

## THE STATUS OF THE 1989 REPORTS' JOINT RECOMMENDATIONS

What then is the strategy for addressing the problem of race/ethnic and gender bias in the Michigan justice system and the legal profession in the future? Contained in the final sections of this report is a detailed analysis of the status of each recommendation set forth in the 1989 Reports, the level of implementation achieved since that date, and additional recommendations for the future. However, like the 1989 Task Forces, there is unanimous agreement that some goals are so critical to the future of this work that they must be strongly emphasized in a special section. It is the conclusion of the State Bar of Michigan Task Force that the 1989 Task Forces' Joint Recommendations correctly predicted the necessary steps to be taken to insure that their reports would not only raise awareness, but would also reduce or eliminate bias and increase citizen confidence in the legal system. Three crucial areas were identified as the foundation for these changes: (1) Ethical Standards and Disciplinary Systems; (2) Education; and (3) Implementation.

It is noteworthy that the 1989 Task Forces believed these provisions to be so important that they met together to draft the language. They wanted the public and profession to know without any doubt that these issues were unanimously supported by all 38 members of both Task Forces and were considered to be fundamental to the effective reform of the justice system. Unfortunately, a review of these specific recommendations shows that only one area has been substantially addressed: In the area of education, the Michigan Judicial Institute has systematically responded to meeting the goals set forward for judicial education standards. No recommendations regarding the disciplinary system or the implementation plans were accomplished. Few of the remaining recommendations regarding, attorney education, law schools or public initiatives have been adopted. This failure to implement the most important and fundamental recommendations of the 1989 Reports is disheartening and confusing. Today, in 1997, a State Bar Task Force once again calls for the leadership of our profession to strongly endorse these fundamental changes.

### ETHICAL STANDARDS AND DISCIPLINARY SYSTEMS

**Joint Recommendation IX-1: Judges, quasi-judicial officers, and lawyers should be subject to a specific Judicial Canon and/or Michigan Rule of Professional Conduct precluding inappropriate gender or racial/ethnic comments or actions.**

**Joint Recommendation IX-2: The Code of Judicial Conduct (Canon 3) should be amended to add an additional numbered paragraph under Section (A) providing that: A judge shall not engage in sexual harassment or invidious discrimination and shall prohibit staff, court officials, and others subject to the judge's discretion and**

**control from doing so. A judge shall prohibit sexual harassment or invidious discrimination against parties, counsel, or others on the part of lawyers in proceedings before the Judge.**

**Joint Recommendation IX-3: The Michigan Rules of Professional Conduct (MRPC 8.4) should be amended to state: It is professional misconduct for a lawyer to ... (f) engage in sexual harassment or invidious discrimination.**

**Joint Recommendation IX-4: General Court Rules 2.003 and 9.205 should be amended to provide for disqualification on the basis of such precluded behavior.**

**Joint Recommendation IX-5: The disciplinary systems for attorneys and judges should actively promulgate policies and procedures designed to increase the confidence level of the public and the professions regarding their response and intervention in matters related to discrimination and bias.**

### **Ethical Standards**

In 1989 both Task Forces made the above joint recommendations regarding Ethical Standards and Disciplinary Systems. These recommendations were based upon the fact that neither the Code of Judicial Conduct nor the Michigan Rules of Professional Conduct specifically prohibited invidious discrimination or sexual harassment. In their reasoning, the 1989 Task Forces cited the public testimony of many attorney witnesses as well as representatives of both the Judicial Tenure Commission and the Attorney Grievance Commission. 1989 survey responses indicated a significant lack of confidence in the existing system's ability to respond to such issues and an even stronger lack of knowledge about the disciplinary systems role in addressing issues of bias and discrimination. At that time, numerous states, as well as the American Bar Association, had adopted specific proposals. These proposals contained language that established a clear enforceable standard for prohibiting invidious discrimination and sexual harassment.

As a result of the above Joint Recommendations, the members of the State Bar Representative Assembly were asked to pass a resolution recommending the creation of the proposed standards. In September of 1990, the following proposal was fiercely debated and passed as a recommendation to the Michigan Supreme Court:

“That the Supreme Court of Michigan be requested to amend the Michigan Code of Judicial Conduct, Michigan Court Rule 9.205 and the Michigan Rules of Professional Conduct as hereinafter set forth to articulate prohibition against invidious discrimination and to replace gender specific terminology with gender neutral terminology:

Michigan Code of Judicial Conduct Canon 2:

C. . . . A judge shall not hold membership in . . . any organization which the judge knows invidiously discriminates on the basis of race, religion, disability, age, sexual orientation, gender, or ethnic origin.

Michigan Code of Judicial Conduct Canon 3:

C. A judge shall not engage in invidious discrimination on the basis of race, religion, disability, age, sexual orientation, gender, or ethnic origin, and shall prohibit staff, court officials, and others subject to the judge's direction and control from doing so. A judge shall prohibit such invidious discrimination against parties, witnesses, counsel, or others on the part of lawyers in proceedings before the judge.

Michigan Court Rule 9.205:

(C) Misconduct. A judge is guilty of misconduct in office if:

(6) the judge engages in invidious discrimination on the basis of gender, race, religion, disability, age, sexual orientation, or ethnic origin.

Michigan Rules of Professional Conduct

5.7 Discriminatory Practices.

- (a) A lawyer shall not engage in invidious discrimination on the basis of gender, race, religion, disability, age, sexual orientation, or ethnic origin, and shall prohibit staff and agents subject to the lawyer's direction and control from doing so.
- (b) A lawyer shall not hold membership in . . . any organization which the lawyer knows invidiously discriminates on the basis of gender, race, religion, disability, age, sexual orientation, or ethnic origin.
- (c) A lawyer serving as an adjudicative officer shall prohibit invidious discrimination on the basis of gender, race, religion, disability, age, sexual orientation, or ethnic origin against parties, witnesses, counsel, or others on the part of lawyers in proceedings before the adjudicative officer."

The adoption of this language was a clear signal on the part of the elected policy-setting body of the State Bar of Michigan. It was persuaded by the reasoning of the 1989 Task Force and its proponents. The appearance of impartiality and the reality of impartiality are equally important. As a profession dedicated to the delivery of fair and equal justice, we are obligated to hold ourselves to the highest standard of professional conduct and behavior. In order to inspire the trust, confidence and respect needed to enforce and uphold our laws, we must demonstrate our commitment to certain guiding principles and standards. It is not enough to merely say that we are in favor of a bias-free justice system. Our actions must ensure that the justice system moves beyond rhetoric to a real and unequivocal standard of behavior.

Despite the clear language of the 1989 Task Force Joint Recommendation and long battle to get such a recommendation adopted by the State Bar, the Michigan Supreme Court did not amend the Code of Judicial Conduct, the Michigan Court Rules and the Rules of Professional Conduct. No reasons were ever published for this failure and an alternative statement was issued by the Justices in the form of an administrative order. Administrative Order 1990-3 endorses many of the recommendations of the 1989 Task Force Reports and directs Michigan courts to commit to the elimination of bias of all types in the judicial system. It does not prohibit inappropriate gender, race, or ethnic comments or actions. It does not specifically name invidious discrimination or sexual harassment as prohibited behavior. It does not outline clear and meaningful consequences for the failure to act in accordance with its requirements.

Late in October of 1993, Rule 6.5 of the Michigan Rules of Professional Conduct were amended to require adjudicative officers and lawyers to treat all persons involved in the legal process with courtesy and respect and to take particular care to avoid discourtesy based on a person's race, ethnicity, gender or other protected personal characteristics and to require those who are supervised by the lawyer to do the same. It is the opinion of the State Bar Task Force that this provision comes closer to the intent of the 1989 recommendation, but does not clearly establish the required standard. Discourteous behavior is only one aspect of bias and discrimination. Many unfair and damaging acts can occur within a climate of seeming courtesy and goodwill. Again, the far-reaching nature of bias and its impact have been lost in a diluted standard.

### **Disciplinary Systems**

The **Judicial Tenure Commission** must continue to take steps to address the problem of bias. Well-publicized cases of gender bias and racial/ethnic bias show that this problem exists among Michigan judges, and that the local, state and national media is eager to publicize bad judges. A Circuit Court Judge, found guilty of three separate incidents of gender bias, was given a three-day suspension with pay, and a District Court Judge was not returned to the bench by voters after incidents of gender bias in his Courtroom were publicized. The Judicial Tenure Commission faces strict confidentiality requirements during the pendency of ongoing investigations. It also receives numerous inquiries and complaints that do not result in formal grievances. Their recommendations on discipline are subject to Supreme Court review and revision.

Taking into account the requirement that Commission investigations be kept confidential, upon the filing of a formal complaint and final adjudication of allegations of bias or discrimination, the public should be informed. Publicizing the final adjudication of claims of bias and discrimination would go a long way toward increasing public confidence.

The **Attorney Discipline Board** has taken internal steps on racial, ethnic and gender bias, promulgating a rule in its personnel manual which mirrors MPCR 6.5 (which requires fairness and courtesy to all). It has made a concerted effort to attract and recruit minority and female hearing panelists. These efforts have been widely disseminated throughout the profession, but no program has been specifically targeted toward the public.

### **EDUCATION**

**Joint Recommendation IX-6: Judicial education related to gender and race/ethnic bias in the courts should be a permanent component of the new judges' seminar as well as of regional seminars and separate curricula for judges on the bench. It should be presented in at least these forms:**

- a. Task Forces' findings and recommendations should be presented for all judges on the bench, then for each group of new judges.**
- b. Courses should be developed which examine gender and race/ethnic bias as they affect court system interactions and case or controversy outcomes with particular attention to an analysis of race and sex-based stereotypes, myths, beliefs and biases that may affect judicial decision making in numerous spheres which affect litigants.**
- c. New and existing courses on substantive areas of the law should be continually updated from the perspective of gender and race/ethnic issues.**

**Joint Recommendation IX-7:** The Michigan Judicial Institute and professional associations should ensure that all educational components are sensitive to the issues of race/ethnic and gender bias by adopting standards which address the following items:

- a. Gender and race/ethnic neutral materials.
- b. Inclusion of women and racial/ethnic minorities as committee members, planners, faculty and speakers.
- c. Impact of race/ethnic and gender bias on issues related to substantive law areas.

**Joint Recommendation IX-8:** Regular training should be conducted for court employees on the issues of gender and race/ethnic bias and their relation to the proper function of the court.

**Joint Recommendation IX-9:** Faculty utilized in educational components should be trained regarding relevant issues of race/ethnic and gender bias.

**Joint Recommendation IX-10:** All entities which provide education for attorneys should be encouraged to:

- a. Include in ethics courses the nature and impact of gender and race/ethnic discrimination and bias on the profession. There should be an aggressive program of education regarding amendments proposed to the Michigan Rules of Professional Conduct, the Code of Judicial Conduct, and any other ethics amendments proposed to prohibit race/ethnic and gender bias, and the consequences flowing from violation of these provisions.
- b. Include components regarding the nature and impact of race/ethnic and gender discrimination and bias in a course in the mandatory continuing legal education currently being developed by the Standing Committee on Continuing Legal Education of the State Bar of Michigan, pursuant to State Bar Rule 17.
- c. Establish an educational standard which assures that all educational components are sensitive to the issues of race/ethnic and gender bias by addressing the following items:
  - 1) race/ethnic-gender-neutral materials.
  - 2) inclusion of women and racial/ethnic minorities as planners, faculty and speakers.
  - 3) impact of race/ethnic and gender bias on issues related to court system interaction and case or controversy outcome.
- d. Upon adoption of mandatory continuing legal education, adopt the above standard as a requirement for accreditation.

**Joint Recommendation IX-11:** All entities which provide education including publication of literature for attorneys should review such literature to make sure it does not reflect race/ethnic or gender bias.

**Joint Recommendation IX-12:** Law schools have a very important role in educating future lawyers regarding the nature and impact of gender and race/ethnic bias in the profession. Michigan law schools should receive the Task Forces' reports and be requested to undertake the following actions:

- a. Include the Task Forces' conclusions and recommendations in the following areas:
  1. Court system interaction: to be included in clinical and trial practice courses;
  2. Ethics: to be included in professional responsibility courses;
  3. Substantive areas of the law: to be included in courses covering these areas;
  4. Extracurricular activities (where appropriate), such as moot court.
- b. Sensitize faculties to race/ethnic and gender bias issues.

**Joint Recommendation IX-13:** Law schools should review case book and instructional materials for biased materials and introduce corrective supplemental materials.

**Joint Recommendation IX-14:** Law schools should initiate programs to expand the pool of potential applicants for faculty positions to include more minorities and women.

**Joint Recommendation IX-15:** Conclusions and recommendation of the Task Forces' Reports should reach the public through the press and other media. Task Force members should actively seek out avenues, such as meetings of groups, associations, and commission, to speak on conclusions and recommendations of the Reports.

The overall recommendations which flow from this analysis are based on the conclusion of the 1989 Reports that "education is an essential tool in efforts to eliminate race/ethnic and gender bias from the Michigan court system ... An educational approach is appropriate because it focuses on understanding, not on blame." The 1989 Reports proposed broad reforms in the areas of education for judges, court personnel, attorneys, law students and the public. In each instance they stressed the need for a broad spectrum of educational strategies. As was noted earlier, the educational efforts of the Michigan Judicial Institute have been exemplary. Under the direction of the Supreme Court, it has systematically integrated these recommendations in its training for judges and court personnel. Both the State Court Administrator and the State Bar of Michigan have produced videos and pamphlets for the education of the profession and the public.

The Institute of Continuing Legal Education reported significant progress in the implementation of education initiatives for continuing legal education relating to gender, race and ethnic issues. It has established a formal recruitment policy for women and minority faculty and has established an internal policy relating to the 1989 recommendations.

The Michigan Judicial Institute does not report that it reviews its literature for bias. All new book and supplement manuscripts are reviewed by the Institute of Continuing Legal Education's editorial staff for gender and racial/ethnic bias and are systematically edited to eliminate bias. With respect to courses and course handbooks, every speaker is provided specific guidance in advance in their Institute of Continuing Legal Education speaker guide as follows:

"The best learning environment is one that demonstrates recognition of, and sensitivity to, the dignity and contributions of all the racial, ethnic and gender groups included in the State Bar of Michigan. The Institute strives for diversity in course faculty and registrants. When composing written materials and oral presentations, please be sensitive to the concerns of all members of the audience through your choice of language, hypotheticals and any anecdotes. Examples of objectionable material include hypotheticals that always assume that lawyers and judges are males and secretaries and legal assistants are females, or that gratuitously portray women or minority groups in an unfavorable light. Please carefully scrutinize your written material and remarks for stereotypes that might offend individuals in the audience."

Of the two law schools responding to the 1997 survey, one reported that it did not review its textbooks for bias, nor did it know of any school that did. However, this same school reported receiving complaints sixty-seven percent (67%) of the time regarding this matter. The second school relied on faculty and publisher review to monitor for bias, but at least a review was being done.

Law schools in Michigan have not adopted any formal recruitment policies for minority and women faculty appointments. Generally, they rely on an annual national conference to assist in identifying and establishing a diverse applicant pool. Through this system, resume banks are updated and made available to interested law schools.

While education has been an important area of progress for the 1989 Reports, there are still wide gaps in the awareness and exposure of most of the profession to these concerns. As a result, the State Bar Task Force reinforces the call to adopt the 1989 recommendations as modified:



- All members of the justice system should either receive or have access to the 1989 Task Force Reports and the State Bar of Michigan Report. Each member of the justice system and the legal profession should attend at least one training session that discusses the conclusions and recommendations.
- Courses should be developed at the Michigan Judicial Institute, the Institute of Continuing Legal Education and all Michigan law schools that examine gender and race/ethnic issues as they affect the justice system. These courses should place particular emphasis on race and sex-based stereotypes, myths, beliefs and biases that may affect the delivery of justice and the creation of a fair and open legal system.
- Women and minorities should be included in all phases of the educational process as committee members, planners, faculty and speakers.
- Ethics courses should regularly include discussion of the nature and impact of bias and discrimination on the profession.
- Substantive law courses and seminars, at all levels of legal education, should be continually and regularly updated from the perspective of gender and race/ethnic issues.
- Race/ethnic and gender neutral standards should be used in all educational programs, publications or course materials for members of the Michigan justice system
- Any mandatory continuing legal education requirement should adopt the above recommendations as requirements for accreditation.
- The conclusions and recommendations of the 1989 Task Forces and the State Bar Task Force should have the broadest possible dissemination to both the legal and the lay community.

#### IMPLEMENTATION

**Joint Recommendation IX-16: A Standing Committee on Racial/Ethnic and Gender Issues in the Courts should be created by the Supreme Court. This Committee would:**

- a. **Implement the Task Forces' recommendations and monitor implementation efforts on an ongoing basis.**

- b. **Work with the Michigan Judicial Institute, continuing legal education providers for attorneys, the National Judicial Education Program and other similar entities to develop judicial and legal education programs on gender and race/ethnic fairness.**
- c. **Work with the State Court Administrative Office to establish a statistical database appropriate for monitoring areas of Task Forces' concerns and performing studies in furtherance of the committee's charge.**
- d. **Monitor the impact of the changes in the Codes regarding the profession, the judiciary, and court operation. As a part of this process, monitor complaints to the Attorney Grievance Commission, the Attorney Discipline Board, the Judicial Tenure Commission, Civil Service entities and individual courts from lawyers, litigants, court personnel, and others.**
- e. **Develop the information generated by these inquiries and information obtained by or provided to the Task Forces through other sources into annual reports which:**
  1. **evaluate progress in implementing reforms and reducing gender and race/ethnic bias;**
  2. **describe the nature and disposition of the complaints received;**
  3. **assess the extent to which the findings and recommendations of the Task Forces are being integrated into judicial and legal education courses and programs;**
  4. **identify new problems rooted in race/ethnic and gender bias and suggests appropriate remedial action.**
- f. **Disseminate these Reports to the Chief Justice, the state judiciary, Task Force members, interested individuals and groups and the media and publish it in the Michigan Bar Journal.**
- g. **Review appellate decisions on gender-related and race/ethnic-related issues in all areas of law and call to the attention of the trial courts those decisions which pertain to gender and race/ethnic bias.**

**Joint Recommendation IX-17: The Standing Committee on Racial/Ethnic and Gender Issues in the Courts should be structured as follows:**

- a. **A Committee should be appointed which is multi-jurisdictional in scope, including representation from the judiciary, court administrators, the organized bar and academic communities in both law and social science.**
- b. **The Committee should be smaller in size than the original Task Forces.**
- c. **Selection of chair, staff, and committee members should take into account recommendations of Task Force Chairs Harold Hood and Julia Darlow and Project Director Lorraine Weber, in consultation with Task Forces' members.**

**Joint Recommendation IX-18: Adequate resources must be made available to create the Committee and administer its work, implement all programmatic concerns reflected in the recommendations of both Task Forces, and to oversee the implementation process. Funding should come from the Supreme Court budget.**

It is clear that the single most important factor identified by the State Bar Task Force relating to the realization of the 1989 Reports goals is the creation of a permanent implementation effort. The 1989 Task Forces recognized that “the ultimate effectiveness of the Reports can only be measured by the extent to which bias is reduced or eliminated and the extent to which citizen confidence in the courts is increased.” (1989 Task Force Reports, Gender at p. 135; Race/Ethnic at p. 76.) Their work created the foundation for attacking bias in the Michigan justice system and the implementation plan proposed was dependent upon the continued involvement and leadership of the Supreme Court. The 1989 Task Forces knew that their work was only the critical first step. Essential to the continued progress was a plan that provided for accountability and monitoring of existing goals and the creation and development of new initiatives. Such a plan would have to be supported by the allocation of sufficient resources, both financial and administrative.

In proposing this plan, the 1989 Task Forces were very aware of the national experience of other task forces addressing these same issues. It was believed that the national experience was a sound predictor of the success or failure of these programs, and that it was unnecessary for every state to “reinvent the wheel” when a strong body of research, literature and experience was already available. Therefore, eight years later it is clearly appropriate that this Task Force also look to our colleagues across the country to assess the current state of implementation efforts across the nation.

### **A National Perspective**

At the time the 1989 Task Forces were meeting, Michigan was one of a handful of states that led the country in studying race/ethnic and gender issues in the legal profession and the courts. In the 1989 Task Force reports, one of the overall recommendations was to establish a standing commission to monitor and assist in the implementation of the recommendations. At the same time, other states were studying their court systems and legal professions. Of the five states in the forefront of these issues, Michigan remains the only state that has not formed a permanent body to monitor the status and implementation of recommendations in these areas.

It was not until 1996, when State Bar of Michigan President Victoria Roberts formed the State Bar Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession and the Michigan Supreme Court formed its Access to Justice Workgroup, that a committee was mandated to review the

entirety of the project. The importance of a standing committee whose purpose is to monitor compliance with the recommendations can be seen by a comparison with other states having such committees.

For example, in New Jersey, the Supreme Court Committee on Minority Concerns was permanently established in 1993 after a Task Force was formed in 1985, and a Unit established in 1988. New York's Franklin H. Williams Judicial Commission on Minorities has issued an annual report for the past five years, after a three and one-half year period of investigation and the formation of a permanent entity in 1991. After releasing its report in 1994, the Oregon Supreme Court appointed an Implementation Committee, and, in 1997, established the Oregon Judicial Department Access to Justice for All Committee to continue the implementation process. Washington, perhaps in the national forefront of addressing these issues, has a permanent State Minority and Justice Commission after a Task Force was established in 1987. The Commission publishes an annual report, a newsletter, and conducts educational programs on diversity for judges and court personnel, among other efforts. Other states have experienced the implementation of initial recommendations and have created permanent bodies to implement them and to monitor progress as well as to make new recommendations. Many states have never had a group formed to study race or ethnic issues, while other states have studied only race or gender problems, without addressing the other issues.<sup>1</sup>

Where does Michigan fall on this continuum in comparison to other states. This is not an easy analysis to make because, at least as to gender issues, there is no current group which is responsible for monitoring national progress.<sup>2</sup> A National Consortium of Task Forces and Commissions on Racial/Ethnic Bias in the Courts (National Consortium) is operated through the National Center on State Courts (NCSC) and has met annually since 1988. Thus, a comparison of Michigan with other states is easier to do on race and ethnic issues because of the concerted national efforts in these areas. In addition, Michigan has

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1 The American Bar Association (ABA) has a Commission on Women in the Profession and, in an unusually promising effort, entered into a joint project with the ABA Commission on Opportunities for Minorities in the Profession to produce a report on the disadvantages facing women of color.

2 An article published in 1993 [Babcock] reported that, as of the time of writing, 28 states had studied gender bias in the courts: Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Utah, Vermont, Washington, and Wisconsin, and, of those states, 14 had issued reports: California, Colorado, Florida, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Rhode Island, Utah, and Washington. An ABA report published by its Commission on Women in the Profession, entitled "Unfinished Business: Overcoming the Sisyphus Factor", published in December 1995, states that 40 states have task forces.

participated in the National Consortium through the State Court Administrator's Office and by the participation of other interested members of the Michigan judiciary.

Despite national emphasis on these investigations, twenty-two states have no commission or task force on race and ethnic issues.<sup>3</sup> Nine other states are in the start-up or data collection phase.<sup>4</sup> Four states have not reported the status of their committees.<sup>5</sup> Of the remaining fifteen states, six are in the report writing or post-report stage<sup>6</sup> and the other nine, including Michigan, are in the implementation phase of activity.<sup>7</sup>

Some states have made good progress on gender issues in the courts and the legal profession. The New York Task Force on Women in the Courts issued its first report in 1986, following its creation in 1984. The report issued after a decade of work addresses such mainstream topics as judicial education and domestic violence as well as innovative record keeping forms in divorce cases to more accurately track property issues, the status of women attorneys, court employees, sexual harassment, and alternative work schedules.<sup>8</sup> The Judicial Council of California Advisory Committee on Access and Fairness Gender Fairness Subcommittee issued recommendations in 1990, and reported in 1996 that approximately one third of the recommendations had been implemented.<sup>9</sup> Washington established a Gender and Justice Task Force in 1987, with a report published in 1989, and established an Implementation Committee, which

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3 These states are Alabama, Alaska, Illinois, Indiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Carolina, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Although it has no commission, Virginia is in the process of developing diversity training for judges and court personnel, and has a group designed to solve the disproportionate representation of minority youth in secure confinement and to make efforts aimed at eliminating sentencing disparities. NCSC is working with developing task forces and commissions in Utah, Kentucky, Alabama, and New Mexico. The information in footnotes 3 through 7 are taken from materials distributed at the 1997 National Consortium meeting.

4 These states are Arizona, Colorado, Hawaii, Kentucky, Nevada, North Carolina, Ohio, South Dakota, Tennessee, and Utah.

5 These states are Hawaii, Idaho, Iowa, and Kansas.

6 These states are Arkansas, Connecticut, Delaware, Florida, Georgia, and Massachusetts.

7 These states are California, Louisiana, Michigan, Minnesota, New Jersey, New York, Oregon, Rhode Island, and Washington.

8 "Appraising Change and Progress a Decade After the Report of the New York Task Force on Women in the Courts: A Report by the New York Judicial Committee on Women in the Courts", May 1996.

9 "Gender and Justice: Implementing Gender Fairness in the Courts", Implementation Report, Judicial Council of California Advisory Committee on Access and Fairness Gender Fairness Subcommittee, July 1996.

worked from 1989 to 1993 to fulfill the recommendations in the report. In 1994, the Washington Supreme Court established the Gender and Justice Commission.<sup>10</sup>

It is significant that Michigan has made progress toward the implementation of the 1989 Reports without the benefit of a structured implementation effort. Our state can be proud of the individual and organizational responsibility taken to build upon the 1989 recommendations. Yet, the experience of states, where formal implementation efforts have been adopted, can serve as powerful models for increased success.

Should Michigan take the further step of establishing the proposed joint commission it will realize numerous additional benefits. Such a commission can function as a state clearinghouse for collecting and sharing information and assisting organizations and individuals in meeting their diversity goals. It can provide an established source of leadership and focus for future initiatives, which have not yet been addressed. A commission can create a forum for discussion and analysis of diversity issues and their impact upon the delivery of justice. Such a forum can fully explore the complex social, professional and ethical questions raised by these concerns, without resorting to formulaic and naïve solutions. It can monitor, regularly and consistently, the progress achieved in our state over the long run. It can highlight our successes, applaud our achievements and identify weaknesses in the system, which require attention and resolution. Most importantly, such a commission can raise awareness and educate all participants to the very real importance of a diverse and bias-free legal system.

### **The Joint Commission Proposal**

It was the opinion of the membership of the 1989 Task Forces and it is the opinion of the members of the State Bar Task Force that "if the battle against bias is to be vigorously pursued and eventually won, the Supreme Court must lead the effort." The implementation plan proposed in 1989 reflected this philosophy. Fundamental to this plan were the following factors:

- Continued leadership by the Michigan Supreme Court;
- Creation of a body which would possess responsibility for oversight and realization of the Report's recommendations;

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<sup>10</sup> "Report of the Gender and Justice Commission of the Washington State Supreme Court", July 1996.

- Creation of a research and evaluation methodology which would identify the extent and success of (1) educational efforts, (2) implementation of specific recommendations, and (3) the elimination of bias in the courts; and
- Allocation of sufficient resources to the effort.

The State Bar Task Force strongly recommends implementation of 1989 Recommendations IX-16 and IX-17, with the following modifications:

- A Joint Commission on Diversity Issues and the Michigan Justice System should be created by the Michigan Supreme Court and the State Bar of Michigan;
- The Joint Commission should not only work to implement the 1989 recommendations, but should place special emphasis on the conclusions and recommendations of the State Bar Task Force;
- The Joint Commission should include within its mandate the investigation of all discrimination and bias that impact on fair delivery of legal services and justice;
- The Joint Commission should identify substantive areas of investigation which were not addressed by the 1989 Task Force and adopt a plan for developing findings and new recommendations;
- The recommendation for funding strategies should be expanded to include not only the Supreme Court budget, but also State Bar, IOLTA, grant and foundation funding, as well as other financial resources within the legal community.

Regarding the creation and structure of the Joint Commission, the State Bar Task Force recommends that:

- The Joint Commission be created for a 5-year term, coinciding with the State Bar of Michigan's long-range plan, with evaluation of its effectiveness taking place at the end of that term;
- The Joint Commission's role should be clearly defined as advisory to the Michigan Supreme Court and State Bar of Michigan;
- The Joint Commission should draw its membership from many jurisdictions and diverse backgrounds and expertise, including representation from the judiciary, court administration, and the organized bar and academic communities in both law and social science;
- Members of the Joint Commission should be appointed by the Chief Justice of the Supreme Court and the President of the State Bar of Michigan;
- The Chief Justice of the Michigan Supreme Court should name an Associate Justice to serve as liaison to the Commission; the President of the State Bar of Michigan should name a member of the Board of Commissioners to serve as liaison to the Commission.