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An appeal for more women on the 8th Circuit bench

by [Barbara L. Jones](#) Associate Editor

Local group seeks greater gender diversity; currently only one woman sits on circuit's appellate bench

Thirteen years ago, a gender-bias study of the 8th U.S. Circuit Court of Appeals found that, with only one woman on its bench, the court was lagging behind the times in terms of gender diversity. Nine judges have been appointed to the court since then — and all of them have been men.

With 11 active and six senior appellate judges now serving on the 8th Circuit bench, 16 out of 17 are men. Diana E. Murphy — appointed in 1994 and still an active judge — remains the only woman ever appointed to have served on the court's bench in its 117-year history.

Murphy was the organizer of the Eighth Circuit Gender Fairness Task Force, the entity that studied the impact of gender in the circuit in the mid-1990s. Among the task force's recommendations was that "court employment units should take identifiable steps to ensure equal opportunity for advancement by women into management and supervisory positions within the court units."

Nonetheless, appointments of males to the bench have outpaced female appointments in all the circuits. This lack of progress for women has occurred despite a wave of task forces that have examined gender bias in both state and federal courts.

The phenomenon has not gone unnoticed, and some women lawyers in Minnesota have decided that the time has come to address this issue. They have formed The Infinity Project, which has as a mission increasing the gender diversity of the 8th Circuit's bench in order to ensure the quality of justice at the court. (The group gets its name from the ongoing nature of its work and from the similarities of the infinity symbol and the number eight.) The founders of the Infinity Project are Lisa Brabbit, an assistant dean at the University of St. Thomas School of Law; Marie Failing, an associate dean at Hamline University School of Law; Minneapolis attorney Mary Vasaly; and Sally Kenney, the director of the Center on Women and Public Policy at the Humphrey Institute at the University of Minnesota.

"It was our feeling that it was time to raise this question and jump start the process," Failing said. "It seemed incongruous with our Minnesota state court bench." (The seven-member Minnesota Supreme Court, for example, currently has two women. At one time in the 1990s, the Supreme Court had four women members, making it the first state high court in the country to have a majority of female justices. The Minnesota high court also was led by a female chief justice, Kathleen Blatz, from 1998-2006.)

Vasaly said that with women well-represented on the Minnesota courts, the bar had become rather "complacent" and didn't focus on the fact that the 8th Circuit appellate bench has only one woman member — ever. But, with nearly a decade and a half now having elapsed since Murphy's appointment, "we decided to do something rather than wait for change," Vasaly said.

Public trust and confidence in the courts is enhanced if the court is balanced in a variety of ways, including gender, Vasaly said, adding that gender diversity also brings an important perspective to the court. "It's a subtle thing. I think the court will be better able to evaluate cases if they have different experiences on the bench," she said.

Kenney believes the importance of gender balance on the court is self-evident. "Surely by now the burden of proof should be on why we shouldn't have half women on the court," she said. She pointed out that the court has geographical diversity with judges drawn from the states that make up the circuit, and added there's no reason not to have gender representation as well as state representation.

The group will pursue three initiatives to advance its core mission:

- Create public awareness of the importance of gender equity on the bench and the availability of qualified women candidates;
- Engage senators and other politicians on the issues of gender equity and the need for appointment of a female 8th Circuit judge; and
- Serve as a clearinghouse for candidates who have indicated an interest in serving on the 8th Circuit bench. (However, the Infinity Project will neither advocate for particular candidates nor screen candidates to determine whether they are qualified to serve.)

"Our purpose is to get ready. We want to be ready [when an opening comes up]," Failing said.

To that end, the group has divided into four sub-groups: one to focus on gaining support from other organizations; one to focus on how to create a pipeline for qualified candidates so that they can be brought to the attention of influential people when the decision is made; one focused on education of the public and the bar; and one to coordinate the groups that have been organized in each state in the 8th Circuit to advance the mission.

The state groups will meet on Oct. 17 at the University of St. Thomas for a kick-off event including workshops and a keynote address. Chief Judge Judith S. Kaye of the New York Court of Appeals has been invited to deliver the keynote.

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Infinite choices

The Infinity Project's goal has the support of the leaders of two key federal bar groups.

Minneapolis attorney Steven Rau, president of the Federal Bar Association, said, "Given the representation of women on the state court bench as well as the federal District Court bench, it's astonishing that Diana Murphy is the only female of the 8th Circuit."

Minneapolis attorney Thomas Boyd, head of the 8th Circuit Bar Association, said that it is appropriate to make sure the concerns of women are brought to the attention of those who are responsible for the appointment of judges.

"It's analogous to having fair representation geographically. It's not a matter of excluding men, but taking steps to make these opportunities for public service available to women," he said. "There are so many qualified women attorneys whom I hope would be interested."

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