



REPORT ON APPELLATE DIVISION CHARACTER AND FITNESS COMMITTEES



Franklin H. Williams Judicial Commission of the New York State Courts
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EXECUTIVE SUMMARY

Members of the Committees on Character and Fitness are charged with assessing a law graduate's present character and fitness to practice law. Given this task, it is especially critical that the Committees operate in a consistent, equitable, and bias-free manner. Evidence-based studies of implicit bias suggest that even those who strive to align their behavior with their intentions are biased by cultural attitudes around race, gender, age, social class, religion, and nationality. Streamlining how the Committees are formed and operate, and how applicants are interviewed, can help reduce the prevalence and impact of bias.

The New York State Court system has been a national leader in the fight to eradicate systemic racism and bias from the court system for more than three decades. Today, dozens of states have court-based commissions designed to monitor and prevent systemic racism. The first such commission was formed in New York by renowned civil rights attorney and former Ambassador to Ghana, Franklin Hall Williams.

For more than thirty years, the Franklin H. Williams Judicial Commission, named in honor of its first Chairman, has been an independent, permanent commission of the New York State Unified Court System. The Williams Commission is currently comprised of twenty-eight esteemed judges, attorneys, and court administrators appointed by the Chief Judge of the State of New York. Our mission is to promote equal access and full participation in the court system by persons and communities of color.

In 2022, as part of its ongoing efforts to eradicate systemic racism in the New York Courts, the Williams Commission met with the then Presiding Justices of New York's four Judicial Departments regarding the Character and Fitness process.¹ This report provides a comprehensive statewide perspective on the current Committees on Character and Fitness, along with key recommendations for improvements.

¹ The Commission met with Hon. Rolando T. Acosta, Hon. Hector D. LaSalle, Hon. Elizabeth A. Garry, and Hon. Gerald J. Whalen. Justice Dianne Renwick has since been appointed Presiding Justice of the First Department. The Commission also met with several staff members, including Clerks of the Court, Deputy Clerks, and Counsel to the Committee on Character and Fitness.

Three primary findings emerged from our conversations with the Presiding Justices.

1. **It is unclear whether Committee members reflect their respective applicant pools or Departments.** No Department requires or requests that its Committee members self-identify their demographic information. Any current information about Committee composition is based on the impressions and assumptions of staff.
2. **No formal applicant complaint mechanism currently exists in any of the Judicial Departments.** Lack of clear, consistent reporting mechanisms (including the option to remain anonymous) may prevent applicants from reporting misconduct and bias.

It should be noted that the First Department invites all candidates to contact Counsel to the Committee with any complaints and/or issues they may have encountered during the admissions process. Email and phone numbers are provided to the applicant on the date of admission.

3. **The processes for selecting, training, and removing Committee members vary widely between Departments.** We recommend streamlining procedures across departments to create a more equitable system for all applicants to the bar.

Based upon our conversations with the Presiding Justices, Committee members, court personnel, and applicants, the Williams Commission makes the below recommendations for improving the New York State Character and Fitness Committees.

KEY RECOMMENDATIONS

1. To ensure that Committee members represent a broad range of backgrounds and experiences, all Departments should implement an application process.

As of the fall of 2022, Committee member recruitment in all four Departments was ad hoc and largely based on referrals from other Committee members and sitting jurists. The Williams Commission recommends that the four Departments create a uniform application process that requests those interested in Committee membership (1) provide a CV; (2) provide a short statement of interest; (3) specify their experience with interviewing candidates; and (4) complete an optional demographic survey (see Recommendation 2 below). A position description and application information should be shared with legal publications (such as the New York Law Journal), bar associations, and legal list serves. By broadening the candidate pool, the Committees may reflect more varied backgrounds and experiences.

The Williams Commission recommends that the four Departments institute a minimum number of years that a potential member must be admitted before applying. A minimum of five to seven years would strike a balance between experience and broadening age ranges and other demographics.

2. Self-identified demographic data of Committee members should be collected.

Based upon the information provided by the four Departments, it is impossible to accurately determine whether the Committees reflect the demographics of their respective applicant pools and communities. Data shared was based entirely on the conjecture of both judicial and non-judicial staff. The Williams Commission recommends that Committee members anonymously self-report demographic information, including race, ethnicity, sex, gender, sexual orientation, and ability. A survey like what the New York State Office of Court Administration (OCA) distributes to its employees would serve as a good guide.

Given the complex nature of questions pertaining to race and other identities, candidates should also be able to check a box that says “other” and write in how they identify. It should be made clear that any information collected from the Committee members would be used for statistical, informational, and reporting purposes only.

The four Departments may also wish to discuss whether to recommend changing the Rules of the Chief Administrative Judge to permit the disclosure of voluntary demographic information, collected during attorney biannual registrations, to the Committees on Character and Fitness.

3. Mandatory training is needed for all Committee members.

While there is no statutory requirement, the First and Third Departments require Committee members to attend some form of training. The remaining Departments do not have any such requirements but acknowledge that training is necessary or helpful. The Williams Commission appreciates that Committee members are unpaid and make sacrifices in their personal and professional lives to serve on the Committees. However, we strongly recommend that Committee members in all Departments complete annual mandatory training on implicit bias and interviewing skills and best practices. The recommended mandatory trainings can provide Continuing Legal Education (CLE) credits and can also be offered remotely to allow for greater scheduling flexibility. Ideally the trainings would be interactive. Committee members should complete pre-and-post training evaluations to help gauge the effectiveness of the training.

All attorneys have an ethical duty to not discriminate in the practice of law.² Thus, it is reasonable to ensure that those screening applicants for admission do so in a bias-free manner.

4. A volunteer Committee mentoring/shadowing program should be instituted.

The Williams Commission recommends that all new Committee members be offered the opportunity to shadow existing members for a period to be determined by the

² New York Rules of Professional Conduct, 8.4(g).

individual Departments. This is beneficial in two ways. First, it can offer new members the chance to observe interviews, helping them develop questions and techniques. Second, if newer members observe questionable or inappropriate conduct, they can report it to the Presiding Justices or other staff. The First Department already implements this process and has done so since 2018. New members shadow more experienced members in the Third Department, as well.

5. A uniform handbook should be created for all Committee members.

The Williams Commission recommends that the four Departments work together to create a uniform Committee member handbook. The handbook could include, among other things, a description of the role, applicable laws and court rules, an overview of the Character and Fitness process, sample questions (see Recommendation 6 below), types of questions and phrases to use and avoid, and resources regarding interviewing and implicit bias.

6. Committee members should be provided with a list of sample questions for applicants.

The Williams Commission recognizes that Character and Fitness interviews tend to be free-flowing conversations. However, the Commission recommends that all members have a list of sample questions that is uniform between Departments. Questions that are included within the court system’s Structured Interview Packet could be used as a guide. Such a list may help interviewers better direct the interviews, gain information necessary for eligibility determinations, and avoid potentially inappropriate and/or biased questions.

7. Term limits for Committee members should be considered.

CPLR § 9401 states that a Committee member shall “serve until his death, resignation, or the appointment of his successor.” Two Departments have instituted some form of term limitations. However, in the remaining two Departments, Committee members currently serve without term limits.

The Williams Commission recommends that all Departments institute term limits for Committee members to ensure diversity and fresh perspective. The length of terms and the number of terms that can be served can be decided by each

Department, as some Departments have a larger pool of attorneys from which to draw. Term limits should be written and clearly state that outgoing candidates shall serve until the appointment of a successor, in compliance with the CPLR.

The Williams Commission also recommends that the Departments consider whether the language of CPLR § 9401 should be updated to better reflect the modern Character and Fitness system.

8. The interviewing process for bar applicants should be clear and consistent with respect to the time, place, and manner that the interviews will be conducted.

All applicants to the bar should have their interviews conducted in a professional, private environment. The Williams Commission recommends that all four Departments require that interviews be conducted in a courthouse, government office, or remotely.

The Williams Commission also recommends that candidate interviews be completed at least one week prior to admissions ceremonies. The Commission has been informed of instances where interviews of applicants have taken place on the morning of their scheduled admission ceremony. This practice creates unnecessary stress for applicants and may not allow interviewers sufficient time to address questions or issues that may arise.

The Williams Commission notes that some Departments have waived interviews for “clean” applications. The Commission recommends that all four Departments create and implement a uniform set of rules stating when and under what circumstances an interview is waived. Absent a consensus, there is risk for inequity among Departments and applicants.

The Williams Commission also recommends that all Departments ensure there are prompt and timely admissions ceremonies. We have been made aware of significant delays in admissions in some Departments following the completion of the application process.

9. Clear and formalized mechanisms for feedback and complaints are needed.

All applicants should have a mechanism to report instances of bias or other inappropriate conduct that may occur during an interview. Three of the Departments have no complaint processes, and none allow for anonymous reporting.

The Williams Commission recommends that all four Departments create a process for applicants to report complaints; that process should allow for anonymity if requested. For all complaints, a written report with a complaint number should be generated. Questions can include the applicant's name and contact information, the interviewer's name, the date and location of the incident, and an account of what happened. Anyone submitting a complaint should receive confirmation of its receipt, regardless of whether it was reported anonymously.

The Williams Commission is cognizant of the concern about "opening the floodgates" to inappropriate complaints if anonymous reporting is permitted. The benefit to applicants and to the Committees, however, outweighs the risk. We note that several agencies, such as the Inspector General for Bias Matters and the Law Enforcement Bureau of the New York City Commission on Human Rights, allow for anonymous complaints.

The investigation process for complaints should be clear, and should include reaching out to all parties, reviewing any available materials, and discussing possible resolutions.

All Committee members and applicants should be given information about the complaint process before their interviews.

The complaint process should be the same or substantially similar across the Departments to ensure equity; all applicants should have similar processes and recourses.

The Williams Commission also recommends that all four Departments offer applicants a post-interview feedback survey. Applicants may identify themselves or remain unknown or anonymous. The survey can ask them to rate their experience on a scale, as well as allow for written feedback. This will assist the respective

Committees in determining whether any changes can or should be made to their interviewing processes.

10. Conduct periodic, formalized reviews of the statewide Character and Fitness process.

It was the general consensus of the Presiding Justices that there be institutionalized reviews of the Character and Fitness process every five years. The Williams Commission supports this recommendation. Such review could be conducted by an independent entity, such as the Williams Commission, and would encourage the sharing of best practices in Committee member selection, complaint mechanisms, training, and outreach.

APPENDIX –SELECTION PROCESS

First Department

Candidates are interviewed prior to selection. Recruitment is currently done unofficially – the Presiding Justice typically reaches out to the City Bar Association and the State Bar Association. They typically do not receive a diverse group of candidates.

There are currently no term limits; however, the imposition of the same were under consideration in 2022. If term limits were instituted, the number of years a member could serve would also have to be determined.

Second Department

Once a vacancy arises, the Presiding Justice consults with the Senior Associate Justice for that County, asks them to collaborate with other members from the County, and asks them to forward the names of potential members. Current Committee members also submit the names of potential Members.

A recommendation from a Senior Associate Justice carries substantial weight.

Committee members serve for four-year terms; however, several members are reappointed multiple times. There is no current time limit on reappointments. Some

individuals are grandfathered in as they started in the 1980s, before terms were instituted.

Third Department

When vacancies occur, the Deputy Clerk reaches out to the justices to compile a list of names of potential members.

The prior Presiding Justice instituted term limits across the board. Statutory language provides that the term limit is permanent until a successor is appointed. The Court appoints successors to comply with the statute.

Terms are for 5 years and members may serve two consecutive terms. The term limits apply to everyone, and no one was grandfathered in.

Fourth Department

There is no limit on the number of Committee members. The Presiding Justice makes appointments when openings arise, normally through attrition.

No term limits are currently in place. There is no stated mechanism for the removal of a member who is not fulfilling their duties.

APPENDIX – COMPLAINT MECHANISMS AND INTERVIEW LOCATIONS

First Department

On the day of the scheduled admissions ceremony, Counsel to the Committee meets with the applicants. During this meeting, she informs them that they should notify her of any complaints, issues, or concerns. She provides the applicants with contact information, including her telephone number and email.

Interviews were virtual as of our meeting in 2022. In-person interviews are never conducted in the offices of the attorney and would take place at the courthouse.

Second Department

No formal or informal complaint mechanisms existed as of 2022. They have not polled any recent candidates and are unaware of any complaints. It was acknowledged that a formalized complaint mechanism was important.

Before the pandemic, the Second Department appears to be the only Department where interviews were conducted at the office of a Committee member; this is no longer the practice. All in-person interviews are to be conducted in a “public facility, such as a bar association or public library, and in a location that permits the interview to be conducted in a confidential environment.”

Where there is a “clean application”, i.e., no issues or questions which must be addressed, the interview is waived.

Third Department

Court personnel sit in on subcommittee hearings to make sure everything runs smoothly. Therefore, if something inappropriate were to happen they would be present.

Interviews were conducted virtually during the pandemic and were held at the courthouse prior to it. None were or are conducted in private offices. Subcommittee hearings are conducted in person.

Fourth Department

While no formal or informal mechanism is in place to address complaints, one would be supported.

Interviews take place in the courthouse, except for Buffalo interviews, which take place at a Court office space in Buffalo, New York.

APPENDIX – TRAININGS FOR CURRENT COMMITTEE MEMBERS

First Department

Mandatory training provides members with 1 CLE credit. It is an annual requirement, although a gap occurred due to COVID. Trainings address implicit bias and interviewing skills.

Trainings emphasize that interviewer questions should be narrowly tailored to the areas of the Character and Fitness process and should not address issues outside of the scope of character and fitness. Each Committee Member sits with Committee Counsel to discuss the do's and don'ts of interviewing candidates. After appointment, new members shadow more experienced members.

Second Department

There is no training for members, but it was acknowledged that there should be mandatory training. The Second Department does have a Handbook on how to start the discussion, but there is no guidance on what not to say.

Third Department

A Character and Fitness CLE is a prerequisite for participation when someone is nominated and appointed (2 hours). The Rules require compliance within 1 year of appointment and 1 year of reappointment; thus, Committee Members will complete the CLE twice if they serve two consecutive terms. The Committee has structured the CLE so that Committee Members can also receive Ethics CLE credit.

Members shadow more experienced members. Written materials are provided upon appointment regarding applicable judiciary law, court rules, and overview of the Character and Fitness process. Members are invited to attend all the Department's CLEs.

Fourth Department

It was acknowledged that some form of training should be offered. However, there was expressed hesitance that it be mandatory since the positions are not paid and people are volunteering their time. Chairs provide training when new members are

brought on, but there is no formal racial bias training. Also, there is no ongoing training after someone has been appointed.