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EIGHTH CIRCUIT: GENDER FAIRNESS TASK FORCE

*The Honorable Lyle E. Strom**

In July of 1993, the Judicial Council of the Eighth Circuit adopted a resolution for the creation of a task force to study and report on the impact or effect of gender in the administration of justice in the Eighth Circuit. Chief Judge Richard Arnold appointed United States District Judge Diana Murphy of Minnesota to establish the Task Force. A task force of thirty members, consisting of circuit, district, magistrate and bankruptcy judges, employees of the courts, representatives from the offices of the United States Attorneys and Federal Public Defenders, attorneys who practice in federal court, and professors of law, was appointed.¹

The Task Force was divided into several committees: demographics, civil practice, criminal practice, bankruptcy practice, courtroom interaction, and the court as an employer. We hired an executive director, Leslie V. Freeman, and a social science consultant, Dr. Louise Fitzgerald, professor at the University of Illinois at Champaign-Urbana.

Each committee worked with Ms. Freeman and Dr. Fitzgerald in developing needed data. This was obtained primarily by survey instruments. In addition, records and data were obtained from the offices of the clerks of the district courts and the circuit court, the administrative office of the United States Courts, the Federal Judicial Center, and the United States Sentencing Commission.

* Senior Judge, United States District Court, District of Nebraska; Chair, Eighth Circuit Gender Fairness Task Force.

1. The Task Force Report was completed in August of 1997 and has been published by the *Creighton University Law Review*. See FINAL REPORT & RECOMMENDATIONS OF THE EIGHTH CIRCUIT GENDER FAIRNESS TASK FORCE, reprinted in 31 CREIGHTON L. REV. 9 (1997).

The ultimate goal of the Task Force was set forth in a mission statement developed at our early plenary sessions. The Task Force determined that its mission was:

1) To study effects of gender on both processes and people in the Eighth Circuit judicial system, by gathering data through a variety of methods and from a cross section of persons involved in the Eighth Circuit judicial system;

2) To analyze the gathered data;

3) To recommend appropriate action; and

4) To make provision for the implementation of any such recommendations as approved and authorized by the Judicial Council of the Eighth Circuit.

Generally, we found very few reports of sexual harassment. Demographically, we found that nineteen of the total of 149 judges, or 13%, were female, as compared to a national average of 17.8%. Women constitute 16.8% of attorneys in the district courts and 19.2% of the attorneys practicing in the court of appeals. We found women attorneys are proportionately more likely to be employed as government attorneys than men, but the survey results challenged the assertion that government practice is a "mommy track"—as there was no significant difference between the percentage of mothers with children under eighteen at home in private practice, government practice, or private/public entities.

In civil practice, while we found evidence of some sexual harassment, we found that gender was more evident in uncivil behavior, as women significantly more often experienced hostility during the litigation process. Women reported general incivility, gender-related incivility, and unwanted sexual attention much more than males, and generally considered incivility in the courtroom to be initiated by other attorneys. Interestingly, men more often identified judges as the source of incivility. Both male and female judges reported experiencing incivility. However, formal complaints on behalf of attorneys were very infrequent. In bankruptcy practice, women perceive that they receive more negative treatment than men and the statistics reflected that female trustees receive less respect than their male counterparts.

Women in criminal practice constitute 13% of the attorneys. They are employed as one-third of the Assistant United States Attorneys and Federal Public Defenders, which exceeds the percentage of female practicing attorneys in the circuit. Employees generally perceived their workplaces as moderately tolerant of gender-related behavior and many were skeptical that complaints would be taken seriously.

The foregoing is only a brief review of some of the findings of our task force. At a Judicial Council meeting in September, 1997, the Council received the report and approved the establishment of an implementation committee to review the report and our recommendations for the purpose of establishing an implementation procedure.

At this time, we are continuing to accumulate data from the various districts in this circuit which will be provided to the implementation committee. The study and report have generally been well received by the bench and bar of this circuit. We believe that this study will result in policies in this circuit that will address issues of gender and improve the administration of justice in our courts.

