

The Path Towards Gender Equality:

A History of the Committee on Women and the Legal Profession and the Results of the 2019 Statewide Gender Survey and Recommendations to Address Gender Bias

By the Committee on Women and the Legal Profession

The mission of the Committee on Women and the Legal Profession has been to secure the full and equal participation of women in the New Mexico State Bar, the legal profession, and the justice system. The Committee's mission of making strides towards gender equality is in line with the newly established New Mexico Supreme Court's Committee on Equity and Inclusion, which is working on equality and fairness in court operations and diversity in the judicial workforce. Under the leadership of recently retired Chief Justice Judith Nakamura and with the support of both the New Mexico Supreme Court and the Board of Bar Commissioners, the New Mexico State Bar Association 2019 Gender Diversity Report was designed, in part, to examine progress and changes that have occurred since the initial report spearheaded by the late Honorable Sarah Singleton more than 30 years ago that examined gender bias and diversity issues. This article will provide historical context on the Committee on Women and the Legal Profession, the Committee's initiatives throughout its thirty year history, the recent 2019 Statewide Gender Survey and the Committee's recommendations to address gender bias on our collective path towards gender equality.



violence, criminal law, juvenile justice, and family law. It also identified gender bias issues affecting female litigants, witnesses, and court employees. Following its publication, the State Bar replaced the Task Force with a permanent committee: the Committee on Women and the Legal Profession ("Committee").

Initial Tasks of the Committee

When the Committee began meeting in 1991, its first task was to write a report for the Board of Bar Commissioners and the Supreme Court recommending actions to implement the recommendations of the Task Force. Following the issuance of the Committee's report, the Board of Bar Commissioners and later the New Mexico Supreme Court adopted most of the actions recommended by the Committee.

As summarized in the September/October 1996 issue of the *Bar Journal*¹ these included:

1. Appointment by the Board of Bar Commissioners of an ad hoc committee charged with drafting a Rule of Professional Conduct prohibiting invidious discrimination.
2. Amendment of the Code of Judicial Conduct by the adoption of a rule that included specific prohibitions against invidious discrimination.
3. Issuance of a statement by Chief Justice Seth D. Montgomery on April 12, 1994 to all judges, court employees and members of the bar prohibiting gender biased behavior in the courtroom, charging judges with the responsibility of prohibiting such behavior by lawyers, and adopting a Handbook as a guide to the creation of a bias free environment throughout New Mexico court system.
4. Revision of uniform jury instructions and court rules to eliminate gender biased language.
5. In 1991, the creation of the Judicial Education Center to provide training to judges in New Mexico on the issues of gender bias and ways to eliminate it in the operation of the courts.

Background – Creation and Initial Actions of the Committee on Women and the Legal Profession

In December 1987, the State Bar of New Mexico, under the direction of the late Judge Sarah M. Singleton, as chair, organized the Task Force on Women and the Legal Profession (hereinafter "Task Force"). The Task Force was charged with investigating and reporting to the State Bar the extent to which gender bias was affecting women who participated in the legal system as litigants, witnesses, legal staff or attorneys. The Final Report, titled "The Status of Women Attorneys in New Mexico" was dated November 2, 1990 ("Task Force Report"). The Task Force Report looked at issues affecting women as lawyers and judges, as well as substantive issues in the areas of civil justice, domestic

6. At the request of the Committee, promulgation of policies by the University of New Mexico School of Law prohibiting gender bias in interviewing by firms that use its placement services, including grievance provisions for students if they feel they were adversely affected by gender bias by a firm using the placement services of the law school.
7. Amendments made in 1993 by the Family Law Section of the State Bar concerning changes in laws relating to spousal support. (NMSA 1978, §40-4-7 (Repl. Pam. 1994)).
8. Through support of the Committee, the Judicial Education Center conducted workshops on domestic violence issues in various judicial districts. Training on domestic violence was also held at district attorney conferences.
9. Many recommendations of the Committee dealt with the need to educate the legal community as a whole about the problems faced by female colleagues, including alternative work schedules to accommodate family responsibilities.
10. During 1995, the Committee suggested substantive revisions to the judicial branch rules regarding sexual harassment, many of which have been adopted.

The Committee's Initiatives During 1991-2020

During the 29 years after its creation, the Committee continued the important work from the initial study. In September 2000, Chief Justice Pamela B. Minzner made reference to Chief Justice Montgomery's letter of April 12, 1994, and she and all members of the Chief Judges Council endorsed the reprinting and redistribution of the Handbook. The Handbook was updated and revised again in 2005, including procedures to follow under Local Rule 83.12 for the United States District Court for the District of New Mexico. It is currently undergoing another revision, with the tremendous assistance of Professor Sarah Steadman and the law students in the UNM School of Law Clinic, and will be distributed again this year.

The Committee, during the same period, conducted various CLE's related to gender bias, initiated workshops, initiated rule changes by the Supreme Court, and with the assistance from the Board of Bar Commissioners and support from the Supreme Court, implemented statutory changes to provide for gender neutral language in the drafting of new and replacement legislation.

"Ask Pat" columns in the *Bar Bulletin* addressed issues of bias arising from both private workplace and courtroom experiences, some taken from real life experiences of practitioners and court employees and others from hypothetical situations. The Committee worked on several updates of the domestic violence card, a business card

size resource guide provided to various professional and community organizations to distribute to clients who are victims of domestic violence and sexual assault in the community. It has recently been revised to include online, text and chat resources. The Justice Pamela Minzner Award was created and became etched in stone at the New Mexico Court of Appeals building named in her honor that is next to the law school. Coordination and co-sponsorship of addresses and CLE's at the New Mexico State Bar Annual Convention have been common, including panels consisting of members of the New Mexico Supreme Court and other notable speakers. In 2016, the Committee presented a plenary session at the New Mexico State Bar Convention entitled *Gender and Justice: New Mexico Women in Robes*, moderated by the late Judge Singleton that provided the history of the Task Force, its findings and the continued relevance of the Committee on Women and the Legal Profession. Clothing drives, a clothing closet for new attorneys, paralegals and domestic violence organizations, a fashion show, scholarships for UNM students, mentorship programs, furnishing and decorating an apartment for a Saranam family, hosting golf clinics, partnering with the Women's Bar on joint projects and the Young Lawyer's Division for a new attorney reception, and hosting regular lunch speakers addressing the needs and competing demands of "working attorneys" were initiatives taken on by the Committee over the years.

Status of Women in the Law – 2020 Diversity and Gender Bias Report

The Committee held an Executive Summit with members of the original Task Force, including Judge Singleton, on June 23, 2012 at the State Bar Center. Discussions included a review of results from the previous report and an inquiry as to whether additional efforts needed to be made to address issues that were identified in the original Task Force.

On September 12, 2017, Supreme Court Justice Judith Nakamura sent a letter to Scotty A. Holloman, President of the New Mexico Board of Bar Commissioners. To quote Justice Nakamura, Much has changed in the twenty-seven years since the Task Force's final report and yet national data indicates that women attorneys continue to lag behind men in private practice, academia, and in the the judiciary. (See, *A Current Glance at Women in the Law, January 2017*, https://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_january2017.authcheckdam.pdf). And there is evidence from other states that female lawyers are given the lead counsel role only about 25% of the time, leading one of our federal colleagues to issue a rule making it easier to allow younger lawyers, including women, to participate in court proceedings. (Internal cite omitted.) While we hope that

is not the case here in New Mexico, my colleagues and I are aware of cases where women lawyers after writing the briefs are not seated at counsel table or given an opportunity to argue the case.

The Chief Justice went on to say that she understood that the Committee on Women and the Legal Profession has indicated an interest in re-examining and updating the 1990 report. “We would support that effort and would welcome any additional recommendations for determining the current status of women legal professionals in New Mexico.”

Under the leadership of the Chief Justice, and funding from both the Board of Bar Commissioners and the Supreme Court, the Board of Bar Commissioners supported the Committee’s request to conduct a survey of all active and inactive members of the New Mexico State Bar to update and evaluate the data from the original Task Force Report. American Decisions was hired to conduct the survey. The details of the methodology are addressed in the American Decision’s May 2020 Diversity Study. A total of 1,564 members of the New Mexico Bar Association elected to participate in this survey. The survey was conducted on-line and was available in English and Spanish. It is statistically valid, and it has a margin of error of +/-2.5%.

American Decisions also held five focus groups following the survey. The focus groups participants were recruited from a database of all members of the New Mexico Bar Association through live phone calls and e-mails and were screened to meet the target audiences of female members, and members from the Native American, Asian American, and African American communities. Group meetings were approximately two hours in length and contained 6-8 participants in each group. Half of the focus groups were comprised of only female participants in order to encourage a more open dialogue.

Major Overarching Themes Emerging from the Data in the Report to the Committee

While there are many issues that are embedded within the report, the May 2020 Draft Report lists three major themes that emerged from the survey data:

1. “Female Members of the Bar Face Significant Challenges Achieving a Balance Between Professional and Family Obligations.”
2. “Income Inequality Facing Female Members of the Bar Remains a Major Challenge.”
3. “Intersectionality of Race/Ethnicity and Gender Reveals Challenges Women of Color Face in New Mexico’s Legal Community.”

Actions by the Committee on Women and the Legal Profession in Response to the Report

The Committee formed a subcommittee to analyze the results of the analysis received in May 2020.² Several in-depth meetings were held with the goal to review all of the data and issues identified in the Diversity Study and to develop a list of recommended issues/actions for the Committee/State Bar/Courts that would identify both short term and longer term initiatives to correct gender bias and the challenges faced by women members of the State Bar.

The Committee made significant recommendations in the following areas: (1) Challenges with Professional and Personal Obligations; (2) Gender and Racial Bias and Discrimination; (3) Mentorship and Leadership Opportunities; and (4) Barriers to Employment Opportunities. The Committee’s key recommendations will assist in making systemic changes to improve the practice of law for women in the legal profession and to better address the challenges attorneys face with both their professional and personal obligations. Among the Committee’s key recommendations are (click here for the Committee’s recommendations in their entirety):

- The Committee would like for the State Bar to establish a best practices employment manual, a reporting hotline and issue a yearly report.
- Equal pay in the public and private sector remains a concern and there are specific recommendations for employers to self-audit salaries.
- The Committee recognizes the need to incorporate an intersectional approach to addressing diversity and gender. 70% of female minority lawyers report leaving or considering leaving the legal profession.³ We need to create a more inclusive culture in the legal profession with an eye to retention of women and women of color in the legal profession.
- Our Committee remains committed to continuing a fair judicial selection process and working with the UNM Law School Deans and Chairs of the Judicial Nominating Commissions to ensure that women candidates are not asked during the selection process whether or how they plan on addressing judicial and family obligations.
- We recommend state and federal judges receive periodic training on issues of explicit and implicit bias. We also recognize that there is a need for continuing legal education on the requirements of Rule 16-804(G) and ways to improve inclusivity and diversity in the legal profession.
- There is a need for a women’s leadership program and mentorship program and opportunities for women to gain trial and appellate experience. Too often women

who have written legal briefs are not allowed to argue the cases in court.

The Committee's recommendations are still a work in progress much as those that were in the initial report from Judge Singleton. We acknowledge that there is much work to be done in addressing the broad range of issues facing women attorneys. Issues to be further explored include attorneys who are single parents, members of the sandwich generation—caring for children/spouses/significant others while also responsible for caring for older family members-- attorneys with disabilities, etc. Younger generations are increasingly caring for their elder family members. Even with more women in the work force than ever before, the burden of care for older members of the family who face physical/mental challenges continues to be borne predominately by female family members. System and cultural changes need to evolve where the care of older family members becomes more of a family obligation and not predominately the responsibility of female family members. We will also examine alternative licensing options for attorneys unable to continue practicing law due to severe health or personal issues.

In summary, the mission of the Committee on Women and the Legal Profession is to secure full and equal participation of women in the State Bar of New Mexico, the legal profession and the justice system. The newest survey by

American Decisions examines the unique experiences and challenges faced by women lawyers and offers concrete recommendations to address intersectionality and make the legal profession more inclusive. As aptly articulated by the late Justice Minzner, the work of this Committee is in continuing to help our profession move closer to true equal opportunity.

For more information on the Committee, visit www.sbnm.org/cwlp.

Endnotes

¹See Bar Briefs Sections and Committees, "Five Years Later: An Update of the Report of the Task Force on Women and the Legal Profession," *Bar Journal* – September/October 1996, pgs. 44-51.

²Members of the subcommittee included: Rebecca Mulcahy, Quiana Salazar-King, United States Magistrate Judge Laura Fashing, Zoe E. Lees, Sheryl Saavedra, Erin Marshall, Jeff Albright, and Elizabeth A. Garcia.

³See American Bar Association. [2020]. *Majority of minority female lawyers consider leaving law; ABA study explains why*, <https://www.abajournal.com/news/article/most-minority-female-lawyers-consider-leaving-law-aba-study-explains-why#:~:text=Seventy%20percent%20of%20female%20minority,the%20challenges%20that%20they%20face>.