court Administrative Office has developed and presented training programs for judges and court administrators on the use of interpreters in the courts.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- The Supreme Court and the State Court Administrative Office should review existing practices, policies and procedures that are used by local courts and develop model policies, standards, and guidelines where appropriate. Leadership on this issue must come from the

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state level. This is also a financial resource issue at the state and local level. More funding must be available to insure that qualified interpreters are available for those in need of service.

- The National Center for State Courts has developed a model professional code for interpretation services and training services which should be used as a model for these standards.
- Training for chief judges on the need for qualified interpretation services should be provided.

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Race/Ethnic Recommendation VI-7: The Supreme Court should adopt a court rule mandating and setting standards for interpretation services in civil and criminal cases where a litigant, witness or victim is unable to communicate effectively in English.

Summary of condition prompting 1989 recommendation:

The translation services available in the court system were inconsistent from court-to-court, and in some instances, unreliable and inadequate.

Research Methodology in 1997:

Review of Supreme Court Rules

Circuit Court Chief Judges Questionnaires

District Court Chief Judges Questionnaires

Probate Court Chief Judges Questionnaires

Discussions with State Court Administrative Office personnel

Status of the implementation of the recommendation in 1997:

The Supreme Court rule has not adopted a Court Rule as suggested.

Questionnaire responses indicated a very high level of limited implementation of this recommendation, ranging from a low of eighty-nine percent (89%) to a high of one hundred percent (100%). All regions reported use of interpreters, more so in criminal than in civil cases. Several interesting approaches were identified to provide such services, including use of the AT&T language line, maintenance of lists of qualified interpreters/translators, or in civil cases requiring the parties to provide them. Several barriers were identified, such as the lack of budget, lack of need and lack of space.

Despite the apparent high level of use of interpreters, most interpretation appears to happen informally with no policies, standards or assurances regarding quality.

The State Court Administrative Office has developed and presented training programs for judges and court administrators on the use of interpreters in the courts.

Recommended Action:

This recommendation has not been implemented. The 1989 Task Force recommendation should be implemented as written. In addition, the State Bar of Michigan Task Force recommends:

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- The Supreme Court and the State Court Administrative Office should review existing practices, policies and procedures that are used by local courts and develop model policies, standards, guidelines where appropriate. Leadership on this issue must come from the state level. This is also a financial resource issue at the state and local level. More funding must be available to insure that qualified interpreters are available for those in need of service.
- The National Center for State Courts has developed a model professional code for interpretation services and training services which should be used as a model for these standards.
- Training for chief judges on need for qualified interpretation services should be provided.

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THE SERVICE ROLE OF THE COURT

Race/Ethnic Recommendation VI-8: Courts should promote outreach services in the community to provide non-English speaking populations with adequate resources to assist in understanding court processes and in completing forms.

Summary of condition prompting 1989 recommendation:

Individuals unable to speak or understand English were effectively deprived of equal access to the courts, and, therefore, were limited in the exercise of their right to fully participate in the judicial system. The translation services available in the court system were inconsistent from court-to-court, and in some instances, unreliable and inadequate.

Research Methodology in 1997:

Circuit Court Chief Judges Questionnaires

District Court Chief Judges Questionnaires

Probate Court Chief Judges Questionnaires

Discussions with State Court Administrative Office personnel

Status of the implementation of the recommendation in 1997:

The questionnaire responses showed a very low level of implementation of this recommendation, from a low of twelve percent (12%) in Region 3 to a high of forty-five percent (45%) in Region 1. Typically respondents indicated a limited perceived need for such services, low demand as well as the expected limitations of time and money resources. Typical outreach efforts which were identified included providing interpreters, outreach efforts with ethnic groups, use of bilingual signs and staff training.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- The Supreme Court and the State Court Administrative Office should review existing practices, policies and procedures that are used by local courts and develop model policies, standards, guidelines where appropriate. Leadership on this issue must come from the state level. This is also a financial resource issue at the state and local level. More funding must be available to insure that qualified interpreters are available for those in need of service.
- The National Center for State Courts has developed a model professional code for interpretation services and training services, which should be used as a model for these standards.

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- Training for chief judges on need for qualified interpretation services should be provided.
- Local organizations with ethnic/race focus should be identified and used in addressing this issue.

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THE SERVICE ROLE OF THE COURT

Race/Ethnic Recommendation VI-9: Judges should determine whether interpreter services are required in a given case, and provide those services when appropriate.

Summary of condition prompting 1989 recommendation:

Individuals unable to speak or understand English were effectively deprived of equal access to the courts, and, therefore, were limited in the exercise of their right to fully participate in the judicial system. The translation services available in the court system were inconsistent from court-to-court, and in some instances, unreliable and inadequate.

Research Methodology in 1997:

Circuit Court Chief Judges Questionnaires

District Court Chief Judges Questionnaires

Probate Court Chief Judges Questionnaires

Discussions with State Court Administrative Office personnel

Status of the implementation of the recommendation in 1997:

Similar to the response for Race/Ethnic Recommendation VI-6, survey respondents indicated a high level of implementation, particularly in criminal cases. Implementation in the courts responding ranged from a low of eighty-eight percent (88%) to a high of ninety-nine percent (99%). Respondents indicated both formal and informal policies with respect to providing such services; some maintain lists of interpreters with many indicating that if the need arises, interpreters are obtained. There appears to be little uniformity or formal policies to assure adequacy and quality of interpreter services that are being provided.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- The Supreme Court and the State Court Administrative Office should review existing practices, policies and procedures that are used by local courts and develop model policies, standards, guidelines where appropriate. Leadership on this issue must come from the state level. This is also a financial resource issue at the state and local level. More funding must be available to insure that qualified interpreters are available for those in need of service.

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THE SERVICE ROLE OF THE COURT

Race/Ethnic Recommendation VI-10: The chief judge of each trial court, the other judges of that bench, and the Court Manager/Administrator, must establish and maintain an environment that promotes and protects equal opportunity, bias free attitudes, and fair treatment.

Summary of condition prompting 1989 recommendation:

In reviewing of court employment demographics, the 1989 Task Force found that minorities were under-represented in professional and administrative positions which exercise authority and determine or recommend policy.

It was also clear that many courts lacked formal personnel policies and procedures that would promote an environment in which equal opportunity was protected, bias-free attitudes and treatment were encouraged, and invidious discrimination prohibited.

Testimony and user surveys suggested that there was a perception by individuals from racial/ethnic minority groups, as well as those who used non-standard or accented English, that treatment by some clerical personnel was discriminatory, impatient, or less than helpful.

Research Methodology in 1997:

Circuit Court Chief Judges Questionnaires

District Court Chief Judges Questionnaires

Probate Court Chief Judges Questionnaires

Discussions with State Court Administrative Office personnel

Status of the implementation of the recommendation in 1997:

Within the court system, implementation ranged from a high of fifty percent (50%) in Region 1 to a low of twenty-five percent (25%) in Region 4. Implementation occurred as early as 1981 (before the original Task Force) to as late as January of 1997. A number of methods of implementation were mentioned in addition to adoption of a specific court-initiated policy statement, including adopting county policies, union contracts, employee handbooks, work rules, personnel manuals administrative rules of conduct and, after a problem developed, adoption of a mission statement.

Reasons given by individual courts for not adopting a written policy were diverse and ranged from "We don't do that" to "No Complaints" to, rather cryptically, "Courts are unwilling." Many cited a lack of resources and a need for a statewide policy to be developed by the State Court Administrative Office. Others felt the Code of Judicial Conduct sufficed to fill this need. Others responded that a formal policy statement is a hindrance and that internal/informal procedures are the better way to handle problems related to gender bias.

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On balance, the status of implementation of this recommendation in 1997 is mixed. There is apparently significant misunderstanding of the importance of formal, written and publicized policies prohibiting gender bias by all participants in the justice system. Even if the State Court Administrative Office developed a uniform, statewide policy statement, an educational process would be required to explain the need for it as well as the importance of enforcement.

In addition, the State Court Administrative Office has developed and distributed a brochure and posters on bias-free courts.

Recommended Action:

This recommendation has been partially implemented. Further implementation requires:

- The Michigan Judicial Institute should include these issues in the training they offer to chief judges, and court administrators; such training should be mandatory.
- All courts should have a written “non-discrimination” policy and ensure that all court personnel are aware of it via a local administrative order.

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JURIES

Race/Ethnic Recommendation VI-11: Michigan courts should examine the use of multiple source lists, after careful consideration of the available sources to augment the Drivers/PID list, and seek appropriate legislative authority.

Summary of condition prompting 1989 recommendation:

In 1989 changes in Michigan laws governing the source list from which jurors were selected have probably improved the process. This resulted in more representative and inclusive jury panels. However, the 1989 Task Force believed that further improvement was possible.

It based this finding on the experience of other states which showed that it was possible to enhance representativeness and inclusiveness in the jury selection process through the use of multiple source lists.

Research Methodology in 1997:

Discussions with State Court Administrative Office personnel

Status of the implementation of the recommendation in 1997:

While multiple source lists are not used in Michigan, the proposed Standards for Juror Use and Management recommend several procedures to ensure representation and opportunity for service. It is not clear, however, that representation has been enhanced sufficiently to insure the inclusion of racial/ethnic minorities in an appropriate manner.

Recommended Action:

This recommendation has not been implemented. The 1989 Task Force recommendation should be implemented as written.

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JURIES

Race/Ethnic Recommendation VI-12: Studies should be undertaken to investigate how representative and inclusive the currently available lists are, and the extent to which the excusal practices impact on the diversity of jury pools.

Summary of condition prompting 1989 recommendation:

In 1989 changes in Michigan laws governing the source list from which jurors were selected have probably improved the process. This resulted in more representative and inclusive jury panels. However, the 1989 Task Force believed that further improvement was possible.

Research Methodology in 1997:

Discussions with State Court Administrative Office personnel

Review of Draft Standards for Juror Use and Management

Status of the implementation of the recommendation in 1997:

Standard 12 of the proposed Standards for Juror Use and Management recommends ongoing data collection and analysis to ensure diversity of the jury pool. This has not been accomplished.

Recommended Action:

This recommendation has not been implemented. The 1989 Task Force recommendation should be implemented as written.

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JURIES

Race/Ethnic Recommendation VI-13: Jury terms of service should be shortened, in those courts using a relatively long term, in order to lessen the financial impact on those who are economically disadvantaged, and to decrease the likelihood that such persons will seek excusal from jury service.

Summary of condition prompting 1989 recommendation:

In 1989 changes in Michigan laws governing the source list from which jurors were selected have probably improved the process. This resulted in more representative and inclusive jury panels. However, the 1989 Task Force believed that further improvement was possible.

Research Methodology in 1997:

Discussion with State Court Administrative Office personnel

Review of Draft Standards for Juror Use and Management

Status of the implementation of the recommendation in 1997:

Standard 5 of the proposed Standards for Juror Use and Management recommend the shortest period of time of service consistent with the needs of justice.

Recommended Action:

This recommendation has not been implemented. The 1989 Task Force recommendation should be implemented as written.

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JURIES

Race/Ethnic Recommendation VI-14: That trial judges be encouraged to implement the Batson standard on their own initiative in any jury selection process in which peremptory challenges appear to be racially motivated.

Summary of condition prompting 1989 recommendation:

The 1989 Task Force identified that the use of racially motivated peremptory challenges was improper and should be prohibited as arbitrary and in violation of equal protection principles as established in *Batson v Kentucky*. Nearly eighty percent (80%) of the attorneys surveyed in 1989 believed that such peremptory challenges were used to exclude jurors on the basis of race or ethnicity. The Task Force did not find any reported Michigan decision in which the *Batson* challenge had been successful.

Research Methodology in 1997:

Interviews with trial lawyers and judges

Status of the implementation of the recommendation in 1997:

Limited anecdotal data suggests that the recommendation is being followed in some cases. The Michigan Judicial Institute has regularly included instruction on the *Batson* standard in its new judges seminar and in criminal substantive courses. It is almost impossible for a meaningful determination regarding the use of this standard to be made because an amendment to MCR 6.433(D) has generally limited access to voir dire transcripts in criminal trials where the appellate attorney is court-appointed. The issue is currently pending on leave granted by the Michigan Supreme Court.

Recommended Action:

This recommendation has been partially implemented. Continued implementation of the recommendation is required.