

EXECUTIVE SUMMARY

The Oregon Supreme Court/Oregon State Bar Task Force on Gender Fairness studied whether and, if so, how gender affects the experiences of Oregonians in the state court system and in the legal profession. The study took a little more than two years to complete and encompassed an examination of judicial administration; civil litigation; domestic relations cases; criminal law and juvenile justice; interactions between lawyers, clients, staff, and other professionals; lawyers' professional opportunities; employment of staff by lawyers, the Oregon State Bar, and the Professional Liability Fund; bar admission; lawyer discipline; and legal education at Oregon's three law schools. In our gathering and analysis of information, we took into account other personal characteristics, such as race and age, that affect men's and women's experiences with, and perceptions of, the justice system. Methods of study included surveys of 18 different populations, such as judges, lawyers, clients, interpreters, paralegals, legal secretaries, and inmates; public hearings throughout the state; focus groups; interviews; review of extant literature and statistical data; and solicitation of written testimony.

The Task Force came to the following general conclusions:

(1) Substantial gender fairness exists in most aspects of Oregon's justice system and legal profession.

(2) Gender fairness has improved markedly in the past 10 to 25 years.

(3) Significant areas of gender unfairness and perceptions of gender unfairness remain, however. These areas include:

(a) Female lawyers (especially young female lawyers) commonly receive treatment that is less respectful than the treatment accorded to their male peers. For example:

- court staff ask female lawyers whether they are lawyers, while assuming that male lawyers are lawyers;
- in court and at work, male lawyers and even judges sometimes call female lawyers "little lady," "hon," and the like;
- female lawyers are called by their first names when men are not; and
- in court and at work, female lawyers are subjected to sexual comments.

(b) In custody and spousal and child support proceedings, some judges appear to favor men disproportionately, while other judges appear to favor women disproportionately.

(c) In marital dissolutions, women tend to receive spousal support and property divisions that place them at a significant short- and long-term financial disadvantage compared with their ex-husbands. Further, an Oregon case study revealed that only about 30% of the women to whom child support was owed received full payment. (Although most of the men to whom child support was owed likewise did not receive full payment, female obligors were relatively few in number.)

(d) Females housed in adult and youth state correctional facilities do not have access to the same job training, work, and general support programs and services as do male inmates and juvenile detainees.

(e) Almost one-third of legal secretaries surveyed believe that gender-based discrimination is the same or worse now, compared with the past. Areas in which they report bias include lack of opportunity for advancement and lack of having their views taken as seriously as the views of men.

(f) On average, male lawyers earn more than their female counterparts, even considering length of practice. Factors that play a role include that, on average, female lawyers charge less for their time, female lawyers practice in fields that are less highly compensated, and female lawyers work fewer billable hours. However, the disparity in compensation is difficult to explain entirely by objective criteria.

(4) Most gender unfairness works to the detriment of women. In some areas, however, gender unfairness works to the detriment of men. For instance:

(a) About 38% of judges surveyed (both male and female) believe that trial courts are biased against men in child custody matters. More than 72% of male lawyers and 43% of female lawyers expressed the same view. (Interestingly, in contested custody cases, men receive custody of their children about half the time.)

(b) Male victims of domestic violence (who are relatively few in number) face disbelief or ridicule because of gender stereotyping.

(c) A significant proportion of judges, criminal defense lawyers, and male inmates believe that prosecutors and judges treat female defendants more leniently than similarly situated male defendants, perhaps because of different parenting responsibilities.

(5) Negative experiences are, in some cases, based on more than gender alone and may be compounded by race, age, sexual orientation, poverty, or other factors. For example:

(a) About 70% of those in Oregon who live at or below the poverty line are women. Poor women lack adequate access to legal services, most notably in the areas of domestic relations and domestic violence.

(b) Sixty-five percent of female inmates of color surveyed believe that they have received different treatment from male lawyers than they have received from female lawyers. Neither male inmates of color nor white female inmates report this phenomenon in such large numbers.

(6) Most remaining unfairness is neither malicious nor egregious but may, for that reason, be more intractable than earlier, more glaring problems.

(7) Identification and eradication of gender-based unfairness are essential to the achievement of a justice system that is fully responsive to the needs of all Oregonians. That is especially true of the few flagrant instances of bias that are encountered.

Because the remaining areas of gender unfairness largely are subtle, the recommendations of the Task Force emphasize a wide range of educational programs for various participants in the court system and the legal profession. A complete list of our recommendations follows.

RECOMMENDATIONS

■ GENERAL

1. The Chief Justice should:

a. charge the Oregon Judicial Department's Access to Justice for All Committee with overseeing and coordinating implementation of the recommendations outlined in this report. Because that committee already is working to address issues of racial and ethnic fairness in the justice system, it is well positioned to ensure that individuals' multiple perspectives, or intersectionalities, will be incorporated into the work of securing gender fairness;

b. establish within the Oregon Judicial Department at least one permanent full-time staff position, plus appropriate support staff, to coordinate the work of the Access to Justice for All Committee; and

c. include in the Oregon Judicial Department's 1999-2001 biennial budget a request for the funds and position authority necessary for such staff.

2. The Legislative Assembly and the Governor should:

- ensure that the Access to Justice for All Committee is adequately funded.

3. The Oregon Judicial Department and the Oregon State Bar should:

- develop a volunteer panel of trained public hearing and focus group moderators and should sponsor periodic hearings and discussions on issues of fairness. Public hearings, focus groups, and roundtable discussions are excellent opportunities for litigants and other court participants to communicate their concerns and frustrations with the justice system. They also provide a regional perspective on whether and how issues differ from one locale to another. Finally, they provide the Judicial Department and the Bar an opportunity to educate the public. Funds for this purpose should be in the Judicial Department's 1999-2001 budget.

4. The Access to Justice for All Committee should:

- review this report and, where it identifies data that were not available, decide what data should be available and develop a plan for collecting such data.

5. The Chief Justice, the President of the Oregon State Bar, the Oregon Council on Domestic Violence, the Office of the State Court Administrator, and other interested persons should:

- examine the archives of the Task Force in order to identify groups, individuals, agencies, or geographic areas that warrant special attention.

6. The Access to Justice for All Committee, the Oregon State Bar, the Oregon Judicial Department, law firms, and law schools should:

- include consideration of intersectionality issues in future studies and discussions of gender fairness. Likewise, all educational programs recommended in the chapters that follow should include intersectionality issues.

■ JUDICIAL ADMINISTRATION

1. The Oregon Supreme Court should:

- by January 1, 2000, review existing procedures for making complaints of unfairness by, and against, the participants in the judicial system. That review should consider whether existing procedures are adequate to facilitate the prompt and appropriate resolution of such complaints and should recommend any needed changes.

2. Judges, including judges pro tempore, referees, and magistrates, should:

- a. monitor behavior in the courtroom and, to the extent appropriate, in pretrial proceedings, and should intervene to correct inappropriate gender-based conduct;
- b. participate in periodic refresher courses on the need to be aware of issues affecting gender fairness; and
- c. when appropriate, expand on precautionary instruction UCJI No.5.01 to address specific issues of fairness that may arise in a particular case.

3. The Education Division of the Office of the State Court Administrator should:

- a. continue to conduct regular educational programs for judges and court staff on the existence and effects of gender-biased behavior in and around the courthouse, and on ways to avoid such behavior; and
- b. by January 1, 1999, develop a brochure on gender fairness and begin to distribute it to participants in the judicial process — including jurors, witnesses, litigants, and interpreters. The brochure should emphasize the commitment of the Chief Justice and the President of the Oregon State Bar to achieving gender fairness and should advise lay participants of available complaint processes (both formal and informal) in the event that they experience or observe unfair treatment. (Such information could, instead, be included in a brochure on other issues of fairness.)

4. The Oregon State Bar should:

- a. continue to conduct regular educational programs for lawyers on the importance of professionalism, including the avoidance of gender-biased behavior and other forms of biased behavior;
- b. in continuing legal education programs for litigators, explore the line between appropriate and inappropriate uses of gender (and other personal characteristics) in litigation strategy; and
- c. continue to educate the public about the workings of the legal system, in an effort to raise the general level of public understanding about the legal system and to emphasize its commitment to fairness.

5. The Oregon State Bar's Committee on Uniform Civil Jury Instructions should:

- by January 1, 2000, consider whether to expand the caveat in UCJI No. 5.01, which provides that “you must not be influenced in any degree by personal feelings or sympathy for, or prejudice against, any party to this case.” The Committee should consider whether it is advisable to give

more explicit guidance on issues of fairness or to refer to other participants beyond the parties (such as a party's lawyer).

6. Law firms, lawyers' organizations, judicial organizations, and other organizations composed of regular participants in the administration of justice (such as interpreters) should:

- a. discuss the issues raised in this report; and
- b. provide continuing education for their members on methods of achieving fairness.

7. The Access to Justice for All Committee should:

- assist the Office of the State Court Administrator and the Oregon State Bar in improving educational curricula to help judges and lawyers identify and avoid gender bias.

8. The Access to Justice for All Committee, in coordination with trial court administrators, county officials, and other interested persons, should:

- implement the recommendations of the Multnomah Bar Association's CourtCare Advisory Committee
 - a. to establish child care at courthouses for jurors, witnesses, and parties during proceedings and to form a new committee to oversee that effort; and
 - b. to begin a statewide feasibility study by January 1, 1999, respecting on-site child care at courthouses.

9. The Access to Justice for All Committee, working together with the Information Systems Division of the Office of the State Court Administrator, trial court administrators, and other appropriate individuals and organizations, should:

- assess the adequacy of the Civil Action Data form to permit analysis of gender fairness and intersectionality issues and recommend appropriate changes.

10. The counties, with the assistance of the Access to Justice for All Committee, should:

- by January 1, 2001, study whether and, if so, how gender affects the treatment of participants in the judicial system by court security personnel and procedures, and recommend any appropriate changes. This research should focus on participants, such as jurors, litigants, lawyers, and witnesses, who are not employees with security passes.

11. The Chief Justice, trial court administrators, and other appropriate individuals should:

- study whether and, if so, to what extent jurors experience or perceive unfairness based on gender during their jury duty and, more specifically, while participating in voir dire and while deciding cases.

12. The Chief Justice and the Oregon State Bar should:

- study whether the gender of participants influences civil litigation, either substantively or procedurally. This research should build on the preliminary work of the Task Force.

13. The Governor should:

- by January 1, 1999, form a group to study whether and, if so, how gender affects the work of administrative agencies in the performance of their adjudicative functions. Many citizens and lawyers participate in hearings before administrative agencies and in appeals of administrative decisions in the contexts of, for example, workers' compensation benefits and unemployment benefits. Administrative matters affect thousands of Oregonians, particularly those of low or moderate income, perhaps resulting in additional intersectionality concerns.

■ DOMESTIC RELATIONS CASES

1. The Chief Justice and the Oregon State Bar should:

- a. appoint a Task Force on Spousal Support to consider the feasibility of formulating statewide spousal support guidelines for adoption in the 2001 legislative session; and
- b. study the legal and practical issues surrounding the dissolution of gay and lesbian relationships (including child custody and support) and develop recommendations for ensuring that the courts resolve such cases fairly and appropriately.

2. The Legislative Assembly and the Governor should:

- work with the Oregon Family Law Legal Services Commission's recommendations, when issued, to ensure that there is adequate funding in the 1999-2001 state budget for providing legal services to low-income people in family law matters.

3. The Education Division of the Office of the State Court Administrator should:

- a. continue to provide regular education for judges regarding the law surrounding marital dissolution cases; and
- b. continue to provide regular education for judges and other court personnel concerning domestic violence, including its dynamics, its effect on children, and "best practices" for handling protective orders and dissolution cases involving domestic violence (*e.g.*, see the protocols of the Oregon Council on Domestic Violence).

4. Oregon law schools should:

- by the 2000-01 academic year, ensure that they educate law students about domestic violence.

5. The Oregon State Bar should:

- a. further develop *pro bono* lawyer referral programs that specialize in domestic relations and domestic violence matters; and
- b. by January 1, 1999, begin to implement a statewide outreach program to inform non-English speakers about what services are available to victims of domestic violence.

6. The Oregon Council on Domestic Violence should:

- a. consider recommending to the Legislative Assembly that Oregon statutes on child custody be amended to include a rebuttable presumption that a parent who has engaged in domestic violence toward the other parent or who has battered a child should not be awarded custody of the couple's children; and
- b. by January 1, 2000, study whether law enforcement officers are fully and fairly enforcing Oregon's domestic violence laws and, if not, recommend needed changes.

■ CRIMINAL LAW AND JUVENILE JUSTICE

I. PROSECUTORIAL AND JUDICIAL DISCRETION

1. All district attorneys' offices should:

- a. by January 1, 1999, review their policies to ensure that gender does not play an inappropriate role in charging practices, plea offers, and sentencing recommendations. Other offices should consider using the Multnomah County District Attorney's policy manual as a model.
- b. as soon as possible, begin to keep data that permit analysis of gender fairness in charging practices,

indictments, and plea offers and agreements, and annually evaluate those data.

2. Prosecutors, criminal defense lawyers, and corrections staff should:

- participate in educational programs concerning issues of gender fairness and intersectionality.

3. Criminal defense lawyers should:

- consider whether gender plays a role in who accepts pleas and who rejects pleas and, if so, whether procedural changes are called for.

4. The Oregon Department of Corrections should:

- by January 1, 2001, develop plans for a long-term solution to the increasing problems involving inmates who are primarily responsible for the care of their children.

5. The Education Division of the Office of the State Court Administrator should:

- develop a judicial education program to explore issues pertaining to the sentencing of pregnant substance abusers.

6. The Chief Justice and the Oregon State Bar, working with the Oregon State Police, the Oregon District Attorneys Association, the Oregon State Sheriffs' Association, and the Oregon Association Chiefs of Police, should:

- by January 1, 2002, study whether gender unfairly affects police practices at the pre-indictment and pre-charging stage.

7. The Oregon Judicial Department, working with the Oregon District Attorneys Association, should:

- by January 1, 2003, study court records to determine whether any gender-based patterns exist with respect to prosecutors' sentencing recommendations and judges' final orders.

II. PROGRAMS AND SERVICES FOR ADULT OFFENDERS

1. The Oregon Department of Corrections should:

- a. provide adequate space in the new women's prison for educational, vocational, and work programs, as well as for recreation and family visiting;
- b. by January 1, 1999, expand work programs and vocational training programs for female inmates to include apprenticeships that realistically prepare them for work opportunities upon release;
- c. by January 1, 2000, expand the current dual diagnosis (substance abuse and mental health treatment)

programs, which now are available at Columbia River Correctional Institution, to female inmates at other institutions;

- d. by January 1, 2000, assess the feasibility of permitting contact between incarcerated mothers and their children (especially newborns) and give special attention to pregnant inmates' needs for services;

- e. by January 1, 1999, develop educational materials for corrections officers, program staff, and contract providers on the unique needs of female inmates and make such materials a part of all orientation programs; and

- f. ensure that adequate job-training opportunities are available for inmates with sentences of varying lengths. One possible means of ensuring that people who are incarcerated for a relatively short period of time (disproportionately women) complete programs is to permit them to continue training during post-prison supervision.

2. The counties should:

- a. begin to address concretely the unique needs of female offenders who are housed in county jails and, by January 1, 1999, develop policies to address those needs; and

- b. by January 1, 1999, ensure that female and male offenders are afforded equal access to jail visiting hours and programs.

3. The Oregon State Bar and the Education Division of the Office of the State Court Administrator, working with the Oregon Department of Corrections, including Community Corrections, should:

- by January 1, 1999, create an educational program for lawyers and judges about the availability and nature of the programs and services in Oregon's correctional institutions, county jails, and community corrections facilities.

III. JUVENILE CORRECTIONS

1. The Oregon Youth Authority should:

- a. immediately take steps to comply fully with ORS 417.270 and to ensure proportional allocation of funds to girls and boys;

- b. provide more programs and services, including drug and alcohol treatment, to serve girls in the juvenile justice system. The OYA should have a plan to implement those programs by January 1, 1999, and should implement the programs by January 1, 2000;

- c. ensure that sex-offender treatment programs are available to boys, without waiting;

d. by January 1, 1999, review staffing standards at secure facilities to determine whether the number of staff is sufficient to meet the needs and deliver programs and services, especially to girls;

e. ensure that adequate treatment and vocational services are available for youths who are detained for shorter periods of time (disproportionately girls). One possible means is to permit them to continue in the program or receive services after they leave the secure facility but while they remain in the legal custody of OYA;

f. by January 1, 2000, ensure that girls and boys have access to the same types of job training (e.g., building trades for girls, beauticians' school for boys), based on interests, skills, and the like;

g. by January 1, 1999, hire women to fill maintenance crew, food service, and other training supervisor vacancies so that girls have access to the same job-training opportunities to which boys have access; and

h. by January 1, 1999, provide or arrange for transportation for children of youths who are in close custody, so as to encourage a stronger bond between the youths and their children.

2. The Oregon Youth Authority and the Oregon Department of Corrections should:

- by January 1, 1999, to the extent permitted under the law, jointly develop a policy on programs and services for girls who are sentenced under Measure 11.

3. The Hillcrest Youth Correctional Facility should:

- by January 1, 2000, hire a female doctor to perform obstetric and gynecological services.

4. The Oregon Judicial Department should:

- by January 1, 2001, undertake to study gender and intersectionality issues affecting juveniles who are adjudicated as "status" offenders (disproportionately girls).

■ INTERACTIONS BETWEEN LAWYERS, CLIENTS, STAFF, AND OTHER PROFESSIONALS

1. The Oregon State Bar should:

a. by January 1, 1999, more widely include gender and intersectionality issues in continuing legal education programs for lawyers, with topics such as

- (i) the disciplinary rules prohibiting conflicts of interest and sexual relationships with clients;

- (ii) clients' perspectives on the lawyer-client relationship; and

- (iii) respectful treatment of office staff and court reporters; and

b. by January 1, 1999, develop a public education program designed to inform clients of their right to be free of sexual harassment from their lawyers and of the help available from the OSB to protect that right. This goal could be accomplished, in part, through additional information included in pamphlets already designed for distribution to the public, through separate publications devoted to this issue, and through public service announcements.

2. Every legal workplace should:

a. by January 1, 1999, establish a policy prohibiting sex discrimination and encourage all personnel (e.g., through small-group meetings) to discuss improving workplace relationships, especially with regard to gender issues. All personnel should be protected from retaliation when they describe their experiences and perspectives;

b. by January 1, 1999, establish a policy prohibiting sexual harassment and regularly inform all employees about the policy and how to use its protection. In addition, each workplace should have a clearly identified person to whom sexual harassment complaints are to be directed; and

c. beginning by January 1, 1999, have supervisors communicate at least annually — orally and in writing — their commitment to a bias-free workplace and to enforcement of their non-discrimination and anti-harassment policies. Lawyers, as well as non-lawyer supervisors, must be willing to confront their colleagues when they observe inappropriate behavior.

■ THE EMPLOYMENT OF COURT, OREGON STATE BAR, AND PROFESSIONAL LIABILITY FUND PERSONNEL

I. COURT PERSONNEL

1. The Oregon Judicial Department should:

a. continue to encourage all its employees to help eliminate any form of gender bias from Oregon's court system. An appropriate reminder on this and other forms of discrimination should be delivered to court personnel annually;

b. distribute to all court personnel, biennially, statistics on hiring, promotion, and compensation that permit a comparison to the ratios of men to women within OJD;

c. include information in its regular personnel workshops to address the perceptions that gender limits

opportunities for advancement of both men and women and that members of the opposite sex receive special preferences in supervisory appointments and application of work rules;

d. by January 1, 1999, review its personnel policies and practices to determine whether any changes are needed to achieve gender fairness;

e. by January 1, 1999, assess whether there are inappropriate barriers to promoting and appointing women to actual supervisory positions within OJD in proportion to their availability among all qualified applicants. If so, OJD should take effective steps to remove those barriers;

f. review its policies on job-sharing, flexible work hours, and release time for education to promote greater use where appropriate;

g. by July 1, 1999, and periodically thereafter, review the adequacy of the procedure for court personnel to bring complaints about gender discrimination or harassment and, if appropriate, recommend changes. That review should recognize that some complaints may be directed at trial court administrators, judges, or others in high positions;

h. by January 1, 2002, study the personnel practices applicable to OJD law clerks to ensure gender fairness; and

i. by January 1, 2002, study how issues of intersectionality affect OJD employees.

II. EMPLOYEES OF THE OREGON STATE BAR AND PROFESSIONAL LIABILITY FUND

1. The Oregon State Bar and the Professional Liability Fund should:

a. ensure that continuing education programs for lawyers, managers, administrators, and supervisors at the OSB and the PLF include issues of gender fairness;

b. by January 1, 1999, initiate regular workplace dialogues to foster an understanding of the experiences and perceptions of people of the opposite sex and to promote mutual respect;

c. by July 1, 1998, and periodically thereafter, communicate to employees, in writing and in person, their commitment to gender fairness and to the enforcement of equal opportunity and anti-harassment policies. Additionally, the OSB and the PLF should review those policies periodically; and

d. by January 1, 2000, study whether additional policies (besides flex-time) are feasible to facilitate employees' meeting their family obligations.

■ LEGAL EDUCATION

1. Oregon law schools should:

a. continue to recruit law students and faculty to increase the number of persons from diverse backgrounds, including women and people of color;

b. disseminate existing written policies prohibiting discrimination and harassment on the basis of gender, race, disability, and sexual orientation, and the procedures for filing complaints, at the beginning of each academic year. Those policies should be enforced promptly and consistently when complaints are made;

c. continue to address issues of fair treatment as a part of their orientation of law students and faculty and in publications such as catalogues. By the academic year 2000-01, gender and intersectionality issues should be included in students' training in professionalism;

d. by the academic year 2000-01, conduct orientation programs for faculty members on fair treatment of staff members;

e. by the academic year 2000-01, examine administrative policies and practices, and modify them where needed, to accommodate more fully the family responsibilities of professors;

f. by the academic year 2000-01, create a variety of opportunities for dialogue among all members of the law school community regarding gender-based perceptions of the law school experience, as well as the effects of race, ethnicity, disability, sexual orientation, age, and economic class on students' experiences;

g. by the academic year 1998-99, publicize the pertinent parts of this report to faculty, students, staff, and alumni;

h. by the academic year 1998-99, review the Task Force survey results for their own campuses to determine which issues are most significant to them; and

i. beginning in the current academic year, recognize the importance of faculty members' mentoring and counseling activities outside class, and factor this important work into salary, tenure, and promotion decisions.

2. Oregon law schools' career services offices should:

a. by the academic year 1998-99, solicit interviews by a wider range of prospective employers, particularly small firms and those working in the public's interest and in the public sector; and

b. by the academic year 1998-99, provide more complete preparation of students, especially female students, for interviews with recruiters.

3. Oregon law schools' faculty should:

- a. by the academic year 1999-2000, incorporate alternative teaching methods, as well as the Socratic method, in all years of law school to provide for different learning styles and preferences;
- b. by the academic year 1999-2000, include gender and intersectionality issues in their class discussions, and as regular parts of the curriculum;
- c. beginning in the current academic year, make every effort to create a classroom environment hospitable to different ideas and to different learning styles; and
- d. by the academic year 1999-2000, engage in collective self-assessment to determine whether the curriculum, teaching methods, and other law school practices and policies hamper the ability of faculty to be accessible to law students, in particular female students of color.

4. Administrators and faculty at Oregon law schools should:

- a. recognize that misperceptions concerning women's competence may adversely affect decisions concerning the promotion and tenure of female faculty; and
- b. by the academic year 1998-99, take appropriate steps to ensure that promotion and tenure decisions are not based on such misperceptions.

5. Oregon law schools and the Oregon State Bar should:

- a. by January 1, 2001, begin to examine how well Oregon law schools actually prepare men and women for law practice. That examination should address questions such as these:
 - Upon graduation, do men and women seek similar forms of employment? Are they hired for the jobs that they want, in the same proportions, within a similar amount of time, and for similar compensation? Are they perceived by employers and potential employers as equally suited and well-prepared for law practice?

The answers to those questions will assist both law schools and the legal profession in assessing gender fairness; and

- b. by January 1, 2001, determine whether there are gender-based differences in male and female faculty salaries in Oregon's law schools and, if so, implement the changes necessary to ensure fairness.

■ ADMISSION TO THE PRACTICE OF LAW AND LAWYER DISCIPLINE

I. ADMISSION TO THE PRACTICE OF LAW

1. The Board of Bar Examiners should:

- by the summer 1998 bar examination, formalize its policy addressing gender and racial and ethnic identity in examination questions, because the membership of the Board of Bar Examiners changes over time.

2. The Oregon State Bar should:

- continue to track bar pass rates by gender and by race and ethnicity. This process will enable the Bar and the Oregon Supreme Court to respond to any patterns of disparity that may become evident in the future.

II. LAWYER DISCIPLINE

1. The Oregon State Bar should:

- a. recruit equal numbers of men and women (and recruit diverse people) to serve on the committees, boards, and trial panels that conduct disciplinary proceedings; and
- b. include participants in the disciplinary process in educational programs concerning gender and intersectionality issues.

2. Bar Disciplinary Counsel should:

- a. by January 1, 1999, develop a system to track complaints about lawyer conduct by the gender of the complainant and of the accused; and
- b. beginning in 1999, periodically survey complainants and accused lawyers to determine whether there is any perception of gender bias in the disciplinary process.

3. The Oregon State Bar and the Oregon Supreme Court should:

- review disciplinary rules to determine whether there is any gender-based unfairness to lawyers, to clients, or to the interests that those rules are designed to protect. If changes are warranted, the Disciplinary Rules and Procedures Committee should make appropriate recommendations to the Oregon Supreme Court.

III. GENERAL

1. The Access to Justice for All Committee and all those to whom the Task Force addresses recommendations should:

- consider the factors that have led to gender fairness, and the perception of gender fairness, in admission to the practice of law and in lawyer discipline. The Committee should determine whether areas of gender-based unfairness discussed in this report can benefit from those lessons. Such factors may include: extensive, gender-neutral, behavior-based written rules; diversity of persons in the enforcement process; conscious regard for the perceptions of people living at different intersectional points; and multiple layers of review.

■ OPPORTUNITIES IN THE LEGAL PROFESSION

1. The Oregon State Bar should:

a. gather and maintain data about its membership through regular anonymous surveys, conducted at least every three years. The data should contain basic demographic information about lawyers, including gender, race, ethnicity, and self-identified sexual orientation. Specifically, the Bar should maintain, and make easily accessible, the following information:

- (i) the number of lawyers in the Oregon State Bar;
- (ii) their years of experience;
- (iii) their compensation, including benefits;
- (iv) their positions with their firm, corporation, governmental unit, or other entity;
- (v) their areas of practice;
- (vi) their career paths (longitudinal study);
- (vii) promotional opportunities offered and taken; and
- (viii) status as active or inactive;

b. beginning in 1999, sponsor periodic educational programs about state and federal laws that apply to lawyers in their roles as private and public employers, with an emphasis on appropriate hiring methods and responses to complaints of sexual harassment;

c. continue and expand mentoring programs for young lawyers, especially women and people of color;

d. undertake to consider, by January 1, 2000, the feasibility of establishing a process by which lawyers may complain of adverse treatment without the need to

reveal that complaint, at least initially, to persons in the complainant's own firm or community;

e. by January 1, 2000, study whether lawyers who serve in contract lawyer, in-house counsel, and of-counsel positions experience unfairness on the basis of gender or other personal characteristics and, if so, make appropriate recommendations to remedy any such unfairness; and

f. encourage qualified lawyers who are women, people of color, gay men, lesbians, and disabled persons to apply for judicial positions.

2. Private and public legal employers should:

a. by January 1, 1999, implement written hiring policies to ensure that interviewers conduct interviews in accordance with legal requirements;

b. ensure diversity among the persons responsible for hiring decisions, in particular by including women and people of color;

c. by January 1, 1999, implement and distribute policies prohibiting discrimination and sexual harassment;

d. plan social and business events that are open to, and are of interest to, both male and female lawyers and clients;

e. by January 1, 1999, establish promotional policies respecting management positions to ensure fairness in promotions;

f. review case assignment procedures to ensure that women have an equal opportunity to participate in challenging and high-profile cases; and

g. by January 1, 2001, adopt part-time, flex-time, and similar policies that allow lawyers to meet the demands of their personal lives, and ensure that lawyers who take advantage of such policies are not placed at an inappropriate disadvantage for having done so.

3. The Governor should:

- continue to appoint qualified lawyers who are women, people of color, gay men, lesbians, and disabled persons to judicial positions (especially outside major metropolitan areas).

4. The Chief Justice should:

- by January 1, 2000, determine whether case assignments are made fairly to female and male judges and, if not, make appropriate recommendations to remedy any such unfairness.