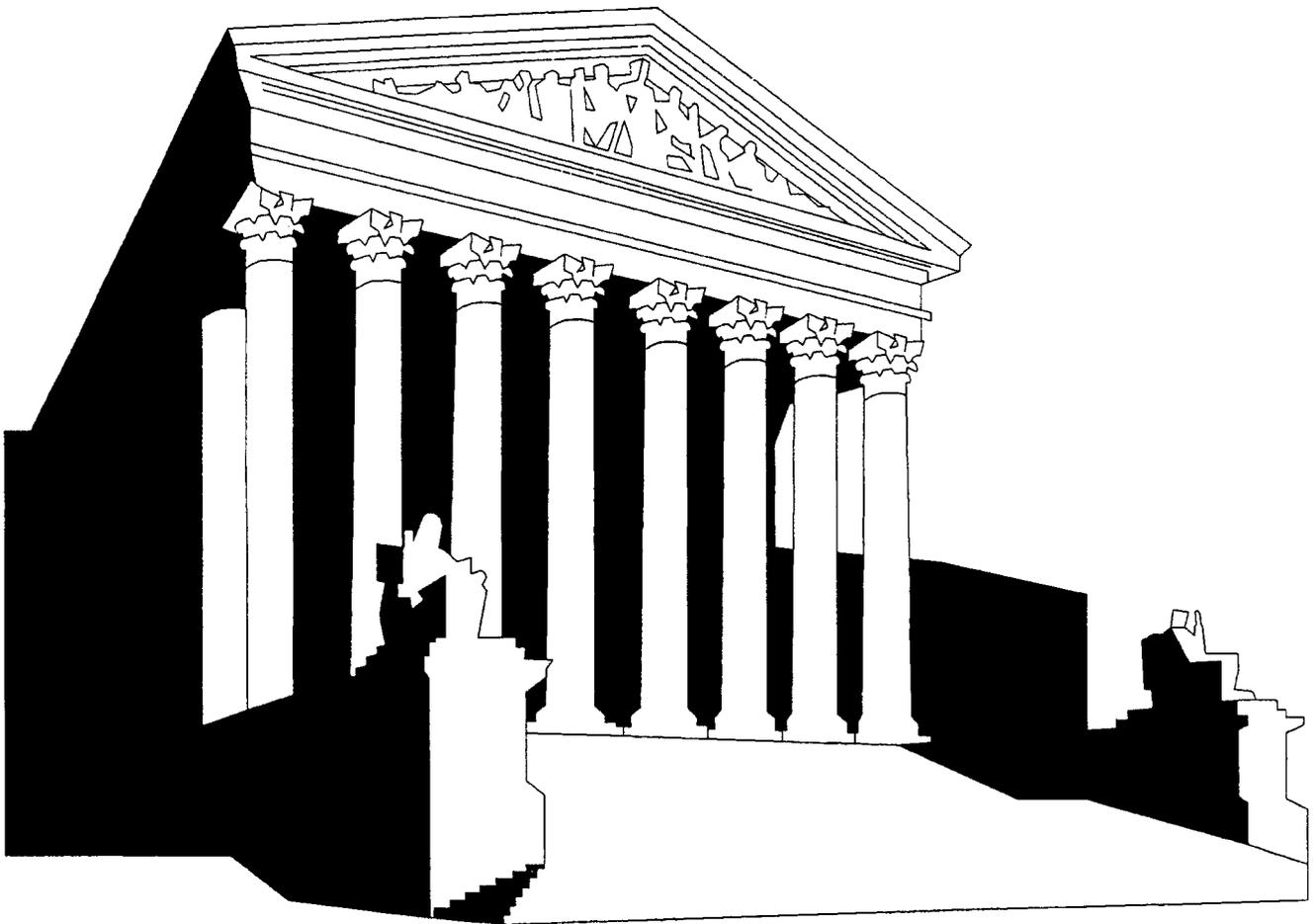


**GENDER FAIRNESS  
IMPLEMENTATION COMMITTEE**



**PROGRESS REPORT**

**APRIL 1994**

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# I. Family Law

## A. Spousal Maintenance

### 1. Recommendations of the Gender Fairness Task Force

- a. Judicial education courses and continuing education courses for lawyers in family law should address spousal maintenance. These courses should contain information about the economic realities faced by women attempting to reenter the labor market after extended absences, including practical exercises dealing with spousal maintenance determinations. The courses should also contain information emphasizing the need to make specific findings on all of the factors which state law requires courts to consider in awarding maintenance.

#### DISCUSSION:

Judicial Education. Educational programs addressing maintenance have been offered at:

- Judges' Conferences on 12/90, 6/91, 12/91 and 12/92. The program presented in December of 1991 was under a grant awarded to the National Women Judges' Association. It was very well attended and judges had to be turned away for lack of room;
- Judicial College on 7/91, 5/92 & 5/93; and
- At all New Judge Orientation programs held on 7/89, 7/90, 7/91, 6/92 and 5/93.

CLE's. Continuing legal education programs for attorneys practicing in the area of family law continue to focus on maintenance issues. It has been covered in the following programs:

- Yearly at the Minnesota Family Law Institute. Over 1500 attorneys and judges have attended these programs which had special focus on the economic consequences of divorce;
- On April 13, 1993, judges presented a panel discussion on this topic.
- MILE (Minnesota Institute of Legal Education) presented a program on maintenance on September 28, 1993.

The Implementation Committee believes that there will be a need for education in this area for the foreseeable future. In recent months there has been a great deal of information provided in the media concerning the

economic status of women. Judges and attorneys need to understand the economic realities of the workplace and avoid making decisions on stereotypical assumptions.

An article in the Minnesota Family Law Journal (March/April, Volume 6, Number 3) titled "Spousal Support In Minnesota: Where Are We Going?" reviews the progress in this area. The authors, Jean M. Gerval and Carelle Muellner, analyzed data taken from Hennepin County cases decided between October 1, 1991 to December 31, 1991. It found that the Courts awarded permanent maintenance in 27% of the cases in which maintenance was ordered. The study also estimated that the rate of maintenance ordered statewide was approximately 8%. A previous study in 1986 which examined cases in all the judicial districts found that judges were awarding maintenance in less than one-half of one percent of dissolution cases. From the Hennepin County Study, the authors conclude: "It appears that Minnesota Courts are currently ... awarding permanent maintenance more frequently than in 1986". The authors also noted however that the study shows that:

"A woman must be married more than 20 years before she has a 50% chance of receiving a permanent award of maintenance. Even in a marriage spanning more than 40 years, however, a wife may only have even odds of receiving a permanent award of maintenance in Hennepin County."

There have also been legislative changes. For example, the 1993 Omnibus Family Law Bill (Laws, 1993, Chapter 322) adds failure to pay spousal maintenance as a basis for suspension of an occupational license and interception of tax refunds.

In summary, it appears that there has been some progress in this area, at least in Hennepin County, but that the task force findings are still valid. Much more work needs to be done in this area to make practice conform to statute and case law. Dr. Kathryn Rettig has analyzed the data in the above article and points out that Hennepin County is the state's wealthiest. The implementation committee concludes that there is a continuing need for education of attorneys and judges; and that there is a need for further data, such as an updated Rettig report.

- b. Courts should discontinue the use of the terms "rehabilitative" or "short-term" maintenance and adopt the term "maintenance" as standard usage.**

DISCUSSION: Although no hard data exist to determine the extent to which the terms "rehabilitative" or "short term" maintenance are currently being used, it is the impression of the implementation committee that such terms have fallen into disfavor and are rarely used.

While objectionable terminology may occur less frequently, permanent maintenance remains rarely ordered, even in long-term marriages. A follow-up judges' survey is needed to determine whether judicial attitudes toward

spousal support have changed.

The committee is concerned about the direction being taken by the Minnesota State Bar Association's Committee on Spousal Maintenance Guidelines. The committee has been working diligently for over two years and has developed a computer program to facilitate determination of guidelines. The Gender Fairness Implementation Committee notes, however, that the bases upon which the computer program rests does not follow the legislative directive contained in M.S. §518.552 subd. 3 (where there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification) or the Supreme Court's direction in Nardini v. Nardini, 414 N.W. 2d 184 (Minn. 1987).

## **B. Property Division**

### **1. Recommendations of the Gender Fairness Task Force**

- a. Judicial education programs should address the need for judges to divide marital property so that each of the parties retains some liquid and income-producing assets after divorce.**

DISCUSSION: Programs addressing property issues were presented at Judge's Conferences on 12/90, and 6/91. All New Judge Orientation Programs cover property division.

Continuing education programs need to continue to address this issue. No hard data exist which would enable the committee to document any improvement. Anecdotal information received by the committee seems to indicate that in many cases women continue to receive the non-income producing property such as the residence, while the man receives the income-producing business. It is unclear to what extent this may reflect gender bias as opposed to decisions of the parties.

## **C. Child Support**

### **1. Recommendations of the Gender Fairness Task Force**

- a. Judges should enforce child support orders through the use of contempt.**

DISCUSSION: Judicial education programs on use of contempt powers of the court to enforce child support were presented on 12/90 and 12/92. This topic was covered at the Judicial College on 5/92 and the New Judge Orientation on 6/92.

While no hard data exist, the implementation committee believes that use of contempt power is a seldom used sanction. Further education of judges is necessary in this area. Such education should incorporate new changes recently enacted by the legislature (See item e, below).

- b. **In keeping with the original legislative intent, judges should interpret the child support guidelines as the minimum level of the non-custodial parent's obligation, rather than the maximum.**

DISCUSSION: Judicial education courses on interpretation and application of Minnesota's Child Support Guidelines were presented on 6/91, 12/91 and 12/92. This topic was covered by the Judicial College on 7/91, 5/92 & 5/93. It has been presented at all New Judge Orientation Programs.

Data on current practices of judges in setting child support is needed. The impression of the Implementation Committee is that many, if not most judges, rely on the guideline amount rather than make an independent assessment of the needs of the children and ability of the parties. Thus the child support guidelines continue mainly to operate as the **maximum** level of support.

- c. **When the Minnesota Legislature reexamines its child support guidelines, as required by federal law, it should adopt an approach to establishing child support levels that reduces the disparity between the standard of living of custodial parents and children and non-custodial parents after divorce.**

DISCUSSION: The Implementation Committee, through Judge Mary Louise Klas, Senator Ember Reichgott Junge and Aviva Breen, has monitored the legislature as it revised child support guidelines. In 1992 a number of bills, including an "income equalization bill" were introduced at the legislature. Although none of these passed, the Gender Fairness Task Force Findings were part of the discussion at the legislature. The legislature enacted Laws 1993, Chapter 340, which raises the \$4,000 cap on child support to \$5,000. This legislation requires that the court review child care expenses and allocate costs to each parent in proportion to this/her income. It imposes an automatic cost of living index on the \$5,000 cap. It requires the parent with the best available medical insurance to provide coverage for the child. If the employer is self-insured and does not offer dependent coverage, an obligor is required to obtain dependent coverage. If insurance is not available to either parent, the court can require an obligor to pay \$50.00 or more per month toward children's medical and dental expenses or toward insurance.

Monitoring and providing input as the legislature addresses the issues of child support and child support enforcement continues to be a high priority of the Implementation Committee. Legislation incorporating a tool which reveals after divorce disparity (developed by Kathy Rettig) was introduced in the 1992 session but did not mesh with initiatives of individual legislators. Thus the guidelines do not yet address the standards of living in each parent's household after divorce.

- d. **Judges should calculate the effects of a downward deviation from the guidelines on the post-divorce standard of living of both parties before ordering a downward deviation. Judicial education courses should contain information on how to perform these calculations.**

**DISCUSSION:** Under statute, downward deviations now have to be justified by the judge. 1993 Minn.Sess.L. Article 6, Section 44, Chapter 1, First Special Session, prohibits the court in public assistance cases from deviating downward from the guidelines unless it finds that failure to do so would impose an extreme hardship on the obligor. It also requires the court if deviating to make written findings giving the guideline amount, reasons for deviating and how a departure best serves the interests of the child. Judicial College and New Judge Orientation courses have introduced judges to the worksheet which they can use to calculate post-divorce standards of living in each household.

Although there is no hard data, the committee believes there are fewer downward departures, since now under statute a judge must justify in writing the deviation downward and make a finding why such deviation would serve the interests of the child.

- e. **Judges should use other statutorily authorized judicial sanctions for failure to pay child support, such as the appointment of receivers, where appropriate, and should consider developing additional creative sanctions, all of which should be incorporated into statewide enforcement policies.**

**DISCUSSION:** Laws 1993, Chapter 340, Section 40 expands the remedies available for a willful failure to obey a judgment or order of the court (M.S. 257.67). It clarifies that the court may make any child support order a lien on the property of the obligor. Section 44 subjects an employer who fails to obey an income withholding order to sanctions including contempt and payment of a fine to the obligee or public authority. It provides that criminal contempt includes willful failure to pay court-ordered child support when the obligor has the ability to pay.

2. **SUMMARY:** Much has been done to educate judges and the legislature on the realities of how child support and the guidelines affect custodial parents and children. Much remains to be done. The disparity in the income levels of the non-custodial parent and the custodial parent and child remains. In many situations (especially low income cases) the child support level of the guidelines is too low. Judges need to understand the effect of their orders on the post-divorce standard of living of both parties and the children. The legislature has recently given judges new tools to collect child support. Judges now need encouragement to set child support at higher levels and then use the tools to collect it.

## **D. Child Custody**

### **1. Recommendations of the Gender Fairness Task Force**

- a. **Judicial education programs in family law must sensitize the bench to issues of bias in custody determinations. Judges must recognize that fathers can be good custodians of small children and that mothers with careers can be good parents.**

DISCUSSION: Programs to sensitize judges to issues of bias in custody determinations were presented on 12/90 and 12/91 at the Annual Judges Conference, and at the Judicial College on 7/91, 5/92 and 5/93.

There is a need for continuing sensitivity training for judges in the area of bias in custody decisions. The Implementation Committee has heard that data are available indicating that in contested cases awards of custody are approximately 50% to the fathers and 50% to mothers. Even if correct, whatever significance the data may have does not lessen the continuing need for judges to examine bias in this area.

- b. Judicial education programs in family law should educate judges about the need to make custody decisions promptly.**

DISCUSSION: In the above continuing education courses, judges have been encouraged to make prompt decisions in custody cases. No data are available concerning the length of time taken by judges in getting out decisions in custody cases. However, the recent adoption of time standards and the monitoring of late decisions may have an improvement on this area. New programs such as the "Divorce with Dignity Program" and the Hennepin County "Storefront Lawyer program" may serve to reduce delay as well as animosity.

- c. Custody mediation should not be ordered where domestic abuse has been documented by means of sworn statements, an OFP, or arrest records.**

DISCUSSION: Judicial education programs addressed this problem at Judges Conferences on 12/90 and 12/91. This topic was covered at the Judicial College on 7/91, 5/92 and 5/93 and at all New Judge Orientations.

Although no hard data are available, the Gender Fairness Implementation Committee has anecdotal evidence indicating that judges continue to ignore the issues of domestic violence when they order litigants into mediation. This includes at least one county-wide system mandating attendance at mediation "education" sessions.

- d. Counties using court services for custody evaluation should provide rigorous training and evaluation to ensure that social workers are sensitive to issues of bias in their investigation and reporting.**

DISCUSSION: Some counties have provided gender sensitivity training. The Implementation Committee does not know how many counties have provided training or how rigorous the training was. The Committee should canvass all counties to find out the extent of the training.

- e. The Office of the State Court Administrator should develop a standardized format to be used throughout the state in custody evaluations and reports.**

DISCUSSION: This has been assigned to the Procedure and Forms Committee. The implementation committee needs to monitor the Procedure and Forms Committee.

- f. **Where other evidence about custody is presented to the court, the court must carefully consider it along with any recommendation from a court services worker or private evaluation.**

DISCUSSION: Judges have been encouraged to be aware of not only their own bias but to consider the biases of custody evaluators.

- g. **Judicial education programs in family law should examine the effects of joint custody orders.**

DISCUSSION: Programs presented at Judges' Conferences on 12/90 and 12/91 examined the effects of joint custody orders. This was also covered at the Judicial College on 7/91, 5/92 and 5/93. The Committee has no data with which to determine judicial attitudes at this time.

- h. **Judges should use great caution in deciding to order joint custody; it should be imposed over the objections of one of the parents only where the court makes specific findings which identify the reasons why such an order is in the children's best interests.**

DISCUSSION: This topic was covered at the conferences on the above date. Existing case law (Abbott v. Abbott, 481 N.W. 2d 864 [Minn. App. 1992]) requires specific findings before a court imposes joint custody over the objection of one of the parties. A change in the statute (Minn. Stat. 518.17 subd 2) also requires specific findings if a court imposes joint custody over objections. Imposition of joint custody over the objection of the parties is believed to be very rare.

## **E. Access to the Courts**

### **1. Recommendations of the Gender Fairness Task Force**

- a. **State resources should be made available for the funding of legal representation for poor people in family law matters.**

DISCUSSION: In 1990 and 1991 there was an \$890,000 appropriation. In 1991 efforts were unsuccessful in securing funds. In 1992 additional funds were secured, and the legislature eliminated the requirement that victims pay filing fees for Orders for Protection.

In 1993 an increase in real estate filing fees was designated for legal representation. This should be a very significant increase in funds. IOLTA funds have decreased as the result of lower interest rates. State funding has filled the gap caused by reduced federal funds. Ongoing efforts are necessary to ensure that needed resources are obtained.

- b. Whenever possible judges should award temporary attorney fees and costs to the economically dependent spouse in an amount that is sufficient to allow that spouse to effectively pursue relief in family court.**

DISCUSSION: The economic realities of women, including the need for temporary attorney fees, were discussed at:

- Judicial Conferences on 12/90, 6/91 and 12/91;
- The Judicial College in 1/92; and
- The New Judge Orientation on 6/92.

Minnesota Statute 518.131 subd 1, d and Minnesota Statute 518.14 cover the issue of temporary attorney fees. Minnesota Statute 518.14 now mandates attorney fees necessary to enable a party to carry on or contest a proceeding when it makes findings of necessity and ability of the other party to pay them. While judges have the authority to award temporary attorney fees, too few judges exercise that authority.

## **F. General Family Law Recommendations**

- 1. Family Law should be one of the subjects covered on the Minnesota Bar examination.**

DISCUSSION: This recommendation was adopted by the Board of Law Examiners and became effective beginning with the 1992 bar exam. The committee does not know the number of students taking family law courses. For a discussion of the content of family law courses and the availability of related course offerings see II.A.2.e., infra.

- 2. Since family law and domestic abuse cases make up an ever increasing percentage of the caseload in Minnesota's courts at the trial level, judges should be required to accumulate at least ten hours of judicial education credit in these two areas during each certification period.**

DISCUSSION: A letter was sent to the Judicial Education Advisory Committee. A decision was made to encourage but not compel accumulation of 10 hours. At Judicial Conferences the following programs were presented:

- Minnesota District Judges' Association - A presentation of the Gender Fairness Task Force Report and a program on Domestic Violence was held in September 1989. In September of 1990 a program on child witnesses was held, and in September of 1991 programs addressed family law and children in the court.
- Annual Conference of Judges - In December of 1990, programs were held on Child Custody and Visitation and Spousal Support. In December 1991, a program addressed the Primary vs. the Psychological Parent. In December

1993, there was a program on domestic violence. The program used a cordless response system, and asked participants to respond to questions concerning a case scenario typical of fifth degree assault-domestic abuse cases.

3. **Judges and attorneys must include more comprehensive economic information about the parties to a divorce in both temporary and final orders. Court records are often incomplete, and vital statistics data accumulated at the state level are presently not detailed enough to permit thorough analysis of the effects of divorce on families and children.**

DISCUSSION: The need for better economic data was covered at the Judicial College on 7/91, 5/92 and 5/93. Legislation in 1991 now requires both parties to submit specific financial data at the initial stages of the dissolution process.

Judge's orders are much more complete as can be seen by the great reduction in the number of cases which are remanded as the result of inadequate findings. The committee should facilitate a follow-up study by Kathy Rettig.

4. **The Office of the State Court Administrator should develop materials which explain the function of the court in family law matters to litigants. These materials could include both pamphlets and videotapes. They should be distributed statewide.**

DISCUSSION: The 1991 Legislature funded a project to develop materials which explain the function of the family court. Two videos have been completed and a third is in the process of being made.

## II. Domestic Violence

### A. Civil Process

#### 1. Recommendations of the Gender Fairness Task Force

- a. **Judges, attorneys, court personnel and law enforcement officers should be sensitized to the problems of individuals who have been victims of domestic abuse.**

DISCUSSION: **Judges.** Judicial education programs concerning domestic abuse were presented:

- At Judges' Conferences in 1989, 1991, and 1993. In 1993, a program was presented in which judges used a cordless response system to respond to questions about a typical domestic abuse scenario.

- In September, 1989 at the Minnesota District Judges' Association, judges performed role plays in which they played victims, advocates and parties at an OFP hearing.
- At the Judicial College in July, 1991.
- At a conference in November '93 in which teams of twelve from each of the 10 judicial districts underwent education and began to develop a team plan for their districts. This occurred because the Conference of Chief Judges has declared that Domestic Violence is a priority for Minnesota Courts.
- At the New Judge Orientations in 1990 and 1992.

**Lawyers.** Programs on Domestic Violence were presented:

- At the Criminal Justice Institutes in 1990, 1991, 1992, and 1993. Over 2000 persons participated.
- At the Family Law Institutes in March 1990 and April 1991. The Duluth Domestic Abuse Intervention Program was presented at these times.
- The County Attorneys' Association presented a training in May 1992 and the Dakota County Attorney's Office did a presentation for the First Judicial District.
- At Hamline University Advanced Legal Education, where a CLE was offered on Prosecuting Domestic Assault cases for city and county prosecutors in May, 1991.

**Court Personnel.** Domestic Abuse training for court administrators was held:

- In June 1990. Court administrator training was also presented at the Minnesota Association of Court Administrators meeting in February, 1991.
- The Ninth District Coordinating Council for Domestic Violence presented a training for judges and other court personnel in June, 1993.

**Law Enforcement.** Programs on domestic abuse include;

- Professional peace officer training offered by the state higher education institutions includes current domestic abuse laws and discussion of domestic violence. It also includes responding to crime victims and to victims of domestic abuse.

- Continuing education courses are offered which include the topic of domestic abuse, but no record is kept of who attends which courses.

Training needs assessments show that human relations kinds of issues are a lower priority for continuing education than courses about responding in dangerous situations, legal updates, etc. Model Law Enforcement Policy contained significant training materials but it will be addressed in judicial education programs.

There is a need for ongoing education. Programs need to be evaluated to determine whether the program dealt with "abuse dynamic and the dangers of victim blaming." See discussion below.

- b. The topic of domestic abuse and Orders for Protection - including information about the abuse dynamics and the dangers of victim blaming - should be addressed in judicial education programs.**

DISCUSSION: The topic of domestic violence has been addressed in numerous continuing education programs, including programs at the Judicial College and the New Judge Orientation. The Committee understands the necessity of continued work in this area. The Committee has no hard data which prove change in judicial attitudes.

- c. Courts should not issue mutual Orders for Protection in cases without cross-petitions.**

DISCUSSION: A judicial education program was presented in September 1989 at the Minnesota District Judges' Association. Judges were informed that mutual orders were prohibited. See Fitzgerald v. Fitzgerald 406 N.W.2d 52 (Minn. App. 1987). A continuing need for education exists. Periodic complaints still occur.

- d. Continuing legal education programs should address domestic abuse issues.**

DISCUSSION: A continuing need for education exists.

- e. The topic of domestic abuse should become part of the curriculum in family law courses in the state's law schools.**

DISCUSSION: Family Law is now a bar examination course and thus is virtually mandated for those taking the Minnesota Bar exam.

Hamline University Law School offers two course in Family Law and General Practice Clinic: Basic Family Law, which includes a discussion of the constitutional approach to domestic abuse and issues of privacy; and Children and the Law which includes issues about abuse throughout the course. In addition, the General Practice Clinic provides divorce services for

low income people. Domestic abuse is often an issue.

William Mitchell offers Family Law which includes Minnesota cases on domestic abuse, description of the Duluth Domestic Abuse Intervention Project, the Domestic Abuse statute and the Gender Fairness Task Force Report. In addition, the Misdemeanor clinic covers domestic abuse, and there is an Internship with the Washington County Domestic Abuse Project at Lake Elmo.

The University of Minnesota has a Domestic Abuse clinic.

Since all three law schools have domestic abuse as part of the curriculum, either in the Family Law courses or clinics, this recommendation appears to be complete. The Committee intends to meet with the persons in charge of the family law curricula in each of the law schools to determine how domestic abuse is worked into the curriculum and whether the concerns expressed by the Task Force are addressed.

- f. Domestic abuse issues should be addressed at local bar association meetings. The Minnesota State Bar Association could prepare a videotape presentation for use by local bar associations.**

DISCUSSION: It does not appear that anything has been done to implement this recommendation. Judge Davidson in Hennepin County uses a video in her "Divorce with Dignity" program which contains a discussion of domestic abuse. More information is needed.

- g. Court administrators and their deputies should have training in the area of domestic abuse as well as a good understanding of Minnesota's Domestic Abuse Act.**

DISCUSSION: See above recommendations; specifically, training was given to court administrators but it is not known whether their deputies and/or other court personnel were made part of the training.

- h. The state's courts should set a uniform standard regarding the role of the domestic abuse advocate at OFP hearings. The advocate should be allowed to attend the hearing, be present at counsel table and address the court. The courts should also take action to ensure that advocates are allowed to assist in the preparation of OFP petitions.**

DISCUSSION: A uniform standard has been set by the Minnesota Supreme Court. Advocates are allowed to be present at OFP hearings and assist in the preparation of petitions without danger of being accused of the unlawful practice of law. The Supreme Court's Order completes this recommendation. Questions have been raised as to whether the alleged perpetrator's "advocate" is entitled to the same rights and privileges as the advocate for the victim. The Supreme Court Order only allows victim's advocates to assist victims and sit at counsel table. A follow-up reminder may have to be issued.

- i. **State funding for the hiring and training of advocates should be increased.**

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

- j. **The forms used to petition the court for an Order For Protection should be simplified. For example, proposed orders could contain more sections which would be checked off by the judge.**

DISCUSSION: New forms have recently been completed. The new forms were approved by the Conference of Chief Judges in November of 1993.

## **B. Criminal Enforcement of Domestic Violence Laws**

### **1. Recommendations of the Gender Fairness Task Force**

- a. **Legislation should be enacted that mandates funds and makes available domestic abuse advocacy programs in each county of the state.**

DISCUSSION: In 1992 legislation was passed which mandated a program in each judicial assignment district. Funding for advocates was also made available.

- b. **The state should create a statewide computerized data base on domestic violence, available to law enforcement, prosecutors, courts and probation, to be accessed under both victim and abuser names, to include: existing OFPs and their conditions; existing conditions of bond or probation; pending criminal charges; past domestic violence criminal history; and past OFPs.**

DISCUSSION: Study of the feasibility and the cost of the domestic abuse data was completed by the Department of Public Safety and presented to the legislature in 1991. The legislature is considering this request along with other requests for expanding the criminal justice data base. A completed data base with 100% of local jurisdictions involved is still under consideration. This is a costly and complicated issue but its importance cannot be underestimated. As shown by the improved data available in DWI cases, this information would enhance prosecutions and considerably improve the efficient prosecution of these cases.

- c. **Police reporting requirements regarding domestic violence should be expanded to require law enforcement officers, prosecutors, court and probation officers to report the items above into the statewide data base.**

DISCUSSION: This recommendation cannot be implemented until the data base is established. A feasibility was completed and presented to the legislature in 1991. A study on integrated information systems has been approved.

- d. **Legislation should require medical care providers to report incidents of domestic violence to law enforcement authorities, and to preserve and make available physical evidence of injury to the victim.**

DISCUSSION: The concept of preserving and making available physical evidence of injury to the victim is included in the model domestic violence prosecution plans.

This recommendation became controversial because domestic abuse advocates believed that implementation would discourage victims of domestic abuse from reporting to a medical provider. The Implementation Committee should initiate a discussion with domestic abuse advocates and proponents of this recommendation to see if there can be a resolution which would not have a negative impact on victims. The AMA is initiating a campaign relating to domestic violence which stresses the role a medical provider can play in recognizing victims of domestic violence so this may be an opportune time to resolve the concern. Other kinds of health advocacy should be pursued as alternatives.

- e. **Legislation should mandate presentence investigations in all cases of conviction of domestic violence, without ability to waive the requirement.**

DISCUSSION: No legislation has been enacted. The Ramsey County Department of Corrections has a special unit dealing with habitual domestic assault offenders and a procedure for dealing with them. This may be a useful process which could be replicated by other counties.

It should be noted that Minn. Stat. 609.115, Subd. 1 (the presentence investigation law) states, "When a defendant has been convicted of a misdemeanor or gross misdemeanor, the court may, and when a defendant has been convicted of a felony, the court shall conduct a presentence investigation." Subdivision 1 also states "at the request of the prosecutor in a gross misdemeanor case, the court shall order a (PSI). Many domestic abuse cases are now gross misdemeanors and the prosecutors have the authority to compel a PSI. Chemical assessments (in the nature of a PSI) are mandatory in DWI cases, and some thought should be given to comparing the relative seriousness of the problems to determine whether the requirements should be more similar. A high percentage of domestic violence cases do have a PSI even though it is discretionary. Legislation was unsuccessful partly because of the increased costs which would be involved if a PSI were required in every case. Also, Minn. Stat. 609.135, Subd. 5, requires participation in "counseling or other appropriate programs selected by the court" in domestic abuse cases.

- f. **Legislation should require all county and city prosecuting authorities to have a plan for the effective prosecution of domestic violence cases.**

DISCUSSION: 1990 legislation 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 Public Safety that a plan has been adopted by July 1, 1994.

When all city and county attorneys have filed their notices the recommendation will be completed. An evaluation tool was developed to be used by the ten pilot cities and counties as their plans were implemented. A review of the evaluations is necessary to determine how the plans are working and whether the evaluation method is effective.

- g. **A policy commitment should be implemented to end discretionary dismissals for reasons of "victim cooperation," and to develop effective means of reversing this phenomenon.**

DISCUSSION: See Discussion under f, above.

- h. **A single prosecutor should be responsible for each case from initial charge to disposition.**

DISCUSSION: See Discussion under f, above.

- i. **Early contact between prosecutor and victim, with earliest possible domestic abuse advocate intervention, should be used to explain the use of subpoenas, and the role of victim as a witness.**

DISCUSSION: See Discussion under f, above.

- j. **The use of subpoenas should become standard procedure in all domestic violence prosecutions necessitating appearance of the victim.**

DISCUSSION: See Discussion under f, above.

- k. **Coordination should be established with law enforcement authorities to preserve prompt complaint evidence by means of videotape or audio recording.**

DISCUSSION: See Discussion under f, above.

- l. **Adequate resources must be allocated to permit prosecutors to execute the foregoing.**

DISCUSSION: No new funding has been appropriated to help prosecutors implement the above recommendations.

- m. **The Supreme Court should promulgate a rule which provides that domestic abuse advocates do not commit the unauthorized practice of law when appearing with or assisting victims of domestic violence in criminal proceedings.**

DISCUSSION: The Minnesota Supreme Court has issued an order which makes it clear that advocates do not commit the unauthorized practice of law when assisting victims.

- n. **The prosecutor's statutory obligation to notify domestic violence victims in advance of case dismissals should be uniformly enforced and coupled with a requirement that prosecutors state the reason for dismissal in open court.**

DISCUSSION: 1990 legislation amending Minn. Stat. 611A.0315, Subd. 1, requires 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 the dismissal.

A review is necessary to determine if there is compliance with this requirement. This recommendation will be complete when the number of dismissals, including dismissals because of the unavailability of the witness, is reduced significantly and when cases are prosecuted successfully without the presence of the victim.

- o. **Courts should require supervision of conditions of release by court services pending trial in criminal actions and of probationary conditions following sentence.**

DISCUSSION: To our knowledge, nothing has been done to implement this recommendation. Safety of victims is clearly at stake. More information is needed as to whether victims are being contacted about no contact orders. Success will be achieved when victims are contacted with respect to no contact orders and conditions of release are more difficult to violate because of greater supervision.

- p. **Courts should create uniform forms for statewide use in bail matters for criminal domestic violence proceedings.**

DISCUSSION: Referred to Forms and Procedures Committee. May dovetail with a similar recommendation from the Race Bias Task Force. This has not been completed yet.

In November of 1993, the Ramsey County Bench deleted fifth degree assault - domestic from its bail schedule. Thus, a person charged with this offense must remain in custody until he or she sees a judge. Over the weekend, the judge reviews police reports and other data in order to make the McLaughlin probable cause determination.

- q. **Courts should enforce the statutory mandatory fine requirement in instances of conviction for domestic violence, except in cases of sworn indigence.**

DISCUSSION: Minn. Stat. 609.101, Subd. 2 (3) provides "when a court sentences a person convicted of violating the assault laws it must impose a fine of not less than \$100 nor more than the maximum fine allowed by law." Interestingly, subdivision 4 (2) establishes the minimum fine for other misdemeanors and gross misdemeanors at 30% of the maximum fine, which is higher than the mandatory minimum for domestic assault charges. This punishment is a lower form of sanction and represents different philosophies with respect to fines.

- r. **Police and sheriff's departments should be encouraged to present in-service training programs concerning domestic abuse. Post Board credit should be offered and the programs should be made as realistic as possible.**

DISCUSSION: No information is available on the degree to which this recommendation has been implemented.

### III. Criminal and Civil Justice

#### A. Sexual Assault

##### 1. Recommendations of the Gender Fairness Task Force

- a. **The Minnesota Bureau of Criminal Apprehension and Department of Corrections should determine the incidence of "acquaintance rape" in Minnesota, and ascertain what proportion is formally prosecuted in criminal courts. This examination should be sufficiently detailed to separately examine intrafamilial and nonfamilial cases, and those involving intimate sexual relationships and platonic relationships.**

DISCUSSION: There has been a study by the Attorney General's Office and a University of Minnesota Study in this area. The BCA should be invited to meet with the Implementation Committee. Other sources of data should be explored.

- b. **County attorneys should increase prosecution of "acquaintance rape" cases.**

DISCUSSION: There has been national and statewide attention focused on this issue. However, nothing has been done by the Implementation Committee on this issue.

- c. **Judicial education programs should be designed and taught, to heighten judicial awareness about the subject of acquaintance rape.**

DISCUSSION: The Office of Supreme Court Continuing Education has a program in the planning stages on this issue. They are currently seeking a speaker for a program to be held in the winter of 1994.

- d. **A judicial education program should be designed and taught to heighten judicial awareness about the pervasive gender-based stereotypes employed 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 biased defense.**

DISCUSSION: See above. A program is in the planning stages.

- e. **Judges should not distinguish in setting bail, conditions of release, or sentencing, in nonfamilial criminal sexual conduct cases, on the basis of whether the victim and defendant were acquainted.**

DISCUSSION: This issue was addressed at the Judicial College on 5/92. June Cicero's office found that judge's practices in setting bail are consistent.

- f. **Judges should curtail improper reliance upon irrelevant gender stereotypes in criminal sexual conduct cases during the voir dire process, counsel's argument, witness examination, and cross-examination of the victim. They should recognize that this question is considerably more broad in scope than the questions subsumed in Minn. Stat. 609.347.**

DISCUSSION: Nothing has been done.

- g. **Judges should scrutinize proffered plea negotiations in criminal sexual conduct cases to ensure that they are not grounded upon improper gender-based stereotypes about the victim.**

DISCUSSION: Nothing has been done. Judicial education is needed.

## **B. Sentencing Adult Felons**

### **1. Recommendations of the Gender Fairness Task Force**

- a. **The Minnesota Sentencing Guidelines Commission should direct its staff to collect the data necessary to determine whether any gender bias exists in the imposition of non-imprisonment sanctions on adult women and men felony offenders.**

DISCUSSION: Nothing has been done. Judicial education is needed.

- b. **The Minnesota Sentencing Guidelines Commission data on non-imprisonment sanctions should be made available to the legislative, judicial, and executive branches for the purpose of eliminating any gender bias in non-imprisonment sentences.**

DISCUSSION: The legislature has recently mandated a Nonfelony Enforcement Advisory Committee. The judges who will be appointed to that committee should examine this issue.

- c. **The Minnesota Department of Corrections should provide a comparable number and types of educational, vocational, and rehabilitative programs for men and women in probationary, imprisonment, and supervised release settings, consistent with the differing needs of men and women adult felony offenders.**

DISCUSSION: The DOC should be contacted to determine the status of programs.

- d. **Local authorities should be encouraged to provide jail facilities that will result in an equal sentencing impact on both men and women adult felony offenders.**

DISCUSSION: No information is currently available.

## C. Juvenile Justice

### 1. Recommendations of the Gender Fairness Task Force

- a. **The Office of the State Court Administrator should collect additional data on gender disparities in juvenile dispositions. The Task Force Implementation Committee and juvenile court judges should determine what additional information is needed to overcome current deficiencies.**

DISCUSSION: As the result of the Juvenile Justice Task Force data should soon be available to the State Court Administrator.

- b. **A study should be conducted with the enlarged data to determine if disparities still exist for juvenile female status offenders.**

DISCUSSION: The DOC is currently doing a study on the placement of juvenile offenders.

- c. **Juvenile court personnel should receive education to make them aware of their possible biases.**

DISCUSSION: The Department of Corrections and court services personnel should be contacted to determine the amount of education given in this area.

## **D. Advocacy on Behalf of Minor Sexual Abuse Victims**

### **1. Recommendations of the Gender Fairness Task Force**

- a. **A procedure should be established which would encourage the appointment of a guardian ad litem for the minor child whenever a child is a victim in a criminal sexual conduct case. The guardian ad litem would not be a party to the action, but would provide information to all parties regarding acceptance or rejection of plea agreements, as well as assisting in the preparation of the victim impact statement for sentencing.**

DISCUSSION: A letter was sent to the State Funding Task Force which is considering the role and use of guardian ad litem. The Implementation committee should seek legislation or a change in court rules to authorize appointment of a guardian ad litem in criminal sexual conduct cases. The Implementation committee should develop model criteria for use by judges when deciding whether to make such appointments.

## **E. Civil Damage Awards**

### **1. Recommendations of the Gender Fairness Task Force**

- a. **The Task Force implementation committee should investigate the best methods to collect data on the effect of gender-based stereotypes on personal injury awards.**

DISCUSSION: Reports which have been done in New Mexico and Canada need to be obtained.

- b. **Minnesota Civil Jury Instruction Guide (JIG) 160 should be examined by the jury instruction committee to determine the appropriateness of a modification of the JIG to provide for valuation of lost wage claims by homemakers.**

DISCUSSION: The JIG committee of the District Judges' Association needs to be contacted to have this examination performed.

## **F. Employment Discrimination**

### **1. Recommendations of the Gender Fairness Task Force**

- a. **Judicial education programs should raise awareness of gender-based employment discrimination within the courts and of the impact of sexist, discriminatory remarks on the overall processing of gender-based employment cases in the courts.**

DISCUSSION: A program on Sexual Harassment was presented at the MDJA Conference in September, 1990. Sexual harassment policies exist in

all judicial districts.

- b. **Judicial and attorney education programs should reflect an awareness of the inappropriateness of the defense tactic of appealing to gender stereotypes.**

DISCUSSION: In addition to the above program, this topic has been covered by the Trial Skills Program in 1991, 92 and 93. A Video Program on Gender Equity in the Workplace was developed by the MSBA and distributed statewide.

- c. **The Bar Association should seek changes that will encourage claimants to come forward. These changes could include, but are not limited to, increased pro bono or legal aid efforts, increased attorney fee awards, improved job security legislation to prevent retaliation by employers, and doubling or tripling the plaintiff's damages.**

DISCUSSION: The Bar Association has been contacted. They have referred the fee issue to the Labor and Employment Law Section.

- d. **The Bar Association should conduct a comparative study of damage awards and other relief granted by administrative agencies and the courts.**

DISCUSSION: The Bar Association has been contacted. They are trying to find someone at the law schools or elsewhere who is interested in researching this.

- e. **Law firms should foster an environment within the firm which encourages increased representation of litigants in employment discrimination cases.**

DISCUSSION: There has been a great increase in the number of these cases. These cases now have a separate reporting category.

## IV. **The Court Environment**

### **A. Women Litigants, Witnesses & Attorneys**

#### **1. Recommendations of the Gender Fairness Task Force**

- a. **Standards of gender fair behavior for all participants in the judicial system should be incorporated in such documents as the Code of Judicial Conduct, the Rules of Professional Conduct, and the Rules for Uniform Decorum.**

DISCUSSION: Amendments were adopted to the Rules of the Board on Judicial Standards and Rules of Professional Responsibility. This

recommendation has been implemented by adoption of the amendments to the Rules.

- b. Sensitivity training for lawyers and courtroom personnel should be provided through law schools, continuing legal education, and employee training programs.**

DISCUSSION: A video, "Gender Equity in the workplace" was produced by the MSBA and distributed to 21 local Bar Associations and presented at Statewide convention. Court administrators have received training on sexual harassment.

- c. Special efforts should be made to present innovative, entertaining and memorable judicial education programs to enhance sensitivity to gender fairness issues. Programs should include specific reference to the complex issue of when judicial intervention is appropriate to correct a gender fairness problem and how that intervention should be accomplished.**

DISCUSSION: Programs were presented for judges at the Judge's Conferences in 6/90, 9/90, 6/91 and 12/91. A program was presented at the New Judge Orientation on 7/91 and at the Judicial College on 7/91.

- d. A guide on "How to Conduct Gender-Fair Proceedings" should be drafted and distributed to all judges. Such a guide could discuss forms of address, provide a uniform method for designating attorneys, and explain how to avoid in-chambers discussion on topics which tend to exclude persons of one gender.**

DISCUSSION: One thousand copies of this recently completed book have been made and distributed. The mailing will be coordinated with a press release. This recommendation is now complete.

- e. Evidence of gender-fair attitudes and behavior should be a criterion for judicial selections.**

DISCUSSION: While nothing specifically has been done, both the current and previous governor have shown sensitivity to gender issues. Candidates for judicial selection are asked whether they are familiar with the Gender Fairness Task Force Report. They are also asked whether they have observed or experienced any gender bias in their judicial district.

## **B. Women Judges**

### **1. Recommendations of the Gender Fairness Task Force**

- a. The Governor should increase the number of women attorneys appointed as judges so that the judiciary will achieve a more balanced gender composition.**

DISCUSSION: There has been a significant number of women attorneys who have been appointed to the judiciary. Appointment of women has been a priority issue with the present and the previous governor.

- b. **Women should be appointed to vacancies in districts with no women judges.**

DISCUSSION: Women judges are now to be found in all of the districts except the Eighth and Ninth Judicial Districts. There continues to be a problem both in attracting qualified women applicants and having them appointed.

- c. **The ability to work with women and men as equals should be a criterion in the appointment of all judges.**

DISCUSSION: A sexist attitude should disqualify a candidate for judicial appointment. Staff for the Judicial Merit Selection Committee has indicated that candidates for judicial selection are asked whether they are familiar with the Gender Fairness Task Force Report. They are also asked whether they have observed or experienced any gender bias in their judicial district.

- d. **Chief Judges and court employees should be given training to assure that women judges are given adequate respect and any problems are appropriately remedied.**

DISCUSSION: At a recent program, "Executive Leadership for Chief Judges and District Administrators", held June 23-25, 1993, issues of sexism were covered, including dealing with judges who are insensitive or act inappropriately. This issue was also covered at the Judges' Conference in 9/90, and court employees attended sensitivity training at a MACA program in 2/91.

- e. **Women attorneys should be fairly represented on all committees considering candidates for judicial appointment.**

DISCUSSION: The Bar Association needs to be contacted to determine the current status.

- f. **Judicial districts should develop policies for the assignment of judges which treat applicants fairly regardless of gender.**

DISCUSSION: A judge's survey should be used to determine the status of this issue.

- g. **The judicial education system should include an opportunity for all new women judges, and especially for those geographically isolated, to learn from more experienced women judges about how best to deal with gender fairness issues.**

DISCUSSION: At the New Judge Orientations new women judges have an opportunity to learn from more experienced women judges.

- h. The Supreme Court Information Officer should ensure equal representation of women judges in publicity about the judicial system.**

DISCUSSION: This policy was communicated to the Court Information Office. Media strategy has been gender sensitive.

- i. In providing speakers at judges' meetings, attention should be paid to obtaining respected women speakers on substantive issues.**

DISCUSSION: This Policy has been communicated to the Continuing Education Department.

### **C. Gender Fairness in Court Documents**

#### **1. Recommendations of the Gender Fairness Task Force**

- a. The Supreme Court and the Office of the State Court Administrator should issue general directives on the use of unbiased language in court documents, brochures and forms.**

DISCUSSION: A letter has been sent to the Forms Committee and the Conference of Chief Judges. Current forms have been reviewed and revised.

- b. Such directives should make clear that masculine pronouns are not to be used as if they were neutral words; that all unnecessary gender-specific language should be deleted; and that drafters should consider the inclusion of language to promote gender fairness in court policy statements.**

DISCUSSION: A letter has been sent to the Forms Committee and the Conference of Chief Judges. Current forms have been reviewed and revised.

- c. The Supreme Court and the Office of the State Court Administrator should appoint committees immediately to review and amend all existing court documents which use gender biased language.**

DISCUSSION: Court documents have been reviewed and revised.

### **D. The Court as Employer**

#### **1. Recommendations of the Gender Fairness Task Force**

- a. The Task Force recommends that the State Court Administrator's office conduct a more comprehensive study of employment practices within the state court system and undertake development of behavioral standards for nondiscrimination, development of effective grievance procedures, and**

employee training where indicated.

DISCUSSION: A Sexual Harassment Policy has been adopted covering all court personnel. Comparable Worth studies have been completed.

## E. Sexual Harassment

### 1. Recommendations of the Gender Fairness Task Force

- a. **The State Court Administrator should seek consultation with experts in sexual harassment policy development to establish a policy and grievance system which can work in a structure where there are people with unusual power and people with unusual vulnerability.**

DISCUSSION: A sexual harassment policy was drafted and approved by the Conference of Chief Judges. It was adopted by the Supreme Court in October, 1990. The Sexual Harassment Policy was the subject of training at a judges' conference in 1/91.

- b. **The variety of sexual harassment policies and disciplinary systems for different categories of court employees should be coordinated so that genuine remedies are available which satisfy the needs of the victims as well as protect the rights of those against whom accusations are made.**

DISCUSSION: A sexual harassment policy was drafted and approved by the Conference of Chief Judges. It was adopted by the Supreme Court in October, 1990. The Sexual Harassment Policy was the subject of training at a judges' conference in 1/91.

- c. **Court employees at all levels should be given specific training to assure that they understand what sorts of behaviors will not be tolerated and to encourage reporting of problems of sexual harassment.**

DISCUSSION: After adoption of the Uniform Sexual Harassment Policy, in service training was conducted 2/90 at the MACA conference. Court Employees throughout the state have been trained regarding the policy and the behavior which will not be tolerated.

- d. **The Canons of Judicial Ethics should be amended to prohibit sexual harassment.**

DISCUSSION: The Rules of the Board on Judicial Standards were amended to make discrimination or harassment grounds for discipline. Rule 4(a).