

## **Delaware report to the National Consortium on Racial and Ethnic Fairness in the Courts 2016**

In keeping with the goals of the National Consortium to examine the treatment accorded minorities in the courts, the Delaware Supreme Court appointed an Access to Justice Commission in December of 2014 to examine the state's justice system and identify any barriers to access to justice that may exist and to develop recommendations to remove or reduce those barriers. To increase the Commission's independence and to give any recommendations the Commission might make added weight, the voting membership of the Commission is comprised entirely of private citizens including noted academics, community and business leaders and other professionals from across the state. Delaware Supreme Court Justice Chief Justice Leo E. Strine, Jr. and Justice Karen Valihura serve on the Commission as non-voting members and act as a liaison between the Court and the Commission.

Like other Access to Justice programs created across the nation, the Delaware Access to Justice effort is examining civil justice at all levels for low-income and disadvantaged people in the state with subcommittees that are focused on the efficient delivery and adequate funding of legal services to the poor, coordinating and improving help to pro-se litigants and promoting greater private sector representation of underserved litigants. Unlike other jurisdictions, Delaware's effort is also focused on the criminal justice system with the Commission forming a Committee on Fairness in the Criminal Justice System. This was a priority for Chief Justice Strine who has asked the Committee to focus in particular on the racial disparity in Delaware's prisons. While African-American citizens make up about 22 percent of Delaware's population, African-American inmates make up about 60 percent of the state's prison population. As Chief Justice Strine said at a Martin Luther King Jr. Day breakfast in 2015, "No Access to Justice Commission worthy of its name can go forward in Delaware without confronting these issues of inequality."

"To truly make the dream that Dr. King talked about come true, and to ensure that all Americans have access to the inalienable rights that belong to all of us, we cannot ignore our duty today to continue to work to overcome the problems that black people still endure because of our nation's shameful legacy of racial discrimination," said Chief Justice Strine after the Commission started its work.

The Fairness Committee, co-chaired by two respected members of Delaware's legal community, is focusing on five primary areas:

- Alternatives to incarceration including reentry issues
- Bail and pre-trial detention issues
- Charging, plea bargaining and sentencing decisions
- Policing strategies
- Root causes of racial disparities

To assist the Committee in its work, the group reached out to experts at the Equal Justice Initiative in Montgomery, Alabama; the University of Pennsylvania Law School's Quattrone Center for the Fair Administration of Justice and the University of Delaware, among others, to conduct reviews of those five areas of criminal justice and present reports on each area along with suggestions for possible

reforms. In order to include the community, and raise awareness about the Delaware Access to Justice initiative, the experts were asked to present their reports and take questions from the Committee at hearings that were publicized and opened to the public so that the community could learn from the experts along with the committee. Those hearings on Oct. 22, 2015 and Nov. 13, 2015 were held at two large public venues in Wilmington and were recorded on video which was later posted on the Courts' Access to Justice website (at <http://courts.delaware.gov/supreme/access.aspx>) along with copies of the reports that were submitted by the experts.

The Committee then set up a series of public forums to hear from the community about their thoughts on the issues and their evaluation of the experts' testimony and reports. These four public forums were set up in the evenings and held in locations throughout Delaware — including both rural portions of the state and the state's largest urban area, Wilmington — from Dec. 1 through Dec. 9, 2015 in order to make sure that a broad cross-section of the public had the chance to participate. The Committee also accepted written public comments through an interactive form on the Delaware Access to Justice website through Dec. 15, 2015. To further assist the Fairness Committee, the Delaware Courts commissioned a disparity study of the state's criminal justice system to document and quantify any racial disparities at key contact points in the process. The Fairness Committee is now in the process of reviewing the expert reports, testimony and public comments to formulate an action plan that will be presented to the Delaware Supreme Court and the public sometime in the coming year. The work of the civil Access to Justice subcommittees, focused on pro-se and pro-bono issues, is also continuing and may include public hearings in the near future.

Beyond Access to Justice, the Delaware Courts have also undertaken several other related initiatives. Working with the Delaware Legislature, the Delaware Courts have commissioned an expert to review and suggest revisions to the state's criminal code that are focused on fairness and equity. This summer, the Delaware Courts will launch a training program that focuses on combating implicit bias. Delaware is also one of four jurisdictions participating in the Smart Pretrial Demonstration Initiative to look at using a risk-based assessment system to improve pretrial policies and practices to both save money through efficiency and improve pretrial outcomes while also being fairer and more just to both defendants and victims. The initiative is funded by the Bureau of Justice Assistance and managed by the Pretrial Justice Institute and in addition to the Delaware Courts, state prosecutors, public defenders, the Department of Correction and the Delaware State Police are also participating.

Finally, Chief Justice Strine, in addition to meeting with a number of minority community leaders and community groups, participated in a panel discussion entitled "The Conversation About 'The Conversation' About Race" on March 24 at the Delaware Historical Society in downtown Wilmington. The Chief Justice appeared on a panel with a well known local civil rights activist and educator; the executive director of an organization that focuses on community re-entry efforts and the head of one of the largest police organizations in Delaware. The program was designed to focus on how the community can engage in a direct and respectful discussion about the intersection of race and public policy.