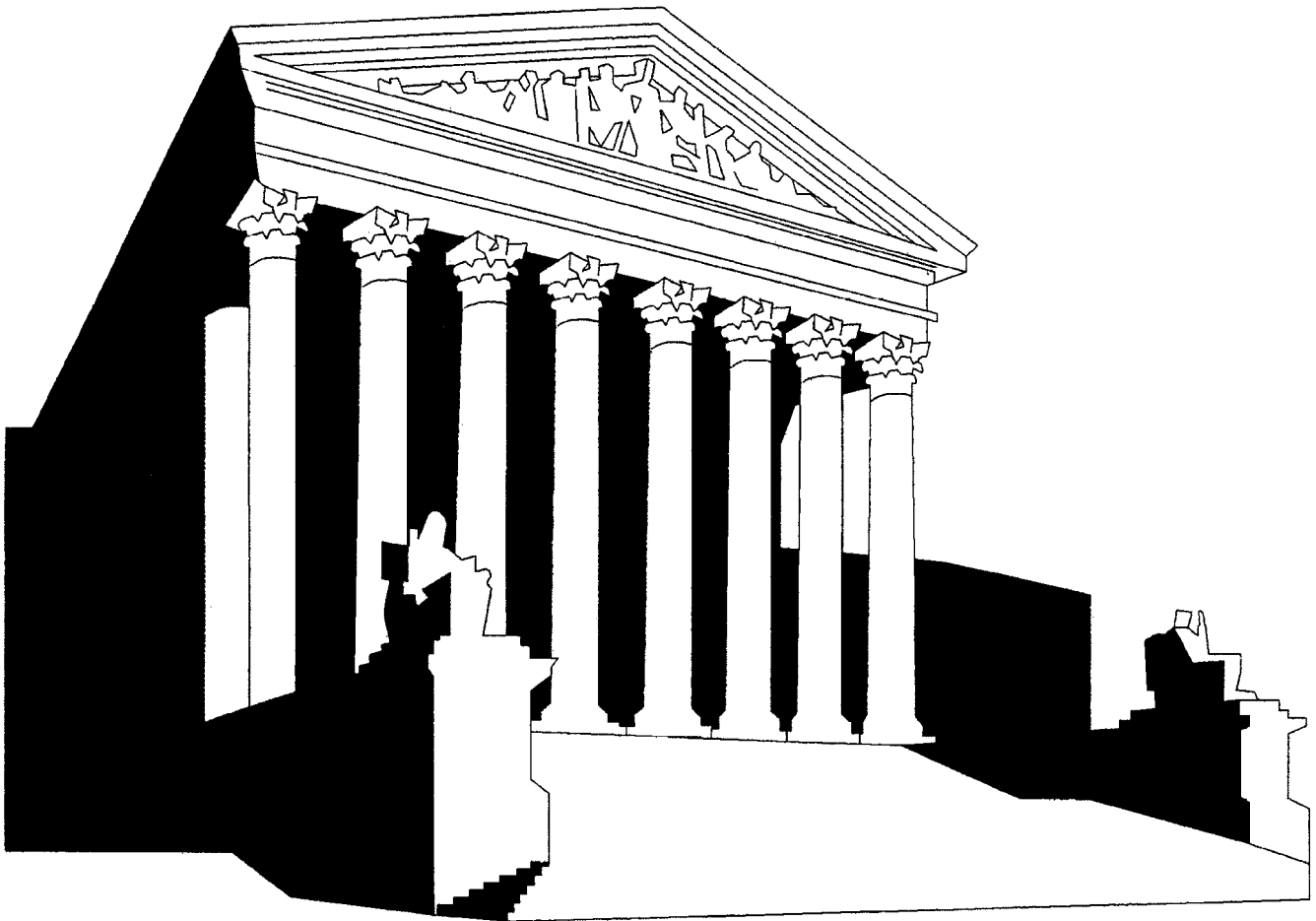


# PROGRESS REPORT TO THE MINNESOTA SUPREME COURT



## GENDER FAIRNESS IMPLEMENTATION COMMITTEE

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## A MESSAGE FROM JUSTICE ROSALIE E. WAHL

The Minnesota Supreme Court has been unwavering in its support of and commitment to the work of its Task Force on Gender Fairness in the Courts and the Gender Fairness Implementation Committee it established. Chairing that Task Force and its Implementation Committee has been for me one of the most rewarding experiences of my service on the Court. I have been honored to serve with the dedicated and capable women and men throughout the system and in the public we serve who have involved themselves so deeply in moving this great institution closer to the goal of fairness and justice for all. We have made impressive progress but our work is not complete. Perhaps it will never be complete as education and reform must be ongoing. We will evaluate our progress, however, and continue our efforts, using the partnerships we have formed within the judicial system and with the Legislature to make the entire justice system gender fair in all its dealings.

A handwritten signature in black ink that reads "Rosalie Wahl". The signature is written in a cursive, flowing style with a large initial "R".

Justice Rosalie E. Wahl

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## Introduction

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On September 6, 1989, the Minnesota Supreme Court Task Force for Gender Fairness in the Courts released its report to the state's judiciary and to the public with a commitment to make the document a blueprint for action. Four years later, the Supreme Court's Gender Fairness Implementation Committee has accomplished many of the report's recommendations. In the coming year the committee will be evaluating the effectiveness of its efforts thus far and continuing its partnership with judges, lawyers, law enforcement, legislators and policy makers to move forward in the effort to ensure that the Minnesota state court system is gender fair.

The Task Force recommendations targeted the areas of domestic violence, sexual assault, sentencing, civil justice, family law, and the court environment. The Implementation Committee established domestic violence as its top priority and utilized a two-pronged approach of judicial education and legislative action. The Committee used a similar approach to achieve its goals in the other issue areas.

While domestic violence was stated as a priority issue, the Implementation Committee made significant strides in each of the areas the Task Force studied. The Task Force has been hailed nationally as a model of implementing its recommendations. The summary that follows outlines what has been accomplished to date toward achieving the court system's goal of providing fair and equal treatment to all Minnesotans.

# Summary of Major Accomplishments

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## ***Judicial Education***

Judges' continuing education programs have addressed the following topics:

- ▶ Spousal maintenance
- ▶ Property division
- ▶ Child support and use of contempt powers to enforce child support orders
- ▶ Custody
- ▶ Sexual harassment
- ▶ Domestic abuse

A conference on domestic abuse was held in November of 1993. Representatives from all districts attended to start the development of local coordinating councils.

## ***Legislation***

The following major pieces of legislation were passed:

- ▶ Child Support - Legislation has raised the child support cap, requires allocation of child care costs to each parent, and authorizes the court to order the obligor to pay medical support. Judges now must make written findings when deviating downward from the child support guidelines.
- ▶ Family Law - Specific findings are now required if the court imposes joint custody over an objection. Financial disclosure is required at the initial stages of a dissolution. Temporary attorney fees are to be awarded when necessary, if the other party has an ability to pay.
- ▶ Domestic Abuse - Legislation requires each city and county attorney to have a model domestic abuse prosecution plan by July 1, 1994. The prosecutor is required to make a record of reasons for dismissal of criminal domestic assault charges.
- ▶ Funding - Appropriations have been made to fund legal representation in family law matters and battered women's programs. Domestic abuse victims no longer have to pay filing fees.

## ***Other Accomplishments***

- ▶ The Supreme Court has issued an order clarifying the role of advocates in domestic abuse matters.
- ▶ The Rules of The Board on Judicial Standards and the Code of Professional Responsibility prohibit harassment and discrimination.
- ▶ A guide on conducting gender fair proceedings has been developed and distributed to all judges.
- ▶ More women have been appointed to the bench - there is a woman judge in every judicial district except the Eighth and the Ninth.
- ▶ Forms and other publications have been revised so that they are gender neutral.
- ▶ A sexual harassment policy has been adopted which covers all court personnel.
- ▶ Family law is now covered on the bar exam.
- ▶ Three videos that explain the functions of family court have been produced.

# Family Law

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## ***Spousal Maintenance and Division of Property***

More than 15 educational programs have been presented to the legal community about spousal maintenance issues since the task force report was released in 1989.

### **Education**

Judges: Programs addressing spousal maintenance have been presented to judges at their annual conference and at Minnesota's Judicial College on seven occasions from 1990 to 1993. At all judicial education programs information is presented verbally and through written materials. This topic is covered in the annual new judge orientation program every year since 1989. Programs addressing property issues were presented at two statewide judges' conferences.

Lawyers: Spousal maintenance has been covered each year at the Minnesota Family Law Institute attended by more than 1,500 attorneys and judges. In addition this has been the topic of a panel discussion by judges and a program presented by the Minnesota Institute of Legal Education.

## ***Child Support***

The task force recommended that child support orders should be enforced through the use of contempt powers and other statutorily authorized judicial sanctions. The task force also recommended that judges interpret the child support guidelines as a minimum – not a maximum – level of the non-custodial parent's obligation. A high priority of the implementation committee is to continue monitoring and providing information as the legislature addresses these issues. Much has been done to educate judges and legislators on the impact of child support guidelines on custodial parents and children. In addition, the legislature recently has given judges new tools to collect child support.

### **Education**

Child support enforcement was the subject of three educational programs from 1990 through 1992. Child support also was covered at the new judge orientation program in 1992. Judicial education courses on interpretation and application of Minnesota's Child Support Guidelines were presented at conferences and the judicial college and at new judge orientation programs six times from 1991 through 1993.

## **Legislation**

The Minnesota Legislature made it possible to increase child support levels for middle and upper income families by raising the \$4,000 cap on child support to \$5,000. The legislation also:

- ▶ Requires the court to review child care expenses and allocate costs to each parent in proportion to his/her income.
- ▶ Imposes an automatic cost-of-living index on the \$5,000 cap.
- ▶ Requires the parent with the better medical insurance to provide coverage for the child and sets out other insurance-related considerations.

Laws 1993, Chapter 340, Section 40 expands the remedies available for a willful failure to obey a judgment or order of the court.

## ***Custody***

### **Education**

Five judicial education programs addressed the recommendation that custody mediation should not be ordered where domestic abuse has been documented in sworn statements or by an order for protection or arrest records. These programs also examined the appropriateness and impact of joint custody orders. In their educational programs judges also were encouraged to be aware of potential biases in custody evaluations.

In addition, some counties have provided gender-sensitive training for custody evaluators to ensure that social workers are sensitive to issues of bias in their investigations and reporting.

The State Court Administrator's office is exploring, with the Conference of Chief Judges, a mechanism for developing a standardized format for custody evaluations and reports.

## ***Access To The Courts***

### **Funding for Family Law Matters**

To provide legal representation in family law matters for poor people, the legislature authorized in 1990 an additional \$890,000. In 1992 additional funds were secured and the legislature also eliminated filing fees for orders for protection. The 1992 and 1993 legislative sessions resulted in a further annual increase in appropriations of \$1.8 million for civil legal service statewide.



## **Education**

The need for awarding temporary attorney fees for the economically dependent spouse in an amount sufficient to pursue relief in family court was discussed at five judicial education programs including a new judge orientation session.

## **Legislation**

Minnesota Statute 518.131 subd 1(d) and Minnesota Statute 518.14 cover the issue of temporary attorney fees. In response to a Task Force recommendation, Minnesota Statute 518.14 was amended to mandate attorney fees necessary to enable a party to carry on or contest a proceeding in appropriate circumstances.

## ***General Family Law Issues***

The Board of Law Examiners adopted the task force recommendation that family law should be one of the subjects covered on the Minnesota Bar examination, effective with the 1992 bar exam.

Family law programs were presented at six judicial conferences held between September, 1989, and December, 1993.

With funding from the 1991 legislature, three educational videotapes have been produced that explain to litigants the function of the court in family law matters. The tapes entitled "Divorce in Minnesota: An Overview", "The Process of Divorce", and "Consider the Kids: Looking Out for the Children of Divorce", will be used with parties in dissolution proceedings in the courts of this state.

# Domestic Violence

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## *Civil Process*

### **Education**

Judges: Nine programs designed to sensitize judges to the issues of domestic violence were presented at judges conferences held between September, 1989, and December, 1993. Topics included abuse dynamics, the dangers of victim blaming and the inadvisability of issuing mutual orders for protection without cross petitions. In addition, a statewide conference was held in November, 1993, to bring together representatives of all facets of the justice system that address domestic violence. At the conference participants formed teams and action plans for reducing the problem at the local level.

Lawyers: All three law schools now include domestic abuse as part of their curriculum. Nine programs for lawyers from 1990 to 1993 included presentations at the annual Criminal Justice Institute which attracts more than 2,000 persons each year.

Court Personnel: Court administrators participated in two statewide training sessions. Additional local training has been provided in the Ninth Judicial District.

Law Enforcement: Education programs address domestic violence and domestic abuse laws as well as responding to victims.

### **Advocates**

A Supreme Court order in 1990 made clear that victim advocates can be present at hearings on orders for protection and assist in the preparation of petitions and that such conduct does not constitute the unauthorized practice of law.

Funding: The legislature has appropriated the following:

- ▶ In 1990, \$175,000 for battered women's services
- ▶ In 1992, \$500,000 increased funding to the Department of Corrections for battered women's shelters and services and
- ▶ In 1992, \$300,000 to establish domestic abuse advocacy programs in every judicial district by July 1, 1995.
- ▶ In 1993, \$1.3 million was appropriated for battered women's programs and shelters.

## **Forms**

New, simplified forms for orders for protection were approved by the Conference of Chief Judges in 1993.

## ***Criminal Process***

### **Legislation**

In 1990, legislation was passed that amended Minn. Stat. 611A.0315 Subd. 1, to require the prosecutor to make a record of the specific reasons for dismissal of criminal charges against a person accused of domestic assault and to indicate the specific reason for the unavailability of a witness if that is the reason for dismissal.

In 1992 legislation was passed which mandated a domestic abuse advocacy program in each judicial district in the state. Funding in the amount of \$300,000 also was made available.

### **Data**

At the recommendation of the Task Force, the Department of Public Safety completed a feasibility study for a statewide computerized data base on domestic violence. The study was presented to the 1991 legislature. While funding was not approved that session, the Legislature created the Criminal and Juvenile Justice Information Task Force, chaired by the State Court Administrator, to study and make recommendations for improvements in the statewide information systems, including an orders for protection registry.

### **Model Domestic Violence Prosecution Plans**

Legislation passed in 1990 required the development of model prosecution plans by five pilot cities and counties. Completed model plans were circulated to every city and county attorney in the state. Each city and county attorney is required to file a notice with the Department of Safety by July 1, 1994, that a plan has been adopted. The effectiveness of the plans will be assessed with an evaluation tool developed for the 10 pilot sites.

The plan calls for the following:

- ▶ Policy commitment to end discretionary dismissals for reasons of victim cooperation and to develop effective means of reversing this occurrence.
- ▶ A single prosecutor should be responsible for each case from initial charge to disposition.

- ▶ Early contact between prosecutor and victim, with earliest possible domestic advocate intervention, should be used to explain the use of subpoenas and the role of a victim as a witness.
- ▶ The use of subpoenas should become standard procedure in all domestic violence prosecutions necessitating appearance of the victim.
- ▶ Coordination should be established with law enforcement authorities to preserve prompt complaint evidence by means of videotape or audio recording.

The task force recommended legislation that would mandate a pre-sentence investigation in all cases of conviction of domestic violence, without the ability to waive the requirement. While no legislation has been enacted, the Ramsey County Department of Community Corrections has a special unit dealing with habitual domestic assault offenders and a procedure for dealing with them. It is a process that could be replicated in other counties.

# Criminal And Civil Justice

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## ***Sexual Assault***

In response to a Task Force recommendation, the Attorney General's office and the University of Minnesota have studied the incidence and nature of acquaintance rape in Minnesota and determined what proportion is prosecuted in criminal court.

### **Education**

Judicial education programs are in the planning stages on the following:

- ▶ On the subject of acquaintance rape.
- ▶ On the gender-based stereotypes used in the trial of a criminal sexual conduct case and to develop judicial skills in distinguishing between the presentation of a legitimate consent defense and the improper assertion of a gender-based defense.

A 1992 Judicial College class focused on a recommendation that judges should not distinguish – on the basis of whether the victim and defendant were acquainted – in setting bail, conditions of release, or sentencing, in non-familial criminal sexual conduct cases.

### **Juvenile Justice**

As recommended by the Task Force, the Department of Corrections currently is conducting a study to determine if there are disparities for juvenile female status offenders.

## ***Employment Discrimination***

### **Policies**

In 1990 a system-wide sexual harassment policy was adopted by the Minnesota Supreme Court.

Comparable worth studies have been completed.

### **Education**

Judges and Court Personnel: A program on sexual harassment was presented to all chief judges and assistant chief judges, followed by general statewide training of judges in 1990. The Sexual Harassment Policy was

the subject of in-service training at the 1990 conference of court administrators. Court employees throughout the state have been trained regarding the policy and the types of behavior that will not be tolerated.

Lawyers: A sexual harassment program was presented at the Trial Skills Program in 1991, 1992 and 1993. The Minnesota State Bar Association produced and distributed statewide a videotape on gender equity in the workplace.

## ***The Court Environment***

### **Policies**

The Minnesota Supreme Court adopted amendments to the Rules of The Board on Judicial Standards and the Rules of Professional Conduct which makes discrimination or harassment on the basis of gender professional misconduct and grounds for discipline.

### **Education**

Judges: At six judges' conferences, including a new judge orientation, programs were presented to enhance sensitivity to gender fairness issues.

A guide book on "How to Conduct Gender-Fair Proceedings" has been produced for all state court judges.

Lawyers: The Minnesota State Bar Association's video "Gender Equity in the Workplace" was distributed to 21 local bar associations and presented at the state convention.

## ***Women Judges***

A significant number of women attorneys has been appointed to the judiciary by the current and previous governor. Women judges are now to be found in all judicial districts except the Eighth and Ninth. As of January, 1994, 46 women serve on the bench statewide.

At the new-judge orientation new women judges have an opportunity to learn from more experienced women judges.

## ***Gender Fairness In Court Documents***

Court forms and documents have been reviewed and revised to assure that they use unbiased and gender neutral language.