

1994

Responding to Gender Bias in the Courts: Progress without Accountability

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Recommended Citation

Scarnecchia, Suelyn. "Responding to Gender Bias in the Courts: Progress without Accountability." *Mich. B. J.* 73, no. 3 (1994): 270-2.

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Responding to Gender Bias in the Courts: Progress Without Accountability

By Suellyn Scarnecchia

On December 19, 1989, we received the final report of the Michigan Supreme Court Task Force on Gender Issues (task force report). The task force made 91 recommendations, plus an additional 18 joint recommendations with the Task Force on Racial/Ethnic Issues in the Courts. The Michigan Supreme Court, the State Bar of Michigan and other individuals and organizations have made much progress in responding to the recommendations, with one glaring omission—Although jointly recommended by both task forces as “essential to the realization of the goals envisioned in the reports,”¹ the Supreme Court has failed to appoint a standing committee on Racial/Ethnic and Gender Issues in the Courts. Without this committee, no one is ultimately accountable for the successful implementation of the recommendations of the task force, which called for a committee to:

- Monitor efforts to implement recommendations on an ongoing basis;
- Bring together various organizations to develop effective responses to the recommendations;
- Monitor the impact of efforts made to respond to bias;
- Provide reports to the public, the judiciary and the Bar on an ongoing basis; and,
- Continue research in the area of bias in the courts and make new recommendations as the need arises.

The task forces, appointed by the Michigan Supreme Court, both found the standing committee to be essential and we hope the Court will soon appoint one.

The State Bar of Michigan has been particularly active in its response to the task force report on gender bias. Here is a listing of some of those efforts:

- In 1990, appointed an Assistant Executive Director for an Open Profession, Deborah J. Gaskin until 1992, and presently Christina Mui. Along with many other duties, Ms. Gaskin and Ms. Mui have addressed a variety of organizations on the subject of bias in the courts and the profession.

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- The Local Bar Liaison Committee and Nancy Galloway, the Assistant Executive Director for Local Bar Associations, have implemented change in both the annual Presidents-Elect Conference and the “On the Road” publication to encourage sensitivity to gender bias through attorney presentations and local bar programs.

- Production of the “Respect” video which addresses gender and race/ethnic bias in the courts and profession. The video has been shown at many bar meetings and seminars.

- State Bar presidents have made gender and race/ethnic diversity an important consideration in making appointments to State Bar committees. Local bar associations have been encouraged to do the same.

- State Bar sections have been asked to provide information on their efforts to implement task force recommendations. The Environmental Law Section has been the most active—developing a detailed long-range plan for increasing diversity, setting up a standing committee on recruitment and targeting outreach efforts to women and minority bar associations. The Labor Law Section held a roundtable discussion of bias in the profession as part of a Section seminar.

- Established a Model Personnel Policy Committee to respond to specific task force recommendations.

- The Law Practice Section has organized a seminar on rainmaking for women lawyers.

- The Board of Commissioners Committee on Task Force Recommendations surveyed the largest 50 Michigan law firms about the number of women partners and associates in their firms.

- The State Bar will sponsor a conference in April 1994, addressing employment issues faced by women and minority attorneys.

- Established a Domestic Violence Committee, chaired by Dawn VanHoek, which

will address the task force recommendations regarding domestic violence.

The leadership and commitment of Executive Director Michael Franck have been essential to these successes. Some of the relevant task force recommendations have not yet been addressed by the State Bar and much follow-up is needed to encourage and monitor progress by State Bar sections, committees and local bar associations. The State Bar's long-term commitment to responding to gender bias in the courts and the profession cannot be dependent on the commitment of one or more individuals. There must be a standing committee to which the Bar is accountable from year-to-year for its activities in this area.

The Michigan Supreme Court has taken several steps to implement the recommendations of the task force report. Directly following the issuance of the report, the Supreme Court issued Administrative Order 1990-3² which stated the Court's commitment to fair and equal application of the law in Michigan and which directed, among other things, that:

The judges, employees of the judicial system, attorneys and other court officers commit themselves to the elimination of racial, ethnic and gender discrimination in the Michigan judicial system.

The Court also took the important step of establishing staff positions within the State Court Administrative Office (SCAO) and the Michigan Judicial Institute (MJI) to implement recommendations of the task forces.³ In addition, the Court, through the SCAO and MJI, has:⁴

- Developed and provided training to judges and other court personnel on the issues of gender discrimination and domestic violence;
- Created models and guidelines for courts on child support, visitation and custody issues;
- Developed model policies for courts on sexual harassment, family leave, equal opportunity employment and employee performance evaluations;
- Required chief judges to develop equal employment opportunity plans and directed that the plans be provided to the SCAO;
- Created and distributed a poster and brochure on the importance of bias-free behavior in the courts;
- Networked with other legal system organizations on issues relating to equal justice;

These amendments added prohibitions for lawyers and judges against treating persons unfairly because of the person's race, gender, or other protected personal characteristic.

- Received a grant to develop *pro se* kits for domestic violence restraining orders; and,

- Conducted a series of in-house training seminars on discrimination and attitudes for Supreme Court staff.

Other activities are in progress, such as investigating issues of bias when conducting management studies, developing public education programs and developing a training program for court staff on how to more effectively deal with *pro se* litigants.⁵

In its most controversial action, the Court issued amendments to Michigan Court Rules, Michigan Rules of Professional Conduct and the Michigan Code of Judicial Conduct.⁶ These amendments added prohibitions for lawyers and judges against treating persons unfairly because of the person's race, gender, or other protected personal characteristic. The Court's action was controversial, in part, because it came a full three and one-half years after the task forces recommended such amendments. The amendments which the Court adopted also failed to include the terms "sexual harassment" or "discrimination," watering down the language proposed by the task forces. The State Bar had recommended prohibiting membership in private clubs which discriminate, and the Court rejected the Bar's proposal.⁷ Also, the Court excluded the State Bar proposal's specific prohibitions against discrimination on the basis of religion, disability, age and sexual orientation.

Apart from these controversies over particular language, participants in the legal system now have some reassurance that gender bias by judges and lawyers can be the basis for complaints of professional misconduct. Of course, without the standing committee recommended by the task forces, no one is required to:

Monitor the changes in the codes . . . As a part of this process, monitor complaints to the Attorney Grievance Commission, the Attorney Discipline Board, the Judicial Tenure Commission, Civil Service entities and individual courts from lawyers, litigants, court personnel and others.⁸

The task force report stands for the proposition that merely having rules in place which prohibit discrimination does not ensure full and fair implementation of those rules. There must be a standing committee responsible for monitoring and reporting on the effect of the amendments.

Special mention must be made of the efforts by the MJI, under the Supreme Court's direction. MJI has taken several steps aimed at responding to the task force recommendations, including:⁹

- Inclusion of articles on domestic violence in its judicial journal, *Colleague*, which is distributed to all Michigan judges;
- Training for judges and court staff on domestic violence. Much of this has been funded by grants which were pursued by MJI staff;
- Permanent addition to the "New Judges Seminar" of a three-hour session entitled "Fairness in the Courts," which incorporates recommendations of the task force report;
- A four-day seminar for judges on judicial decision-making planned for 1994, which will examine the impact of personal biases on judicial decisions;
- Seminars for court employees which discuss bias in the courts and specific issues facing employees;
- Development of training materials for use by local court administrators, including production of a video entitled "The Court's Image: Differences and Perceptions;" and
- Training on diversity issues for court administrators.

In 1994, MJI will produce a videotape entitled "Personnel and Your Diverse Workforce." The MJI leadership and staff should

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be congratulated for their progress to date in responding to the task force report.

Progress has been made by others in responding to the recommendations of the Task Force on Gender Issues. For example, the task force report noted that from 1985 through 1988, women had constituted only 14% of the Institute for Continuing Legal Education's faculty.¹⁰ As of December 1993, that percentage had increased to approximately 24%.¹¹

In the area of domestic violence, advocates for women and children celebrated passage of House Bill 4064, which amended the Child Custody Act of 1970 to include a new "best interest" factor:

(k) Domestic Violence, regardless of whether the violence was directed against or witnessed by the child.¹²

The task force report recommended this amendment to the Child Custody Act which requires a trial judge to explicitly consider domestic violence when determining custody.¹³

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Local bar associations have appointed standing committees on gender and race/ethnic bias. The Washtenaw County Bar and the Grand Rapids Bar Association have set the standard for programming in this area, as well as in encouraging cooperation among local special interest bar associations. The Women Lawyers Association of Michigan has established a Gender Bias Committee which responds to complaints of gender bias by members and actively pursues implementation of the task force recommendations.

The above is not by any means a complete listing of all responses to the task force report in Michigan. Many recommendations of the task force as yet remain unaddressed. Until a standing committee is appointed by the Supreme Court to monitor and report on our successes and failures, we will not be accountable to anyone if we fail to live up to the hopes and expectations of the task force and the citizens who first urged its creation.¹⁴ Someone must monitor not only what we are doing to provide equal justice, but whether we are doing it well. ■

Footnotes

1. Final Report of the Michigan Supreme Court Task Force on Gender Issues (December, 1989), p. 135; Final Report of the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts (December, 1989), p. 76.
2. *Michigan Bar Journal*, July 1990, pp. 723-724.
3. Pamela Creighton, "Update: Racial and Gender Bias Reports," *Michigan Women* (Newsletter of the Michigan Women's Commission), Fall 1993, p. 6.
4. *Id.*
5. *Id.*
6. By Order dated July 16, 1993, the Court amended MCR 9.205 and Rule 1.2 of the Michigan Rules of Professional Conduct, and to the Michigan Code of Judicial Conduct, and added Rule 6.5 to the Michigan Rules of Professional Conduct.
7. Justices Levin and Mallett dissented to the elimination of reference to private memberships and proposed alternative language to the State Bar's in their dissent.
8. Final Report of the Michigan Supreme Court Task Force on Gender Issues (December, 1989), p. 140; Final Report of the Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts (December, 1989), p. 82.
9. Letter to author from MJI Executive Director, Dennis W. Catlin, Ph.D., dated December 9, 1993.
10. Final Report of the Michigan Supreme Court Task Force on Gender Issues (December, 1989), p. 134.
11. Reports of Director Lynn Chard and Education Director Karl Brevitz to the ICLE Executive Committee, on file with the author.
12. Michigan Compiled Laws 722.23(k).
13. Final Report of the Michigan Supreme Court Task Force on Gender Issues (December, 1989), p. 42.
14. Final Report of the Michigan Supreme Court Task Force on Gender Issues (December, 1989), p. 1.

Lawyers and Judges AA/NA Groups MEETING DATES

Monday 12:00 PM
St. Joseph Hospital East
Bailey Room A
Parkview and North Streets
Mt. Clemens

Monday 12:30 PM
Detroit Bar Association
Conference Room
23rd Floor, Penobscot Building
Detroit

Monday 7:00 PM
Prince of Peace Lutheran Church
19100 Ford Road
Ford Rd. (Altar Rd.) just west of
Southfield Freeway
Dearborn

Monday 7:00 PM
Rehmann Health Center
147 S. Saginaw
Chesaning

Wednesday 6:00 PM
Kirk In The Hills
Presbyterian Church
1340 West Long Lake Road
½ mile west of Telegraph
Bloomfield Hills

Wednesday 6:00 PM
Unitarian Church
2474 South Ballenger Road
Lower Level, Room 2C
1 block south of Miller Road
Flint

Thursday 8:00 PM
Central Methodist Church
(2nd Floor)
Corner of Capitol and
Ottawa Streets
Lansing

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