

Gender Fairness Implementation Committee

**Final Report to State Court Administrator
2008-2010**

**Gender Fairness Implementation Committee
November, 2010**

Introduction

The Gender Fairness Implementation Committee (GFIC) was established in 1989 and charged with the responsibility to implement the recommendations of the Minnesota Supreme Court Task Force on Gender Fairness. Over the past twenty years the group has been actively involved in the implementation of Task Force recommendations, in identifying and delivering continuing education, in identifying other gender related Judicial Branch issues in need of attention, and in continually measuring progress toward full implementation of the original recommendations and the effectiveness of efforts to assure gender fairness in the Judicial Branch.

In 2008, 2009 and 2010 efforts¹ concentrated on:

1. Execution of a 20th Anniversary recognition of the issuance of the Gender Fairness Report;
2. Analysis of the Minnesota State Bar Association Diversity Report and its application to the Judicial Branch;
3. Development and distribution of a Domestic Abuse Bench Guide to judges, referees and child support magistrates;
4. Examination of the efficacy of the development of an Informal Compliant Process;
5. Analysis of whether judicial selection methods impact gender diversity on the bench;
6. Analysis of the impact of Judicial Branch policies and procedures on court users;
7. Examination of the treatment of child custody issues in Order for Protection matters; and
8. The Creation of a “Diversity” Committee.

Accomplishments

1. Gender Fairness Report – 20th Anniversary

On October 27, 2009 the Gender Fairness Implementation Committee sponsored a lunch and afternoon continuing education session to commemorate the 20th Anniversary of the issuance of the Gender Fairness Report. Over 140 participants were in attendance. Judge Harriet Lansing, Vice-Chair of the Minnesota Supreme Court Task Force on Gender Fairness in the Courts, provided the keynote address at the lunch. During the afternoon three continuing education sessions were held. The sessions, and faculty included:

Family Law: How Far Have We Really Come?

- *Susan Rhode, Moss and Barnett PA*
- *Kay Nord Hunt, Lommen, Abdo, Cole, King, Stageberg P.A.*

How Practitioners Identify Domestic Violence in Today’s Complex World

- *Loretta Frederick, Senior Legal & Policy Advisor, Battered Women’s Justice Project*
- *Professor Nancy VerSteegh, Vice Dean for Academic Programs and Professor of Law, William Mitchell College of Law*

¹ The 2008-2009 Gender Fairness Implementation Committee membership can be found at Appendix A.

Courtroom Environment and Substantive Law

The final panel discussed the differences in substantive areas of law impacting women and changes in the court environment for women litigants, witnesses, attorneys, and judges in the last 20 years.

- *Judge Diana E. Murphy, Eighth Circuit Court of Appeals*
- *Magistrate Judge Susan Richard Nelson, U.S. District Court*
- *Marianne D. Short, former judge of the Minnesota Court of Appeals and Managing Partner, Dorsey & Whitney, LLP*
- *Moderator: Michelle S. Grant, partner, Dorsey & Whitney, LLP*

In conjunction with the event a writing contest was held for students at the four Minnesota law schools. The winning students' papers will be published in the spring edition of a law review journal.

Honorees	Article	Law Review to Publish Article
Rita Berg University of St. Thomas School of Law	<i>Parental Alienation Analysis: Domestic Violence and Gender- Bias in Minnesota's Courts</i>	University of Minnesota Law Review
Jan Jeske William Mitchell College of Law	<i>Custody Mediation Within the Context of Domestic Violence</i>	Hamline Journal of Public Law and Policy
Danielle Sollars William Mitchell College of Law	<i>Gender Balance in the Judiciary: Why Does it Matter?</i>	William Mitchell Law Review

2. MSBA Diversity Best Practices Guide

In 2008 the Minnesota State Bar Association (MSBA) issued a report entitled *Diversity & Gender Equity in the Legal Profession: Best Practices Guide*. A GFIC subcommittee was established to review the document with the purpose of identifying any recommendations that warrant further consideration for acceptance by the Minnesota Judicial Branch from the perspective of the Gender Fairness Implementation Committee. The final report is found at Attachment B.

3. Judicial Selection Methods

The Judicial Selection Methods work group was tasked with reviewing the various merit and appointed judicial selections methods to determine if one particular system is superior in producing a diverse and representative bench. The final report is found at Attachment C.

4. Domestic Violence Bench Guide

Domestic violence is one of the most challenging issues facing the justice system today. Judges, referees and magistrates are faced with making complex decisions in cases where domestic violence is present, often with little information about the full relationship between the alleged victim and the alleged perpetrator, and the extent to which violence is present in the relationship. In the past few years, the American Bar Association and domestic violence experts throughout the United States have called for the development of domestic abuse risk assessment tools to guide judges in their decision-making process. Risk factors may point to an increased likelihood of violence in a relationship.

In 2007 the Gender Fairness Implementation Committee developed a risk assessment tool in response to that call for action. The Domestic Abuse Risk Assessment Bench Guide is for use at all stages of family, order for protection, civil or criminal cases involving allegations of domestic violence. The Implementation Committee recognizes that domestic violence risk assessment is very complex. There is no perfect tool, and no single risk assessment instrument should be relied on as the only measure. Rather, various assessments should be utilized, including extensive information from alleged perpetrators, alleged victims/survivors, advocates, and any available records. The Bench Guide is a “best practices” tool for use when judges, referees, and magistrates are faced with complex decisions pertaining to the existence of domestic violence in a case.

The Bench Guide was distributed to all judges, referees, and magistrates in the fall of 2009. A copy can be found at Appendix D. The Bench Guide was the subject of a break out session at the 2010 Annual Minnesota Judges Conference in December 2010.

5. Informal Complaint Process

In response to concerns that people using Minnesota’s courts experienced conduct by Judicial Branch employees and judges that was problematic with respect to gender, and potentially other issues, but which might not “rise to the level” of a complaint to the Board on Judicial Standards, the Gender Fairness Implementation Committee created an “Informal Complaint Process” work group. The intent of the work group was to examine existing systems, procedures, etc., to determine whether they were adequate to meet the perceived need to respond to these “lower-level” types of complaints, and if not, to suggest possible new processes or changes to address them. The Subcommittee concluded that although no change is needed to the existing system, current processes and policies could be modified to better serve the public. See Appendix E for recommendations.

6. Work-Life Balance

The GFIC Work-Life Balance workgroup examined Minnesota judicial branch policies and practices, as they impact upon users of the court system. The focus was narrowed to litigants, witnesses, and jurors. The focus of the workgroup was to arrive at some recommendations about how the GFIC can help accomplish this, as it relates to work-life balance and access to the courts. The Subcommittee concluded that the improvements could be made to provide greater access to the courts and to court related information available through the Judicial Branch. Appendix F contains the subcommittee recommendations.

7. Creation of a Diversity Committee

The Gender Fairness Implementation Committee's 2008-09 work plan included an examination of the Best Practices Guide to determine whether there were practices recommended in the guide that should be, but had not been, implemented within the judicial branch. As part of this effort, GFIC discussed the fact that the MSBA's examination was very broad, considering equity from the standpoint of gender, race and ethnicity, sexual orientation, disability and religion and creed. The GFIC committee concluded that the diversity efforts of the judicial branch should be similarly broadly-focused.

In addition, information was reviewed on how other states address issues of access and fairness within their court systems. Many states have fairness and diversity committees that focus their efforts more broadly than gender and race, using subcommittees assigned to specific areas including gender and race.

In December 2009 the GFIC Committee and the Racial Fairness Committee (RFC) presented a proposal to the Judicial Council asking the Council to establish a Committee for Equality and Justice, reportable to the Judicial Council. Upon approval, GFIC and the RFC created a workgroup, consisting of Justices Gildea and Page, members of the GFIC and the RFC and a representative from the academic community, to develop a comprehensive recommendation on the Committee's creation. This recommendation, following endorsement by the GFIC and RFC, was presented to and approved by the Judicial Council in June 2010. Judge Tanya Bransford, Fourth Judicial District, and Mary Vasaly, Maslon Edelman Borman & Brand, LLP, have been appointed co-chairs of the Committee. Membership recruitment took place in August and September, 2010. The proposed membership of the new Committee will be presented to the Judicial Council in November 2010. The Committee for Equality and Justice is scheduled to commence activities in January 2011.

Issues for Future Consideration

1. Best Practices for OFP Proceedings

An initial examination of the treatment of child custody issues in Order for Protection matters was begun over the biennium. The Best Practices for OFP Proceedings workgroup was formed in response to the fact that some of the most difficult issues raised in Order for Protection cases are those related to child custody and parenting time. The workgroup began an examination of how courts handle OFP pro se proceedings involving potentially dangerous parties. The Committee for Equality and Justice should consider continuation of analysis in this area. The subcommittee report is found at Appendix G.

Conclusion

The Gender Fairness Implementation Committee was instrumental in efforts to ensure that the judicial system consistently treats women and men with fairness and respect. It is expected that

the Committee for Equality and Justice will continue efforts to ensure gender equality in the Minnesota Court System.

APPENDIX A

Gender Fairness Implementation Committee Membership 2008-2010

Hon. Lorie Gildea, Chair Associate Justice	
Suzanne Bollman Sherburne County Attorney's Office	Phil Duran OutFront Minnesota
Loretta Frederick Domestic Violence Consultant	Sangeeta Jain Child Support Magistrate
Geoffrey A. Hjerleid Olmsted County Attorney's Office	Sally Kenny Professor, Public Affairs and Law Director, Center on Women and Public Policy Humphrey Institute
Anne T. Johnson Assistant Dean for Admissions Hamline University School of Law	Susan Murphy Attorney at Law
Hon. Mary Louise Klas Retired District Court Judge	Jill Prohofskey Child Support Magistrate
Joan Peterson Attorney at Law	Hon. Kathleen Sanberg Tax Court
Julie Moore Rapacki Attorney at Law	Katherine Wiik Attorney at Law
Mary Vasaly Attorney at Law	Janet Marshall Staff

APPENDIX B

MSBA DIVERSITY BEST PRACTICES GUIDE REVIEW

Purpose:

This workgroup was established to review the best-practice recommendations in the 2008 Minnesota State Bar Association (MSBA) report, *Diversity & Gender Equity in the Legal Profession: Best Practices Guide*. Our purpose was to identify any recommendations which warrant further consideration for acceptance by the Minnesota Judicial Branch from the perspective of the Gender Fairness Implementation Committee. It should be noted that the report was also being reviewed from a more general perspective by the State Court Administrator's Office.

Outside the Scope of this Purpose:

The 2008 MSBA report specifically examines legal settings from an employment perspective. Our review was necessarily limited to looking at the Minnesota Judicial Branch as an employer, rather than as an entity serving the public. While there may be ways in which the branch could better serve the public from a gender standpoint, such questions, not being addressed by the report, were outside the scope of our review. Additionally, the MSBA report examined a wide range of legal employers, including non-profit organizations, law schools, firms, corporations, and other governmental bodies as well as courts themselves. The workgroup determined that some recommendations were not applicable to the Minnesota Judicial Branch, for such reasons as labor-contract requirements; legal or constitutional considerations; or the fact that some employees, i.e., judges, are appointed rather than "hired" in the traditional sense. Thus an early effort of the workgroup was to narrow the broad scope of the MSBA report to those considerations which could actually be applied to the Minnesota Judicial Branch, and then to examine those.

Additional consideration:

According to the Minnesota Legislature's Office on the Economic Status of Women, "for more than a decade Minnesota has led pay equity efforts in the nation. While pay equity initiatives have now been undertaken in thousands of public and private organizations across the country, Minnesota was the first to provide pay equity for state government employees and the first to require pay equity for local government employees." It is important to note that Minnesota's judicial system employees are not now covered by this legislation. Monitoring pay equity has been complicated by the staggered transfer of trial court employees from local payrolls to state funding from 1990 – 2005. Nevertheless, the Branch monitors internal pay equity without a state mandate.

Scope of Review:

In keeping with the Best Practices Guide's "First Steps for Diversity Best Practice Implementation" (p. 12), the workgroup focused its examination on the following areas:

1. Data - We requested and received a comprehensive review of the gender breakdown in judicial branch staff, by pay grade/hierarchy level. We were interested in examining whether gender based differences were apparent from role or geographic standpoint;
2. Determine and communicate commitment from your top leaders –
 - a. We examined the organizational structure of the Judiciary itself and the GFIC within it. For example, we raised the question of why the gender committee reports to the State Court Administrator, but the race committee reports to the Judicial Council and what, if anything, this may say about the branch’s commitment to gender fairness; and
 - b. We considered the level of visibility of the GFIC, member appointment and public relations efforts, and the role they may play in the visibility of these issues to the greater legal community as well as the branch’s value-judgment of such committees.

#1 – Data Measurement Capabilities and Findings

The work group wishes to acknowledge that branch staff, particularly Nancy Griffin, was very helpful in pulling together statistics, broken down by gender, of employees, judges, promotions, and merit/step increases. The staff uses its human resources information system (SEMA4) to pull data on these and other categories when measuring pay equity.

Non-Judicial Employee Data:

Minnesota Judicial Branch (non-judicial) employee data are broken out into “staff,” “supervisor,” and “management” categories.

Overall, roughly 84% (2347) of branch (non-judicial) employees are women (vs. 16% -- 449 – who are male); this breakdown is also roughly reflected at the “staff” level. At the “supervisor” level, women are even more represented (89% vs. 11%).² And at the “management” level, women are also overrepresented, though to a somewhat lesser degree (72% vs. 28%). (See attached table and diagram #1.)

From the standpoint of promotions, female employees and male employees appear to be being promoted in roughly the same proportion as their representation in the overall staff numbers: approximately 86% of promoted employees were female, while about 14% were males (FY 08). In terms of merit/step increases, female employees saw slightly higher increases, on average, than male employees: 3.22% vs. 3.08% (FY 09). However, it is unclear how this translates into actual dollars: a smaller merit/step increase could well translate into more actual dollars of pay than a marginally higher merit/step increase at a lower salary rate.

Looked at from a geographic standpoint, among the districts, eight out of ten match or exceed the overall average “staff” gender breakdown of 84%-16%; only the Second and Fourth report

² Statements of relative representation are based on the assumption that equity suggests a roughly equal match of percentages in roles to the percent of the general male/female population. No examination has been made as to whether these numbers are better or worse than the level of equity achieved in other areas of legal practice, industries or professions.

averages slightly more evenly balanced than the rest of the state in terms of gender representation: in both cases, approximately 82% of staff at all levels (excluding judges) are female vs. 18% male. Interestingly, it is at the Supreme Court (70% female vs. 30% male) and Court of Appeals (74% vs. 26%) where the gender ratio among staff people varies considerably from the staff gender ratio branch-wide.

At the “supervisor” level, where branch-wide the breakdown is approximately 89% to 11% favoring females, women represent 100% of supervisory staff in four districts (1, 3, 6, and 8). Among the remaining districts, the percentage of female “supervisors” ranges from 83% (Fourth) to 96% (Tenth). Supreme Court supervisory staff numbers are more evenly-balanced in gender terms; women represent 69% of supervisory employees. The Court of Appeals employs no supervisory staff.

Finally, at the “management” level, among the districts, only four (Districts 3, 4, 7, and 8) are (barely) below the average of 72% female representation (69%, 68%, 70%, and 70% respectively). Again, “management” staff at the Supreme Court itself (56% female) is substantially different from the gender breakdown of managers (72% female) branch-wide. The Court of Appeals is reported to have one management staff, who is female, thus resulting in a 100% female management outcome. If the Court of Appeals has only one management staff person, then its outcome will *always* be 100% skewed toward one sex, so this number may not be particularly meaningful.

Judicial Data:

In contrast to the female-dominated employee base, system-wide the bench remains dominated by men, although important progress has been made in judge gender diversity in last 20 years. It should be noted that the Judicial Branch is not involved in the judicial selection and appointment process and therefore bears no direct influence on the proportion of female to male judges. Judges are either appointed by the Governor or elected to office. However, this is not to say that judges do not have an impact on the composition of the bench through informal mentoring, recruiting, training and the like.

In 1989, women represented only 10% of judges; in 2009, they represent 31%. But put differently, throughout the entire branch, 69% of judges are men. Fully seven out of ten judicial districts are even more heavily skewed than this: for example, the Eighth District bench is 91% male. However, unlike in 1989, there are now no districts that have no female judges at all. Among the districts, the Fourth is the most balanced: 54% male to 46% female. The other two districts that have a gender-balance that is better than average are Districts 2 (Ramsey – 62%/38%) and 10 (Anoka/NE metro – 67%/33%). Interestingly, the districts that are faring the best in terms of gender balance on the bench are centered in the Twin Cities metropolitan area. Among non-metro districts (assuming that the metro districts are Districts 1, 2, 4, and 10), the Seventh District appears to do the best: 75% male judges to 25% female judges, though this outcome is still noticeably above the statewide bench breakdown of 69% vs. 31%.

At the appellate level, the Court of Appeals is nearly evenly divided (53% male to 47% female – 9 out of 19 judges of the Court of Appeals are women). The Supreme Court is slightly more heavily male-dominated (71%) than the system-wide average.

Analysis:

If a presumed concern underlying both the relevant portions of the MSBA report and the GFIC itself is that women may be under-represented in some or all aspects of the Minnesota legal system or profession, and that the shared ultimate goal is more equitable gender-balance throughout the system, it is challenging to apply that philosophy to the Minnesota Judicial Branch. With non-judicial employee numbers like those discussed above, concerns about female under-representation are difficult to maintain.

In terms of equal non-judicial employment opportunities, these positions are overwhelmingly filled by women. Yet the bench, system-wide, is 69% male, despite dramatic improvements in the gender balance among judges/Justices in the past 20 years. The nagging question is whether the employee positions themselves are viewed as “women’s work,” merely supporting the “more important” work of judges at generally lower pay, whereas judicial positions, which tend to be more autonomous and involve decision-making power at generally higher pay, are seen as more naturally “men’s work,” in the first place.

But if one compares gender-balance data for any workplace to the presumed 50-50 gender distribution in society generally (and where, theoretically, 84-16 ratios or even 69-31 ratios in given job categories should not persist), then the Supreme Court turns out potentially to be leading the way. In this context, the Supreme Court’s 70-30 ratio among “staff” positions is actually much closer to the presumed 50-50 balance one would expect in a gender-balanced world, and its 69-31 “supervisor” ratio and 56-44 “management” ratio are even closer. On the other hand, the Supreme Court itself is 71% male. In comparison, the Court of Appeals, while slightly less gender-balanced among employees than the Supreme Court (74% female vs. 70%, respectively), is markedly more gender-balanced in terms of the bench (47% female vs. 29%, respectively).

In order to understand why the Supreme Court’s employee gender-balance is less *imbalanced* than that of the rest of the branch, additional research would need to be conducted. Questions such as: what conditions exist within the court system which have allowed women proportionately higher employment rates than in other legal system employers? What conditions account for the variances within the Judicial Branch itself (e.g., are there differences in practices and culture as the Supreme Court level that account for the 70% vs. 84% employment rate of women)?

From the standpoint of judges/Justices, the vast majority of judges and Justices attain their positions through appointment instead of election. Even if anti-female bias were present in the appointment process, considering that in general the same process plays out across the state, such bias would presumably produce similar gender-imbalances on all benches everywhere in Minnesota. And yet the numbers suggest that though imbalances do persist, they vary considerably: from a 91-9 ratio in the Eighth District, to 71-29 at the Supreme Court, to 54-46 in the Fourth District, to 53-47 at the Court of Appeals. Evidently, there are factors present which

make possible a near-50/50 balance in some places which are less present elsewhere. One question that comes to mind is whether the applicant-pools for these positions, particularly those outside the Twin Cities metropolitan area, exhibit different gender breakdowns. Do female attorneys in greater Minnesota have equal opportunities to find work that would make them strong judicial candidates? Are recruitment efforts needed in order to attract female attorneys to seek judicial office?

Having identified the gender disparities on the bench as a potential and nearly-statewide concern, the workgroup, whose mission began with the MSBA's best-practice report, returned to the MSBA for additional data that might shed additional light on the problem. The MSBA divides the state into 22 bar districts; some correspond exactly to judicial districts, but in most cases, each judicial district is comprised of multiple bar districts (no bar district is divided between judicial districts). Therefore, data from each bar district may be combined with data from other bar districts as needed to produce data corresponding to a particular judicial district.

The workgroup gratefully acknowledges the assistance of MSBA staff in providing data regarding MSBA membership, broken down by bar district and by gender (the MSBA lacked gender information on a tiny percentage of its membership).³ These data allowed the workgroup to calculate the number of MSBA members per judicial district and their gender-breakdown, and to compare the results to the gender diversity found on the bench in that judicial district. Clearly, there are important caveats to such an analysis: MSBA membership is wholly voluntary, and therefore MSBA members are likely to be only a portion of the actual attorney population in any particular area; MSBA membership may be perceived to be more meaningful to men than to women, or in urban communities versus rural communities; MSBA membership may bear no relationship whatsoever to one's contemplation of or qualification for judicial candidacy. Nonetheless, the workgroup approached the data with the basic assumption that MSBA membership in a given district roughly represented the gender-breakdown of the overall attorney population of that district.

Finally, the workgroup also turned to US Census figures to calculate the estimated population of each judicial district. Census figures also bore out the basic assumption that the underlying gender-breakdown in society is roughly 50/50: for example, the most-populous county, Hennepin, is 50.2% female, while the least-populous county, Traverse, is barely different, proportionally, at 50.9% female.

The results of the analysis are found in the Appendix. The outcome, perhaps not surprisingly, shows that the metropolitan-area judicial districts (1, 2, 4, and 10) are the most-populous districts, have the largest bar memberships, have the most gender-diverse bar memberships, and have the most gender-diverse benches. Conversely, the four districts with the least gender-diverse benches (3, 5, 6, and 8) are generally all clustered at the bottom of the lists in terms of population, bar membership, and gender-diverse bar membership. Districts 7 and 9 rank fairly consistently in the middle of these calculations. It should be noted that the most gender-diverse MSBA district bar, that of District 2, is still only 41% female – good, but notably shy of a logical

³ The Minnesota Judicial Branch does not collect data regarding attorneys admitted to practice relating to their gender or judicial district.

50/50 breakdown – and this, and similar imbalances elsewhere, may be the lingering product of a previous era when gender diversity in the profession was even more markedly lacking.

Interestingly, perhaps, the link between gender-diverse benches and the *percentage* of women in each district’s MSBA membership appears to be weak: for example, District 4 has the most gender-diverse bench, but is only tied for third with respect to a gender-diverse bar by percentage; District 1 has the fourth-most gender-diverse bench but the second-most gender-diverse bar by percentage; District 6 has the sixth-most gender-diverse bar by percentage, but only the ninth-most gender-diverse bench. In District 8, women comprise some 24% of the local MSBA membership, yet only 9% of the District 8 bench.

More strong is the apparent connection between gender diversity on the bench and the *raw number* of women in that district’s MSBA membership.⁴ If the gender diversity in a district’s MSBA membership roughly approximates the gender diversity in that district’s attorney population, this implies that the more female attorneys in a given district, and thus the deeper the pool of potential female judicial candidates, the more likely that women will be appointed or elected to the bench. If accurate, this is both logical and a positive trend. Arguably, then, in order to address gender diversity on the bench, there may need to be efforts to expand the number of women lawyers, particularly in non-metropolitan areas, as well as expanding the number of women, particularly from non-metropolitan areas, in law school and in the pipeline leading to law school. The degree to which the Minnesota Judicial Branch itself may get involved with such efforts is uncertain, though it is possible that individual women lawyers, judges, or Justices could undertake formal or informal mentoring or leadership-development projects which could have a similar effect. It is possible that organizations such as the MSBA or Minnesota Women Lawyers (MWL) could serve as the institutional vehicles for such efforts, with participation by women lawyers, judges, or Justices taking place on an individual basis.

It is also plausible that participation in a district’s bar association or in MWL might expand a lawyer’s network of connections, opportunities to demonstrate leadership, and overall visibility, and so encouraging women lawyers to participate could enhance their prospects for being considered for the bench at some point if that is their interest. However, it is not the Minnesota

⁴ The workgroup notes that there is also a potential connection between gender diversity on the bench and overall district population and attorney population (the positive correlation between overall population and attorney population is taken for granted), but neither factor warrants extended exploration. For example, even though every district’s population is assumed to be roughly split 50/50 between men and women regardless of the actual *size* of that population, it is still true that metropolitan benches are nonetheless more gender-diverse than non-metropolitan benches. There may be cultural differences (a “metropolitan effect”) between metropolitan and non-metropolitan areas which provide greater or fewer opportunities to women and where women feel more or less empowered to explore them. Alternatively, women lawyers may perceive they will have greater job opportunities and satisfaction in metropolitan versus non-metropolitan areas. If such a population-based “metropolitan effect” exists, and it is unlikely that the greater-Minnesota districts’ actual population or relative population rank will change significantly any time soon, this implies that any “metropolitan effect” will persist and that attention to overall population within a district will not be well-placed. It is also doubtful that the mere size of a local attorney population automatically produces gender diversity on the bench: a large but wholly male attorney population would be unlikely to produce gender diversity because, despite its size, women would not be participating and thus not positioning themselves for possible judicial office. The optimal combination from the standpoint of gender diversity on the bench appears to be a large attorney population with significant female participation, measured by raw numbers, not percentage.

Judicial Branch's job to promote MSBA or MWL membership; perhaps it is in these groups' interest to examine ways of increasing participation in their activities, particularly in greater Minnesota, and if this has a salutary effect on gender diversity on the bench, so be it.

In the end, while a numeric analysis of data is helpful, it does not necessarily tell the full story and address different perceptions or beliefs which may drive inequities. For example, one district may have fully qualified female candidates but have difficulty in increasing female judicial representation due to a lack of understanding of or visibility to the appointment process. Another district may have a clear and visible process but a small bench of qualified female candidates because of early self-selection out of the process due to perceived inequities. Or, processes may be communicated in ways or times which are suitable to the majority male candidates but which fail to understand or address needs of female candidates. Uncovering and addressing those perceptions and differences in beliefs, if they exist, will be critical to reaching greater gender equity.

The workgroup recommends that:

- Data continue to be collected and updated, and proactively shared with Judicial Branch leaders on a regular basis;
- The Minnesota Judicial Branch consider in the future seeking gender and judicial-district data on attorneys admitted to practice;
- Judicial Branch leaders be required to evaluate possible inequities within their work areas and determine actions they might take to increase gender parity to all levels of employment in their branch;
- Best-practice leaders be recognized and promoted as resources for those leaders that faced issues of less equity within their work group; and
- The Chief Justice continue to communicate to his appointees to the judicial nominating commission and the Governor the branch's commitment to increased gender parity on the bench on every level throughout Minnesota, particularly outside the Twin Cities metropolitan area.

2. a. and b. Organizational Structure and Communication of Commitment.

As the MSBA report made clear, improving diversity outcomes, including gender diversity outcomes, requires clear leadership from the top of the organization involved. Here, the message from the top – from the Judicial Council – is ambiguous. The branch has both racial-fairness and gender-fairness committees, each chaired by a Justice, but whereas the former reports to the Judicial Council, the latter reports to the State Court Administrator. The perception this creates is that the racial-fairness committee is more important than the gender-fairness committee or, more broadly, that the branch takes more seriously issues regarding race than issues regarding gender. While addressing racial issues is critical to the branch's mission of serving all fairly and being perceived as open to all Minnesotans, addressing gender issues is also critical to that mission. The workgroup believes that the branch must address diversity issues broadly, and emphasize that doing so is critical to its mission.

The workgroup recommends that the Judicial Council:

- make explicit its commitment to addressing diversity concerns as a critical aspect of the branch's mission, and direct that the Gender Fairness Implementation Committee report directly to the Council.
- establish a committee or subcommittee to examine the issues of religion, sexual orientation, and disability.
- treat the level of public relations and media communications regarding the GFIC consistently with appointment to other committees at the State level.

Conclusion:

Although significant strides have been made in expanding the number of female participants in the judicial system, significant work remains to ensure that progress in equity continues to be made and not lost during the harsh economic climate. Continuing to monitor data and communicate the importance of a well balanced court system which matches the demographics of the constituents its serves is vital to the implementation of justice.

All recommendations:

1. Data be collected and updated, and shared proactively with Judicial Branch leaders on a regular basis.
2. The Minnesota Judicial Branch consider in the future seeking gender and judicial-district data on attorneys admitted to practice;
3. Judicial Branch leaders be required to evaluate possible inequities within their work areas and determine actions they might take to increase gender parity to all levels of employment in their branch.
4. Best-practice leaders be recognized and promoted as resources for those leaders that faced issues of less equity within their work group.
5. The Chief Justice continue to consider gender diversity in appointments to the judicial nominating commission, and to communicate to these appointees and the Governor the branch's commitment to increased gender parity on the bench on every level throughout Minnesota, particularly outside the Twin Cities metropolitan area.
6. Judicial Council make explicit its commitment to addressing diversity concerns as a critical aspect of the branch's mission, and direct that the Gender Fairness Implementation Committee report directly to the Council.
7. Judicial Council establish a committee or subcommittee to examine the issues of religion, sexual orientation, and disability.
8. Judicial Council treat the level of public relations and media communications regarding the GFIC is consistent with appointment to other committees at the State level.

Subgroup members;

Suzanne Bollman, Assistant County Attorney, Sherburne County Attorney's Office
 Phil Duran, Legal Director, OutFront Minnesota
 Julie Moore Rapacki, Polish Your Star, LLC.

APPENDIX C

Judicial Selection Methods