

GENDER FAIRNESS IMPLEMENTATION COMMITTEE

2006 PROGRESS REPORT

INTRODUCTION

The Gender Fairness Implementation Committee was established by Supreme Court Order, effective January 1, 1989. Pursuant to the Order, the Committee was charged with the following responsibilities:

1. Implement Recommendations of the Minnesota Task Force on Gender Fairness in the Courts;
2. Work with Continuing Legal Education for State Court Personnel, Board of Continuing Legal Education, and the National Judicial Education Program to develop judicial and legal education programs on gender fairness;
3. Work with the Office of the State Court Administrator to establish a statistical data base appropriate for monitoring areas of Task Force concerns and performing studies in furtherance of the committee's charge; and
4. Evaluate the effectiveness of approved reform measures which have been implemented to assure gender fairness in our courts.

Over the past seventeen 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 2000 and 2004 the Committee reviewed all Task Force recommendations to identify areas in need of future attention.

In early 2006 the Committee identified the projects to be addressed during FY 06. They included:

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- Development of model Domestic Violence Assessment Tools
- Examination of the need to coordinate proceedings courts involving domestic violence and children and exploration of tools aimed at enhancing coordination of these cases.
- Improved handling of cases involving immigrant and refugee women;
- Exploration of feasibility of implementing informal complaint system for judges; and
- Exploration of feasibility of establishing data collection system to track economic consequences of divorce on women and children.

This progress report reflects the efforts made in each of the projects and contains recommendations for future actions. A detailed discussion on each topic follows the summary of recommendations.

SUMMARY OF RECOMMENDATIONS

- 1. The State Court Administrator's Office should distribute a domestic violence risk assessment checklist (bench card) to all trial judges in the state.**
- 2. The Gender Fairness Implementation Committee recommends that local courts consider and implement procedures which will enable judges to have information on parties' involvement in the entire court system readily available when issuing orders in domestic violence cases.**
- 3. Information with respect to accessing the courts, in particular in cases of domestic abuse, should be made available in multiple languages and available in multiple locations. The question of what entity has the responsibility for funding, promoting and preparing the materials should be explored by the State Court Administration Interpreter Program.**
- 4. Cultural awareness training for judges must be ongoing and continuously revisited as diverse communities arise in**

many locations throughout the state. Judges who have more experience might be asked to mentor or provide resources to other judges.

5. **Representatives of the Gender Fairness Implementation Committee should meet with the Racial Fairness Implementation Committee to discuss cultural awareness training issues and opportunities.**
6. **The Judicial Council should consider a policy relating to what court documents should be translated and who has responsibility for the funding. Translation of judicial orders as well as forms should be considered.**
7. **Judicial training on the relationship/interplay between domestic violence and immigration should be developed and implemented.**
8. **Training on domestic violence should be provided to interpreters.**
9. **The Gender Fairness Implementation Committee should study and make recommendations on the implementation of a complaint process to handle gender bias remarks and actions by judges and court employees.**
10. **No action toward collecting information on the economic impact of the Income Shares child support calculation method should be undertaken until the method is implemented in 2007.**

11. Judicial Council Policy 10.02 should be amended to include the identification and address of barriers to gender fairness within the judicial system.

DOMESTIC VIOLENCE ASSESSMENT TOOL

On the cutting edge of court system response to domestic violence are practices that create a flow of information to the courts at critical junctures. This information allows the courts to properly assess the dangerousness and lethality of alleged offenders. The challenge for courts is to decide which of the many alleged domestic abusers before them is truly dangerous or likely to re-assault. National research on the subject and tools from other jurisdictions exist that would help Minnesota courts. The Risk Assessment subcommittee spent considerable time reviewing such tools and forms and making recommendations on usage in Minnesota. For example, in some jurisdictions the risk assessment tool is filled out by the court and is placed in the court file. In others, court staff is responsible for gathering necessary information to complete the form for the court's review. There was some reluctance to recommend either of these systems for several reasons. Court staff does not have the resources to fill out forms in advance of each domestic violence hearing. Likewise, judges do not necessarily have the information and the time at the hearing to fill out the form. Last, there was concern that this information should not be included in the court file unless verified by the criminal justice agencies, which are the source of such data. The Committee agreed that the assessment information is still useful to judges and that the checklist designed to elicit the information could be distributed as a laminated bench card. (A copy of the bench card is found at Appendix A.)

Identifying and assessing risk in the wide array of domestic violence cases that come before the civil and criminal courts constitutes critical aspects of judicial intervention in domestic violence cases. A baseline recognition and understanding of risk and lethality markers in domestic violence cases greatly enhance a judge's ability to adjudicate these cases effectively. While judges do try to assess risk in these cases, most have no validated tool with which to do so. By using a tool such as the Risk Assessment Bench Guide, judges will be better equipped to make informed and accurate decisions in cases in which

domestic violence is involved. In addition, uniform application of this tool in each court throughout the State of Minnesota will ensure that best practices are in place in every jurisdiction.

RECOMMENDATION: The State Court Administrator's Office should distribute a domestic violence risk assessment checklist (bench card) to all trial judges in the state.

COORDINATION OF COURTS IN CASES INVOLVING DOMESTIC VIOLENCE AND CHILDREN

Many cases involving children and domestic violence involve proceedings that are filed in different court divisions sequentially or simultaneously. For example, the same family can be in criminal court, juvenile court, and/or family court. These courts can issue conflicting orders or can act otherwise without information about the other proceedings or orders. There are many models for coordinating the work of courts across court divisions in order to improve the legal system's response to children and victims of domestic abuse. The Committee's goal in this area was to increase awareness of the problems and to provide tools aimed at enhancing coordination of these cases for courts to consider.

The Court Coordination Subcommittee concluded that judges should make efforts to gather information about parties' interactions in other court divisions prior to domestic violence related hearings. The Subcommittee makes no recommendation on how this should be accomplished and encourages local courts to implement procedures to gather the information.

RECOMMENDATION: The Gender Fairness Implementation Committee recommends that local courts consider and implement procedures, which will enable judges to have information on parties' involvement in the entire court system readily available when issuing orders in domestic violence cases.

IMPROVED HANDLING OF CASES INVOLVING IMMIGRANT AND REFUGEE WOMEN'S ACCESS TO COURTS

The increasing number of immigrants in the state has greatly challenged courts and other institutions dealing with people whose first and perhaps only language is not English and who may have limited understanding of the functions of our legal system. Of those, many are battered and are likely to remain in violent relationships until courts and other criminal justice agencies can adapt to this new reality. The scarcity of interpreters, the emergency nature of battered women's legal needs and other factors confound well meaning courts' efforts at addressing these critical needs.

The Minnesota Advocates for Human Rights has recently released its findings and recommendations related to the needs of battered immigrant woman in this state. Examination and implementation of appropriate recommendations should be undertaken. The Immigrant and Refugee Women's Access Subcommittee spent considerable effort reviewing the Advocates for Human Rights Report and progress made to address the issues in the report. The Subcommittee learned that the Judicial Branch, Legal Aid and the Advocates for Human Rights have addressed many of the issues contained in the report. For example:

1. The Rules of Civil Procedure have been amended to clarify the policy to provide and pay for interpreters on civil actions where an official record is made in a court setting;
2. Order for Protection Forms have been translated into 9 languages;
3. Legal Aid and the MN Advocates for Human Rights have increased efforts to assist members of the immigrant communities with access to the courts;
4. New judge orientation includes a session on the use of interpreters in the courtroom;
5. The Judicial Branch has implemented a complaint procedure for complaints against court interpreters;
6. The Judicial Branch Interpreter Program has certification programs/testing available in 12 languages. Minnesota has certified interpreters in 6 languages;
7. The Judicial Branch Interpreter Program conducts an ethics course and an

orientation to court proceedings seminar. Court interpreters must attend these courses and must pass an ethics examination before being placed on the court interpreter roster for assignments; and

8. Feedback forms are available for persons using interpreter services.

The Subcommittee also identified the follow outstanding issues:

1. Although forms are translated, judicial orders are not and this creates a barrier for non-English speaking litigants.
2. Sensitivity to domestic violence is needed as part of training of interpreters.
3. There are concerns with the quality of interpreters in areas throughout the state.
4. There is a lack of standards for contracted services for translation of court documents.
5. The role of gender, among other cultural variables, impacting interpretation should be explored.
6. Information about access to the courts (how to go to court, how to file, etc.) should be translated into multiple languages and should be readily available to communities.

Recommendations:

- 1. Information with respect to accessing the courts, in particular in cases of domestic abuse, should be made available in multiple languages and available in multiple locations. The question of what entity has the responsibility for funding, promoting and preparing the materials should be explored by the State Court Administration Interpreter Program.**
- 2. Cultural awareness training for judges must be ongoing and continuously revisited as diverse communities arise in many locations throughout the state. Judges who have more experience might be asked to mentor or provide resources to other judges.**
- 3. Representatives of the Gender Fairness Implementation Committee should meet with the Racial Fairness Implementation Committee to**

- discuss cultural awareness training issues and opportunities.
4. The Judicial Council should consider a policy relating to what court documents should be translated and who has responsibility for the funding. Translation of judicial orders as well as forms should be considered.
 5. Judicial training on the relationship/interplay between domestic violence and immigration should be developed and implemented.
 6. Training on domestic violence should be provided to interpreters.

COMPLAINTS AGAINST JUDGES

Many of the Gender Fairness Implementation Committee recommendations were related to gender bias remarks and actions by judges toward attorneys, litigants, and staff. In the past the Committee has explored whether the current formal judicial complaint process is adequate. The Committee was and remains concerned that complaints may not on their own rise to the level of action through the formal complaint process and that the cumulative effect of these complaints could warrant action. The Committee's 2006 Workplan included a review of informal complaint processes used elsewhere, e.g. North Dakota. The Committee was unable to complete this project. Exploration of the feasibility of implementing a process to handle complaints against judges and court employees will be included in the Committee's 2007 activities.

RECOMMENDATION: The Gender Fairness Implementation Committee should study and make recommendations on the implementation of a complaint process to handle gender bias remarks and actions by judges and court employees.

CHILD SUPPORT GUIDELINES

The original Gender Fairness report paid close attention to the impact of the child support guidelines on women and children's ability to maintain a life style above the poverty guidelines. From time to time the Committee has attempted to re-measure the economic impact of the Guidelines. The 2005 Legislature has changed Minnesota's guidelines system to one based on income shares. The Committee is interested in exploring the economic impact of the income shares model. However, this exploration should wait until the new system has been implemented and utilized for a period of time.

RECOMMENDATION: No action toward collecting information on the economic impact of the Income Shares child support calculation method should be undertaken until the method is implemented in 2007.

OTHER ISSUES

The Gender Fairness Implementation Committee also reviewed Judicial Council Policy 10.02 which provides that it is the policy of the Minnesota Judicial Branch to identify and eliminate barriers to racial and ethnic fairness within the judicial system, in support of the fundamental principle of fair and equitable treatment under law. The Implementation Committee strongly believes that the policy should be expanded to include gender issues. A copy of the proposed Policy amendments can be found at Appendix B.

RECOMMENDATION: Judicial Council Policy 10.02 should be amended to include the identification and address of barriers to gender fairness within the judicial system.

CONCLUSION

The Gender Fairness Implementation Committee continues a 17-year tradition to implement the original recommendations of the Minnesota Supreme Court Task Force for Gender Fairness in the Courts and to identify emerging issues that threaten to create barriers to gender fairness in the Judicial Branch. In 2007 the Committee will continue

its work on the projects identified above and on other emerging issues to be identified throughout the year.

APPENDIX A
Draft of Laminated Bench Card

Domestic Violence Risk Assessment Bench Guide

*A research-based bench guide for use by Minnesota judges
at all stages of family, Order for Protection, civil or criminal cases involving domestic violence*

Note: The **presence** of these factors can indicate **elevated risk** of serious injury or lethality. The **absence** of these factors is not, however, evidence of the absence of risk of lethality.

1. Does perpetrator have access to a **firearm**, or is there a firearm in the home?
2. Has the perpetrator ever used or threatened to use a **weapon** against the victim?
3. Has perpetrator ever attempted to **strangle** or choke the victim?
4. Has perpetrator ever **threatened to or tried to kill** the victim?
5. Has the physical **violence increased in frequency or severity** over the past year?
6. Has perpetrator **forced** the victim to have **sex**?
7. Does perpetrator try to **control** most or all of victim's **daily activities**?
8. Is perpetrator constantly or violently **jealous**?
9. Has perpetrator ever threatened or tried to commit **suicide**?
10. Does the **victim believe** that the perpetrator will re-assault or attempt to kill the victim? *A "no" answer does not indicate a low level of risk, but a "yes" answer is very significant*
11. Are there any pending or prior Orders for Protection, criminal or civil cases involving this practitioner?

These risk assessment factors are validated by a number of studies. See Campbell, Jacquelyn, et al., "Intimate Partner Violence Risk Assessment Validation Study: The RAVE Study Practitioner Summary and Recommendations: Validation of Tools for Assessing Risk from Violent Intimate Partners", National Institute of Justice (December, 2005); Heckert and Gondolf, "Battered Women's Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault", Journal of Interpersonal Violence Vol 19, No 7 (July 2004).

How To Use The Domestic Violence Risk Assessment Bench Guide

- **Obtain information regarding these factors through all appropriate and available sources**
 - Potential sources include police, victim witness staff, prosecutors, defense attorneys, court administrators, bail evaluators, pre-sentence investigators, probation, custody evaluators, parties and attorneys
- **Communicate to practitioners that you expect that complete and timely information on these factors will be provided to the court**
 - This ensures that risk information is both sought for and provided to the court at each stage of the process and that risk assessment processes are institutionalized
 - Review report forms and practices of others in the legal system to ensure that the risk assessment is as comprehensive as possible
- **Expect consistent and coordinated responses to domestic violence**
 - Communities whose practitioners enforce court orders, work in concert to hold perpetrators accountable and provide support to victims are the most successful in preventing serious injuries and domestic homicides
- **Do not elicit safety or risk information from victims in open court**
 - Safety concerns can affect the victim's ability to provide accurate information in open court
 - Soliciting information from victims in a private setting (by someone other than the judge) improves the accuracy of information and also serves as an opportunity to provide information and resources to the victim
- **Provide victims information on risk assessment factors and the option of consulting with confidential advocates**
 - Information and access to advocates improves victim safety and the quality of victims' risk assessments and, as a result, the court's own risk assessments
- **Note that this list of risk factors is not exclusive**
 - The listed factors are the ones most commonly present when the risk of serious harm or death exists
 - Additional factors exist which assist in prediction of re-assault
 - Victims may face and fear other risks such as homelessness, poverty, criminal charges, loss of children or family supports
- **Remember that the level and type of risk can change over time**
 - The most dangerous time period is the days to months after the perpetrator discovers that the victim
 - might attempt to separate from the perpetrator or to terminate the relationship; and/or
 - has disclosed or is attempting to disclose the abuse to others, especially in the legal system.

The Value of Domestic Violence Risk Assessment Tools

Identifying and assessing risk in the wide array of domestic violence cases that come before the civil and criminal courts constitute a critical aspect of judicial intervention in domestic violence cases. A baseline recognition and understanding of risk and lethality markers in domestic violence cases greatly enhance a judge's ability to effectively adjudicate these cases. While judges do try to assess risk in these cases, most have no validated tool with which to do so. By using a tool such as the Risk Assessment Bench Guide, judges will be better equipped to make informed and accurate decisions in cases in which domestic violence is involved. In addition, uniform application of this tool in each court throughout the State of Minnesota will ensure that best practices are in place in every jurisdiction.

Copious literature exists regarding the use and accuracy of various risk and lethality assessment instruments. The most commonly identified risk and lethality factors are listed in this Bench Guide. Of course, risk and lethality factors are not one-hundred-percent determinative. Most notably, while assessment tools often correctly predict the most dangerous offenders/individuals, such tools are sometimes under-inclusive and can fail to identify some dangerous individuals. Therefore, judges should utilize this tool to improve risk assessment accuracy but be vigilant of the risk inherent in *all* domestic violence cases.

Of course, the quality of decisions which are informed by the Risk Assessment Bench Guide can be greatly improved where the court has evidence of the existence of such factors in particular cases. For this, the court must rely on other court and legal system practitioners. Judges need the information necessary for these assessments and should take leadership locally to encourage attorneys, litigants, police, probation and others to consistently provide it. A strong coordinated community response to domestic violence will facilitate information-gathering and timely provision of information to the bench so that judges can take appropriate measures regarding the safety of victims and their children.

Risk assessment instruments have a proven ability to identify some of the highest-risk abusers. This kind of tool should assist judges in deciding whether to institute stronger controls that might have a deterrent impact on abusers' future violence or provide heightened safety measures for victims. For example, a judge can order more intensive supervision of a more dangerous offender or can institute more protective parenting time provisions when a party presents heightened risk.

The use of this formal assessment tool can save lives, but is not intended to, nor should it be used to, prejudge any case on the merits.

APPENDIX B

Proposed Amendments to Judicial Council Policy 10.02

Minnesota Judicial Branch JUDICIAL COUNCIL POLICY

Policy Source:	Minnesota Judicial Council
Policy Number:	10.02
Category:	
Title:	Racial, and Ethnic, <u>and Gender</u> Fairness Policy
Effective Date:	June 22, 2006
Revision Date(s):	
Supersedes:	

I. POLICY STATEMENT

It is the policy of the Minnesota Judicial Branch to identify and eliminate barriers to racial, ~~and~~ ethnic, and gender fairness within the judicial system, in support of the fundamental principle of fair and equitable treatment under law.

II. IMPLEMENTATION AUTHORITY

Implementation of this policy shall be shared between the State Court Administrator, the chief judges of the judicial districts and the Court of Appeals, and the Chief Justice. Each district shall establish and maintain Equal Justice Committees to analyze available data, develop and implement plans to address identifiable problem areas, undertake outreach activities with communities of color and promote gender fairness and multicultural understanding and competency among judges and court employees. The State Court Administrator shall assure the collection of race data, provide data analysis assistance, employee training and other relevant support and shall assure that committees reporting to the Judicial Council and advisory workgroups reporting to the State Court Administrator consider the impact of their recommendations on communities of color and women. The District Equal Justice Committees, once established, may come to the Racial Fairness Committee and the Gender Fairness Implementation Committee for advice, counsel, and exchange of ideas.

III. EXECUTIVE LIMITATIONS

The State Court Administrator shall consult with the Racial Fairness Committee and the Gender Fairness Implementation Committee in carrying out these responsibilities.

APPENDIX C

Gender Fairness Implementation Committee Roster

Honorable Lorie S. Gildea, Chair
Associate Justice
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