

## Vermont Judiciary Commission on Diversity, Equity, and Inclusion

### Charge and Designation

*Adopted January 24, 2022*

*As Amended January 9, 2023*

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The Vermont Supreme Court wishes to establish a Commission on Diversity, Equity, and Inclusion (DEI) for the following reasons, and for the purpose set forth below:

- The Constitution of Vermont entrusts the Vermont Judiciary with the responsibility to protect the rights of all Vermonters through access to the courts and equal justice under the law.<sup>1</sup> To realize these fundamental ideals, we continually strive to identify, evaluate, and address bias, racism, and prejudice within the justice system.
- A recent analysis of Vermont data by the Council of State Governments<sup>2</sup> demonstrated that Black people are disproportionately represented in corrections populations at all stages, including pretrial detention, postconviction incarceration, parole, furlough, and probation. Specifically:
  - In 2019, Black people in Vermont were over three times more likely to be defendants in a misdemeanor case and almost six times more likely to be defendants in a felony case than White people. This disparity is particularly stark for felony drug cases, where Black people were over fourteen times more likely to be defendants than White people.
  - Black people are over six times more likely to be incarcerated in Vermont than White people.
  - These disparities remain even when controlling for Vermont residency and criminal history, meaning that out-of-state residents do not drive these disparities.

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<sup>1</sup> See Vt. Const. ch. I, art. 4 (entitling all persons to access to courts); Vt. Const. ch. II, § 4 (vesting judicial power in Vermont Judiciary); Vt. Const. ch. II, § 28 (entrusting in Vermont Judiciary responsibility to administer justice impartially, “without corruption or unnecessary delay”).

<sup>2</sup> S. Bastomski et al., Results of the Racial Equity in Sentencing Analysis, Presentation to the Justice Reinvestment II Working Group (Nov. 17, 2021), <https://www.vermontjudiciary.org/sites/default/files/documents/VT%20JRII%20WG%20November%2017%20Presentation.pdf> [<https://perma.cc/J3NJ-GTCF>].

- This analysis did not include sufficient data to evaluate disparities among other racial and ethnic groups. The analysis specifically highlighted a lack of data on people of Hispanic ethnicity.<sup>3</sup> More data is needed.
- As an employer, the Judiciary must consider and address DEI issues among judges and judicial employees. The Judiciary is committed to a policy of equal employment opportunity and fully supports initiatives to foster a diverse workforce and maintain inclusive work environments.
- Across the Judiciary, members have worked conscientiously within their spheres to address systemic issues of bias, racism, and prejudice. The Vermont Supreme Court recognizes the need to organize and enhance these efforts on a continuing basis.

**Therefore**, the Commission on Diversity, Equity, and Inclusion is hereby established. The Commission’s overarching purpose shall be to advance racial and social equity in pursuit of equal justice under the law. Our aim is to broadly identify disparities in our justice system, understand the causes, evaluate solutions, and implement changes. We anticipate that the Commission’s work will address disparities amongst individuals involved in court proceedings as well as internal Judiciary practices, such as hiring, training, and retention. The Commission shall have discretion to define the scope of its work within the framework established below. To begin the work, an Organizational Meeting of the Members of the Commission identified below will take place within the next sixty days or as soon thereafter as possible. Following the Organizational Meeting, the Commission’s work will proceed in three phases as follows.

1. *Understand the issues*: By 3/31/23, the Commission shall submit its First Report to the Court with specific proposals to:
  - a. Identify data gaps and recommend new data collection measures in areas within the courts to evaluate systemic and institutional inequalities or disparities that may exist.
  - b. Collaborate with partners to solicit and obtain input from the legal profession and the community at large regarding DEI issues in the Judiciary.
2. *Evaluate potential solutions*: By six months following submission and acceptance by the Court of the First Report, the Commission shall submit its Second Report to the Court, which shall include:
  - a. Recommended solutions to address identified inequities and disparities and remove barriers to achieve desired outcomes.
  - b. Evaluation of current DEI practices within the Judiciary.

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<sup>3</sup> The analysis explains: “The Vermont Judiciary does not receive data from law enforcement on Hispanic ethnicity separate from race. Prior to August 2020, DOC [the Vermont Department of Corrections] also did not collect data on Hispanic ethnicity separate from race. As a result, the data used for this analysis likely underrepresents the proportion of people who would identify as Hispanic, which limits any conclusions regarding disparities in Vermont’s criminal justice system.” *Id.* at 18.

3. *Take action:* By six months following submission and acceptance by the Court of the Second Report, the Commission shall submit its Third and Final Report to the Court with specific proposals to:
  - a. Implement recommended solutions through measures approved and overseen by the Commission, including recommendations for legislation or rule change.
  - b. Implement measures to evaluate effect of changes towards desired outcomes.

At no point in the process of the work of the Commission should the deadlines we have specified above be cause for delay in addressing inequity where a solution can be quickly and satisfactorily achieved. In addition to the reporting above, regular updates on the progress of the work of the Commission will be given as needed and at the Court's regular monthly meetings.

The Vermont Supreme Court hereby appoints Chief Justice Paul L. Reiber and Associate Justice Nancy J. Waples as co-chairs and the following persons to the Commission:

1. The Chief of Planning and Court Services
2. The Chief Administrative Trial Judge
3. Supreme Court Justice
4. Two Superior Court judges (recommendation of Judge Zonay)
5. A Court Clerk (recommendation of Laurie Canty)
6. A Court Operations Manager (recommendation of Laurie Canty)
7. The Immediate Past President of the Vermont Bar Association President
8. The Vermont Attorney General's Office designee
9. The Vermont Defender General's designee
10. The Executive Director of the Department of State's Attorneys and Sheriffs, John Campbell
11. The Executive Director of the Office of Racial Equity

The Vermont Supreme Court further names the following individuals to be the Executive Committee of the Commission:


1. Chief Justice Paul L. Reiber, Commission co-chair
2. Associate Justice Nancy J. Waples, Commission co-chair
3. Associate Justice William D. Cohen
4. Chief Superior Judge Thomas A. Zonay
5. Chief of Planning and Court Services Scott Griffith

At its Organizational Meeting the Commission shall: (1) Identify specific goals and desired outcomes of the Commission's efforts; (2) Decide and appoint Committees, members of which are not limited to Commission Members, to be convened only as needed and to be chaired by a Commission member; and (3) Consider funding and staffing to propose to the Court Administrator, who will have discretion to approve the proposal. The commencement of work and the deadlines outlined above for First, Second and Third and Final Reports will be amended depending on the adequacy of funding and staffing that are approved and secured.

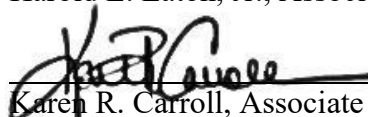
Done in Chambers at Montpelier this 9th day of January, 2023.



Paul L. Reiber, Chief Justice



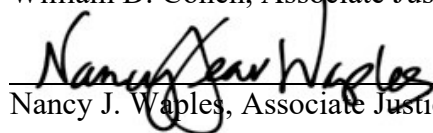
Harold E. Eaton, Jr., Associate Justice



Karen R. Carroll, Associate Justice



William D. Cohen, Associate Justice



Nancy J. Waples, Associate Justice