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TENTH CIRCUIT: GENDER BIAS STUDY—CONTINUING EDUCATION AND TRAINING

*The Honorable David M. Ebel**

The Tenth Circuit Study of Gender Bias and Sexual Harassment was initiated in September 1995 with a study of the District of Wyoming. Prior to that time a number of federal courts and individual states had undertaken comprehensive studies of gender bias. Most of the existing literature was based upon quantitative data using survey research methodology calculated to obtain a number of confidential responses, which produced substantial valuable information.

After reviewing the existing studies, the Co-Chairs of the Tenth Circuit Study decided to adopt a slightly different focus. We decided that a forward-looking approach oriented toward education programs for court staff, lawyers, and judges would have the greatest long-term benefit in combating gender bias and sexual harassment. By utilizing a *qualitative research approach*, where qualified interviewers conducted interviews targeted at certain individuals, we obtained information from a variety of data sources (including attorney and court employee interviews). This qualitative information has been and will be gathered to develop an understanding of the processes and long term consequences of gender interactions within the court system. The Wyoming pilot study was intended to develop basic guidelines for other local study groups within the circuit, as well as identifying any concerns within the District of Wyoming.

By opting for local study groups within each district in the Tenth Circuit, we acknowledged probable contextual, cultural, and personality differences between districts. The use of vol-

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unteers to gather most of the data placed a great deal of responsibility for the success of each local study in the hands of the individuals who were most knowledgeable about the environment in which they worked. Our approach was designed to identify and record issues of greatest importance in specific locales, and to determine which of these had circuit-wide ramifications.

The Wyoming study committee was chaired by District Judge William F. Downes, and included four local federal practitioners (two male and two female) and the Clerk of the Bankruptcy Court. The Co-Chairs of the Task Force and the local committee were supported by Dr. Julia Robinson, the study director, and the Deputy Circuit Executive. The study committee was appointed by the Task Force Chairs after consultation with many people representing a wide range of perspectives. There was a high degree of interest and cooperation in the local study from judges, the Wyoming bar, and the legal community. The success of our pilot study was greatly enhanced by the collegial and professional atmosphere created by the volunteer members of the committee and the local bar.

The local committee was asked to research aspects of gender bias and sexual harassment and their possible impact upon:

- A. Court administration;
- B. Courtroom environment and the dynamics of the treatment of litigants, witnesses, and attorneys;
- C. Court employment including appointment, hiring, and advancement; and
- D. In-service training available on gender issues to assist court employees, judges, and attorneys in understanding both the systematic impact of gender issues upon the court system and, generally, in the context of the workplace.

Interviews were conducted with twenty-six attorneys, fifteen women and eleven men, all of whom worked regularly or daily with the federal court system. The district judge chair chose not to participate in the attorney interview process because he thought his presence would stifle criticism, and the interviewees were otherwise assured of anonymity throughout the data collection process.

After reviewing the notes from the interview teams, it was clear that all interviewees had expressed confidence and trust in the judges and court employees with whom they interact. There were no reported instances of sexual harassment and few instances of perceived gender bias. All instances of perceived gender bias were viewed by the interviewees as unintentional, and perhaps could best be expressed as "old fashioned gentlemanly conduct" which was not offensive in nature. The research suggested that gender bias was not a major problem in the District of Wyoming. Indeed, many of the attorneys with wider-reaching practices suggested that the federal courts in the Tenth Circuit were consistently sensitive to the issue. A substantial number of practitioners commented on the meaningful progress in gender equity in the past ten years and how fortunate they felt practicing law in the collegial atmosphere of the District of Wyoming.

In addition to the attorneys interviewed, sixty-two questionnaires were mailed to the homes of Wyoming federal court employees. A total of eighteen anonymous questionnaires, a response rate of thirty percent, were returned. No critical areas of concern were discussed in the responses. A number of employees noted that they would like to have opportunities for formal training, but asked that the curriculum be broadly based on issues of diversity and sensitivity rather than limited to gender and sexual harassment. These employees noted that concerns similar to those identified around gender existed in the areas of age discrimination and cultural differences.

With this information in hand, the local committee then published a written report which addressed the objectives of the Tenth Circuit Gender Bias Task Force.¹ The Task Force's stated objectives were to:

A. Establish and publish a policy prohibiting gender bias and sexual harassment which will apply to all federal courts within the Tenth Circuit Court;

1. Parties interested in obtaining a copy of the Tenth Circuit Gender Bias Task Force Report should contact Gary Wente at the Tenth Circuit Court of Appeals, Byron White United States Courthouse, 1823 Stout Street, Room 109L, Denver, Colorado 80257.

B. Develop programs designed to address any gender bias and sexual harassment that may exist within the Tenth Circuit federal court system, including an effective reporting system;

C. Issue a report of the results of all of the local study committees; and

D. Evaluate the effect of the report and remedial programs five years after the final report is issued.

Shortly after the Wyoming study committee issued its final report, Congress moved to curtail national funding for gender bias studies. Because the goals of the Tenth Circuit Task Force were largely educational in nature (and court employees had noted that concerns similar to those identified around gender existed in the areas of age discrimination and racial and ethnic differences), the Judicial Council moved to combine the Gender Bias Task Force and the Committee on Race and Ethnic Bias. The new consolidated Gender, Race and Ethnic Bias Committee continued its efforts to develop clear policies, reporting procedures and educational materials with volunteer judges and court personnel.

The first task of the new Tenth Circuit Gender, Race and Ethnic Bias Committee was to review the Model Employment Dispute Resolution Plan ("Model EDR Plan") adopted by the Judicial Conference of the United States in March 1997. The Model EDR Plan approved by the Judicial Conference attempted to provide rights and protections to employees of the United States courts which are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995 ("CAA").² The CAA applied various federal workplace laws to Congressional employees. One of the legislative provisions of the CAA required that the Judicial Conference of the United States prepare a report, for submission to Congress by the Chief Justice, regarding the application of eleven workplace laws to the Judicial branch. These workplace laws are:

2. 2 U.S.C. §§ 1301-1438 (1997).

- (1) The Fair Labor Standards Act of 1938 (29 U.S.C. § 201 *et seq.*);
- (2) Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*);
- (3) The Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*);
- (4) The Age Discrimination in Employment Act of 1967 (29 U.S.C. § *et seq.*);
- (5) The Family and Medical Leave Act of 1993 (29 U.S.C. § 2611 *et seq.*);
- (6) The Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*);
- (7) Chapter 71 (relating to Federal service labor-management relations) of Title 5, United States Code;
- (8) The Employee Polygraph Protection Act of 1988 (29 U.S.C. § 651 *et seq.*);
- (9) The Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 *et seq.*);
- (10) The Rehabilitation Act of 1973 (29 U.S.C. § 701 *et seq.*); and
- (11) Chapter 43 (relating to veterans' employment and reemployment) of Title 38, United States Code.

The Tenth Circuit Gender, Race and Ethnic Bias Committee reviewed the Model EDR Plan and the existing Equal Employment Opportunity Plan which had been in effect since 1982. Because many of the reporting procedures and protections of the two Plans related to the goals of the Gender, Race and Ethnic Bias Committee, the Committee drafted a unique Consolidated Equal Employment Opportunity/Employee Dispute Resolution Plan ("Consolidated EEO/EDR Plan") that also incorporated suggestions made by the Wyoming Study Committee.

In October 1997, the Judicial Council of the Tenth Circuit approved this circuit-wide Model Consolidated EEO/EDR Plan. The Consolidated Plan was approved by the judges of the Tenth Circuit Court of Appeals and is now being considered for adoption by district and bankruptcy courts throughout the circuit.

Our circuit-wide reporting, counseling, and remediation procedures for workplace disputes (including gender bias and sexual harassment) are now clearly-stated. Innovative counseling procedures now exist for addressing and resolving issues of alleged sexual harassment and gender bias, as well as other employment and workplace disputes. These procedures are available to all court employees and applicants and include professional mediation and judicial review. Circuit-wide training for judges and court personnel will be held in April 1998, and formal implementation of the Consolidated EEO/EDR Plan will occur on June 1, 1998.

The Tenth Circuit Gender, Race and Ethnic Bias Committee will continue to address bias issues that affect judges, court employees, and attorneys. The courts, local bar, and legal community continue to view ongoing education and training as necessary and beneficial. The Committee will seek input from local committees of judges, practitioners, and court personnel and will use this information to suggest program topics for the upcoming Tenth Circuit Judicial Conferences. We will also focus on identifying and bringing to our various federal courts training programs addressing both gender and sexual harassment.