

Beyond Visibility Social Justice and Equality for LGBT Lawyers

By Lousene M. Hoppe

Statistical and anecdotal evidence indicate that support for full equality for lesbian, gay, bisexual, and transgender (LGBT) persons is at an all-time high in this country and continues to increase. In tandem, there is progress toward more inclusion in the legal profession for LGBT lawyers and law students. A few years ago, young lawyers and law students who might not have considered openly identifying themselves as LGBT are now aggressively recruited by many firms as part of diversity initiatives. Even in a tough economy, the National LGBT Bar Association (formerly National Lesbian and Gay Law Association) had over 630 lawyers and law students at its 2009 Career Fair with over 135 recruiters from progressive Am Law 200 firms, nonprofit organizations, and government agencies.

Despite progress toward more inclusion in the legal profession for LGBT lawyers, obstacles to full inclusion still remain. In many firms, corporations, courts, and government offices across the country, LGBT lawyers are an invisible minority. Many LGBT lawyers and law students also fear that being “out” at work can subject them to discrimination. The 2009 Human Rights Campaign Foundation (HRCF) Report “Degrees of Equality” (www.hrc.org/documents/HRC_Degrees_of_Equality_2009.pdf) notes that 51 percent of LGBT employees hide their identity from most at work. The HRCF report also found that 58 percent of LGBT employees “say that someone at work makes a joke or derogatory comment about LGBT people at least once in a while.” The Williams Institute reported in 2007 that from the mid-1980s to mid-1990s 16 to 68 percent of LGBT persons surveyed had experienced workplace discrimination, with a drop of 15 to 43 percent since the mid-1990s. (“Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination,” www.law.ucla.edu/williamsinstitute/publications/Policy-Discrimination-index.html).

Beyond the issue of visibility, LGBT lawyers, and all LGBT employees, face other equality issues in workplaces. Many major companies have established safe-workplace policies that include dismissal of employees who use slurs targeting sexual minorities. However, the HRCF “Degrees of Equality” report notes that just over one-third of Fortune 500 companies have policies banning discrimination based on gender identity. Disparities also can exist in the area of employment benefits where same-sex couples can be denied access to certain benefits that heterosexual couples receive, such as bereavement leave and paternity/maternity leave. See HRCF “State of the Workplace for Lesbian, Gay, Bisexual, and Transgender Americans 2007–2008” at www.hrc.org/about_us/7061.htm and “HRC Domestic Partner Benefits” at www.hrc.org/issues/workplace/benefits/domestic_partner_benefits.htm.

While some firms protect LGBT employees through antidiscrimination policies and as obligated by state laws, there is no federal law prohibiting the termination of an employee based on sexual orientation or gender identity. This applies nowhere more clearly than in the U.S. armed forces (including the JAG Corp), where more than 13,500 service members have been discharged under the military’s “Don’t Ask, Don’t Tell” policy since 1994. See Servicemember’s Legal Defense Network, “About Don’t Ask, Don’t Tell” at www.sldn.org/pages/about-dadt. By the time this article appears in publication, however, the policy may have been repealed by Congress, pending the completion of study on integrating LGBT soldiers into the ranks. See Sheryl Gay Stolberg, *Deal Reached for Ending Law on Gays in Military*, N.Y. Times, May 25, 2010, at A14.

How can the legal profession, and the ABA specifically, address the challenges its LGBT members continue to face? One answer is the ABA Commission on Sexual Orientation and Gender Identity (SOGI Commission), which was established in 2007 to “secure for lesbian, gay, bisexual and transgender persons full and equal access to and participation in the ABA, the legal profession, and the justice system.”

Since its inception, the SOGI Commission has acted decisively in its efforts to achieve its goals, in part by asking all ABA Sections, Divisions, Forum Chairs, and staff directors (including the Young Lawyers Division) to gather information about how many LGBT lawyers serve as ABA leaders and members or participate as speakers or panelists in ABA programs. The SOGI Commission also is collecting published city, county, and state reports about LGBT lawyers’ experiences within their firms and the legal profession in general. In 2007–2008, the Commission held focus groups for gay men, lesbian women, and transgender persons. The Commission expects to publish reports on the current conditions in the profession

American Bar Association Young Lawyers Division
[The Young Lawyer](#)

for LGBT persons and to make recommendations to firms and corporations about best practices for their LGBT partners, associates, and staff members.

The SOGI Commission works closely with the National LGBT Bar Association, an affiliate of the ABA, whose thousands of members include lawyers, judges, other legal professionals, law students, and activists. The organization is an umbrella group for more than twenty-four affiliated lesbian, gay, bisexual, and transgender regional voluntary bar associations. In 2008, the LGBT Bar developed a five-year strategic plan, including the objectives of establishing an active in-house division, endorsing judicial candidates, and facilitating coordination between leading legal scholars and litigators.

Implementation of the LGBT Bar's five-year plan has already resulted in increased programming directed toward young LGBT lawyers. The LGBT Bar, sometimes in partnership with the Minority Corporate Counsel Association, has hosted receptions for LGBT in-house counsel. These events provide young LGBT firm lawyers the opportunity to network with peers, corporate counsel, and potential clients. In addition, the LGBT Bar recently accepted nominations for its inaugural Best LGBT Lawyers Under 40 Award, which will allow the LGBT Bar to identify and recognize outstanding young lawyers and increase their visibility within the legal profession.

Young lawyers often have led the struggles for equality and inclusion of minorities in the legal profession and beyond. To learn more about how you can get involved in this important struggle, please visit www.abanet.org/SOGI and www.lgbtbar.org.

Lousene Hoppe is an attorney with Fredrikson & Byron, P.A., in Minneapolis and the ABA YLD's National Representative from the National LGBT Bar Association. She can be contacted at LHoppe@fredlaw.com.