
**State Bar of New Mexico
Supreme Court of New Mexico**

**SUMMARY
REPORT**

**Task Force on Women
and the Legal Profession**

Chair - Sarah M. Singleton

**P.O. Box 25883, Albuquerque, NM 87125
(505) 842-6132**

Printed 4/91

The Task Force on Women and the Legal Profession completed its two-year study examining the needs of women lawyers in New Mexico. The final report of the Task Force was accepted by the Board of Bar Commissioners on January 26, 1991. The Board then appointed a Women in the Legal Profession standing committee to evaluate and implement the recommendations of the Task Force. Members of that committee are: Robert M. St. John, Co-chair; Marcia Wilson, Co-chair; James L. Branch, Jr.; Carol A. Connor; The Honorable Stanley F. Frost; Clark de Schweinitz; Kim E. Kaufman; Lynda M. Latta; Antoinette Sedillo Lopez; Karen J. Meyers; Peggy J. Nelson; Betty Read; Carol Vigil; and Laura L. Watchempino.

For a more complete document including the survey instrument, findings and detailed analyses, contact the offices of the State Bar of New Mexico.

The Task Force on Women and the Legal Profession, appointed in December 1987 by then State Bar President C. Emery Cuddy, Jr., has completed its over two-year study. The Board of Bar Commissioners received the final report of the Task Force at its November 2, 1990 meeting. The Report was accepted by the Board at its January 26, 1991 meeting. A standing committee has been appointed to evaluate and implement the recommendations made by the Task Force.

The Task Force, chaired by Commissioner Sarah M. Singleton of Santa Fe, includes members Keith Andersen, Christina Armijo, Philip R. Ashby, Ruth Cohen, Susan M. Conway, C. Emery Cuddy, Jr., Julia L. Davis, Deborah S. Dungan, Cynthia A. Fry, Sandra Grisham, Teresa M. Johnson, Suzanne Jollensten, Kim E. Kaufman, Lynda Latta, Teresa I. Leger, Antoinette Sedillo Lopez, Melinda Lopez, Karen J. Meyers, Anita P. Miller, Daniel A. Najjar, Peggy J. Nelson, Nicholas J. Neding, Marilyn S. Page, Deborah S. Raines, Betty Read, Sheryl Scheible, Michael L. Stout, Mary Walters, and Marcia Wilson. Theodore Parnall, Peter Winograd and Martha Vazquez served as ex-officio members.

The Task Force was asked to "examine the needs of women lawyers, their acceptance by the Bench and Bar in general, their needs and the degree to which the State Bar has addressed those needs." Interestingly, the American Bar Association had established a Commission on Women in the Profession about the same time the Task Force began its study. In addition, simultaneously, states throughout the country were establishing commissions to investigate gender bias. The New Mexico Task Force was immediately in contact with the ABA Commission and with the National Judicial Education Program to Promote Equality for Men and Women in the Courts which serves as a clearinghouse for gender bias task forces.

Due to the concern and advice expressed to the Task Force by these other groups, it was determined early on that the work of the Task Force should include study of whether gender bias was affecting women who were not lawyers who came into contact with the legal profession either as litigants or as witnesses.

The Task Force did not, however, believe that its mission was the same as that of a task force established solely to investigate gender bias in the courts. Because they were established by the Bar, they believed that they also

had an obligation to look at the role of women in the profession. To meet those dual objectives, the Task Force decided to investigate the following areas: 1) professional experience; 2) women as decision makers; 3) treatment of women by the courts; and 4) impact of gender bias in decision making.

The Task Force reviewed a vast amount of information including the reports that had been prepared by the commissions in other states and other literature in the areas studied. Supreme Court rules were analyzed, and a representative of the Task Force attended the National Conference on Gender Bias in the Courts. Thirty-eight law firms were surveyed regarding parental leave policies, and the Task Force held regional meetings in twelve locales around the state. With the assistance of John Temple, Assistant Director of the Bureau of Business & Economic Research at the University of New Mexico, all active in-state members of the Bar were surveyed. In addition, the Task Force referenced the data collected from the University of New Mexico School of Law graduates, by Antoinette Sedillo Lopez, Lee E. Teitelbaum and Jeffrey Jenkins, for their article "Gender, Legal Education and Legal Careers."

The final report of the Task Force identifies findings and recommendations in the following specific areas: 1) employment experience of women as members of the Bar and as members of the profession; 2) judicial selection; 3) Bar activity; 4) courtroom environment; 5) court documents; 6) civil justice; 7) domestic violence; 8) criminal law; 9) sentencing; 10) juvenile justice; 11) family law; 12) property division; 13) alimony; 14) child support; and 15) custody. The Task Force's conclusion after completing its study was that, although the law has made significant gains toward eliminating gender bias, bias still exists in the administration of the law and in the treatment of women as professionals.

The Task Force presented some interesting facts about the profile of female members of the Bar. Females are 25 percent of the active in-state Bar members. The female members of the Bar tend to be younger than their male colleagues, to have practiced fewer years and are more likely to practice in the larger cities. Women tend to be over-represented among government lawyers and slightly under-represented in private practice. Women are fairly represented in various fields of law, except they are over-represented among family law practitioners and under-represented in

plaintiff's personal injury and general civil practice. Women are less likely than the male counterparts to be married and are less likely to have children. For the most part, when female attorneys do have children, they assume primary child-rearing responsibilities. Male lawyers, on the other hand, are much more likely to have a spouse who is the primary child care provider. The failure to afford flexible working arrangements to those with child care responsibilities was an often noted complaint among survey respondents.

Apart from the demographic information used by the Task Force, inquiry was made into the professional experience of female attorneys and into the substantive areas of law which affect women who come in contact with the legal profession. The inquiries resulted in findings and recommendations which are reported below.

EMPLOYMENT EXPERIENCE

Findings

1. Women face barriers in the employment experience which their male colleagues do not. These barriers are both overt — failure to advance as quickly, more problem achieving partnership — and subtle — closer scrutiny of hours and work.
2. Females are less likely to have a mentor within a law firm due in part to the unavailability of experienced female lawyers to fill this role and to the unwillingness of experienced male lawyers to serve this function for women.
3. Womens' salaries, shortly after they begin in practice, fall behind those of males with similar experience and in similar work settings.
4. While most men and women are satisfied with their jobs, there is significant dissatisfaction with the practice of law which is felt by both men and women.
5. Women more than men are dissatisfied with the division between professional and personal lives.
6. Female lawyers with children are the primary child care providers much more often than male lawyers with children.
7. Women and men who try to balance family responsibilities and careers are demonstrating a commitment to the profession.
8. Employers have not made sufficient accommodations for parents with child rearing responsibilities and have not permitted flexible working assignments to the degree which they should.

Recommendations

1. The State Bar of New Mexico should adopt a resolution similar to that adopted by the ABA House of Delegates which recognizes that bias exists, that there is no place in the profession for bias and that calls upon all members of the profession to eliminate barriers to full participation by women in the profession.
2. The State Bar should study alternative working arrangements which accommodate more flexibility in the work place and should make such information available to employers of lawyers. Employers who make such accommodations should be publicly recognized for their innovation.
3. All employers should review salaries and should correct salary differences which seem to adversely affect women.
4. All employers should review the criteria used to evaluate work and should articulate non-discriminatory standards.
5. The Bar should collect information on mentoring programs and should make it available to all employers throughout the state. The Bar should also investigate a mentoring program which would be available to all female lawyers, particularly the sole practitioner and small firm lawyer.
6. The Employment and Labor Section of the State Bar should present continuing legal education programs concerning gender bias in employment, particularly in the legal profession, and the Section should prepare materials for publication in the *Bar Bulletin* which would assist employers in eliminating gender bias.

JUDICIAL SELECTION

Findings

1. The judicial nominating commissions' procedures under the 1988 constitutional amendment have not discriminated against women; however, the final appointment process has discriminated against women.
2. Too few women who would make excellent judges have applied for judicial positions at the appellate level and in some districts.
3. Using experience, beyond that required by law, as a significant criterion for judicial selection may have a disparate impact on women applicants because a large percentage of women are among the newer members of the Bar.

Recommendations

1. Each judicial nominating commission should be sensitive to the fact that any experience requirement may have a disparate impact on women which may be unrelated to qualification for judgeship.
2. The president of the Bar should continue to solicit the input of the Task Force, female attorneys, and other interested groups in appointing members of the judicial nominating commissions.

3. Members of the nominating commissions and the Bar leadership should encourage qualified women to apply for judicial vacancies.

4. The governor should increase the number of female judicial appointments.

BAR ACTIVITY

Findings

1. Female membership in the State Bar is slightly less than one-fourth of the total membership. The State Bar has an 80-20% male-female representation in its governing body. As of 1990 and 1991, the State Bar has selected its first female president in its 104 year history.

2. During the 1989-1990 year, the Young Lawyers Division committee chairs are almost evenly divided between female and male lawyers. There are 7 men and 3 women on the YLD Board. Seventy-four percent of the YLD liaisons to Bar sections are men. The Young Lawyers Division membership is much more closely divided between men and women than the division throughout the Bar as a whole because of the large number of women entering the profession in the last 10 years. Fewer women than men have leadership roles in YLD.

3. Men serve as section chairs or section officers to a considerably greater degree than the ratio of men to women in the Bar would predict. Women considered expense a limiting factor to section memberships, and cited family responsibilities as another compelling impediment to increased participation. Both men and women felt constrained from greater participation in Bar activities by practices that were too busy and by Bar programs not sufficiently attuned to their fields of interest.

4. Although the female leadership on Bar task forces is proportionate and although the membership of women among the four task forces exceeds the male-female ratio of Bar membership, the figures are misleading. The largest task force is the Task Force on Women and the Legal Profession. This Task Force is chaired by the sole woman chairperson and is unrepresentative of the Bar as a whole because of its predominantly female membership (25 women, 6 men).

5. Those five boards or commissions whose membership is made up of appointees solely by the Supreme Court are chaired in every instance by male lawyers. With the exception of the MCLE and the Specialization Boards, the male-female ratio of membership is representative of the ratio in the Bar membership; the two exceptions reduce a comparative female ratio on those boards to less than half its representative ratio. Two of the boards have non-lawyer female members.

6. The rules committees appointed by the Supreme Court have an underrepresentation of women. As of 1990, two committees have no women members; one committee has only one woman member. On the remaining three committees, the

female participation roughly equals, but does not exceed, female percentage of membership in the Bar. Only one of the six committees has a female chair.

Recommendations

1. Women should seek, and the Bar leadership should encourage, board and representative positions earlier in women's careers.

2. Reassessment and lowering of program costs or provision of taped programs in various locales might make some Bar activities more accessible to those lawyers, male and female, who currently find it difficult to juggle their practices and their finances to fit existing activity patterns.

3. The Board of Bar Commissioners and the Supreme Court should be sensitive to the underrepresentation of women in the fact-finding and rule revision concerns of the Bar, and appoint greater numbers of female attorneys to task forces and to rule committees. Female non-lawyers who serve on boards should not be considered as representing female Bar membership.

4. The Bar and CLE providers should encourage women to be speakers at all programs.

5. In giving awards, the Bar should be sensitive to the contribution of women members.

COURTROOM ENVIRONMENT

Findings

1. More women than men report instances of gender-biased behavior in the courtroom. Significant numbers of attorneys of both sexes report that women are the objects of different forms of address, demeaning comments, and inappropriate comments on appearance. Additionally, some men report their perceptions that they are treated differently because of their gender.

2. Survey results addressing the apparent credibility given by judges to witness, including expert witnesses, reflect the general perception of both male and female respondents that judges usually appear unbiased.

3. One-quarter of the female lawyers responding to the survey perceive that gender bias affects the outcome of cases.

4. One half or more of the women responding to the survey believe that their gender impacts the outcome of negotiations. There is a significant perception among women that gender bias negatively and inappropriately impacts the settlement process. A substantial majority of men report that they have not experienced gender bias which impacted settlement negotiations in their cases.

Recommendations

1. The Supreme Court should adopt the provision in the proposed Model Code of Judicial Conduct, See Canon 3B 5 & 6, which sets standards of gender fair behavior for judges.

2. The New Mexico Supreme Court should adopt a statement directed to all judges mandating the elimination of any practices which are gender biased and instructing all attorneys and judges to strive for gender neutrality inside and outside of the courtroom. The statement should be published in the *Bar Bulletin*.

3. The Supreme Court should create a task force on gender bias in the courts, as called for by the Conference of State Court Administrators, to expand on this study and to study other areas of relevance to the court system.

4. Efforts should be made in CLE presentations and in judicial education sessions to include good programs on gender fairness.

COURT DOCUMENTS

Finding

Bracketing rather than general use instructions better ensures that instructions are gender appropriate. The use of bracketing is consistent with trends in other jurisdictions which have considered these issues.

Recommendation

Civil and criminal jury instructions should be revised to include bracketed pronouns (masculine, feminine, or neuter). In order to accommodate cost considerations, these modifications should be made when the applicable pamphlets are being reprinted for other reasons. Gender neutral language should be adopted in all local district court rules where this has not already happened when these rules are next amended or reprinted.

CIVIL JUSTICE

Findings

1. The survey revealed some differences in perception by male and female respondents with respect to certain types of damages awards and clear agreement among respondents of both sexes that some awards, i.e., disfigurement and lost wages, appear likely to differ depending upon the sex of the injured party.

2. It appears that the gender of the attorney makes no difference in the outcome of a claim for pain and suffering, lost wages, disfigurement or wrongful death, regardless of whether the case is resolved by award or by settlement.

3. Because household services are not compensated, litigants have not successfully recovered for the value of their services. The jury instructions do not adequately permit this recovery.

Recommendation

Jury instructions should be supplemented or amended to eliminate gender bias.

DOMESTIC VIOLENCE

Findings

1. Domestic violence is a serious problem faced by our society.

2. New Mexico statute has established a procedure and remedies by which to afford protection to victims of domestic violence; however, the statute has not adequately been implemented or enforced.

3. Court staff is not always available or appropriately trained to provide assistance to petitioners seeking to utilize the act pro se.

4. Judges, lawyers, court personnel and law enforcement officers may not always be sufficiently sensitive to or aware of the problems of victims of domestic violence and may not understand or be aware of the cycle of violence and its impact on victims.

5. In some cases petitioners for protection orders do not receive adequate relief through the court systems. This perception is especially strong in the use of support awards for petitioners who do not also seek divorce.

6. Few attorneys have experience in or provide representation in cases involving domestic violence. Many women who are victims of violence lack financial resources to secure private counsel.

Recommendations

1. Judges, attorneys, law students, court personnel and law enforcement officers should be sensitized to and made aware of the problems of individuals who have been victims of domestic abuse through training and education materials, continuing judicial and legal education programs.

2. State funding should be provided for the hiring and training of lay advocates and attorneys. The ongoing development of the pro bono panels, such as that in Albuquerque, to provide representation in these matters throughout the state should be continued and expanded by the Bar.

3. The forms used to petition the court for protection orders should be simplified and available in Spanish.

4. The Legislature should amend the statute as follows:

- a. new funding to develop a standard computer program for monitoring local and statewide statutory compliance through analysis of all domestic violence arrests or reports;

- b. creation of statewide and local task forces on domestic violence for the following purpose:
 - (1) to facilitate interagency education;
 - (2) recommend and implement appropriate methods to increase interagency communication;
 - (3) develop intervention and treatment services for the victims and offender;
 - (4) educate public about dynamic of cycle of violence and about services and resources available.
 - c. extend the time period in which a domestic violence protection order may be enforced; and
 - d. include a provision that would allow the granting of a permanent injunction in those cases where a separate divorce action is not contemplated.
5. The courts should establish mechanisms to monitor compliance with the Act by court personnel.
6. District attorney offices should review prosecution of domestic violence matters. If too many discretionary dismissals are occurring, district attorneys should implement policies to assure effective prosecutions of these cases.
7. The judiciary should award child support whenever appropriate in domestic violence cases even if divorce is not being sought.
8. The AOC or the district attorneys should study whether criminal assault cases involving family members are treated similarly to or differently from assault cases involving non-family members with respect to such matters as degree of culpability and severity of sentence.
9. The Legislature should appropriate funds or increase funds to establish adequate statewide support programs and services for domestic violence victims, including but not limited to intervention and counseling services for victims, offenders and their families.
10. The State Bar should develop information video and pamphlet in non-lawyer language describing:
 - a. rights and remedies under both Acts;
 - b. how the legal process work;
 - c. what to expect from attorneys; and
 - d. what support services are available and how to access them. These materials should be distributed widely.
11. Counties throughout the state should consider adopting programs like those in place in Albuquerque.

CRIMINAL LAW SEXUAL ASSAULT

Findings

1. New Mexico lacks a significant data base from which to draw conclusions regarding treatment of sexual assault crimes.
2. Significant numbers of serious sex offenses are not heard in court due to gender-based stereotypes about acquaintance rape.
3. Victim blaming is found in the conduct of sexual assault cases, unfairly focusing on the question of the victim's conduct rather than on the conduct of the defendant and the issue of force.
4. Because of general sentencing laws, statutory penalties in sex offense cases inadequately address the seriousness of the crime, even though sentences imposed may be greater than those imposed in comparable felony level offenses.
5. New Mexico law currently excludes prosecution for spousal rape.

Recommendations

1. Statewide information needs to be compiled and made available regarding:
 - a. Reported incidents of stranger rape;
 - b. Reported incidents of acquaintance rape;
 - c. Numbers of reported cases that lead to indictment; and
 - d. Results of cases taken to court, including numbers plea bargained, numbers tried, convictions (and the conviction-relationship to original charges) and sentences imposed.
2. An appropriate law enforcement agency should determine the incidence of "acquaintance rape" in New Mexico and ascertain what proportion is formally prosecuted in criminal courts. This examination should be sufficiently detailed to separately examine intra-familial and nonfamilial cases and those involving intimate sexual relationships and platonic relationship.
3. District attorneys should increase prosecution of "acquaintance rape" cases.
4. Judicial education programs should be designed and taught to heighten judicial awareness about the subject of acquaintance rape.
5. A judicial education program should be designed and taught to heighten judicial awareness about the pervasive gender-based stereotypes employed in the trial of a criminal sexual conduct case and to develop judicial skills in distinguishing between the presentation of a legitimate consent defense and the improper assertion of a gender biased defense.
6. Judges should curtail improper reference to irrelevant gender stereotypes in criminal sexual conduct cases during the voir dire process, counsel's argument, witness examination, and cross-examination of the victim.
7. Judges should scrutinize proffered plea negotiations in criminal sexual conduct cases to

ensure that they are not grounded upon improper gender-based stereotypes about the victim and should determine whether the conduct of defendant is part of a history of recidivistic sexual assault.

8. Victims should be given the opportunity to present their views on sentencing.

9. The Legislature should remove the exclusion of spousal rape from the criminal sexual penetration statute.

SENTENCING ADULT FELONS

Findings

1. The perception exists among a majority of the members of the Bar that convicted female defendants fare better in the New Mexico courts than male defendants do in sentencing decisions.

2. The limited research conducted on sentencing in New Mexico indicates that when factors other than the defendant's sex are controlled for, gender does not appear to be a significant factor in sentencing decisions.

3. Insufficient data has been compiled and analyzed to determine whether, in fact, sentencing in New Mexico is gender neutral.

Recommendations

1. The Bar should support and encourage efforts to institute uniform collection of criminal justice data by the Department of Corrections, public defenders, district attorneys, courts, probation and parole officers and all other entities involved in the prosecution, sentencing and punishment of adult felons.

2. The courts should automate record keeping so that data will be readily available for study.

3. The Supreme Court should direct that a comprehensive study of sentencing in New Mexico be completed which addresses the impact of gender, race, regional differences within the state, prison facilities and programs, family circumstances, charging and plea practices, prior convictions, nature of crime, and drug/weapon involvement on sentencing decisions.

JUVENILE JUSTICE

Findings

1. Lawyers in New Mexico perceive that gender bias exists in the juvenile justice system.

2. Male juveniles charged with delinquent offenses are perceived to be treated more harshly than females charged with delinquent offenses.

3. Male juveniles adjudicated as status offenders or delinquents are perceived to spend longer periods of time in secure placements than female juveniles similarly adjudicated.

4. Juvenile probation officer's recommendations concerning the resolution of a case involving a child are perceived to vary or are influenced according to the sex of the alleged offender.

5. Reliable data concerning the impact of gender on the adjudication of juveniles as status offenders or as delinquents is not available.

Recommendations

1. The New Mexico State Bar, Juvenile Probation or the Legislature should provide funding for an in-depth objective study of the status of New Mexico's juvenile justice system. Precise data regarding the number and gender of children adjudicated delinquent and status offenders, a comparison of the sentences imposed on male vs. female offenders convicted of similar offenses, and a comparison of the amount of time males and females spend incarcerated for similar offenses is necessary to confirm that gender bias in the juvenile justice system is more than a subjective perception among those attorneys who practice in the area.

2. In any future study, the entire scope of the Children's Code should be addressed, including the prosecution of child abuse and child neglect cases under its provisions.

3. In any future study, inquiry should be made of the manner in which children, as witnesses, are viewed as to credibility by both judges and lawyers, and with respect to differences in gender.

FAMILY LAW ACCESS TO THE COURTS

Findings

1. A significant number of women with family law problems cannot utilize the legal system because they lack the financial means to secure representation.

2. Legal services that are provided without fee cannot meet this need because of the limited resources of these programs and the overwhelming demand for services in poverty law matters, including, but not limited to, family law matters.

3. Increased funding should be secured to provide legal services to high-priority family law matters for low income families.

4. In most districts, domestic relations cases are not assigned to judges with specialized knowledge in family law.

Recommendations

1. The State Legislature should allocate funds to legal services programs to provide representation for low income families in family law and related poverty law matters.

2. The Bar should adopt and promote pro bono programs which will result in the provision of services to poor families with domestic relations problems.

3. Where feasible, domestic relations cases should be assigned to judges who have a particular interest in and an affinity for domestic relations matters.

**FAMILY LAW
PROPERTY DIVISION****Finding**

Property division in New Mexico does not seem to be significantly affected by gender discrimination. However, a community property interest in professional degrees, licenses or enhanced earning capacity acquired by one spouse is not recognized and community property law does not adequately take into account the lost earning capacity of a homemaker or under-employed spouse.

Recommendation

Recognition should be given to contributions to intangible but valuable assets relating to career enhancement, as well as to career sacrifices by homemaker spouses.

FAMILY LAW ALIMONY**Findings**

1. Alimony awards to women are sometimes not given in appropriate cases and even when given are consistently for an inadequate period of time and for an inadequate amount. Moreover, the vast majority of lawyers perceive that men are not being awarded alimony when it would be appropriate.

2. Insufficient alimony awards contribute to a long-term reduction in the standard of living for women. Alimony awards do not adequately take into account the disproportionate responsibility women bear as homemakers and parents, both before and after divorce, and employment opportunities for displaced homemakers.

3. Enforcement of alimony awards is inadequate.

Recommendations

1. Substantive changes in the law regarding the awarding of alimony, the duration of the award, and the amount of alimony should be made. Awards should be enforced.

2. Judges and attorneys should be further educated with respect to the economic consequences of divorce, including women's more limited employment opportunities, wage potential, and the cost of child rearing.

**FAMILY LAW
CHILD SUPPORT****Findings**

1. Judges are more inclined to deviate from the application of the child support guidelines in establishing child support awards when the mother is the paying parent than when the father is the paying parent.

2. It is not uncommon for judges to deviate from the application of the child support guidelines in establishing child support awards without specifying the reasons for doing so.

3. Female attorneys believe that the New Mexico law regarding child support generally results in a long-term reduction in the standard of living for custodial mothers.

4. Judges are more inclined to enforce child support awards when the paying parent is the father than when the paying parent is the mother.

5. Wage assignments (as an enforcement tool) are more frequently used when the father is the paying parent than when the mother is the paying parent.

6. The use of jail for contempt when obligors deliberately fail to pay child support is more frequently used when the father is the paying parent than when the mother is the paying parent.

7. The enforcement of the payment of child support awards is not adequate.

8. Lack of enforcement of child support obligations significantly contributes to the dramatic increase of women and children living in poverty after divorce.

Recommendations

1. District court judges need to be made aware of the gender bias that exists in the establishment of child support and the enforcement of child support awards, and encouraged to apply the law of New Mexico in these areas, which is simply that they cannot discriminate on the basis of sex.

2. District court judges need to be educated about the use of the child support guidelines. The guidelines are presumptive, and deviations from them should be the exception, not the rule. If there is a deviation, the specific reasons for it must be stated in the order and the decree. Before a downward deviation from the guidelines is made, the effect on the standard of living for the children and the custodial parent should be carefully considered.

3. District court judges need to be educated about the available child support enforcement mechanisms that exist under federal and state law, and encouraged to use those mechanisms more frequently and more consistently.

4. Attorneys need to be educated about the use of the child support guidelines and the child support enforcement mechanisms that are available to help ensure that the guidelines are followed and enforcement mechanisms are used more frequently and consistently.

**FAMILY LAW
PHYSICAL CUSTODY****Findings**

1. Trial judges in New Mexico apparently do not treat men fairly in custody litigation. Despite this, men are seeking primary physical custody in larger numbers and lawyers are not discouraging them.

2. Sexual abuse allegations against the male parent have increased in domestic litigation. Judges are apparently giving them serious consideration. There is concern as to whether some allegations are unfounded.

3. Mothers who work outside the home are at some risk of losing custody if the father has remarried a woman who stays at home.

4. A significant number of both genders, but more often fathers, are seeking custody in order to gain economic advantage in the domestic litigation.

5. Males and females who work in the legal system have substantially divergent views of the legal system in the context of child custody litigation. Men see fathers as more disadvantaged than mothers in requests for custody. Women see mothers as more genuinely interested in obtaining custody than fathers are. Women also perceive that mothers are at some risk of losing custody if they are in a non-traditional role.

6. Sometimes judges have awarded primary physical custody to the party in a better economic situation, rather than using alimony and child support awards to provide adequate resources for the child.

Recommendations

1. Trial judges in New Mexico who hear child custody cases should ponder whether they in fact fail to accord the petitions of fathers for primary physical custody fair and serious consideration. A simple method to use when considering such petitions is mentally to switch the genders of the two parents, but keep the other pertinent facts of the case the same, and then determine whether that makes a difference in the custody decision.

2. There should be educational programs for lawyers and judges to educate them about the investigations, determinations and treatment of sexual abuse, to avoid ignoring a genuine case and to reduce the chances of a successful manipulation of the child into false allegations. Delayed, inept, suggestive or repeated interrogation must be avoided. Judges should consider whether guardians ad litem should be appointed in cases where these allegations are made.

3. Judges should consider whether their decisions regarding custody between working mothers and a father with a stay at home wife are based on biases against working mothers or to legitimate factors.

4. If a judge determines that allegations of sexual abuse are spurious or that child custody is sought solely for economic advantage in the litigation, then judges should consider a substantial award of fees to the other side and should consider where Rule 1-011 has been violated.

5. Judges should not award primary physical custody based on economic circumstances but should use alimony and child support awards to provide adequate resources for the child and should award custody based on parenting ability.