Now that Trump has won the presidential election, we are hearing concerns and fears from many same-sex couples who are concerned that their marriages may be challenged or invalidated. We are also hearing from couples who are not yet married, but worried that they may lose the right to marry under a Trump administration.

While there are many reasons for concern about the new administration, the freedom to marry—and the security of our existing marriages—are not in serious jeopardy.

There is no realistic possibility that anyone's marriage will be invalidated. The law is very strong that if a marriage is valid when entered, it cannot be invalidated by any subsequent change in the law. So people who are already married should not be concerned that their marriages can be taken away. To the contrary, it is important that they continue to live their lives as married couples. If you or anyone you know encounters any problem with your marriage being fully respected, contact NCLR or another LGBT legal group immediately.

For individuals who are not currently married but who may wish to marry in the future, it is also highly unlikely that the fundamental right of same-sex couples to marry will be challenged or that the Supreme Court would revisit its 2015 holding that same-sex couples have that fundamental right.

The doctrine of stare decisis—which means that courts generally will respect and follow their own prior rulings—is strong, and the Supreme Court rarely overturns an important constitutional ruling so soon after issuing it. In addition, even the appointment of an anti-marriage equality justice to replace Justice Scalia on the Supreme Court would not jeopardize the Supreme Court's 2015 ruling on marriage equality, and the great majority of Americans still strongly support the freedom of same-sex couples to marry.

In short, undoing marriage equality would be extremely difficult.

Originally printed by the National Center for Lesbian Rights

Shannon Minter, Esq.
NCLR Legal Director
We are very excited at SOGI to be presenting you with the Stonewall Award. If you can tell us more about your story, you have some quite unusual things about you: openly gay judge, woman of color who also happens to be in Dallas, Texas and an elected judge. . . . I find your background fascinating. Tell me more about your experience and how you got to be where you are.

HTP: Thank you again for the opportunity to visit with you. It is nice to have someone be interested in the path that I have traveled and certainly in connection with the Stonewall Award. As you know from the review of my bio materials, I practiced law for over a decade before running for public office and this bench in particular. During the course of my practice, there was a period of time where I was not open and authentic with everyone about what I refer to as my relationship orientation.

I use that term [relationship orientation] instead of sexual orientation because I think it contributes to the problem that members of the LGBT community face of being put into a box. Too often people are placing attention on one aspect of who we are versus looking at us in our totality. I was a communications major in college, and language is very important to me. So I stopped using the term sexual orientation some time ago in favor of the term relationship orientation; I think that is a more fair way to characterize our orientation. It is not just about sexuality, but it is how we relate to people on many different levels. Throughout the interview I will probably use that term . . .

I like the term.

HTP: There was a period where I was not able—well I felt that I was not able—to be open and to live an authentic life in terms of sharing . . . widely my relationship orientation, and that was a very difficult period of my life. To have to have a different existence publicly than the one that you have privately is something that I wouldn’t wish on anyone.

Early on in my career, I went on a fellowship to Europe, and I was on that fellowship for an extended period of time. While I was there, I had a lot of time alone because the fellowship required us to travel to several different countries in Europe during a period of a little less than 30 days. So we were on planes and in airports a lot. During that time, I made the decision that when I returned to the United States; I would endeavor to live a whole life, an authentic life, and an integrated life. So, I did that.

It was difficult in the sense that it’s hard to get people on board with the fact that you have not been able to share everything about yourself with them. You go through those experiences of trying to get people who had been a part of your life on board fully. Going through that process, people came up to me, and shared with me as well. It hit me one day, “Gosh, there are a lot of lawyers in the LGBT community, and it’s important that we be open and accessible to one another so that we have the support group.” I later came to appreciate how critical living an authentic life is in the journey toward full equality in all respects.

Several years later, I decided I wanted to run for public office. As you alluded to in your opening remarks, I paused to consider how it might play with the public, the fact that I am a member of the LGBT community and an African-American female. Once I started testing the water, I found that we have an extremely open community here in Dallas, the political community in particular. It is extremely open and accepting of people from every facet of life. We have a very strong Stonewall Democrats chapter in Dallas County that really vets candidates seeking office in Dallas County to assess the extent to which they accept and embrace folks across the spectrum. As I got out there, I quickly realized it was really going to be ok. I had no idea that I was going to be the first openly gay, African-American elected official in the state of Texas. That never entered my mind.
Someone brought the reported fact up to me probably a year after I had been on the bench.

That’s the intro on how I came to do this and … the thought that I gave to doing it from this standpoint. Ultimately, I was persuaded that I had had the kind of career where the legal community would say, “We think she can be a good judge, and we’re not interested in discriminating against her on the basis of her relationship orientation….we want to focus on the things we know about her as a lawyer and how we think that’s going to translate to the courtroom. Fortunately, that’s what people did and how I got the opportunity to do this job I love.

I must point out that you have very, very high approval rating, so you are doing a very good job, and people respect what you do very much.

HTP: Thank you for that compliment. Certainly, I was very humbled by the public’s response to the effort I give in preparing for and presiding over the docket each day.

The other part of my response was the feeling that, maybe, I had really done something for lawyers of color, women lawyers, and LGBT lawyers that would open the door that much wider for them to have opportunities to serve in the judiciary. I think that’s what really bowled me over, the idea that my service could lead the way for others to serve because people will see what can be missed when people are discriminated against on the basis of immutable characteristics. If the public would have done that, I would never have gotten a chance to serve. That’s what those poll ratings mean to me more than anything.

I’m going to ask the elephant in the room question. You came to national attention when in 2012 you decided you were not going to marry any straight couples from your courtroom. The reaction you had from that . . . was . . . well, if you just google your name . . .

HTP: It’s funny that you bring that up because on October 28 [2016], I gave a local TEDx talk. The title of the TEDx talk is “Lessons in the Label.” It was the first time I spoke publicly about that whole experience in 2012.

The way that it came about was through a speech I gave at a Stone continued on page 12
Two SOGI Commissioners selected for Ms. JD Mentor Program

This past year, the American Bar Association’s ("ABA") Commission on Sexual Orientation and Gender Identity ("SOGI") was pleased to learn that two of its Commissioners, Mr. Victor Marquez and Ms. Elvia Rosales-Arriola, were nominated for, and accepted, roles as Mentors in the 2016-17 Ms. JD Fellowship Program. Mr. Marquez, an immediate past SOGI Commissioner, is Principal of the Marquez Law Group based in San Francisco, CA. Ms. Rosales-Arriola, a current SOGI Commissioner in her third year of service, is a Professor Emerita of Law at Northern Illinois University.

Ms. Marina Gatto, Ms. JD Fellowship mentee (left) and Mr. Victor Marquez, Ms. JD Fellowship mentor (right) at the ABA Commission on Women's 2016 Margaret Brent Awards Luncheon at ABA 2016 Annual Meeting, San Francisco, CA, Aug. 7, 2016.

By way of background, Ms. JD is a “non-profit, nonpartisan organization dedicated to the success of women in law school and the legal profession.” Each year, Ms. JD offers countless opportunities for women to learn about and gain experience in the legal profession, provides exposure to educational, networking, and leadership opportunities, and hosts a multitude of programs, including its Fellowship Program. Ms. JD explains its Fellowship Program, as follows,

In conjunction with the ABA’s Commission on Women in the Profession’s [Margaret] Brent Award, Ms. JD selects up to 20 second year law students as Fellowship Winners. In addition to receiving financial support and invitation to ABA and Ms. JD events, Ms. JD matches the law students with mentors from among the Commission’s alumnae of commissioners and Margaret Brent Award Winners. The one-year program is designed to foster a commitment to excellence in a new generation of women attorneys, inspired by the generation of trailblazers who paved the way for their success.2

During the MS. JD Fellowship Program selection process, Ms. JD reported that they had a record level of mentee-applicants who expressed interest in LGBT law and issues. It was a natural fit, then, for SOGI Commission leaders like Mr. Marquez and Ms. Rosales-Arriola, who have unique and dynamic backgrounds in LGBT advocacy and rights, social justice, and leadership and education, to be nominated and selected as mentors for the Ms. JD Fellowship Program.

For example, in addition to Mr. Marquez’s role as an immediate past SOGI Commissioner and 2016 recipient of the ABA’s Spirit of Excellence Award, Mr. Marquez is also a former president of the Hispanic National Bar Association (2007-2008), and the first openly gay person to lead the organization. Mr. Marquez was paired with Ms. JD mentee, Ms. Marina Gatto. Of her experience in the Ms. JD Fellowship Program, Ms. Gatto explained her excitement of being paired for Mr. Marquez,

It is an honor to be paired with such a passionate and visionary mentor who has worked tirelessly to diversify the legal profession, and to make it more inclusive for future lawyers like myself. Victor inspires me to continue to pursue my goals and personifies what it means to be both an incredible lawyer and a dedicated activist, and I hope to follow in his footsteps in my future career.

Similarly, in addition to her role as Professor Emerita of Law at Northern Illinois University, Mr. Rosales-Arriola is also the Executive Director of Women On the Border, Inc., based in Austin, TX. Women On the Border is a non-profit organization dedicated to advancing awareness of the impact of NAFTA on women in the global factories at the U.S.-Mexico border known as “maquiladoras.” Ms. Rosales-Arriola was paired with Ms. JD mentee, Ms. Katherine MacRae. Of her mentor-mentee relationship with Ms. MacRae says,

Elvia has been a phenomenal mentor. Not only does her work for minority communities inspire me to take a more active role in my community, but her words of encouragement to “follow my heart” could not ring more true today.

continued on page 10
Transgender Rights Under Trump—What Now?

In the wake of the elections, transgender people across the country are struggling to understand what the future may hold for our communities.

In the past two decades—and especially in the past eight years under President Obama—we have made so many gains in employment protections, health care, student rights, family law, asylum, federally funded housing programs and homeless shelters, and other areas. In addition, President Obama has protected federal benefits programs and made health care accessible to millions of previously uninsured people, as well as increasing funding for HIV-related services.

What does the future hold under President Trump?

I remain optimistic that we will not see major rollbacks of the gains transgender people have made in the past two decades. Many of those gains are based on federal civil rights statutes and federal court precedent, which cannot be quickly undone. I am also optimistic that the U.S. Supreme Court will affirm that Title IX protects transgender students in the case now pending before them. Many states have also enacted policies and laws protecting transgender people, and social acceptance has reached a critical mass that will only continue to grow. There is much for our country to fear from the incoming administration, but there is no immediate reason to believe that transgender people will be a particular target, though certainly we may lose some executive agency protections and will no longer have a strong champion in the White House.

I am most deeply concerned about the impact of heightened deportation on undocumented transgender people, many of whom have fled life-threatening situations. I am deeply concerned about transgender people on Medicare and Medicaid, and transgender people living with HIV, as proposals to privatize and cut back on these public benefits proliferate in the Republican Party. Many transgender people in this country are living in poverty and hanging by a thread. Any further erosion of our nation’s already paper thin safety net will be devastating for many transgender people who have been pushed to the margins of our society. There is also reason for concern about an escalation of police violence against transgender people, and particularly transgender women, including those who are engaged in survival sex work, and women of color who face race-based profiling and brutality, both from police and others.

It is distressing to see the far right’s elevation of issues around transgender people and restrooms eclipse these broader issues. Like others in our country, transgender people want to be able to live safely, to be able to work and have access to decent healthcare, and to be able to live with dignity. We don’t want to be in the crosshairs of a trumped up culture war.

In the months ahead, it is critical that we join with others to resist any attempts to escalate the deportation of undocumented people, including preserving and expanding the number of sanctuary cities. We must hold the new president accountable to his promises not to cut Social Security, Medicaid, or Medicare benefits. And we must push hard for continued and expanded funding of services for people with HIV and for continued access to inclusive and affordable health care.

Transgender people have been used by some on the right—including the new Vice-President-elect Pence—as a wedge to divide and distract our country. Although we are a small group, we have an important opportunity now to use that visibility in positive ways—by joining with others in a newly energized multi-racial, multi-issue movement for health, dignity, and justice for all.

Originally printed by the National Center for Lesbian Rights

Shannon Minter, Esq.
NCLR Legal Director
Supreme Court To Decide Transgender Sex Discrimination Case

The Supreme Court may finally resolve this year whether federal laws that prohibit sex discrimination protect transgender people. G.G., a Virginia high school student, was assigned female at birth but identifies as male. He legally changed his name, has facial hair, a deep voice and other male secondary sex characteristics, and lives as male. G. uses the men’s restroom in all public venues, like restaurants, libraries, and shopping centers.

G. and his mother met with the school at the beginning of his sophomore year to explain his transition and that he would be attending school as a male student. At first, G. chose to use a restroom in the nurse’s office, but the location was inconvenient and using a separate restroom singled him out as different from his male peers. G. started using the boys’ restrooms with the principal’s permission and had no problems with his fellow students.

Some adults in the community were upset when they learned a transgender boy was using the boys’ restroom at school and petitioned the Gloucester County School Board to ban G. from using the boys’ restrooms. The School Board eventually issued a policy prohibiting school administrators in the county from allowing transgender students to use facilities consistent with their gender identity. The policy does not require G. to use the girls’ restrooms. Instead, schools are to provide alternative separate facilities for transgender students.

G. continued using the restroom in the nurse’s office but the public debate about his gender identity and which restrooms he is allowed to use has been humiliating. G. has testified that being forced to use separate restrooms sets him apart from his peers and serves as a daily reminder that the school views him as different. Because of this stigma and exclusion, he has suffered emotional and physical harm.

Title IX of the Education Amendments Act of 1972 protects students from “being excluded from participation in” or “denied the benefits of” any educational program or activity “on the basis of sex” (20 U.S.C. § 1681(a)). Title IX’s regulations permit schools to maintain separate toilet, locker room and shower facilities on the basis of sex, but the facilities provided for students of one sex must be comparable to the facilities provided for students of the other sex (34 C.F.R. § 106.33). The U.S. Department of Education enforces Title IX and issued an opinion letter, declaring that the school must treat transgender students like G. consistent with their gender identity. The opinion letter was consistent with other DOE guidance interpreting that Title IX protects transgender students from discrimination.


The Supreme Court stayed the injunction and granted the certiorari petition on two issues:

Whether courts should defer to an unpublished letter from an administrative agency, like the Department of Education’s opinion letter in this case, issued while the continued on page 10
Model Rule 8.4

After more than two years of intensive drafting and negotiation with entities, both from within and outside of the American Bar Association, the ABA House of Delegates voted overwhelmingly to make it an outright violation of the ABA Model Rules of Professional Conduct (MRPC) for a lawyer to engage in conduct “that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.”

The resolution, which amended the Model Rule 8.4, was sponsored by the ABA’s Standing Committee on Ethics and Professional Responsibility, the Section of Civil Rights and Social Justice, the Commission on Disability Rights, the Diversity & Inclusion 360 Commission, the Commission on Racial and Ethnic Diversity in the Profession, the Commission on Sexual Orientation and Gender Identity, and the Commission on Women in the Profession.

SOGI Chair Mark Johnson Roberts was the first to speak in favor of the Resolution. Mark mentioned that he was passed over by a law firm hiring committee as a new lawyer 28 years ago because he is gay. He focused his remarks, however, on a story about a young, female colleague who was groped by an older male opposing counsel at a holiday party. After she fled the scene, the man followed her and asked “in the crudest possible terms” about what sexual activity she might be planning with her husband that night.

The woman went to her bar association to file a complaint, only to discover that the man’s behavior violated no ethics rule—unless he had been convicted of a crime. Despite concerns that she’d never work in her field again if she prosecuted, Roberts said, she filed a police report.

“Now the opposing counsel has a criminal conviction,” said Roberts. “So be careful what you wish for when you say [victims] should pursue criminal remedies first.”

Since the House adopted the amendments to Model Rule 8.4, the Policy Implementation Committee in the Center for Professional Responsibility has begun working with states to get the new version of the rule adopted. Currently, 25 jurisdictions have already adopted an anti-discrimination provision in their black letter Rules of Professional Conduct.

Adoption of the rule is currently being consider by the Illinois Supreme Court, the Montana Supreme continued on page 15
SOGI Liaison Highlight

What is your name?
MM: Matt Mecoli

What is your position with SOGI (years and organization of orientation)?
MM: This is my first official year with SOGI as the co-Liaison from the Law Student Division.

How many years have you been involved with the ABA?
MM: I’m coming up on my third year of being involved with the ABA. I spent my first year as the 3rd Circuit Governor on the Board of Governors for the Law Student Division.

What is your day job (if student, what school and year)?
MM: I’m a 2L at Drexel’s Kline School of Law.

Other than ABA SOGI, with what other organizations are you involved?
MM: I’m actively involved with founding a nonprofit in my home city of Philadelphia that hosts events around the city for LGBT individuals, particularly in traditionally under-represented communities.

Why did you seek / accept the SOGI Liaison position?
MM: SOGI was recommended to me by both of the former liaisons as the best group in the entire ABA. I’m happy to say their recommendations were well-founded.

On what SOGI Committees do you currently serve?
MM: I serve on the Advocacy Committee.

In what SOGI project are you most interested?
MM: I’m working with the Anti-Bullying Roundtable on a project that will hopefully launch within the next few months. The new project will provide resources to students, educators, and advocates on the legal rights and recourses available to LGBT students. This should provide a manifestation of the excellent work done by the Anti-Bullying Roundtables thus far.

What has surprised you the most about the work that SOGI does in the bar and / or community?
MM: The level of hard work and dedication demonstrated by the members of SOGI is only surpassed by their concern and care for one another. It is a small family, and I have been honored to be one of its members.

One of the first things you worry about when you find out you’ve been appointed to a liaison position as a law student is whether or not your relationship with your new entity will be a productive and meaningful one. Will they care about law student input? Will they need you to be involved?

In my experience with the law students in the ABA, particular as the former 3rd Circuit Governor, I found that the law student who choose to be involved with the ABA, overwhelming do so out of a genuine desire to improve the profession for the law students of today and the lawyers of tomorrow.

So here I was, hoping that there would be a place for me with the Commission on Sexual Orientation and Gender Identity. I was hoping to make a difference and hoping there was work to be done. And SOGI answered that call, as it always does. Through a tumultuous year for the LGBT community, SOGI has always striven to do more to ensure that the rule of law protects that community.

What is your originating organization doing in terms of SOGI-relevant issues?
MM: The Law Student Division takes a progressive stance on most issues involving diversity, including those related to sexual orientation and gender identity. Just last year, the Assembly passed a resolution endorsing the changes to Model Rule 8.4 and a resolution adding gender identity and expression to the non-discrimination language of our Division’s bylaws, both of which were authored by myself and my co-liaison, Nathan Bruemmer.

How do you think SOGI can work to support your originating organization?
MM: The best way SOGI can work to support the Law Student Division is to ensure that they remain a resource and a partner to the members of the Division’s leadership when embarking on diversity projects.

Again, these are just a starting off point to help our readers understand how our Liaisons work, where they come from, and how we can build off of those relationships. I welcome your thoughts

MATT MECOLI
Law Student Division Liaison
Last fall, ABA Section of International Law’s (SIL) Sexual Orientation and Gender Identity Network (GIN) invited SOGI Director Skip Harsch to speak on an Ally Toolkit panel in Tokyo for the Section of International Law’s Fall Conference. What was originally supposed to be CLE on the SOGI Toolkit for the Conference but, trip and the experience became so much more and was truly amazing.

Japan is on the cusp of LGBT change. An extremely homogeneous society, or at least perceived to be, Japan has been slow to advance the rights of LGBT persons. Much in part due to there being so few ‘out’ people in the professional environment. However, this seems to be changing. Last year lawyers from top-tier domestic and international firms created the LGBT Lawyers and Allies Network (“LLAN”). A first of its kind legal group in Japan. ABA staff from the Rule of Law Initiative (ROLI) introduced GIN leadership to LLAN leaders which in turn led to my introduction. Two members from LLAN were also invited to speak on the Ally Toolkit panel. Through working with these individuals in preparing for the panel I was offered another speaking opportunity. One that would present the SOGI Ally Toolkit to attorneys, HR staff, and others from top Tokyo law firms and corporations.

The night of my arrival was LLAN’s first ever Equality Gala. In attendance were both ABA President Klein and Immediate Past President Brown, Betsy Anderson from ROLI, the Hon. Justice Kirby (former Justice of the High Court of Australia), ABA SIL Chair Sara Sandford, and past ABA GIN leaders Kirstin Dodge and Joseph Smallhoover. It was like watching history unfold. For the first time LGBT Japanese professionals were discussing and celebrating being out in the work place. But it also was sobering. I realized that Japan has a long way to go. Many attendees were quick to point out that they were not members of LLAN.

The day after the Gala was the presentation of the SOGI Ally toolkit to more than 50 attorneys, HR staff, and others. The event was hosted by Nishimura & Asahi. Again, this was a first of its kind for Tokyo and Japan. While many corporations and firms have done internal diversity training, this was the first time individuals were gathered together to learn about LGBT Ally training. Our panel did a fantastic job relating the aspects of the toolkit in to Japanese culture. Additionally, many of our materials were translated in to Japanese. Possibly a good start to the International Ally toolkit. Again, I learned much from this presentation. Many of the ideas and exercises were new to the attendees. And some they may just not be ready for.

Friday was the SIL conference panel. It was a wonderful opportunity to present the SOGI Ally toolkit and SOGI’s work on Model rule 8.4. But what was truly enlightening was to hear from three Japanese professionals about the state of LGBT rights in the professional context and as it relates to marriage equality. Speaking of which, LLAN also prepared and published a Foreign Law Report on Equal Marriage. The report included a letter from Immediate Past President Brown as well as information on all of the LGBT policies and resolutions passed by the ABA.

It is my hope that SOGI can build upon these events and opportunities and continue to be a valuable resource for LLAN and the LGBT people of Japan moving forward. With the help of ROGI and other potential external organizations we are poised to be able to help Japan’s LGBT individuals in a very positive way.

Skip Harsch
Director of SOGI
Ms. JD Mentor Program
continued from page 4

Elvia’s kindness and commitment to helping me find my path, which will in turn help those who are vulnerable, speak volumes about her mentorship and leadership. I count myself lucky to have a mentor who understands the challenges and opportunities facing a member of the LGBTQ community and am honored to be her mentee.

SOGI applauds the dedication of Mr. Marquez and Ms. Rosales-Arriola to not only the LGBT community, but also to the self-less devotion of their time and resources to the development of the profession’s next generation of lawyers. In fact, SOGI is very proud of all of the fantastic work its Commissioners are doing as mentors and leaders in educating the professional and public about the barriers that LGBT persons face within the legal profession and the justice system. SOGI would like to also thank Ms. JD for the opportunity and platform for our SOGI Commissioners to engage and support the next generation of leaders.

Supreme Court
continued from page 6

case is pending before the court.

Whether the DOE’s interpretation of Title IX and its regulation should be given effect?


Under the Court’s original briefing schedule, the School Board’s merits brief was due mid-December, 2016 and G’s brief was due mid-January, 2017, before the inauguration of President-Elect Trump. The Court extended the briefing schedule and now the School Board’s brief is due January 3, 2017 and G’s brief is due February 23, 2017. The new administration won’t be able to write and file a brief supporting the School Board, but the government could reverse its position supporting G. before G’s brief is due. In addition, the case will likely be set for oral argument during the Court’s March or April sitting, by which time the Court could have its ninth justice, replacing the late Justice Antonin Scalia.

The Court’s decision in this case may affect more than which restroom G. is entitled to use at his high school. Title IX’s prohibition of sex discrimination in education is similar to the prohibition of sex discrimination under other federal laws, including Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination in employment (42 U.S.C. § 2000e et seq.). The U.S. Equal Employment Opportunity Commission (which enforces Title VII) has interpreted Title VII to mean that sex discrimination includes discrimination against transgender individuals and on the basis of gender identity or gender expression since at least 2012. Other federal agencies have issued guidance and regulations interpreting sex discrimination to cover discrimination on the basis of gender identity or expression, including the Department of Justice, the Department of Housing and Urban Development, the Occupational Safety and Health Administration, and the Office of Personnel Management.

If the new administration changes position on DOE’s interpretation of Title IX, the Court could remand the case back to the lower courts for reconsideration. Or, with or without deferring to DOE’s interpretation, the Court could decide this question in a way that clarifies the law for all transgender people. The First, Sixth, Ninth, and Eleventh Circuits have all recognized that discrimination against a transgender individual based on that person’s transgender status is sex discrimination under the federal civil rights statutes and the Equal Protection Clause of the Constitution (Glenn v. Brumby, 663 F.3d 1312, 1316–19 (11th Cir. 2011); Smith v. City of Salem, Ohio, 378 F.3d 566, 573–75 (6th Cir. 2004); Rosa v. Park W. Bank & Trust Co., 214 F.3d 213, 215–16 (1st Cir. 2000); and Schwenk v. Hartford, 204 F.3d 1187, 1201–03 (9th Cir. 2000)). A decision in this case is unlikely before late Spring, 2017, but this is a case to watch.

ANNA POHL
Liaison, Section of Labor and Employment

For more information about SOGI and the work it is doing in the law and society, please check out our web-site at http://www.americanbar.org/groups/sexual_orientation.html.

COURTENAY R. DUNN, ESQ.
SOGI Commissioner

Endnotes
2. See http://ms-jd.org/programs/.
Call for Nominations for the

2018 ABA STONEWALL AWARD

Deadline is Friday, June 9th, 2017
(Close of Business 6:00 pm, ET)
The Award will be presented at the ABA Midyear Meeting in Vancouver, British Columbia

The ABA Commission on Sexual Orientation and Gender Identity (SOGI) is accepting nominations for the 2018 ABA Stonewall Award. SOGI has worked hard to help secure full and equal access to and participation in the ABA, the legal profession and the justice system for lesbian, gay, bisexual and transgender persons (LGBT) through educational efforts, policy development, collaboration with leaders in the profession, and other activities, such as CLE programs, and advocacy.

ABOUT THE AWARD

The Award is named after the Greenwich Village Stonewall Inn riot of June 28, 1969, which was a turning point in the struggle for gay, lesbian, bisexual, and transgender civil and human rights equality. Achieving greater diversity in the legal profession depends upon recognition of the contributions of individuals from many different backgrounds, including those people of varying sexual orientations and gender identities. The purpose of the Award is to recognize those lawyers, members of the judiciary and legal academia who have effected real change to remove barriers on the basis of sexual orientation, gender identity or gender expression in the legal profession and the world, nation, state and/or locale, and to recognize those who have championed diversity for the LGBT community, both within the legal profession and impacting the greater human universe.

For more information, including the nomination form and instructions, please visit:
http://www.americanbar.org/groups/sexual_orientation/stonewall_award.html
Hon. Tonya Parker
continued from page 3

wall Democrats meeting. The president of the club had invited me to talk with them about my first year on the bench. My first year on the bench was in the year 2011, having been elected in November 2010.

I went to their meeting in February 2012 and gave a 20-25 minute presentation on the things that I had done in the first year on the bench to turn the court around, because the court was in really horrible shape when I inherited it. I talked to them about policies we had changed and instituted and some of our accomplishments, such as trying a significant number of the oldest cases on the docket to reduce the backlog. At the conclusion of my remarks, I addressed a question that I had frequently gotten as to whether my being a member of the LGBT community ever had an impact or any bearing on the work that I do as a judge. I related that it, of course, does not impact the way that I make legal decisions. I make an effort every day to make decisions based on the law in a particular case without regard to who is standing in front of me in that way. Then, I explained that I did not exercise my privilege to officiate marriage ceremonies because I could not do so equally for all couples who desired to be married.

It wasn’t lost on me that while that is a privilege of my office; it is a privilege that I enjoy under color of law. There was something in me that felt it was wrong for me to exercise that privilege for one group of people when I could not exercise it equally for same-sex couples. I believed in my heart exactly what the United States Supreme Court held in June of 2015: that to do so would be a violation of federal law. That was the reason why I just said I don’t feel comfortable doing this, and I’m not going to do it until I can exercise the privilege equally for all couples. Since the marriage equality decision last year, I have officiated scores of weddings for all types of couples. What’s important is that when that story first broke, people were under the mistaken belief that this was a job duty and that I was engaging in an act of civil disobedience by not doing it. Nothing could have been further from the truth. I am a civil trial judge, and I preside over civil litigation matters. Officiating marriage ceremonies is not a duty of my office, it is not a responsibility of my office; it’s a right and privilege that comes with my office that I get to decide whether to exercise. People did not appreciate that fact initially. I issued a written state-

OUT AND ABOUT: THE LGBT EXPERIENCE IN THE LEGAL PROFESSION

Out and About: The LGBT Experience in the Legal Profession is a collaboration between the American Bar Association Commission on Sexual Orientation and Gender Identity (SOGI) and the National LGBT Bar Association (LGBT Bar). Both SOGI and the LGBT Bar went to great lengths to identify and encourage authors to share their stories. This joint publication is an anthology of first person narrative accounts. These moving accounts introduce new insights and perspectives. Out and About is a primer that will inspire new conversations and shine light where it has not shone before. This unique book is of interest to both LGBT and non-LGBT readers alike.

While developing this book, SOGI and the LGBT Bar sought diversity in all its forms—differing sexual orientation and gender identities as well as differing ages, races, geographic locations, practice settings, law schools, years of experiences, and more. This book’s goal is to promote full and equal participation in the legal profession by persons of differing sexual orientations and gender identities.

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ment explaining this but declined any interviews. I just want to get back to the business of running the court, and that’s what I did.

The truth is, people would have had every right to be upset if I was refusing to perform a duty of my office simply because I didn’t like it or agree with the law. But that wasn’t the case. It was a crazy time . . . I can’t begin to tell you how crazy it was.

I can’t imagine the calls and emails into your office. HTP: My poor Court Coordinator. Her email address is public. To the extent that people wanted to say not so nice things to me, they said them to her.

I can’t imagine what it was like to get that much spotlight, very quickly. HTP: That’s part of the reason why I did the TEDx talk—to have an opportunity to help people understand what that time was like for me and how the event impacts my life even still today. As you mention, if you google “Judge Tonya Parker” that’s still very much a part of what you’re going to get. It was cathartic to go through the process of putting the TEDx Talk together.

Is there anything else that you want the readers of the newsletter to know about yourself? HTP: Two things. First, I want people to understand that I am keenly aware that the best way for me to serve any and every group with which I’m affiliated—the LGBT community, the African-American community, and women lawyers—is for me to do a bang-up job every day. The mission is to give 100% each day, each proceeding. I miss the mark plenty of times, but I want people to know it is not because I am not trying to give my best efforts.

Second, I know that it matters that I’m here, and that I’m open and authentic with the way I live my life. LGBT lawyers get to come into the court room, and, as I mentioned in my TEDx talk, they get to focus on practicing their craft. They don’t have to be preoccupied with whether or not their hair, clothes, [or] mannerisms conform to gender stereotypes. They never have to worry that I’m going to be distracted by any of those things, so they get to do the work that they came here to do for their client. And because my colleagues get an opportunity to walk with me in being a part of my life, I think that it shapes them that much more. They are already amazing people who are open and embrace folks of all different backgrounds, but I do believe that having a lesbian judge as a colleague impacts them a great deal. I hope people really get that my priority is to work hard and serve with distinction so that it continues to be true and the citizens continue to believe there is value in my being here.
According to the National Association for Law Placement, the percentage of lawyers who openly identify as LGBT has been steadily increasing, and is about double that reported in 2002. With more openly LGBT lawyers, and employees generally, there is a greater need for LGBT Ally training.

The HOW TO BE AN ALLY TOOLKIT educates employees about being better allies to their LGBT coworkers. This Toolkit provides law firms, corporate legal departments, companies, and corporations with the materials needed to present a successful training program.

The Ally Toolkit provides a basic framework for understanding LGBT individuals and the unique challenges they often face in the workplace. This training is designed to create dialogue regarding what it means to be an ally via a number of tools and resources including:

☞ An overview of LGBT terminology
☞ The Do’s and Don’t’s of Being an Ally
☞ Employer Best Practices
☞ Roleplaying Scenarios
☞ LGBT Implicit Bias education
☞ Group Discussion and Self-Analysis

With the Toolkit, you can:

☞ Tailor the program to any audience.
☞ Present tools employees can use to measure their implicit bias.
☞ Facilitate discussion of how to handle challenging situations in the workplace.
☞ Customize the program to the format and time allotted.
☞ Offer future readings and learning opportunities.

The HOW TO BE AN ALLY TOOLKIT is a project of the American Bar Association Commission on Sexual Orientation and Gender Identity. For more information, visit ambar.org/ally.
Model Rule 8.4
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Court, and the Disciplinary Board of Pennsylvania. However, there are still many who feel that this rule violates certain constitutional rights. New Hampshire refused to adopt subsection (d) of the ABA’s earlier Model Rule 8.4 on the ground that it would violate attorneys’ constitutionally protected freedoms, stating that “A lawyer’s individual right of free speech and assembly should not be infringed by the New Hampshire Rules of Professional Conduct when the lawyer is not representing a client.” It is unlikely they will consider the new rule any time soon.

And in Texas, a Lubbock state senator lobbied Attorney General Ken Paxton to issue an advisory opinion that adoption of the antidiscrimination rule could be used to target people “for elimination from the legal profession.” In a letter issued on December 6th AG Paxton, unsurprisingly, agreed that the model rule infringes on First Amendment rights to freedom of speech, free exercise of religion and free association, he says, and a court would also likely conclude it is overly broad and void it for vagueness.

Broad adoption of rule Model Rule 8.4 is still up in the air. What is clear is that passage of the rule seems very timely in the legal climate where equal rights and freedom from discrimination are squarely pitted against free speech and freedom of religion.

The full text of Rule 8.4 as amended is available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct.html.

Thank you

The SOGI Commission also wishes to recognize and thank our donors for their generous financial contributions and support. We commend all our donors’ efforts to help achieve full and equal participation in the legal profession by persons of differing sexual orientations and gender identities and applaud their commitment to diversity and inclusion.
SOGI/Diversity Midyear Calendar of Events

Friday, February 5, 2017
10:00 AM – 11:30 AM
CLE - Analysis of the Latino Vote in the 2016 November Election – Trends in Latino Vote
Sponsor: Commission on Hispanic Legal Rights & Responsibilities
Location: JW Marriot Marquis Miami, 5th Floor, Plaza 5

1:00 PM – 2:30 PM
CLE – Batson at 30: A Legacy of Partial Impartial
Sponsor: Commission on Racial and Ethnic Diversity in the Profession, Council for Racial and Ethnic Diversity in the Educational Pipeline, Coalition on Racial and Ethnic Justice, Center for Racial and Ethnic Diversity, and Commission on Hispanic Legal Rights & Responsibilities
Location: JW Marriott Marquis Miami, 5th Floor, Plaza 5

2:30 PM – 4:00 PM
CLE – Doing Business in Cuba – New Developments
Sponsor: Commission on Hispanic Legal Rights & Responsibilities
Location: JW Marriott Marquis Miami, 5th Floor, Plaza 5

6:00 PM - 7:30 PM
Joint Reception honoring the ABA Raymond Pace and Sadie Tanner Mossell Alexander Honoree, the ABA Martha Fay Africa Golden Hammer Award Honoree, and Meet & Greet the ABA Spirit of Excellence Awards Honorees
Sponsor: Council for Racial and Ethnic Diversity in the Educational Pipeline, Commission on Racial and Ethnic Diversity in the Profession, and the Law Practice Division
Location: Hyatt Regency Miami, Terrace Level, Orchid B/C/D

Saturday, February 4, 2017
12:00 PM – 2:00 PM (Doors open at 11:30 AM)
Spirit of Excellence Awards Luncheon
Sponsor: Commission on Racial and Ethnic Diversity in the Profession
Location: JW Marriott Marquis Miami, 3rd Floor, Metropolitan Ballroom

3:30 PM – 5:00 PM
LGBT Caucus Meeting
Sponsor: Commission on Sexual Orientation and Gender Identity
Location: Hyatt Regency Miami, 3rd Floor, Iblis Room

5:30 PM – 7:00 PM
Stonewall Award Reception
Sponsor: Commission on Sexual Orientation and Gender Identity
Location: Hyatt Regency Miami, Terrace Level, Brickell Room

Sunday, February 5, 2017
10:30 AM – 2:30 PM
Business Meeting
Sponsor: Commission on Sexual Orientation and Gender Identity
Location: Hyatt Regency Miami, 4th Floor, Flamingo Room

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