

THE NEW PARADIGM OF LGBT INCLUSION:
A RECOMMENDED RESOURCE FOR LAW FIRMS



SUSTAINING PATHWAYS
TO DIVERSITY®





Sustaining Pathways to Diversity:®

**The New Paradigm of LGBT Inclusion:
A Recommended Resource for the Legal Workplace**



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MCCA appreciates the assistance from the Human Rights Campaign Foundation with this report.

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About Other Contributors

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Introduction & Overview

The mission of the Minority Corporate Counsel Association (MCCA) is to advocate for the expanded hiring, promotion, and retention of minority attorneys in corporate legal departments and the law firms that they retain. Since its founding in 1997, MCCA has emerged as a knowledge leader on diversity issues, and its programs and initiatives cover a wide range of diversity management issues, with an emphasis on the professional challenges faced by race/ethnic minorities; women; lesbian, gay, bisexual, and transgender lawyers; people with disabilities; and multi-generational workforces. MCCA furthers its mission by publishing research to recognize and promote diversity efforts and related best practices in the legal profession, and by honoring innovative diversity programs.

MCCA's efforts focus on the research, collection, and dissemination of information on the status of

diversity in the legal profession, as well as the use of that information to educate and advocate members of the legal profession in advancement of the association's mission. As the preeminent voice on diversity issues in the legal profession, MCCA's thought leadership has been widely recognized, and the association has been the recipient of several awards, including recognition by the National Minority Business Council, Inc., the U.S. Equal Employment Opportunity Commission, the National LGBT Bar Association, and the Association of Corporate Counsel.

In 2009, MCCA published its groundbreaking and comprehensive study on diversity and inclusion in America's largest law firms. At the time of its publication, *Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms* (Sustaining



Pathways) was the largest, most comprehensive study of its kind. It explored the four key components of successful diversity and inclusion programs: leadership, recruiting, inclusion, and professional development.

Sustaining Pathways was an update of two widely regarded MCCA research reports that addressed the experiences of attorneys in law firms: *A Set of Recommended Practices for Law Firms* and *Myth of the Meritocracy: A Report on the Bridges and Barriers to Success in Large Law Firms*.

Sustaining Pathways achieved a sizable level of participation among lesbian, gay, bisexual, and transgender (LGBT) attorneys in large law firms. Overall, LGBT attorneys comprised approximately 5% of all respondents. The study revealed that law firms have improved considerably in acknowledging, respecting, and valuing the talents and perspectives of LGBT lawyers. Nevertheless, it also illuminated that law firms have a long way to go to reach a level of inclusion where LGBT lawyers have equal and unfettered access to opportunity and success. MCCA decided to use the LGBT statistical data from *Sustaining Pathways* to update its pioneering 2003 report, *Perspectives from the Invisible Bar: Gay & Lesbian Attorneys in the Profession*.

The New Paradigm for LGBT Inclusion continues the work that MCCA has performed on issues related to diversity and inclusion for LGBT attorneys. MCCA integrated the findings from quantitative survey data collected from LGBT attorneys who participated in *Sustaining Pathways* with qualitative information transcribed from a series of eight focus groups held with LGBT lawyers who volunteered to answer questions and share perspectives about their professional lives. MCCA hopes that this publication

will shed light on the challenges experienced by LGBT attorneys and prompt their employers to take steps to break down the barriers which prevent LGBT attorneys' full and equal participation.

Overview of Research and Objectives

The New Paradigm of LGBT Inclusion: A Recommended Resource for the Legal Workplace is an in-depth research report by MCCA that examines the impact of sexual orientation, gender identity, and gender expression on attorneys in large law firms. Its objective is to examine the experiences of LGBT attorneys at large law firms in order to craft advice and recommendations to assist law firms to foster more-inclusive and supportive environments for LGBT attorneys.

This report addresses three primary questions.

1. What are the perceptions and experiences of LGBT attorneys in law firms?
2. What is the impact of sexual orientation, gender identity, and gender expression on the professional development, opportunities, and career progression of LGBT attorneys in law firms?
3. How can law firms create and maintain inclusive workplaces that ensure equal opportunities for the success of LGBT attorneys in the workplace?

Quantitative and qualitative data were collected through the combination of a Web-based survey and teleconference focus groups. For additional information about the research tactics and methodology, please see the Supplemental Materials which begin at p. 57 of this report.

Executive Summary

A Current Look at LGBT Equality and Inclusion with Recommendations for Improvement

In the years following MCCA's 2003 report *Perspectives from the Invisible Bar: Gay & Lesbian Attorneys in the Profession*, LGBT employees, including attorneys in law firms, have enjoyed slow but steadily increasing equality at work and in the community. Many law firms and other private-sector businesses have led the way in providing protections against employment discrimination based upon sexual orientation, ensuring that benefits include LGBT employees and their families, and supporting civil rights for LGBT people generally.

This findings in this research report show that, although many LGBT attorneys feel that their law firms have improved considerably by integrating issues that impact them into the firms' overall diversity and inclusion efforts and programs, LGBT attorneys still experience a number of unique challenges. In short, although progress has been made over the last decade, a great deal of work remains in establishing a truly equitable environment for LGBT lawyers. This report highlights the steps that law firms must take in order to build workplaces that are fully inclusive and committed to equality for their LGBT attorneys.

MCCA research shows that, where 89% of all the lawyers in the *Sustaining Pathways* study responded that they had a high level of commitment to their careers and to their law firms, only 83% of LGBT attorneys felt the same way. A 6% difference may not seem significant at first glance, but the implications are magnified over time as the lower level of commitment translates to higher rates of attrition. The result is that fewer LGBT lawyers will advance at the firms to be considered for partnership. A high

level of commitment to one's career and to one's firm not only reflects career satisfaction, but also serves as bellwether for those attorneys who are more likely to be retained by a firm over the long term.

Further, as the data in this report reveals, LGBT attorneys who report high levels of commitment to their careers and law firms do so despite the fact that their identities are not fully included or integrated into their firms' cultures.



As LGBT attorneys in law firms share their experiences, complex perspectives, different experiences, and common challenges come to light that serve to underscore the nuanced issues of gender and generational differences that persist within the larger identity of being an LGBT attorney in this setting. For example, although 83% of LGBT attorneys

reported being highly committed to their careers and firms in this survey, that average reflected an 84% commitment by men and an 80% commitment by women. As in the previous comparison, the cumulative effect of that difference year over year results in fewer LGBT women considered for partnership and leadership within law firms. The differential between LGBT partners and associates was even more pronounced, with 93% of partners reporting a high commitment, as compared to only 75% of associates. Similarly, when asked about whether they felt treated equally to their peers, LGBT women and attorneys of color reported higher levels of disparity than their gay white male counterparts.



When analyzing the data in this study, it is important to note that many LGBT individuals are concerned about being open regarding their sexual orientation, especially in workplaces that appear not to be inclusive or accepting. In addition, some LGBT lawyers “pass,” meaning that they allow others to believe that they are heterosexual. These lawyers may engage in this pretense because they believe that it may be dangerous for their careers to openly express their sexual orientation in the workplace. Those who need or want to keep their sexual orientation or gender identity private are less likely to fill out surveys and share

experiences in focus groups. As a result, the voices of these closeted lawyers continue to be underrepresented in research and reports such as this one.

However, thanks to those LGBT attorneys who were willing to share their experiences and perspectives, MCCA has been able to spotlight the challenges yet to be fully addressed in the legal workplace. MCCA also offers a set of recommended practices for employers seeking to build more diverse and inclusive workplaces. In addition, a special section of this report has been dedicated to raising awareness about the challenges faced by transgender attorneys, which are quite separate and distinct from those faced by lesbian, gay, and bisexual attorneys.

Recommendations for an LGBT Inclusive Workplace

MCCA's *Sustaining Pathways* report contains a number of general recommendations for law firms seeking to create more diverse and inclusive workforces. In addition to those recommendations, the following specific approaches are suggested to address the inclusion of LGBT attorneys.

Leadership

- Expressly articulate on a regular and consistent basis, the firm's expectation that all attorneys and staff will do their part to create and maintain a workplace culture of inclusion and equality for all.
- “Lead by example” by visibly demonstrating the importance of LGBT lawyers to the firm by ensuring the hiring, retention, and advancement of LGBT attorneys.
- Set a strong tone from the top so that all employees understand that the firm will not tolerate derogatory comments or negative behaviors directed at any employee based upon the employee's sexual orientation or gender identity. Swiftly take disciplinary action against any employee who violates this zero tolerance policy.

- Establish a clear, consistent, and accessible process whereby an attorney who wishes to raise a concern about possible violation of the firm's zero tolerance policy may do so safely and without fear of reprisal. MCCA suggests that firms may wish to appoint an ombudsperson to address such concerns and offer employees a well-trained and well-informed person to whom to turn for guidance.
- Raise the visibility of LGBT attorneys within the firm and the legal community by appointing LGBT attorneys to key law firm committees and supporting the firm's LGBT attorneys to attain leadership positions in their local, state, and national bar associations.
- Direct the establishment of appropriate internal processes to allow LGBT attorneys to voluntarily self-disclose their sexual orientation in the same fashion that other attorneys report their race/ethnicity or gender through completion of annual firm reports, HR documents, and other diversity surveys such as, Vault/MCCA, NALP, etc.
- Provide LGBT data to clients as a matter of course in response to their inquiries about the firm's diversity efforts and/or client diversity questionnaires, whether or not the client has specifically asked for LGBT data.
- Educate and inform all staff regarding the firm's LGBT-inclusion policies and offer diversity training that includes issues commonly of concern to LGBT people.
- Recruit through LGBT law student groups and bar associations. When involvement in such organizations is listed on candidates' resumes, interviewers should express interest by asking candidates about these efforts and leadership experiences.
- Collect and publish statistics on the numbers of openly LGBT attorneys at the firm.
- Identify LGBT partners and/or associates who are willing to be resources for LGBT law students or lateral candidates who are considering joining the firm. However, do not insist or demand that an LGBT attorney agree to answer questions for other LGBT attorneys who being recruited by the firm.
- Enlist the firm's LGBT affinity group as a strategic partner in recruiting LGBT attorneys and offer information to candidates about the affinity group such as, a recent calendar of events or program agenda.
- Include materials in the firm's recruitment packages and new employee orientation manuals about the firm's anti-discrimination policy, same-sex spouse and/or domestic partner benefits, number of openly LGBT attorneys, LGBT affinity or employee resource groups, LGBT-specific outreach programs and initiatives, including financial support and pro bono services contributed by the firm in support of LGBT bar associations and nonprofit associations.
- Many firms have created LGBT-specific pages on their Websites to highlight activities of LGBT attorneys and their allies, as well as, basic information about LGBT-inclusive policies and benefits. Wherever the firm touts its non-discrimination policies, specify that sexual orientation and gender identity are protected classes and make these policies accessible for review by all recruitment candidates and internal staff. To help communicate this message, many firms participate in the Human Rights Campaign Foundation's annual Corporate Equality Index

Recruitment

- Appoint LGBT attorneys to the firm's hiring committee.
- Actively recruit LGBT attorneys and place appropriate events on the firm's official recruitment schedule. Reach out to and enlist LGBT attorneys as part of the firm's overall diversity recruiting efforts. This should include targeted outreach efforts to LGBT law student groups and bar associations (e.g., Lavender Law, LGBT job fairs, National LGBT Bar Association).

survey (www.hrc.org/cei), display the HRC logo, and the firm's Equality Index score as recognition of the firm's status as a "Best Employer" for LGBT employees.

Retention, Inclusion, and the Work Environment

- Explicitly include "sexual orientation" and "gender identity or expression" as protected from employment discrimination in their equal employment opportunity and anti-harassment policies included in Code of Ethics and employee handbooks. Publicize these policies throughout the firm.
- Include sexual orientation and gender identity or expression in any diversity and anti-discrimination training. Educate all employees regarding appropriate terminology to use when referring to another's sexual orientation or gender identity. Take care to retain trainers who are well-versed in all aspects of diversity and inclusion, not just race/ethnicity and gender.
- Support the establishment of LGBT affinity groups

to provide a safe and open forum for discussion, support, and networking among LGBT attorneys at the firm.

- Acknowledge LGBT attorneys and their families in the same manner that they acknowledge heterosexual attorneys and their families. This includes extending invitations to same-sex partners or spouses when hosting events and holiday parties to which other spouses and guests will be invited (either formally or informally) and recognizing key "rites of passage" like engagements, weddings, and additions to the family for LGBT attorneys in the same way in which such milestones would be acknowledged for all other attorneys.
- Offer restroom options that are private and write any dress codes based upon general expectations of professional appearance without expressly stating specific attire requirements of men and women.
- Ensure that all employees are aware of the firm's LGBT-specific efforts and can access them without fear of disclosing their identity. Information should be centralized and easily accessible through the firm's intranet and also on its public Website. Welcome and orientation information should include LGBT-related information prominently alongside other groups.
- Seek input from LGBT affinity groups to advise the firm regarding diversity policies and practices, as well as the identification of internal and external opportunities to advance the inclusion of LGBT attorneys. Include LGBT attorneys in planning diversity programs and anti-bias trainings to ensure that topics of relevance and interest to LGBT attorneys are included.
- Demonstrate publicly the firm's commitment to LGBT attorneys and the broader LGBT community by sponsoring participation in LGBT bar associations, making charitable contributions to LGBT organizations, supporting LGBT equality, and pro bono efforts that serve the LGBT community.

Affinity Groups

Affinity Groups are networks of employees that are employee-organized and formed to allow people from similar backgrounds within the same company or law firm to come together around shared experiences or culture, such as common race/ethnicity or minority status, gender, sexual orientation, or other shared characteristics. The groups serve as forums for social interaction and the exchange of information and ideas, in addition to professional support. Affinity groups can often assist management to address the diversity concerns of members of under-represented groups, recruit diverse candidates for open positions, or offer feedback regarding current or proposed policies.

Professional Development and Advancement

- Ensure that LGBT attorneys are afforded equal access to networking opportunities, as well as opportunities for client contact and business development.
- Monitor work assignments to assure that LGBT attorneys are receiving high quality work and professional development opportunities that are on par with their non-LGBT peers.
- Train all law firm managers, partners, and senior lawyers who play a role in the evaluation of other attorneys to provide timely balanced, unbiased, and objective feedback.
- Establish a formal diversity mentoring program that specifically includes LGBT attorneys at all levels and ensure that mentors are multiple, accessible, proactive, and consistently supportive.
- Encourage LGBT attorneys to affirmatively avail themselves of all firm resources and take an active role in their professional development.
- Support LGBT attorneys who decide to make use of alternative work arrangements, as necessary to more effectively balance work responsibilities and personal demands.

Work/Life Balance and Compensation/Benefits

- Assess and revise all HR systems and other policies (e.g., dress codes) to ensure gender neutrality and to create gender transition guidelines in the event an employee transitions genders. Undertake regular training to ensure that all attorneys in supervising roles understand these policies.
- Recognize same-sex partners and spouses of LGBT employees and offer benefits to the same degree that they are extended to opposite-sex spouses and partners. Extend all spousal and parental benefits to same-sex partners, spouses and children of

LGBT employees in the same manner and level that these benefits are extended to opposite-sex spouses and partners including, health insurance coverage, and parental, adoption, and bereavement leave. When the firm requires documentation of family members and emergency contacts, LGBT attorneys should be extended the equivalent opportunity to include their partners and spouses.

- Include “sexual orientation” as prohibited grounds for employment discrimination in the firm’s EEO policy or other anti-discrimination policy. Publicize this policy throughout the firm. Include sexual orientation in any diversity and anti-discrimination training.
- Work with the firm’s insurance providers or administrators to remove discriminatory insurance contract provisions that result in the exclusion of transgender employees, their spouses or partners, or other dependents from coverage for their medical needs, be they related to gender transition or not.
- Implement firm-wide gender transition guidelines so that in the event that an attorney (or other employee) transitions, there will be a consistent checklist of issues to address. In addition, HR information systems should have methods for updating and maintaining gender-related information.
- A majority of the *Fortune* 500 companies and half of all large businesses (with 5,000 or more employees) offer benefits to same-sex partners of employees regardless of state and federal recognition of their relationships. In addition to health insurance, these benefits include COBRA, FMLA, retirement and other spousal benefits. Regardless of state recognition of same-sex relationships, most employees and their employers are taxed under federal tax code on the value of the partner benefits as imputed income. Leading businesses and firms support efforts such as the Tax Equity for Domestic Partners and Health Plan Beneficiaries Act, which would end this unfair tax burden on partner benefits.

Findings and Recommendations for Advancing Full and Equal Inclusion of LGBT Attorneys

In the years following MCCA's 2003 report *Perspectives from the Invisible Bar: Gay & Lesbian Attorneys in the Profession*, LGBT employees, including attorneys in law firms, have enjoyed slow but steadily increasing equality at work and in the community. Many law firms and other private-sector businesses have led the way in providing protections against employment discrimination based upon sexual orientation, ensuring that benefits include LGBT employees and their families, and supporting civil rights for LGBT people generally.

A majority of *American Lawyer* (AmLaw) 200 law firms and the top-ranked *Fortune* 100 companies prohibit workplace discrimination based on sexual orientation and gender identity. Also, a growing number of American law firms and businesses currently have employee health insurance plans that cover the medical needs of their transgender employees. In addition, state and local governments in the United States have expanded employment non-discrimination laws to include LGBT employees and relationship recognition laws to include same-sex relationships, including marriage, civil unions, and domestic partnerships.

Despite these advancements, LGBT equality remains inconsistent—and, in many ways, uncertain—throughout the country, primarily due to the absence of federal laws recognizing same-sex relationships or addressing employment discrimination based on sexual orientation and gender identity.

The findings in this research report show that, although many LGBT attorneys feel that their law

firms have improved considerably by integrating issues that impact them into the firms' overall diversity and inclusion efforts and programs, LGBT attorneys still experience a number of unique challenges. In short, although progress has been made over the last decade, a great deal of work remains in establishing a truly equitable environment for LGBT lawyers. This report highlights the steps that law firms must take in order to build workplaces that are fully inclusive and committed to equality for their LGBT attorneys.

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Further, as the data in this report reveals, LGBT attorneys who report high levels of commitment to their careers and law firms do so despite the fact that their identities are not fully included or integrated into their firms' cultures.

As LGBT attorneys in law firms share their experiences, complex perspectives, different experiences, and common challenges come to light that serve to underscore the nuanced issues of gender and generational differences that persist within the larger identity of being LGBT attorneys in this setting. For example, although 83% of LGBT attorneys reported being highly committed to their careers and firms in this survey, that average reflected an 84% commitment by men and an 80% commitment by women. As in the previous comparison, the cumulative effect of that difference year over year results in fewer LGBT women considered for partnership and leadership within law firms. The differential between LGBT partners and associates was even more pronounced, with 93% of partners reporting a high commitment, as compared to only 75% of associates. Similarly, when asked about whether they felt treated equally to their peers, LGBT women and attorneys of color reported higher levels of disparity than their gay white male counterparts.

When analyzing the data in this study, it is important to note that many LGBT individuals are concerned about being open regarding their sexual orientation, especially in workplaces that appear not to be inclusive or accepting. In addition, some LGBT lawyers "pass," meaning that they allow others to believe that they are heterosexual. These lawyers may engage in this pretense because they believe that it may be dangerous for their careers to openly express their sexual orientation in the workplace. Those who need or want to keep their sexual orientation or gender identity private are less likely to fill out surveys and share experiences in focus groups. As a result, the voices of these closeted lawyers continue

to be underrepresented in research and reports such as this one.

However, thanks to those LGBT attorneys who were willing to share their experiences and perspectives, MCCA has been able to spotlight the challenges yet to be fully addressed in the legal workplace. MCCA also offers a set of recommended practices for employers seeking to build more diverse and inclusive workplaces. In addition, a special section of this report has been dedicated to raising awareness about the challenges faced by transgender attorneys, which are quite separate and distinct from those faced by lesbian, gay, and bisexual attorneys.



This report quotes several research participants to illuminate many of the concerns expressed by LGBT attorneys. In addition, this report discusses the key challenges and recommended solutions for each of the following critical elements:

- (1) Leadership,
- (2) Recruitment,
- (3) Retention, Inclusion, and the Work Environment, and
- (4) Professional Development and Advancement.

Understanding the Concerns – In Their Own Words

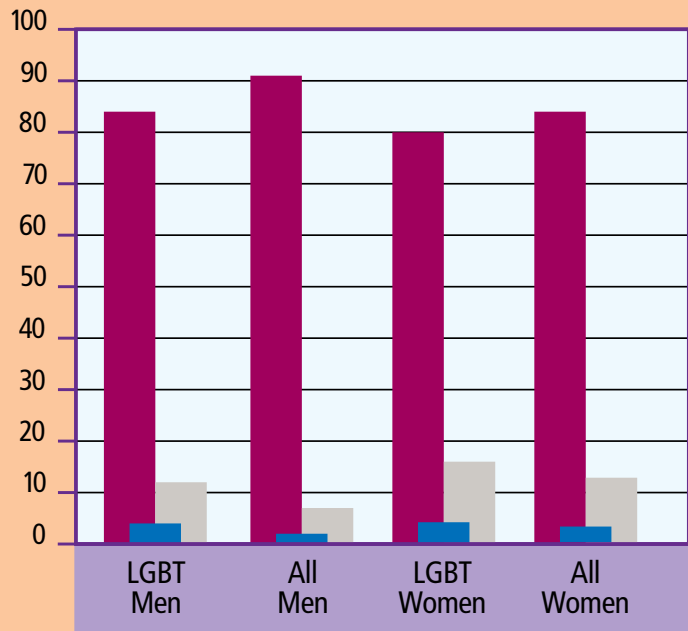
This research report demonstrates that, although many LGBT attorneys feel that their law firms have improved considerably by integrating issues that impact them into the firms' overall diversity and inclusion efforts and programs, LGBT attorneys still experience a number of unique challenges. Therefore, the report seeks to shed light on their perspectives, using their own words to frame the issues.

As one male associate noted:

I've observed over the years that we seem to have a very small group of lesbians, gay, and transgender attorneys. And there's a constant turnover, which leads me to think that people don't think of this place as somewhere they want to call home.

I have a high level of commitment to my career and to the firm.

Agree Disagree Neutral



When MCCA undertook this study, it noted that many LGBT individuals have concerns about being open regarding their sexual orientation, especially in workplaces that appear not to be inclusive or accepting. And, in fact, the majority of LGBT attorneys who responded to this survey and participated in the focus groups are people who are open in the workplace about their sexual orientation or gender identity, and thus were willing to self-identify. Those who need or want to keep their sexual orientation or gender identity private are less likely to fill out surveys and share experiences in focus groups. Therefore, the voices of these closeted lawyers continue to be underrepresented in research and reports, such as this one, that seek to address these complicated issues in the workplace in particular and within society in general.

As one focus group participant offered,

I also wonder [about]...the folks that volunteer to be [in a focus group] like this. I wonder if you're really going to capture that subset of GLBT folks at law firms...that won't self-identify even in an anonymous survey, [I wonder] if they would really want to volunteer and participate in a nationwide focus group.

In addition, there are some LGBT lawyers who "pass," meaning that they allow others to believe that they are heterosexual. They engage in this pretense in part out of concern that openly expressing their sexual orientation in the workplace may be dangerous for their careers.

As one LGBT lawyer describes this phenomenon:

LGBT attorneys sometimes pretend to be straight, and, when specifically asked, will refer to their partner being of the opposite gender. There are others who work very hard to say, "What goes on in my private life is none of your business," which is a



variation on passing. And there are others that may be quiet about what their orientation is, although they believe that they are out. And then, you have others that are very out, including [having] a picture of their partner on their desk, and their domestic partner/spouse showing up for social events. There's a whole continuum on how people deal with that.

Another focus group participant expanded on the notion of a continuum, noting that "there are many degrees to coming out." LGBT attorneys sometimes come out to their entire practice group or law firm at once. Others may come out to a few people at a time as they grow more comfortable and secure in their firms and relationships with colleagues. Even attorneys who are completely out in their firms, or open on their resumes, will likely experience coming out time and time again when these attorneys meet new members of the firm, opposing counsel, and clients.

The following statements from participants

demonstrate these "degrees" in openness in the workplace.

Everybody in my practice group knew my former husband. [I was married to a man before I came out as a lesbian.] So I was a little bit concerned it would make it harder. Nobody blinked an eye, at least that I saw. I was out immediately, at least within my practice group. It took me a little bit longer, I guess, to come out within the firm, which I had been at for years at this point.

– female partner

I'm fairly open, [and] everyone that I work with who is an associate and in my group knows, and I'm completely open [with them]. I don't hide anything about it, but I do know that there are some partners who would not consciously treat me any differently but would [do] so subconsciously. I would feel that there would be some sort

of distancing in terms of the relationship, and so I've chosen not to be out to certain partners, and to be out to certain partners. It necessarily follows that I don't really let them in on my personal life, what I'm doing, who I'm dating, and things like that.

— associate

You just don't know who is across the table. The firm has policies. I know the firm's environment. I know the people at the firm. The clients, you know, especially new clients, I have often just met them so – [for example] my partner's father died last week and so I sent an email to the entire group like, "Hey, guys. I unexpectedly have to leave. I'm not going to be in the office for the next I don't know how many days. My partner's father died. I'll see you when I see you." But then you deal with clients, and you don't know how to say it – "my father-in-law died," . . . it's awkward, because it's not true. We're not married. You know, you can't say my partner's father died. It's different, because you don't know who is getting that e-mail."

— associate

Leadership

It has been said that the "tone at the top matters," and in few areas is leadership as important as it is in advancing diversity. Firm leaders play critical roles to influence their firm's overall culture, and they set expectations for universal respect and appropriate standards of behavior in the workplace. According to the focus group participants, a variety of factors influence the perceptions and experiences of LGBT attorneys, including differences in geographical locations of particular offices, individual leadership

of specific practice areas, and the numbers of open LGBT attorneys. But it was universally clear that the influence of firm leadership is pervasive.

One participant discussed the need for strong, clear, and consistent leadership on LGBT issues within law firms:

Management absolutely sets the tone and makes a difference. The only caveat I have to that is, in a big office ... even though management here is very positive and very supportive, there are little pockets of subgroups of individuals, within this office even, that are probably not completely tolerant and accepting, and probably do make unfortunate comments. The one thing I'll say, though, is that, because management is so supportive and has included the affinity group, it has sort of driven [the subgroups] a little bit underground. At least the whole group has the message that that's not publicly tolerated. You can't legislate people's minds. But management can absolutely set the tone that this is the tenor of our public debate, this is how we'll talk about one another, this is how we'll address one another, this is what "inclusiveness" means here, and that's it. Period.

— associate

When creating a workplace culture that is inclusive of LGBT attorneys, a first step for firm leaders is to implement a process that encourages LGBT attorneys to self-identify. Without such a process in place, law firms have no mechanism of determining who among their attorney ranks are LGBT; as a result, they cannot effectively ascertain how to support these attorneys or track their progress.

The experiences of focus group participants from various firms highlight the fact that many firms do not have consistent, objective, confidential, and

respectful mechanisms by which to gather the data that they need to report to the National Association for Law Placement (NALP), the National LGBT Bar Association, MCCA, Vault, and other organizations to which the firms are requested to report their LGBT statistics.

The way we used to fill out the NALP forms indicating how many openly gay individuals worked at the firm was to send an e-mail to various openly gay lawyers and say, “Can you report back how many openly gay lawyers you know at the firm?” When I joined the diversity committee, I said, “You know, I think this is kind of an inappropriate way to do this,” which seemed to be taken as a surprise. The solution I proposed, which was that people should self-identify was also sort of [a revelation] – “Oh, people would rather identify themselves?” And it came as somewhat of a surprise.

— associate

I filled out that I-9 form where you self-identify, and I thought it was going to be anonymous to HR. Two days later a [partner] from another office is flying in to meet me, and she’s telling me all about the “gay group” and wanting me to write an article for the diversity newsletter. I’m not exactly sure how it got all the way to her, but it seemed like all the upper people know and they’re encouraging me to do more things. So, it worked out, but it was strange.

— associate

My firm has a policy of not asking; we don’t report on NALP. If you don’t self-identify when recruiting, no one is going to ask. So if a particular person was out on their

resume or, like I did, ask specifically to speak with other LGBT lawyers in a given office, if there are no people who have self-identified [during the] recruiting [process], then there’s no one for recruiting to offer up.

— associate



The presence of active LGBT attorney affinity or resource groups can significantly influence how LGBT attorneys evaluate their firms’ commitment to LGBT inclusion and equality, particularly when the groups are consistently supported by firm leaders. Many focus group participants linked the support of leadership within their firms to the ability of LGBT affinity groups to thrive. Moreover, most of the focus group participants were active in their firms’ diversity efforts, which is consistent with the survey finding that 70% of LGBT attorneys (in comparison to only 47%

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of all attorneys) reported actively participating in diversity-related events and initiatives at their firms.

Although many of respondents were active in their firms' diversity programs and LGBT affinity and resource groups help to improve overall inclusion efforts in their law firms, some attorneys reported that the LGBT affinity groups were the only spaces where they could discuss sensitive issues openly. Affinity groups were also the place where they had the greatest opportunity to brainstorm about

workplace challenges, and network with other LGBT attorneys to enhance professional development.

In terms of professional development, [the affinity group] provides a useful tool, just because it identifies people who are safe people to go talk to about issues. So, if an associate is encountering that relationship where a partner is not giving work or suddenly cutting them off from work, or, you know, saying inappropriate things to them, to me, that's a professional development problem. You know, that

Leadership

Recommendations for an LGBT Inclusive Workplace

- *Expressly articulate on a regular and consistent basis, the firm's expectation that all attorneys and staff will do their part to create and maintain a workplace culture of inclusion and equality for all.*
- *"Lead by example" by visibly demonstrating the importance of LGBT lawyers to the firm by ensuring the hiring, retention, and advancement of LGBT attorneys.*
- *Set a strong tone from the top so that all employees understand that the firm will not tolerate derogatory comments or negative behaviors directed at any employee based upon the employee's sexual orientation or gender identity. Swiftly take disciplinary action against any employee who violates this zero tolerance policy.*
- *Establish a clear, consistent, and accessible process whereby an attorney who wishes to raise a concern about possible violation of the firm's zero tolerance policy may do so safely and without fear of reprisal. MCCA suggests that firms may wish to appoint an ombudsperson to address such concerns and offer employees a well-trained and well-informed person to whom to turn for guidance.*
- *Raise the visibility of LGBT attorneys within the firm and the legal community by appointing LGBT attorneys to key law firm committees and supporting the firm's LGBT attorneys to attain leadership positions in their local, state, and national bar associations.*
- *Direct the establishment of appropriate internal processes to allow LGBT attorneys to voluntarily self-disclose their sexual orientation in the same fashion that other attorneys report their race/ethnicity or gender through completion of annual firm reports, HR documents, and other diversity surveys such as, Vault/MCCA, NALP, etc.*
- *Provide LGBT data to clients as a matter of course in response to their inquiries about the firm's diversity efforts and/or client diversity questionnaires, whether or not the client has specifically asked for LGBT data.*
- *Educate and inform all staff regarding the firm's LGBT-inclusion policies and offer diversity training that includes issues commonly of concern to LGBT people.*

associate is now feeling uncomfortable working with that partner, or may not get more work from that partner. That's going to have an impact on their development. The affinity group, having a diverse and supportive environment, does give that person somebody to go talk to and say, "Partner A isn't giving me work anymore. I think it's because I'm gay," or, "Partner A is making snotty comments about the fact that I was on TV for the Pride Parade. What do we do about that?" An affinity group forestalls bad problems more than it, you know, encourages good things. The good things will happen anyway, I think.

— male partner

My professional development has been greatly enhanced through our LGBT group. We're just constantly at networking events through the firm. We're hugely involved in the community in various cities. So, at least for me, my experience is that [my sexual orientation] certainly has not been a detriment in any respect at all from a professional development standpoint, and in fact it really has enhanced my career. I've gotten to meet and interact with partners and clients and other folks in the community that I might not have otherwise had the opportunity to know.

— male associate

It is difficult to overstate the impact of leaders of the firm taking a strong stance in support of LGBT inclusion. Law firms should continually tout and act upon the strategic importance of diversity and inclusion for all groups, including LGBT attorneys, and continue to offer support of the necessary policies, initiatives, and approaches that are essential to building inclusive workplaces.

Recruitment

Law firms that actively include and support their LGBT attorneys are more likely to be attractive employers for all talented law students as well as lateral hires. Many of the focus group participants reported that they carefully examined a law firm's leadership, efforts, and reputation on LGBT issues before making employment choices. Nevertheless, a generational distinction emerged among participants with respect to the degree that this issue influenced career decisions. It was especially important to today's younger attorneys.

I only applied to firms that had domestic partnership benefits. [I] was lucky enough to find a firm where there were out partners, so I could ask particular questions, and felt that ... I wouldn't be the first [LGBT] person at the firm.

— associate

I actually went back to a bunch of firms and asked to speak with a gay or lesbian attorney. I looked at the number of openly gay and lesbian partners, and also at the domestic partnership benefits within the firm.

— associate

I was out on my resume, and there were some firms that specifically assigned me interviewers who were sympathetic or were a part of the community, versus other firms where I would get asked questions about whether I had a wife or a girlfriend, which it was pretty clear from my resume that I didn't.

— associate

There were some firms where I interviewed as a law student, and I believe that I was

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probably screened out because I was open, and told them that I was gay and had a partner who would be moving with me. Certainly, there was a self-selection aspect, because the firms that were okay with me disclosing were the ones that I ended up considering.

— associate

When I was a summer associate at my firm, I went to some LGBT events that the firm had in the summer, and learned about my firm's participation in amici briefs to support gay marriage. And I felt like it was a pretty open firm that wouldn't be discriminating against me because of my sexual orientation.

— associate

I specifically asked the managing partner at my current firm who was extending the

offer to me if [my being gay] was an issue. There was a previous firm that had extended an offer, and I asked that question, and as the managing partner at that firm had said, "Well, I'm fine with it, but some of the other partners will have issues." And I had said, "Well, thank you. I have better things to do with my day." So, with this firm, the managing partner said it was not an issue, and, to buttress that, within maybe three hours, he had two other out attorneys calling me to tell me, "It's a great place, don't worry about it."

— partner

A critical mass of open LGBT lawyers in the office of a particular firm also makes it easier for that office to recruit other LGBT candidates. Simply having a concentration of LGBT attorneys in one city office or practice group, of course, will not necessarily impact the firm-wide culture to become welcoming and inclusive.

I think all of our LGBT attorneys are in [one] office, which is our biggest office, and I think the reason for that is size — just the size of the numbers and it's comforting. We got to a critical mass here and we're having a much easier time recruiting more people now because we have pretty good numbers here.

— associate

I think that we have a critical mass of openly gay attorneys here. Unfortunately, they are pretty much all associates. There are a number of partners here, also, who are gay but are not out. So, you know, that presents its own problems, but there are other offices where there are no openly gay attorneys at all, and I think it presents a problem from a recruiting standpoint. And I think that, if I were one of those people trying to decide where to go, I'm not sure that I would choose a firm where the only gay person that I could talk to was 500 miles away.

— associate

Many of the junior associates also reported utilizing LGBT-oriented job fairs, such as the National LGBT Bar Association's Lavender Law conference, to screen for firms that were actively seeking LGBT lawyers. Several associates, however, reported that there was a disconnect between firms participating in job fairs like Lavender Law and the overall awareness levels of LGBT issues among all firm lawyers.

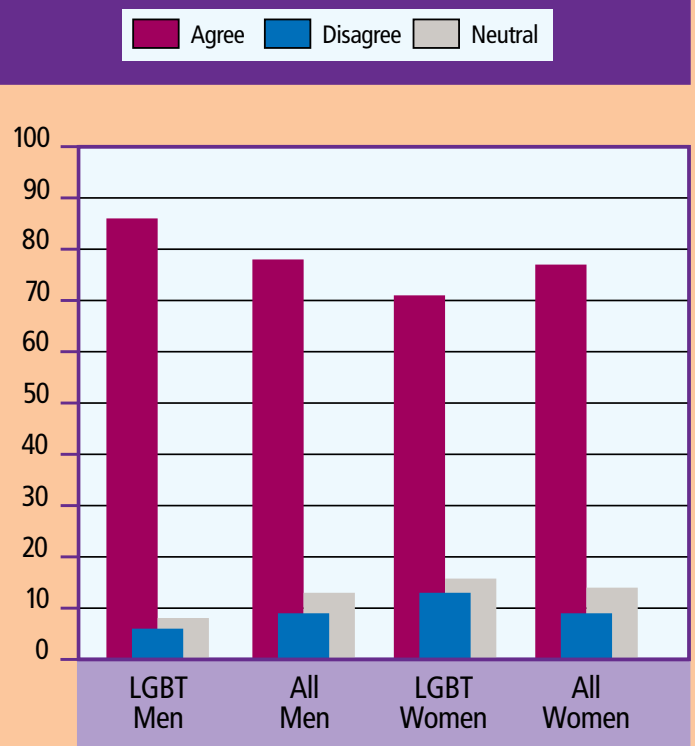
As one associate reported:

I was recruited at Lavender Law, so I thought that that would make it kind of obvious that I'm the gay candidate. But then when I started out at the firm, there's some straight male colleagues that were completely clueless that I was gay. I feel like I'm one of those people who come off as effeminate.

So, that kind of made me laugh a little bit when I was being asked, "Do you have a girlfriend?" or whatever like that. So, my solution was, in June when it was Gay Pride month, I would just put a little rainbow flag in my office and if anyone asked what that was, I could just come out easily that way. Since that happened, I've been more open in my practice group, and it's been sort of a non-issue.

For some of the partners who did not disclose their sexual orientation or gender identity when interviewing with law firms, the decision to refrain from disclosure was often based upon their perceptions regarding the workplace.

I actively support my firm's efforts to recruit and hire a diverse group of attorneys — for example, by participating in special recruitment events on or off site and/or visiting schools.



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I think it's a non-issue for certain younger and progressive partners, where it's probably a very uncomfortable issue for very older partners.

My orientation did not come up at all. I'm happy to say that it worked out well, but it was not a factor. And I just wonder – I'm intrigued by all these other descriptions of a pretty coherent, focused discussion, because – maybe it's my age, I'm a [ma-
ture] lawyer. Now I can see that [candid discussions] happening, but way back when, I could not see having that kind of conversation.

LGBT attorneys who were involved with their firms' recruiting efforts reported mixed perspectives on their experiences in the recruiting and hiring

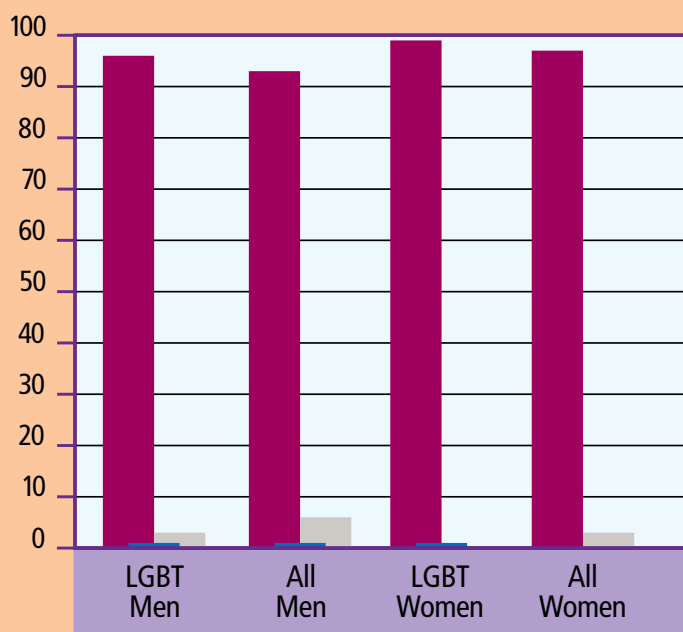
processes. In the survey, 80% of LGBT attorneys (in comparison to approximately 77% of all attorneys) reported actively supporting their firms' efforts to recruit and hire other diverse attorneys. Although this differential between LGBT attorneys and all attorneys is small, the gender and generational differentials within the group of all LGBT respondents is more significant. Among LGBT attorneys, men (86%) were far more likely to report active participation in these activities than women (71%), and partners (91%) were far more likely to participate than associates (74%). Many of the focus group participants discussed a general lack of consistency and organization in their law firms' efforts to recruit LGBT candidates, and some felt that this sorely hampered the ability to recruit LGBT attorneys.

An observation by one male associate illustrated this point:

We don't have an affinity group at the firm, and so a lot of the stuff is very disorganized. I would say that a large part of that has to do with the fact that there aren't organized avenues for planning and getting funding and that kind of stuff. Not to say that the firm doesn't support LGBT issues — they do, and I would say that our participation level at events and things like Lavender Law is probably about the same as our peer firms. It's just done in a much more haphazard way, and I think that that sort of sentiment plays through in the culture overall.
– male associate

I prefer to work in a diverse and inclusive law firm.

Agree Disagree Neutral



Desire for a Diverse and Inclusive Work Environment

The percentage of LGBT attorneys (97%) who preferred to work in a diverse and inclusive law firm was slightly higher than the average percentage for all attorneys responding to the survey (94%). It is therefore an issue of concern from both a recruitment

and a retention standpoint. A diverse and inclusive workplace will help attract LGBT talent and it will also contribute to the ability to retain and promote talented LGBT attorneys.

A striking disparity was revealed with regard to the perceived impact of strong diversity programs on career development; 84% of LGBT survey respondents (as compared to only 48% of all survey respondents) reported that a more diverse and inclusive environment would have a positive effect on their careers. In addition, LGBT attorneys reported actively seeking evidence to assess whether their workplaces were, in fact, diverse and inclusive.

As one associate noted:

The firm has a “don’t bring your personal business to the firm” type of attitude. I mean, you do whatever you want and it’s cool, but most people actually — straight or gay — tend to just sort of work. But there was a moment when I felt included when [a partner] just nonchalantly mentioned a gay social networking site to me, because we do a lot of work for high-tech clients, and he told me to check it out. I was sort of open at that point, but I think at that moment, I felt more comfortable working with that partner, and subsequently [it] just opened my eyes to feeling more included in the firm.

When evaluating an offer of employment, almost all LGBT associates (98%) reported that the opportunity to work in a diverse and inclusive law firm was a significant consideration. LGBT associates also reported a higher likelihood of leaving if they perceived their work environments as not inclusive. The following experiences are illustrative.

[An inclusive workplace] was a factor for me. I currently work at the firm where I summered, and I was out in the interview



process. I turned my resume in to the recruiting committee and I just felt that going somewhere where I could be out from the beginning, and somewhere that has an LGBT committee or affinity group for mentorship and contacts with other attorneys, was very important to me.

When I was a very junior associate, a more senior associate in my group had identified himself to me as gay, and I identified myself to him as gay. And I was asking him about it, and he just sort of made it clear that while it shouldn’t be a secret, it wasn’t anything to be advertised. And I could just see that – the way he portrayed himself in as neutral a way as possible. So, it didn’t sit particularly well with me because I almost felt like I was walking a tightrope, and I knew I wouldn’t do that for long.

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The stress of having to basically lie about what you did over the weekend, and who you did it with, was overwhelming. I only lasted at that firm about six months just because it was so overwhelming how anti-LGBT it was. In my exit interview, I decided to use that as my opportunity to come out since I was leaving and one of the questions was, "What would you do to change the firm?" And I said, "Well, I think the firm should be more involved in [the] LGBT community," and the partner laughed at me and said, "Well, that's never going to happen."

Some partners reported that they realized that their need for a diverse and inclusive law firm diminished as they reached higher levels of success and power within the firm. But most also realized that in order

to recruit new attorneys and staff, the firm needed to be sensitive to the issue. One partner noted that:

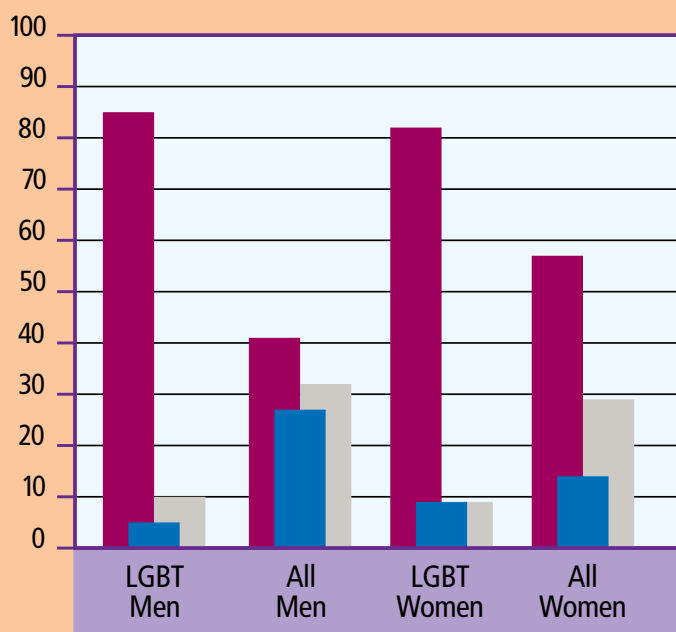
When you're an equity partner and you've been an equity partner long enough, you do forget what it's like to serve at someone's pleasure in an employment setting ... there's always concern initially about can I be out, how out can I be, is there anyone I've got to be careful of? And we have a fair number of gay employees as well, who are not lawyers, and that's a frequent discussion among them. I do think [paying attention to these issues] makes a big difference.

One partner summarized reasons why attorneys at different stages of their careers value diversity in the workplace:

The younger people were supporting it all along. The middle people saw it for the right reason. The older, more conventional people are changing because the clients are demanding it.

A more receptive/inclusive environment for LGBT attorneys would have a beneficial impact on my career.

Agree Disagree Neutral



Gender plays an important, and sometimes more significant, role for LGBT lawyers in certain aspects of law firm life. Among LGBT respondents, a slightly higher percentage of men (85%) than women (82%) believed that a more LGBT-friendly workplace would prove beneficial to their professional development. Women expressed higher levels of concern for whether the workplace was receptive and inclusive for women, and their concerns about gender equality were as prevalent as their concerns for LGBT equality. In fact, 83% of women felt that gender-equal policies would positively influence their professional progression. Not surprisingly, LGBT men were largely unconcerned about the impact of gender-equality policies on their professional advancement, and partners were less inclined than associates to be concerned.

The following comments from female partners reflect the concern women have about their ability

to feel included and work as “part of the team.”

Diversity issues were a factor for me in choosing the law firm that I did, because at the time, as a woman, going to a firm that was more welcoming of women attorneys was a very, very big deal.

I’ve been at my firm since [I was] a summer associate...at the time I started, I was married and was not part of the LGBT community. So it really wasn’t an issue for me. But I was focused on gender issues. At that point, there were not a lot of female partners in my firm or, frankly, I think, in any firm. So it was more a function of how many female associates were there. Of the few female partners that were there, [I wanted to know] what stature did they have within the firm and, frankly, [what was] the perception of how women were treated there?

I was leaving a situation where I had really horrible women partners. And I think there was only one partner. I was coming from a very small firm. So when I went and interviewed, I specifically asked to speak to the women partners I’d be working with just so that I could see what their personalities were like ... so I could just see if I could work with them.

The Generational Divide

Law firm associates who participated in the focus groups reported higher expectations than did law firm partners regarding diversity, workplace equality, and inclusion of LGBT attorneys. Attorneys newly entering the legal profession expect that their law firm employers will offer safe and welcoming work environments in which they can be open and

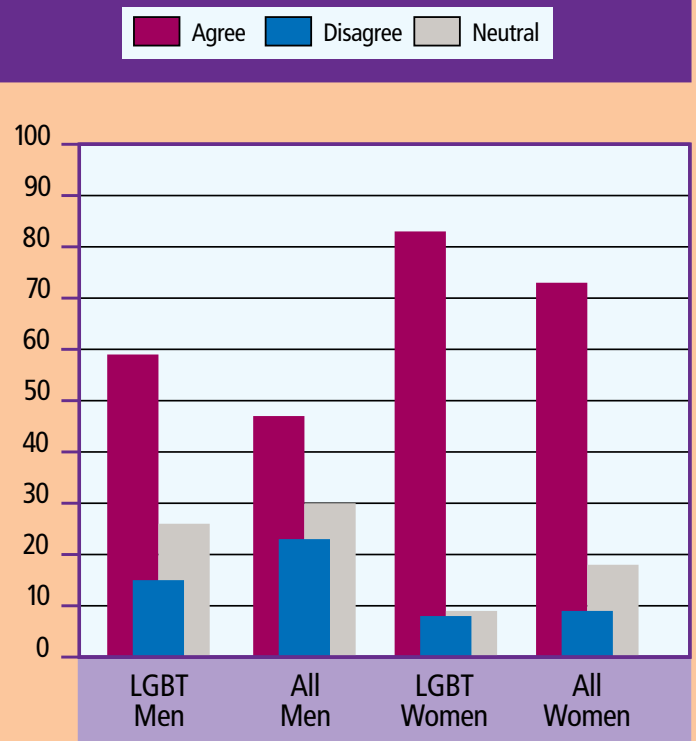
authentic about their sexual orientation, gender identity, and personal lives.

Many LGBT associates discussed these feelings during the focus groups:

I work in an area where most of the people that I work with and interact with are under 40, and I am also under 40. And it’s virtually a non-issue, I guess because we’ve grown up with persons who have different sexual orientations, different ethnicities, and different backgrounds. For the people that I work with and the people that I know, it’s like, “Oh, okay, you’re gay, great. Oh, okay, you’re black, great, whatever.” It’s a non-issue.

I do a lot of the diversity trainings, and participate on one of the panels internally

More gender diversity in the workplace would have a beneficial impact on my career.



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that we do, and [I find] . . . the ones who have children in college, and [may be] on the older side, tend to change quicker and accept change quicker. Both men and women who either don't have children, or are not that participatory in the younger generation's careers, tend to still have issues.



During the recruiting process, I just asked [about LGBT diversity]. I just came out and asked a question, and it started off with the first person I met, who was the attorney recruiting director. And I just asked the question outright, and she told me that it wasn't an issue, told me about the out gay partners and associates that were there, and offered to put me in touch with them. Then I met people in the practice group that I was being recruited for. I asked them and no one seemed to care at all. And then after that, I met one partner and one associate who were already at the firm and were out. And they told me that it wasn't an issue.

In law school, it was up there with the other diversity issues, and the [school's] GLBT organization had a pretty big membership. I think a lot of the GLBT

students . . . kind of expected the same thing when they started working, and some of them got it and some of them didn't.

Within the firm, I think that there are generational differences. I think the older generation knows that their stereotypes and prejudices are becoming less and less acceptable, and at least what I see is that they're responding accordingly and they're sort of reevaluating. And [they are] understanding that, yes, people are different, but that doesn't mean that they're not good lawyers and able to do good work.

Interestingly, these increased expectations of LGBT associates did not always resonate well with some of the LGBT partners, who viewed themselves as having struggled to pave the way for today's associates.

It's kind of interesting, and generational within the confines of [sexual] orientation, that other out LGBT partners and I have compared notes . . . We're of the perception that the younger already-out have been out, you know, since elementary school, seem to have a sense of entitlement . . . We had to work really hard to get where we are. I'm not so sure it's because of our orientation, or just that we saw that's how to advance in a career; whereas . . . a lot, but certainly not all, young LGBT attorneys seem to have a sense of entitlement. And I'm not sure that's even specific to [sexual] orientation.

I think that younger people are out in ways that, years ago, I would never have been out. And I think there are expectations that the firm continues what it's doing. The younger associates don't seem to be

activists like the older folks like me, who lived at a time where you couldn't be open and had to fight to get domestic partner benefits and all of the things that we all now take for granted.

Retention, Inclusion, and the Work Environment

Even as law firms improve their ability to attract

and recruit a more diverse attorney workforce, most continue to struggle with the ability to retain diverse attorneys. Many of the retention challenges for LGBT attorneys mirror those experienced by other underrepresented minority groups: feeling isolated, unwelcome, or excluded. LGBT attorneys also express concerns regarding limited access to professional development opportunities and mentoring. In addition, the legal workplace is not immune from the repercussions of societal

Recruitment

Recommendations for an LGBT Inclusive Workplace

- *Appoint LGBT attorneys to the firm's hiring committee.*
- *Actively recruit LGBT attorneys and place appropriate events on the firm's official recruitment schedule. Reach out to and enlist LGBT attorneys as part of the firm's overall diversity recruiting efforts. This should include targeted outreach efforts to LGBT law student groups and bar associations (e.g., Lavender Law, LGBT job fairs, National LGBT Bar Association).*
- *Recruit through LGBT law student groups and bar associations. When involvement in such organizations is listed on candidates' resumes, interviewers should express interest by asking candidates about these efforts and leadership experiences.*
- *Collect and publish statistics on the numbers of openly LGBT attorneys at the firm.*
- *Identify LGBT partners and/or associates who are willing to be resources for LGBT law students or lateral candidates who are considering joining the firm. However, do not insist or demand that an LGBT attorney agree to answer questions for other LGBT attorneys who being recruited by the firm.*
- *Enlist the firm's LGBT affinity group as a strategic partner in recruiting LGBT attorneys and offer information to candidates about the affinity group such as, a recent calendar of events or program agendas.*
- *Include materials in the firm's recruitment packages and new employee orientation manuals about the firm's anti-discrimination policy, same-sex spouse and/or domestic partner benefits, number of openly LGBT attorneys, LGBT affinity or employee resource groups, LGBT-specific outreach programs and initiatives, including financial support and pro bono services contributed by the firm in support of LGBT bar associations and nonprofit associations.*
- *Many firms have created LGBT-specific pages on their Websites to highlight activities of LGBT attorneys and their allies, as well as, basic information about LGBT-inclusive policies and benefits. Wherever the firm touts its non-discrimination policies, specify that sexual orientation and gender identity are protected classes and make these policies accessible for review by all recruitment candidates and internal staff. To help communicate this message, many firms participate in the Human Rights Campaign Foundation's annual Corporate Equality Index survey (www.hrc.org/cei), display the HRC logo, and the firm's Equality Index score as recognition of the firm's status as a "Best Employer" for LGBT employees.*

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bigotry and ignorance regarding LGBT people and same-sex relationships. As a result, LGBT attorneys must sometimes confront inequity regarding access to health care and other benefits for themselves, their partners or spouses, and families.

MCCA's research found that the day-to-day reality in many law firms has yet to match their express commitment to diverse and inclusive workplaces. This lag is especially pronounced in the case of LGBT attorneys, many of whom still feel reluctant to be open regarding their sexual orientation and gender identity for fear of adverse career implications.

Equal Treatment by Peers

Surprisingly, LGBT attorneys were more inclined to report that they felt they were being treated as equals by their peers (89%) than the survey

respondents overall (87%). A closer look at the data, however, reveals that the higher average level of LGBT satisfaction was skewed by the responses of men. The difference between LGBT men and women was quite pronounced — a 7% differential (85% of women reported feeling treated as equals by their peers, in comparison to 92% men).

In fact, one somewhat surprising finding from the survey was that gay white men were no more likely than their straight white male counterparts to report concerns about unequal treatment by their peers. This suggests that in law firms, being white and male continues to afford advantages, and the advantage of being white and male helps to minimize several of the challenges associated with being gay. Thus, although all LGBT attorneys face multiple challenges to full inclusion, women and race/ethnic minorities experience more significant obstacles.

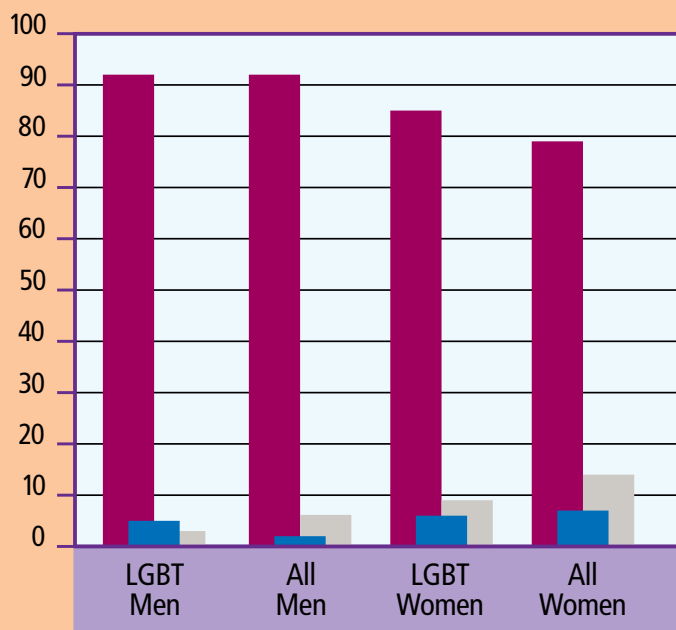
Although LGBT partners had achieved success within the firm (as evidenced by their admission to the partnership), only 84% of LGBT partners felt that they were treated as equals by their peers, in comparison to 90% of LGBT associates. This illustrates two potential trends. First, LGBT partners continue to experience challenges to achieving parity with their straight partner peers. Second, shifting generational perspectives likely have allowed younger lawyers at the associate level to experience greater levels of acceptance and equality among their also younger peers.

As noted by one partner:

Mostly, there is the bias against advancement. Some of these [LGBT] partners are looking for leadership positions, or want to be seen as a heavy-hitter and an origination or principal-billing partner, and are afraid that they will not be given those opportunities if they self-identify. They have that fear that it will have a negative effect.

I feel that I am treated as an equal by my peers.

Agree Disagree Neutral



Many partners also expressed the belief that law firms generally do not accept anyone into the partnership ranks who does not strive to assimilate into their cultures, which are often described as conservative and traditional. As the following examples show, many of the partners perceived unequal treatment of LGBT attorneys to be related to an institutional bias that certain attorneys simply do not fit in, regardless of sexual orientation.

I just see it as a wider issue. When I look at people of color at the firm, the ones who are immigrants and speak with an accent are not as successful as those who basically conform culturally to the sort of lofty attorney ideal, don't speak their native languages, or observe Christian holidays. People tend to succeed who are more assimilated than not. Except maybe it's easier to hide, if you choose to, homosexuality than it is to hide obviously your race, or even whether you are Christian, Jewish, Muslim, or whatever.

The more of a superstar you are, the more of your [differences] that are tolerated.

Perceptions of Challenges Based on Gender, Sexual Orientation, and Race/Ethnicity

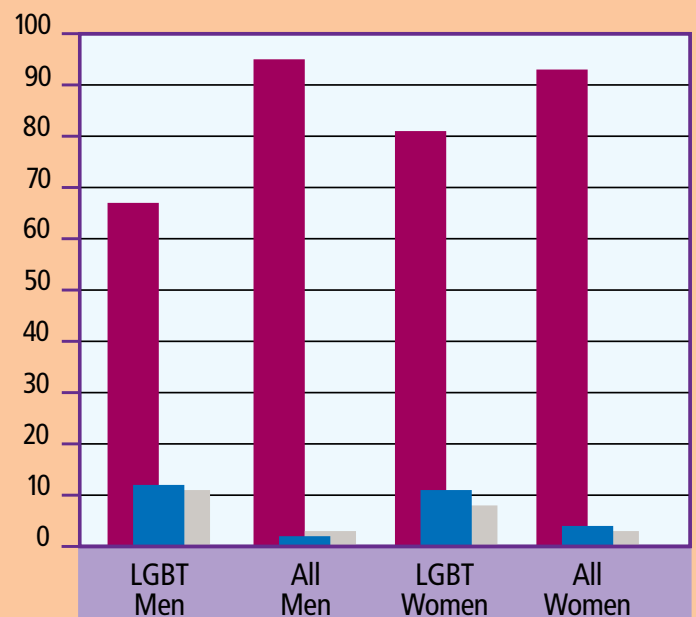
Several attorneys felt that their LGBT identities decreased their chances of being successful in their law firms. About 12% of LGBT attorneys (12% of men and 11% of women; 12% of partners and associates alike) felt that their sexual orientation would hinder their advancement in their firms. It is important to note that many LGBT attorneys who participated in the focus groups reported this perception regardless of whether they were open about their identity. Many

focus group respondents also reported vast differences between geographic locations, practice groups, and other factors in determining the specific challenges faced by LGBT lawyers. For example, LGBT attorneys working in offices located in southern and mid-western cities encountered less progressive attitudes than did their peers in cities located on the West coast and in the northeast.

For generations, and even today, you have LGBT attorneys who "pass," or are making it a non-issue, or whatever phrase you want to use. But they sit with this — fear, I guess is a good phrase — that if someone is doing something adverse to them, "Oh, they must have figured out I'm gay or a lesbian." And that's the consequence of remaining in the closet at work. But on the flip side, if you're

I believe that my sexual orientation will not hinder my advancement in my firm.

Agree Disagree Neutral



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out and someone's treating you poorly, is it because you're not doing a good enough job for them, or is it related to your orientation?

— associate

I feel safe and comfortable, but I think that it depends very much on the partner and group to which an associate is assigned. And I do think that there are some groups or pockets within the firm where someone may feel less comfortable, and I know that to be the case because I have colleagues, other associates, who don't feel comfortable disclosing their sexuality because of their situation, and the clients and the partners for whom they work.

— associate

I think there are certainly a lot of people who might be more open about their sexuality but really don't discuss it or don't discuss it with many people, or don't discuss it all just because of their concerns about how people are going to respond. I think that part of the problem is that there isn't an overall firm attitude that people can point to. It really is kind of a hit-or-miss basis, and rather than taking any risks or chances, because people are concerned about their careers, they don't really expose themselves in that way.

— associate

Although the percentage of LGBT attorneys who felt that their race/ethnicity would hinder their advancement in the firm was the same as the percentage of attorneys overall (6%), 8% of female LGBT attorneys felt that their race/ethnicity would hinder their advancement in comparison to only 5% of their male LGBT counterparts. The possible intersection of race and gender with sexual orientation among LGBT attorneys in law firms needs to be explored in much greater detail in future reports that are designed for that purpose.

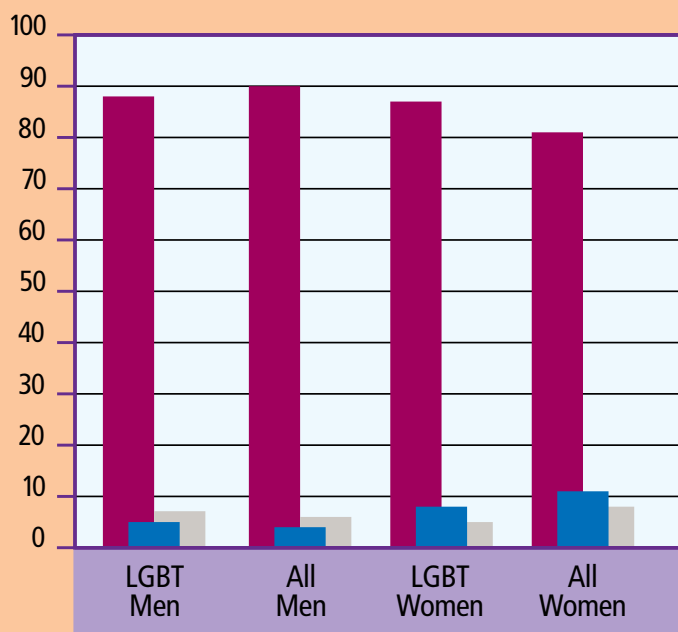
What's interesting at my current firm is that, while it seems to be, you know, really ahead of the curve on gender and LGBT issues, it doesn't seem to be so with respect to race and racial-type issues. I don't really see racial events and e-mails and networking and, you know, those sorts of events and communications like I do with the female groups and with the LGBT groups, and I'm not sure why that is, but it seems — we seem to be stronger in gender and sexual [orientation].

— associate

I'm Asian and I was at a diversity retreat, and it's kind of strange how our firm did it. But they ended up making us go to our

I believe that my race/ethnicity will not hinder my advancement in my firm.

Agree Disagree Neutral



respective affinity groups, and we have a larger Asian presence at my firm but there's only a handful of LGBT attorneys. So they put me in the LGBT affinity group.

— associate

Some of the male Hispanic gay men at the firm have had more difficulty. It's anecdotal, but I am the one they come to.

— partner

Again, the gender differential was a significant factor in understanding the overall challenges faced by the LGBT attorneys. Although the percentage of LGBT attorneys (10%) who felt that their gender would hinder their advancement in the firm was roughly the same as the percent of attorneys overall (11%), 23% of female LGBT attorneys felt that their gender would hinder their advancement in comparison to only 2% of males. Among LGBT partners, only 2% felt that gender would hinder their advancement, in comparison to 9% of LGBT associates. Both the male and female focus group participants agreed that gender issues for women, regardless of sexual orientation, were greater challenges in many of their firms than sexual orientation issues for GBT men.

I actually don't really have any comment for the GLBT issue, but I still think there are some gender issues, along with the mommy-track idea.

— female partner

I had a close friend at the firm who was a black lesbian, and I asked her once over a lunch conversation whether she thought her experience was altered by any one of those characteristics more than others. And she thought her experience here was influenced more by the fact that she was a woman than the fact that she was black

and the fact that she was lesbian.

— male associate

I'm not a woman, so I can't say, but that [gender as a greater challenge than LGBT identity] resonates with me. If I had to bet, that's what I'd bet. I'm not seeing it from the orientation/GLBT side, but I'm sensing there's still a lot of progress to be made on the gender issue.

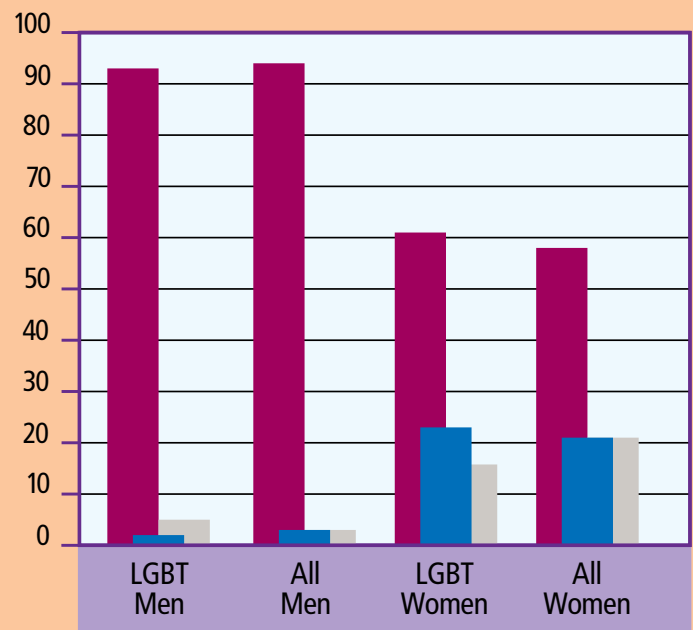
— male partner

I was "growing up" as a lawyer at a time when men still had the distinct advantage over women, and I don't think that difference has gone away.

— male partner

I believe that my gender will not hinder my advancement in my firm.

Agree Disagree Neutral



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Gender issues for LGBT attorneys can be more complicated when the attorneys express their gender identities in non-conforming ways. Social expectations remain in play for gender expression of men and women regardless of sexual orientation, and those that do not conform to these gender roles may find their experiences in law firms to be especially challenging. The issue of gender identity and expression is explored in greater detail later in this publication; in the context of this discussion, it is important to note that the negotiation of the social expectations of gender expression and gender roles presented a central theme for many of the focus group participants in defining and communicating their LGBT identities. Several attorneys shared their perspectives about the convergence of sexual orientation with other characteristics such as, gender and race.

I think that the intersectionality of my gender and my sexual identity are both very weighty, and I feel some more pressure in

my professional life to be “girly” to kind of counterbalance being gay. I think that the opportunities that I have had professionally are because I do not look like the “scary lesbian” . . . and my straight friends in law school who are women went to their interviews in pantsuits to say, you know, “I’m a woman but I’m going to wear pants” and [yet] I was an out lesbian, but I wore a skirt every single time. So I think that my firm is probably very happy that they can use me to check their [LGBT] box, but they can also put me in front of any client and not raise eyebrows based on how I look.

— female partner

At the firm [where] I used to work, I was extremely conservative in my dress, and wore huge boxy shirts and huge boxy pants and did everything I could to look like a straight white man. But at the firm

I'm at now, there's no line. There are no limits. I am who I am. I wouldn't say I dress flamboyantly, but I definitely dress with bright colors and, you know, tight clothes, if I want – nothing on the inappropriate side, but I certainly don't feel the need to be more masculine because I'm a man, at all. And I would say the same is true for the other LGBT people in our office. In other words, I don't feel like there's any pressure either for lesbians or for gay men to dress or act [in certain ways] at all.

— male associate

I definitely perceive greater gender pressure — to act like a girl — as a lesbian than I think my straight female colleagues do, and that's not unique to the part of the country where I practice. This is something that I've talked about with other out lesbian friends of mine who work in other cities at other firms.

— female associate

Many law firms seem to be oblivious to the notion that LGBT attorneys have more than one diverse identity. Their diversity programs are oriented from the perspective of mutually exclusive identities, which leaves the intersection between these various diverse identities unexplored. This approach often creates competition for attention and resources between the different groups representing these identities in law firms.

As one participant articulated:

I think that an interesting quandary that a lot of firms face in diversity — and it's across the board — that there's a perception that there's a pie, and that the greater the slice that LGBT wants to take is somehow taking away from other groups, that if there's been

an effort made to expand ethnic diversity, every dollar taken away from ethnic diversity to support LGBT is a dollar less that the [ethnic groups] have. If you include some efforts for hiring for LGBT, are you taking away efforts at hiring for ethnicity or gender? I don't know what the answer to that question is, other than to try to shake people from the initial perception. It's not a pie with a limited number [of pieces]; it is, in fact, a more open field — the greater our diversity, the better we are.

Another female partner who participated in a focus group observed that firms are too limited in their definitions of “diversity:”

There was a partners' meeting where the entire subject of the multi-day meeting was diversity. It was a little bit disappointing that the LGBT community, I think, might have been mentioned once in the entire outing. It was really focused on people of color and women, which I promptly raised after, and my comments were very well-received. So in my case, it's not really so much that the firm has affirmatively done anything because I would say, frankly, they're probably lagging a little bit behind on that, although they are stepping up their efforts now in large part because of me. It's more just a feeling of knowing who the people are and a comfort level, and kind of getting a sense that people are accepting of it.

Negative Comments in the Workplace

Despite the fact that derogatory comments and similar statements are “politically incorrect,” they remain all too common. In MCCA's survey, 71% of LGBT attorneys (as compared to 78% of the overall

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group of attorney respondents) reported hearing negative comments or jokes based on gender, race/ethnicity, sexual orientation, and/or physical disability. LGBT partners were slightly more likely (71%) than their LGBT associates (69%) to report having been exposed to such comments or jokes. These results may be best explained by the possibility that many of the comments and jokes are being made outside the presence of LGBT attorneys, and when made in their presence, partners are a bit more privy than associates.

The impact of exposure to such negative comments or jokes was uniformly offensive. They trigger feelings of exclusion, as well as stress from the hostility and insensitivity of the offending colleagues. But many attorneys feared that standing up to force a few offensive attorneys to reexamine their biases and discriminatory behavior was risky. They felt that speaking out had the potential to lead to alienation and unproductive work relations, especially in firms that are less vigilant about enforcing zero tolerance for discriminatory or harassing behaviors. For some, knowing what to do is difficult.



I was a summer associate there, and then went to work there as an attorney. Even as a summer associate, I was heckled at events by other associates who may have assumed or thought that I was in the LGBT community. So I knew going into it that it was going to have to be a closeted professional experience.

— associate

Well, I didn't really want to create a big issue out of this, because what if it costs me my job or what if it costs me professional advancement? So I didn't go to the firm with it. It was at a recruiting event, when I was a summer associate, the first time something happened; another associate called me a "faggot" in front of several people and it was very upsetting. The way I dealt with it was I called him at home the next day and told him that it was inappropriate what he did ... He profusely apologized ... I never had a problem again with that person. So I chose to deal with it directly, but I know a lot of people probably just can't do that, and it's hard to give advice on what firms could do, other than provide assurance that the firm is committed to diversity and that if you do feel that you've been slighted in some way based on your sexual orientation, that the firm will be receptive and open and will deal with it in the most fair and swift way possible.

— associate

There was one other gay man in the group. And for ten years, people who worked in the same office, same city as me would routinely greet me with his name. I would respond by saying "No, I'm not him, I'm

me,” and I’d reintroduce myself, but, for years, it went on.

— partner

Straight men were the most likely to overhear negative comments or jokes based on gender, race/ethnicity, sexual orientation, or physical disability, and they were also the most likely to feel comfortable speaking up to protest. In fact, more than three-quarters responded that they would voice disapproval as compared to only about two-thirds of women or LGBT men who reported feeling comfortable objecting. As with many of the other experiences, among LGBT attorneys, a considerable gender difference was apparent when it came to hearing offensive, bigoted comments or jokes; 75% of the LGBT women reported having been subjected to such an experience, in comparison with just 69% of LGBT men. In fact, several of the male participants shared stories about having observed harsher treatment of lesbians.

I actually have heard horrible stories from lesbians. I’m not sure what it is, but there are [several] in our firm. They have shared with me, privately, stories of things that happened to them in the firm — typically with men in their practice groups — that have been pretty horrific and surprising. And I think that the problem with that is that they’ve never done anything with that information out of fear. And they’ve kind of held onto those things whether or not they’re still working with those people. But there was never any way to resolve it or to address it, because they’ve not done anything with it outside of mentioning it to a few people.

— male associate

The group leader is in the office with a [lesbian associate], and, one afternoon,

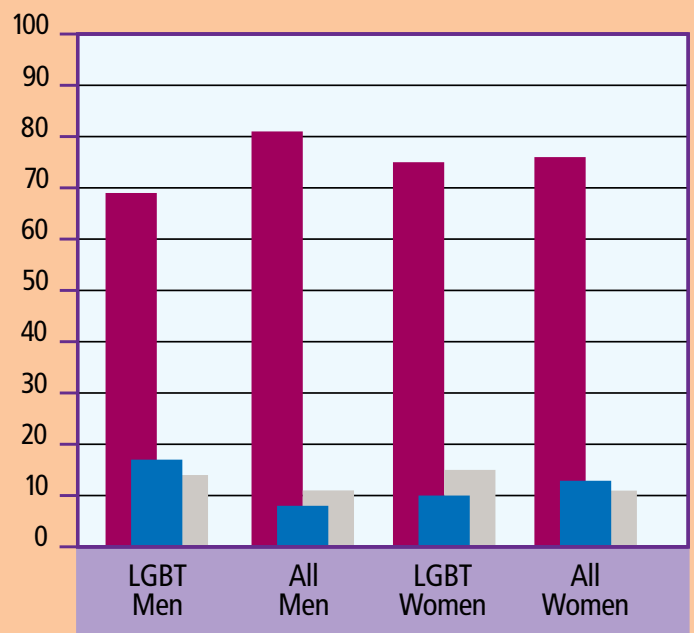
told her a “dyke” joke, you know, in those terms. Two or three days after that, he sent her a cartoon, an e-mail that had some pretty negative things in it. And when he sent the e-mail, he copied four or five other people in the group, but sent it directly to her.

— male associate

We had an attorney here who was not gay. She’s married and has a child. But before she practiced law, she was a professional tennis player for a while. And one of the attorneys made a joke like, “Yes, that was her lesbian phase.” And I was just thinking, “My God.” [Then] he kind of laughed. I don’t know how to respond to those types

In my work environment, I sometimes hear negative comments/jokes based on gender, race/ethnicity, sexual orientation and/or physical disability.

Agree Disagree Neutral



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of comments. I'm much more comfortable now because I've been here for a while, and I'm more senior. But as a first- and second-year associate, I mean, it was troubling.

— female partner

Many of the LGBT attorneys reported two related sets of experiences in the workplace. The first involved the struggles of LGBT attorneys to force their firms to appropriately recognize and use correct terminology when the subject of attorneys' personal lives is relevant. The following accounts underscore the types of slights LGBT attorneys experience all too frequently.

Every year our HR group puts out a home phone directory so that in case of an emergency we can contact each other,

and every year we fight this battle. They put my partner as "companion." I'm like, "companion?" Where does that even come from? And we have gone to HR like six years in a row and said, "Partner, partner, partner, partner." And every year it comes back "companion." And I don't know, maybe there's some guidance that could be given for what the appropriate terminology should be, and now that [same-sex] marriage is valid and invalid on any given day, it may be more complicated. But it seems like such an easy thing to fix.

— partner

The lawyer who does our compliance training could not say "sexual orientation." She said "sexual preference" every time, which I find very offensive. And so I sat down with her. I'm like, "Look, I just want you to understand what this implies, what it means in the battle that we're fighting outside of these four walls." She was like, "Oh, I'm sorry. I'll change. I'll really try and change my slide." I'm like, "That's fine. I want you to understand the distinction of what you said so you understand it in your soul." And she just didn't get it. So I think terminology, and understanding why that terminology is important, are important.

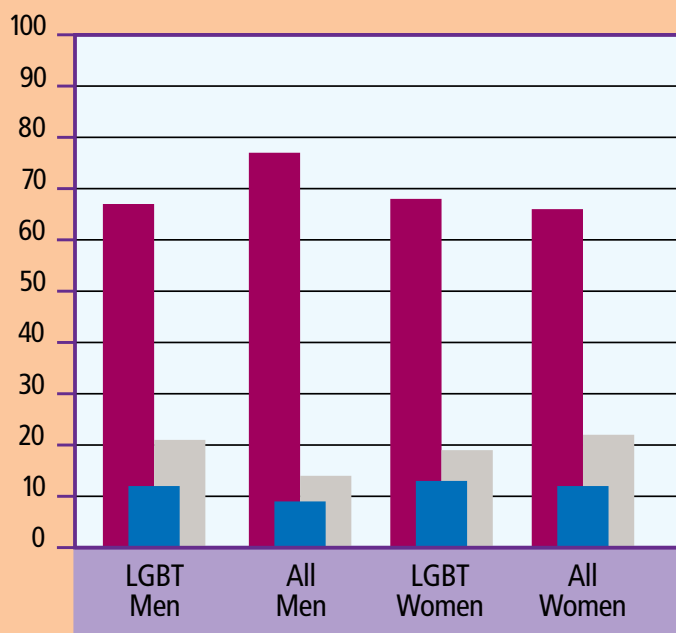
— partner

The second related set of experiences involved frustration by LGBT attorneys when their coworkers and colleagues neglect to speak up when derogatory jokes and comments are made about LGBT people.

The most salient point about using slurs against the GLBT community or telling jokes is that it's probably the only remaining group about whom someone can make

If I overhear negative comments based on race, gender, sexual orientation, or other differences, I feel comfortable voicing my disapproval.

Agree Disagree Neutral



a joke and everyone — not just the gay people, but the more progressive straight people — feel uncomfortable calling anyone out on it. If a racial joke were told, the people in the room would say, “Hey, you know, that’s not OK.” The room almost gets kind of heavy when somebody tells a joke [about LGBT people]. There will be several people sitting around thinking, “Man, that’s not OK, but I’m not going to be the one to say anything because then I might be excluded from the group.” It’s still OK to do that.

— partner

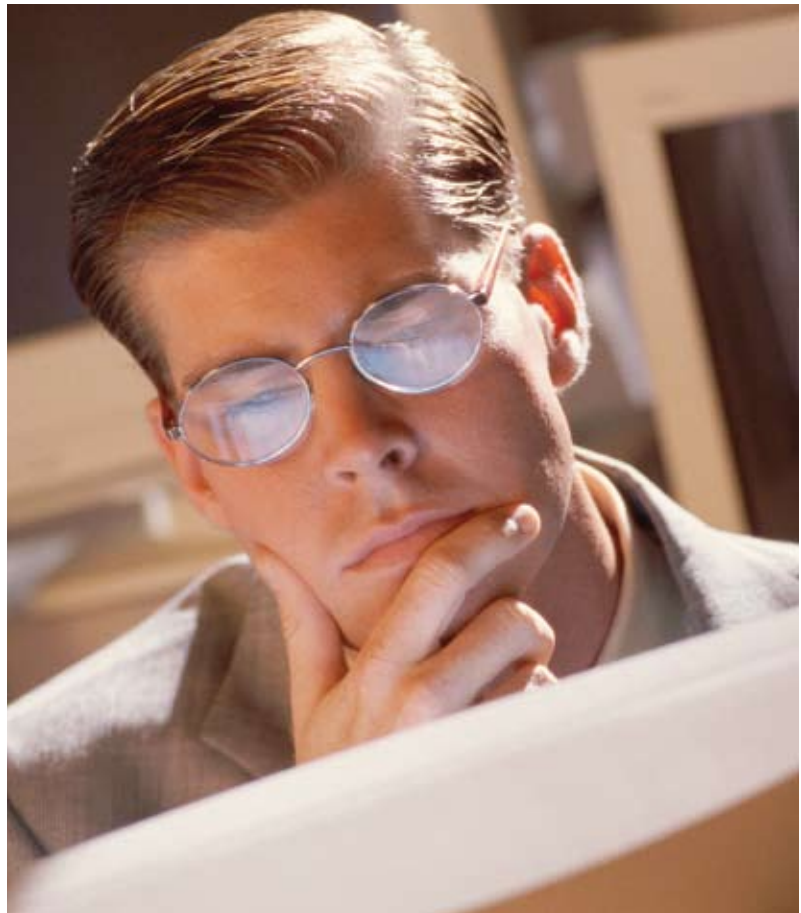
There are plenty of people who probably feel scared to say something. And it’s not because anyone would actually think that they’re gay. It’s that you know that the next comment that’s coming is, “So, what, are you a fag, too?” You know, even though they may be, you know, married with kids and everybody knows they’re not gay. It’s just kind of a not wanting to go there.

— associate

People are also concerned about being excluded because you can’t take a joke.

— partner

work assignments, share the written and unwritten rules of the workplace, and receive mentoring and professional guidance. Networking opportunities can arise through formally planned and scheduled firm-sponsored events, or as informally as being asked to grab lunch with the practice group leader and a few members of the team.



Informal and Formal Networking

In law firms, access to both formal and informal networking opportunities is important to the professional development and advancement of every attorney. The benefits of networking include the opportunity to develop relationships with colleagues, cultivate business development and key

Many LGBT attorneys reported feeling excluded from informal or formal networking opportunities because of sexual orientation. In particular, lesbian women reported higher feelings of exclusion in part because they additionally experienced challenges based upon their gender. Among LGBT attorneys, 18% of women and 10% of men reported experiencing exclusion from informal or formal networking opportunities.

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The issue was more pronounced for associates than partners, with 13% of associates (in comparison to 9% of partners) reporting such exclusion.

In addition to feeling excluded from networking opportunities, many LGBT lawyers also felt that they had to remain silent in offensive or hurtful situations. They remained silent in order to avoid jeopardizing the limited networking opportunities that were made available to them either because they were not yet open about their sexuality, or because they were out but accepted by colleagues because they did not “rock the boat” or complain when inappropriate things were said or done in their firms.

At a social event, one male partner was at a table of women. And a senior male partner walked over and said something

like, “Here you are with all these women. Are you gay?” Did I say anything? I didn’t. I didn’t quite know what to say at that point. That was a social event, not in the office, but it was an event of law firm people. But I didn’t quite know if I should be offended as a woman or as a lesbian. I still struggle with it.

— female partner

Before I came out at the firm, I can remember a couple of instances where attorneys in my firm would be speaking disparagingly of other attorneys, either plaintiffs’ counsel or counsel we were working with ... And on occasion they would say “He’s gay” or [an associate] would accuse that attorney of being gay or [call him] a fag. And I remember at the time thinking, “My God, that was so inappropriate.” I can stick up for this guy and say, “I don’t see why you need to accuse him of being gay like that’s something wrong,” but then you run the risk of them excluding you from those types of calls, from strategy conferences and things like that, if you call them out on it. You know, I wasn’t out. And I was trying to get ahead.

— female associate

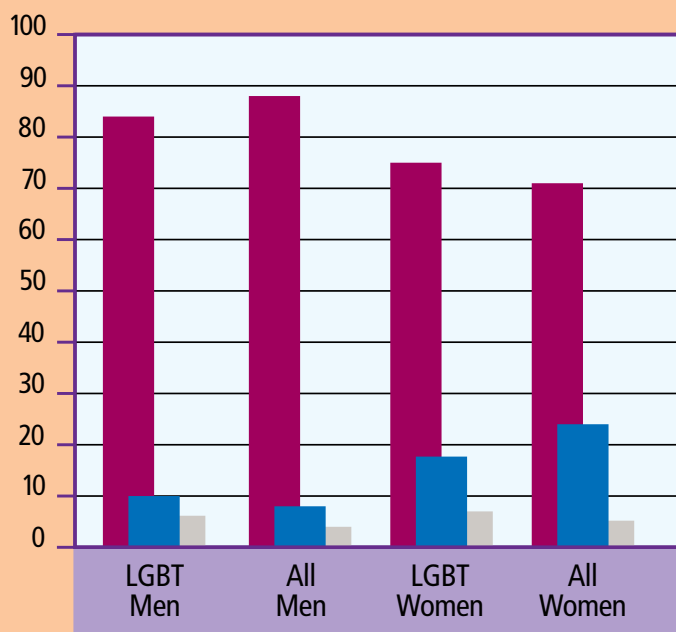
I don’t feel accepted socially in the firm, whereas if you just asked me about work I would say absolutely 100% accepted. No one even blinks twice. There’s this odd camaraderie after work, “drinks,” [that] kind of thing that I never quite get in on.

— female associate

When we have firm picnics and stuff, I still don’t go and take my partner. Not so

Reported exclusion from informal or formal networking opportunities.

Agree Disagree Neutral



much because I think we would feel out of place, but because there's so many kids around and there's the staff and their kids are around and there's just a certain sense sometimes that people don't like or are less comfortable to have their kids see a same-sex couple. I just worry a little bit about, you know, being too in-your-face kind of thing.

— female associate

You know, where I work has gained a reputation for being a little bit of a “boys’ club” and I have personally seen that a couple times.

— female partner

When I was a very junior associate, like a second- or third-year, my class was made up of mostly females who happened to be in their life stage of preparing for weddings and getting married and, you know, discussing caterers and cakes and photographers and all those things. In that case, I did feel left out in a social setting. I've never felt that way with a partner or within a work setting. But I certainly wasn't able to bond with my class in those early years the way they bonded with each other over similar life experiences.

— female associate

Although examples of exclusion and related challenges abound when the discussion focused on networking within the firm, several participants shared their stories about inclusive workplaces where LGBT lawyers felt welcomed.

[On my] first day, when [my partner] helped me move in my belongings into

my office, I encountered [someone from another office.] And I introduced him to my partner as my partner. And he had this blank stare of horror. I think I might have been the first lesbian he had ever met with a significant other. But otherwise, the entire practice group that I come from is incredibly progressive. And I don't I think it would be fair to say they didn't bat an eyelash. It was just a non-issue. And they've integrated me and my partner into all the firm activities, including the external activities in particular, for better or worse, with our gay, lesbian, and transgender clients and client reps. And so it usually falls to me to coordinate our involvement in the Human Rights Campaign and local GLB-type centered events, which our firm is very supportive of, and it falls to me because I am a part of that community. And they've been terribly welcoming, including their spouses and colleagues in other firms. It's been a really welcoming environment overall.

— female associate

[My partner] remarked that at some of the early events that she went to, how surprising it was that even very senior attorneys and their spouses, if I ended up diverted by a client, would come over and make sure that someone was talking to her and making her feel welcome. And it wasn't just the young, progressive [ones]. It was the wife of the sixty-year-old senior partner. So that's been a very positive experience.

— female partner

Several participants also discussed the generational differences between associates and partners in terms of how LGBT lawyers assert themselves into

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networking situations. The following illustration of this point describes a law firm that annually hosts a “prom” for its employees.

I will say that I see an entitlement among younger GLBT attorneys that’s a positive. When I started working in a law firm, in big law firms [a long time ago], you just went to the prom, the dinner dance, or whatever, alone, or you brought “a friend.” Or you didn’t go. Those were your choices. It was an eye-opening experience to me the first time I was sitting in my office and a gay guy comes in and says, “Should I take my boyfriend to the prom?” And I was sort of like, “Oh, my gosh,” because I, at that point, was taking my partner to the prom and I had been doing

it for a number of years, but that was a long journey, and a lot of, you know, deep breaths and gripping the handrails tightly to do it. And I did it. But he just came in with a sense of, you know, “I think I would like to do that. Is that okay?” I don’t know if that’s entitlement, or it’s just more self-confidence, or what, but I see that much more now, “I’m part of this firm, and this is who I am. And so do I get to be fully part of this firm?” Whereas, 27 years ago, I would not have asked, “Can I be fully part of this firm?” I would have assumed I could not be.

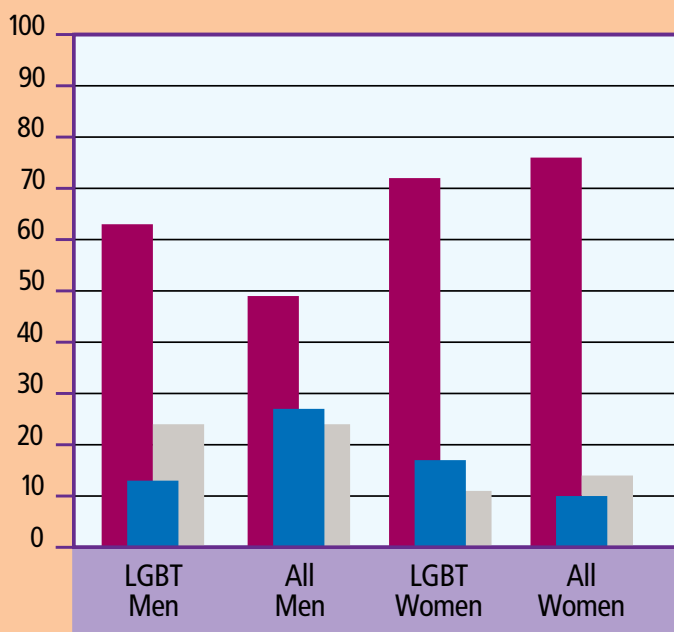
— male partner

Work/Life Balance, Compensation, and Benefits

Participants as a group indicated they had access to partner benefits, but transgender participants indicated that transgender-inclusive benefits were still needed (those issues will be discussed in greater detail later in this report). Overall, 66% of LGBT attorneys (in comparison to 60% of all attorneys) felt that greater flexibility in accommodating their personal lives would have a positive impact on their careers, and that such flexibility could take the form of reduced hours, alternative schedules, or the ability to telecommute. Of this group of LGBT respondents, 72% of women and 63% of men felt that greater flexibility would enhance their careers; 70% of associates (compared to 64% of partners) felt the same. Despite this perception, 53% of LGBT attorneys felt that negative consequences for their careers would result if they reduced their hours or chose to telecommute, in comparison to 44% of all attorneys who felt that way. Of LGBT attorneys surveyed, 55% of women and 52% of men registered this concern, as did 60% of associates and 47% of partners. When comparing the survey results, LGBT lawyers report a greater desire for work/life balance; likewise, their fear of articulating that desire and acting

More flexibility in accommodating my personal life would have a beneficial impact on my career.

Agree Disagree Neutral



upon it is also significantly greater. The participants described some unique situations that LGBT lawyers face in their firms that make it much more difficult for them to address their work/life balance needs.

My partner and I were going to adopt, and we're looking at this long process. I looked at the adoption leave and it was only two weeks, whereas maternity leave was eighteen weeks. So I went to our managing partner of the firm and I said, "Look, I mean, I'm not asking for eighteen to twenty weeks. Obviously, I'm not going to go through delivery, which is a traumatic event. But, you know, four weeks would be great." The firm took that, came back, and made adoption leave for LGBT parents eighteen weeks – the full length of maternity leave. They then called a focus group together and asked us to all come in and talk to them about insurance benefits and this and that, life insurance, and just all sorts of stuff, because they said "we just never thought – we didn't think about it so thanks for bringing it up." And so now everything is exactly equal. But the price is not equal. The benefits are equal, but the cost is not.

— female partner

The cost of benefits for gay lawyers is obviously going to be higher because of tax considerations, and the fact that the federal government doesn't recognize [partners] as dependents. But rather than giving the same benefit and using imputed income, they just charge the same-gender partner the COBRA rates.

— male partner

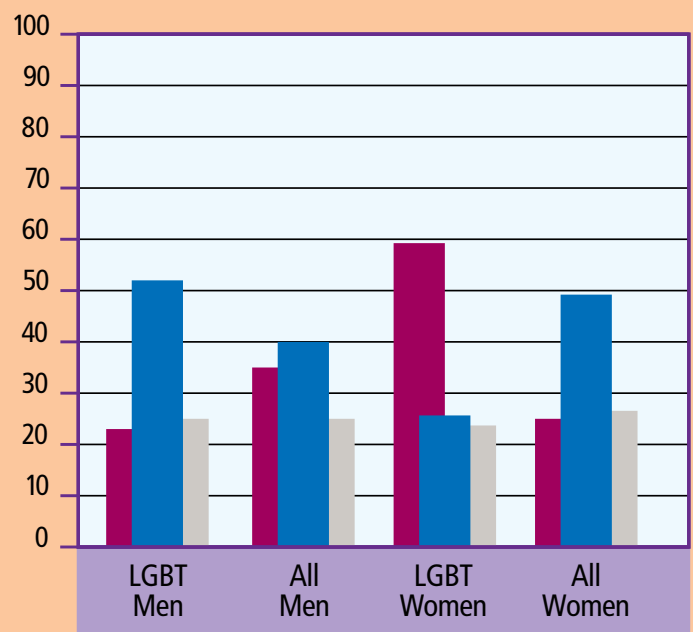
As a younger attorney, I let my work speak for itself. I have to be honest, though, that

the thing that makes me more nervous than being an activist in the firm in terms of being a lesbian, which I have taken a stand on several things, including our failure to participate in the Human Rights Campaign survey and things like that and made a difference, is I'm more nervous about telling my partners that I'm pregnant. And so, you know, I think that it's going to garner some gender issues that I think most women deal with in firms, which [includes] having a family. And I think it adds on another layer that it's not something they're quite expecting from me. They always thought that I wouldn't have a family because I am a lesbian.

— female associate

If I choose to reduce hours/telecommute, etc., I can do so without negative career consequences.

Agree Disagree Neutral



I think there has been an undercurrent of an assumption that, you know, the gay and lesbian lawyers are great because they're not going to have kids. At least we can count on them not needing maternity leave.

— female partner

Professional Development and Advancement

The level of professional development one receives, particularly in the early stages of a career, is critical to the ability to advance in an organization. The quality of work assignments, performance feedback, mentoring, and client contact are key to success as an attorney in private practice. Firms seeking to build inclusive workplaces must remain mindful of

Retention, Inclusion, and the Work Environment

Recommendations for an LGBT Inclusive Workplace

- Explicitly include “sexual orientation” and “gender identity or expression” as protected from employment discrimination in their equal employment opportunity and anti-harassment policies included in Code of Ethics and employee handbooks. Publicize these policies throughout the firm.
- Include sexual orientation and gender identity or expression in any diversity and anti-discrimination training. Educate all employees regarding appropriate terminology to use when referring to another’s sexual orientation or gender identity. Take care to retain trainers who are well-versed in all aspects of diversity and inclusion, not just race/ethnicity and gender.
- Support the establishment of LGBT affinity groups to provide a safe and open forum for discussion, support, and networking among LGBT attorneys at the firm.
- Acknowledge LGBT attorneys and their families in the same manner that they acknowledge heterosexual attorneys and their families. This includes extending invitations to same-sex partners or spouses when hosting events and holiday parties to which other spouses and guests will be invited (either formally or informally) and recognizing key “rites of passage” like engagements, weddings, and additions to the family for LGBT attorneys in the same way in which such milestones would be acknowledged for all other attorneys.
- Offer restroom options that are private and write any dress codes based upon general expectations of professional appearance without expressly stating specific attire requirements of men and women.
- Ensure that all employees are aware of the firm’s LGBT-specific efforts and can access them without fear of disclosing their identity. Information should be centralized and easily accessible through the firm’s intranet and also on its public Website. Welcome and orientation information should include LGBT-related information prominently alongside other groups.
- Seek input from LGBT affinity groups to advise the firm regarding diversity policies and practices, as well as the identification of internal and external opportunities to advance the inclusion of LGBT attorneys. Include LGBT attorneys in planning diversity programs and anti-bias trainings to ensure that topics of relevance and interest to LGBT attorneys are included.
- Demonstrate publicly the firm’s commitment to LGBT attorneys and the broader LGBT community by sponsoring participation in LGBT bar associations, making charitable contributions to LGBT organizations, supporting LGBT equality, and pro bono efforts that serve the LGBT community.

the differences in perceptions reported by diverse attorneys regarding their overall levels of professional development and availability of opportunities to advance.

Work Allocation

Although 74% of all attorneys responding to the original *Sustaining Pathways* survey reported that work assignments in their departments were apportioned according to knowledge, skills, and experience, only 69% of LGBT attorneys agreed with that sentiment. Among that group, 71% of men and 65% of women felt that work assignments were based on merit, and 62% of associates and 79% of partners felt that work assignments were based on merit. Many firms view themselves as pure meritocracies, but these responses demonstrate that the ability of an LGBT attorney to “fit in” with partners and other coworkers can impact the nature, quality, and extent of the work assigned. Complicating this analysis is the fact that gender, race, and ethnicity cannot always be separated from sexual-orientation biases faced by LGBT attorneys in trying to obtain challenging work assignments.

I don't ever feel like I'm being discriminated against or anything of that nature, or not being included or given higher level projects or anything like that because I'm gay. But I do sometimes feel, at least within the practice group that I'm in — and not just with me, with women in general — like there's still a little bit of work that needs to be done as far as having female partners, having female mentors, [who] are well-respected and have power and the ability to help the associates, especially female associates progress within the firm, and get the client contact they need, and the projects to hone their skills.

— female partner

Unfair work allocation can cause attorneys to feel that they do not have equal access to assignments, and that they may be excluded from plum assignments because of their sexual orientation or identity. Among survey respondents, LGBT attorneys were more inclined to report being excluded from desirable assignments, with women just slightly more so than men. The concern is weighted more heavily based upon one's role in the firm, with only 5% of LGBT partners reporting work allocation issues, in comparison to 13% of associates. Many of the focus group participants discussed the often-explicit connection in many law firms between lawyers who “fit in” and whose careers are then advanced, in contrast with some LGBT attorneys who are considered outside the group and then fail to receive the same opportunities for advancement and success. The disparity leads some LGBT lawyers to report feeling quite vulnerable and guarded about their decisions to be open in the workplace about their sexual orientation due to the potential for jeopardizing their access to good work.

What I have seen is that more people tend to come out and be very open about their sexuality after they've made partner, which indicates to me that the real concern is while I'm an associate, I shouldn't let anybody know about this — it may impact my chances at success, and once I'm on the other side of the line, you know, I'm a lot more stable and I can do that. And so a lot of associates who have been very closeted have subsequently come out and really advance the ball at the firm in terms of LGBT issues. But it's frustrating as an associate seeing that, and realizing that those people could have, you know, helped the situation earlier if they would have just felt more comfortable.

— male associate

Findings and Recommendations

If I came out, you know, I think I probably would have gotten a lot less work. It would have probably hurt relationships I had with other attorneys at the firm. I think, ultimately, it could have ended my career at the firm, just based on advice

that I was given by more senior associates. So, yeah, [when] deciding to stay in the closet . . . a big part of that was the fear of basically going to zero with professional development, and eventually just getting ousted from the firm.

— male associate

Work/Life Balance and Compensation/Benefits

Recommendations for an LGBT Inclusive Workplace

- *Assess and revise all HR systems and other policies (e.g., dress codes) to ensure gender neutrality and to create gender transition guidelines in the event an employee transitions genders. Undertake regular training to ensure that all attorneys in supervising roles understand these policies.*
- *Recognize same-sex partners and spouses of LGBT employees and offer benefits to the same degree that they are extended to opposite-sex spouses and partners. Extend all spousal and parental benefits to same-sex partners, spouses and children of LGBT employees in the same manner and level that these benefits are extended to opposite-sex spouses and partners including, health insurance coverage, and parental, adoption, and bereavement leave. When the firm requires documentation of family members and emergency contacts, LGBT attorneys should be extended the equivalent opportunity to include their partners and spouses.*
- *Include “sexual orientation” as prohibited grounds for employment discrimination in the firm’s EEO policy or other anti-discrimination policy. Publicize this policy throughout the firm. Include sexual orientation in any diversity and anti-discrimination training.*
- *Support LGBT attorneys who decide to make use of alternative work arrangements, as necessary to more effectively balance work responsibilities and personal demands.*
- *Work with the firm’s insurance providers or administrators to remove discriminatory insurance contract provisions that result in the exclusion of transgender employees, their spouses or partners, or other dependents from coverage for their medical needs, be they related to gender transition or not.*
- *Implement firm-wide gender transition guidelines so that in the event that an attorney (or other employee) transitions, there will be a consistent checklist of issues to address. In addition, HR information systems should have methods for updating and maintaining gender-related information.*
- *A majority of the Fortune 500 companies and half of all large businesses (with 5,000 or more employees) offer benefits to same-sex partners of employees regardless of state and federal recognition of their relationships. In addition to health insurance, these benefits include COBRA, FMLA, retirement and other spousal benefits. Regardless of state recognition of same-sex relationships, most employees and their employers are taxed under federal tax code on the value of the partner benefits as imputed income. Leading businesses and firms support efforts such as the Tax Equity for Domestic Partners and Health Plan Beneficiaries Act, which would end this unfair tax burden on partner benefits.*

Feedback and Evaluations

LGBT attorneys were more likely than attorneys in the general attorney population to believe that the reviews and feedback they received were inaccurate depictions of their full merit. In the *Sustaining Pathways* survey, 87% of total respondents (in comparison to only 81% of LGBT attorneys) reported that the feedback on their technical skills was accurate; further, 85% of overall survey respondents (in comparison to 79% of LGBT attorney respondents) reported that the feedback on their interpersonal and communication skills was accurate. On this point, no significant differential existed between men and women, or associates and partners within the LGBT population. Nevertheless, the marked differential between LGBT and heterosexual attorneys indicates that LGBT attorneys have greater concern regarding the accuracy and fairness of their evaluations than do their “straight” peers.

A few LGBT partners felt that associates should not express their sexual orientation in the workplace at all, and that barriers to advancement were removed by simply being a good lawyer. In the words of one participating partner:

What I tell them is, “sure, you can stand out for your dress, or your mannerism or something like that. You better be damned good at what you do.” Because if you’re damned good at what you do, people will look past the dress, the mannerisms, and probably still hire you anyway. But if you’re not damn good, and you’re just mediocre, you won’t advance.

As a focus group participant articulated:

If somebody was really flamboyant and couldn’t turn it down, then it [could become an issue] because people at some point will say “you don’t fit in, you’re not X-Y-Z type of lawyer.” And I don’t know a good answer to that. I think the law firm

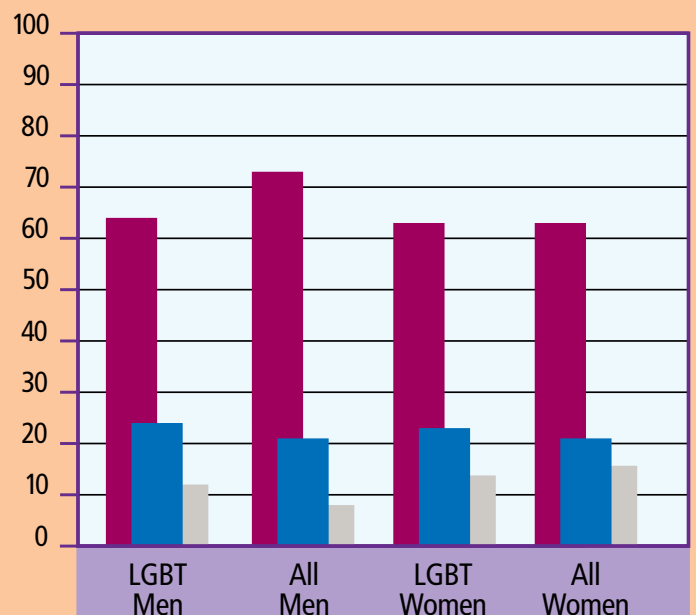
probably has the right to have the kind of partners or associates they think will present well with the kind of clients they have. And at the same time, it’s wrong to tell a person who’s born [LGBT] to be somebody he’s not. I think it probably would be discriminatory, I bet you most of the firms that I’ve been associated with would probably have trouble with such a person. And it wouldn’t be because of performance — it would be because they didn’t fit in, [and] they would be evaluated differently.

— partner

Moreover, 69% of all attorneys and 63% of LGBT attorneys reported that the evaluation of their work by senior lawyers was free of biases based on their background and assumptions based on stereotyping.

Evaluation of my work by senior lawyers is free of assumptions/stereotypes based on my background.

Agree Disagree Neutral



Findings and Recommendations



Among LGBT attorneys, 36% of men and 37% of women reported that bias adversely impacted their evaluations; when taking seniority into account, that percentage of respondents who reported being subjected to biased evaluations increased to 40% of LGBT associates and 32% of LGBT partners.

Although only 11% of all LGBT lawyers reported that they had experienced unfair performance evaluations based upon their gender, race/ethnicity, sexual orientation, and/or physical disability, when that percentage is broken down by gender, it is clear that fairness is a greater challenge for women than men. In fact, 18% of women (but only 7% of men) reported receiving unfair performance evaluations. Given that the average for all attorneys who expressed concerns regarding unfair evaluations was 9%, it appears LGBT men fared well on this question because their experience was pretty close to the norm. In addition, “fairness” is much less of a concern to LGBT partners, only 4% of whom reported unfair performance evaluations, in comparison to 16% of LGBT associates.

As is the case in other areas examined in this report, the intersection of gender and sexual orientation muddies the waters when evaluating which adverse stereotypes and/or assumptions come into play when an attorney receives an unfair evaluation. The result is some confusion among LGBT attorneys regarding how to advance their careers while remaining true to their desire for openness regarding their sexual orientation.

I was in a partner meeting for my practice group yesterday. And we were talking about, you know, something or other. And I raised an issue. And somebody senior to me said, “Well, why didn’t you raise that issue a year ago?” And I said, “I did, and no one listened to me.” So now it’s become a crisis. And so at some point, I chalked that up to being a female, because I find that that might have more of an impact than the fact that I’m a lesbian. That’s my most immediate and upsetting experience. But, you know, that sort of sums up the way I

think — it's more gender, rather than sexual orientation, that seems to be the challenge.

— female partner

I think the ones who can conform the most, relative to other GLBT associates, have a leg up There are some people who will be supervising GLBT associates who are the very feminine male associates or are the very "butch" female associates, and it might cause them problems and discomfort — which will have an impact on whether they continue to work with [those associates] and how strongly they view their work. There are other people for whom that probably won't be an issue, but certainly if the associate . . . conforms to society's feelings about femininity then, you know, that's one less issue they have to worry about in terms of their performance appraisals.

— male partner

mentoring was a generational issue, instead of a sexual orientation issue.

We did not have a mentoring program; we did not have affinity groups; we did not have opportunity for all sorts of other advancements. And we had to create that path ourselves. Yes, it's a function, to the next generation, that we've cleared the path, and you can take it still further from there. But every now and then you get the perception from associates [that] "Hey, look, I made my minimum hours for the year; I should get a big raise. I've been here for two years; I should be in direct contact with clients. I should be mentored more." And that may be more generational, as opposed to orientation.

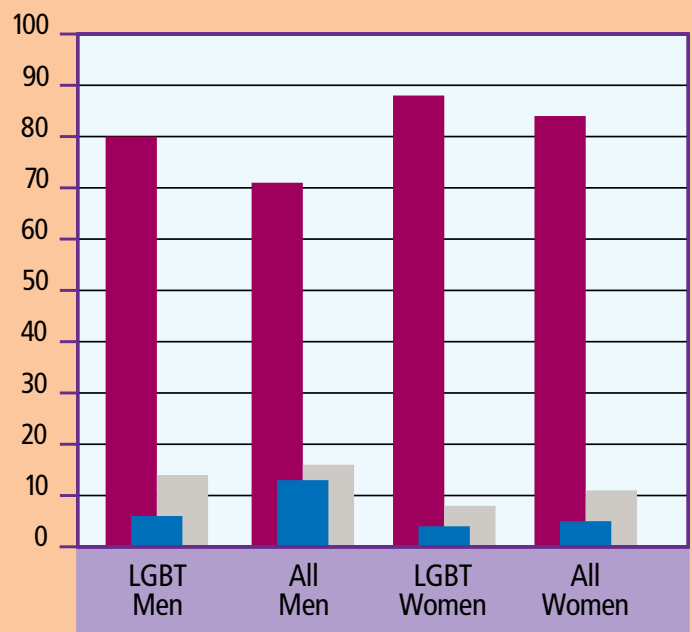
— male partner

Mentoring by Senior Attorneys

LGBT attorneys are well aware of the importance of mentors. In fact, 83% of LGBT attorneys felt that increased mentoring by senior attorneys would have a positive effect on their careers (in comparison to 76% of all attorneys). Within the LGBT community surveyed, more female attorneys (88%) felt that they would benefit from increased mentoring than male attorneys (80%). Surprisingly, associates (84%) and partners (87%) were in relative agreement about the positive impact of increased mentoring on their careers, illustrating an oft-ignored issue: Partners, especially junior partners, seek mentoring as much as some associates. A general consensus was established among the focus group participants that firms should work harder to implement better mentoring programs; nevertheless, there was some pushback from several male LGBT partners who felt that the associates' demands for increased

My career would benefit from more/better mentoring by senior attorneys/partners.

Agree Disagree Neutral



Findings and Recommendations

I believe that [the need for more mentoring] is absolutely generational and not orientation-related. And I would add, as one of the older people ... I am now beginning to believe that every generation has believed that the younger generation does not work as hard and does not respect the achievements of the older generation.

— male partner

Client Contact and Business Development

Access and contact with law firm clients appears to present another challenge to the full and equal inclusion of LGBT attorneys; 77% of LGBT attorneys (in comparison to 81% of all attorneys) reported being satisfied with the level of existing client contact they received. Further, 73% of female LGBT attorneys in comparison to 79% of male LGBT

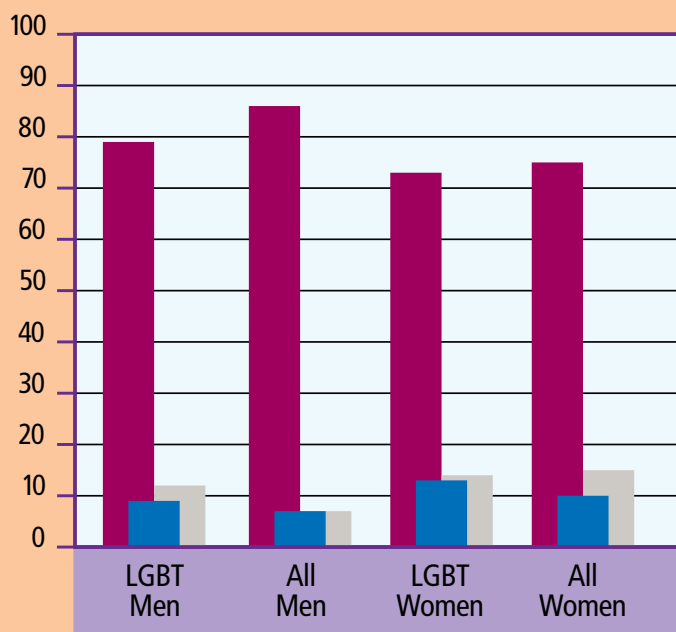
attorneys reported satisfaction with their levels of client contact. Not surprisingly, 96% of LGBT partners were satisfied, in marked contrast to only 67% of LGBT associates. While some associates found that their connections to LGBT communities enhanced their levels of client contact, many partners attributed some associates' lack of client contact to their LGBT identity.

I've had opportunities that other associates at my level definitely have not had, and I have those because of my affiliation with the LGBT affinity group. I also get some work that maybe I wouldn't get otherwise. If an openly gay client rolls into my group, some of the partners to whom I am out will make a point of including me, which is nice.

— male associate

I am satisfied with the level of client contact I receive.

Agree Disagree Neutral



A lot of it is client-driven. And so, on a professional-development stage, often, you know, certain clients are more "gung ho" about diversity, and I think management recognizes that, and even uses it to its advantage when it can.

— male partner

We have a very out associate in our group. He invited partners to his wedding to his partner, and many firm partners showed up. He has run into some issues with others, but those issues relate to an aspect of his personality that has nothing to do with his being gay. He's pretty out, the way he comports himself, dresses and so forth, in terms of being much more stylish or flamboyant than a lot of the other associates. Partners are not always comfortable putting him in front of clients.

I think he will succeed if he can ... check some personality [traits] at the door, and he'll fail if he can't.

— male partner

Similarly, 65% of LGBT attorneys (in comparison to 69% of all attorneys) reported being satisfied with the business-development opportunities in which they were included. Business development was significantly more challenging for women; on this issue, GBT men did not report a sizable disadvantage in comparison to their heterosexual counterparts. Only 58% of female LBT attorneys (in comparison to 69% of male GBT attorneys) were satisfied with their inclusion in such opportunities. Not surprisingly, partners felt more positive than associates, with 70% of LGBT partners feeling satisfied in comparison to only 59% of associates.

Although client contact can often lead to business-development opportunities, the opportunity and ability to develop one's own clients is critical to an attorney's independent success in law firms. Focus group participants talked at length about how they were often excluded from these opportunities, and made suggestions regarding what they felt corporations and law firms can do to assist LGBT lawyers in law firms.

I see that there isn't as much of what I think should be in terms of being personally included with clients — getting asked to go to client's lunches, or doing client pitches, that kind of softer networking — which is very important for senior attorneys.

— partner

I'd sure love to see a call to action, similar to what existed for [race and] ethnicity, from major corporations [that addresses] not just gender and ethnicity (which have been cutting-edge, but now have become

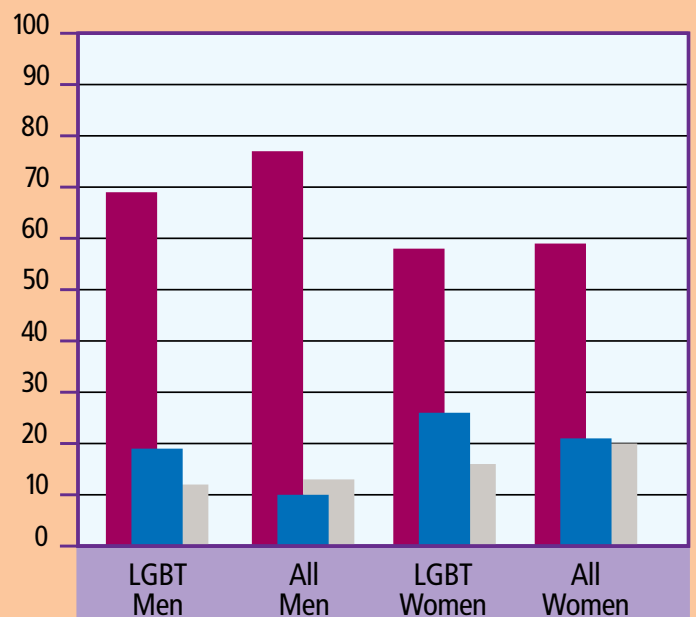
mainstay for diversity requirements), but also insisting, or making sure, that LGBT is an aspect of diversity, and recognized. So law firms who begrudgingly agree that they'll work on gender issues, they'll work on ethnicity, must also now realize they have to not only deal with, but accept, LGBT diversity because it could be client-driven.

— partner

We have lots of clients who make us report, at least on a quarterly basis, to break down the hours of the lawyers and other service providers who have worked on their matters and identify them by diversity characteristics. Very few of those large

I am satisfied with the opportunities I receive to actively participate in business development efforts with important clients.

Agree Disagree Neutral



Findings and Recommendations

corporate clients who require that sort of reporting ask about LGBT status.

— partner

The firm clued in to the fact that we were all okay with kind of going out and doing the marketing in that community on behalf of the firm and participating in events.

They've been pretty good about making different sorts of allocations to provide for the resources to do that, as well as kind of contacting us when they hear about things. There've been several events that have come up that they've paid for and sponsored that I didn't even know were occurring. So my feeling about it is that the firm has been great and they've been pretty good about letting us use that as a marketing tool to the degree that we're comfortable.

— associate

Even as many of the LGBT lawyers talked about the benefits of client-driven efforts to make law firms focus on sexual orientation and gender identity issues, a few lawyers acknowledged that attempts to involve more LGBT lawyers in client development activities may not necessarily result in more LGBT lawyers actually doing the work that comes in from the client.

I have been involved in some pitches where it has been a straight white male who's gotten the call, who then contacts me. I have a contact. I made the initial phone calls to the prospective client. And then, it falls on him to put the team together. Sometimes the team is diverse. Sometimes it's not. And even after some prodding on the diversity and, in particular, gender, you know, they will say, "Well, they are so junior that they really shouldn't have a significant piece of the action." So even after cajoling and prodding, it sometimes is hard to get our partners to understand what it is they need to do.

— partner

Professional Development and Advancement

Recommendations for an LGBT Inclusive Workplace

- *Ensure that LGBT attorneys are afforded equal access to networking opportunities, as well as opportunities for client contact and business development.*
- *Monitor work assignments to assure that LGBT attorneys are receiving high quality work and professional development opportunities that are on par with their non-LGBT peers.*
- *Train all law firm managers, partners, and senior lawyers who play a role in the evaluation of other attorneys to provide timely balanced, unbiased, and objective feedback.*
- *Establish a formal diversity mentoring program that specifically includes LGBT attorneys at all levels and ensure that mentors are multiple, accessible, proactive, and consistently supportive.*
- *Encourage LGBT attorneys to affirmatively avail themselves of all firm resources and take an active role in their professional development.*

Transgender Attorneys: The Unique Challenge of the “T”

The Human Rights Campaign Foundation’s Transgender Inclusion in the Workplace, 2nd Edition, provides a useful definition of transgender:

The umbrella term transgender (sometimes shortened to trans) encompasses people who experience and/or express their gender differently from conventional or cultural expectations — either in terms of expressing a gender that does not match the sex listed on their original birth certificate (i.e., designated sex at birth) or physically altering their sex. The term includes transsexuals, cross-dressers and other gender-variant people; not all people who consider themselves or who may be considered by others as transgender will undergo a gender transition. Although a minority of transgender people may not object, it is generally accepted that transgender people should not be referred to as “transgendered.” Thus, it would be appropriate to say “He is a transgender male” but not “He is transgendered.”

One transgender lawyer commented that

The [transgender] community itself debates the definition a lot. You know, the politically correct answer, I guess — and I more or less subscribe to it — is [that] it should be any person who identifies in any fashion with a gender identity role or expression that’s different from their apparent gender and therefore includes a spectrum of individuals from those who just feel that they are different, androgynous, all the way through cross-dressers and transsexuals. So it’s a difficult definition to make, but if

you’re going to protect against discrimination or to respect the attributes of someone who self-identifies as transgender, you have to make it a very broad definition.

Several focus group participants expressed the view that law firms have not given transgender issues sufficient thought or planning. Further, even lawyers who are supportive of equality for gay and lesbian lawyers may not be sufficiently educated, aware, or prepared to support equality for transgender colleagues. This may stem from a lack of understanding surrounding what it means to be a transgender person, as well as the tremendous personal and professional challenges that transgender lawyers have to overcome before transitioning or revealing their gender identity in the workplace.





We had a summer [associate] ... who is potentially considering gender reassignment. I can tell you there are partners that I work for who are incredibly supportive of the GLBT effort. They are straight partners and they have actually gone and recruited with me at Lavender Law, and they were completely flummoxed by that and they couldn't figure out how to deal with this woman who, for all intents and purposes, looks like a man and wears a man's suit to work every day.

— associate

Our firm has gender identity included in the non-discrimination policy and things like that but, you know, the non-discrimination policy only goes so far into reality or into actual effect and I think that that's an area that can definitely be underserved for no other reason than the small number of people that are open about it.

— associate

I think [one of] the key issues in law firms [is] probably insurance coverage. I mean, obviously, having a non-discrimination policy that includes gender identity is a big part of that. So, to the extent you're doing work to have an inclusive policy – that we don't care who you're dating, sort of welcoming policy, that's going to help you, but I think you're not going to get complete coverage by only addressing LGB issues [and] won't cover all the T issues.

— partner

I think that notwithstanding many large law firms' stated commitment to diversity to include the T in LGBT, they're not, in fact, very welcoming for younger attorneys who have transitioned or are in the midst of a transition, or are thinking about transitioning, to make a home in those kinds of places. I know that there are several instances in which people who, after announcing their transition in relatively

large-sized law firms, were pretty much driven out of practice and were basically encouraged strongly to leave, if not actually fired.

— partner

I certainly can say that we do have a GLBT group in place. We do labor pretty hard to have policies that recognize the needs of everyone in that group. I don't know if we have any transgender attorneys working at the office or even staff, but I do know we have policies in place to recognize those kinds of divergent needs. And so I know we recognize it and I think it would be easier if we were asked to put that to the test in a specific case. But those policies do exist, and I am confident that the management here and other attorneys would welcome the opportunity to accommodate whatever additional policies would be needed.

— partner

Perspectives of Transgender Lawyers

Focus-group participants who identified as transgender shared some of the challenges facing this relatively small community in the legal workplace. Due to the relatively few transgender attorneys who participated in this research, MCCA has opted not to include gender or position data for those quoted in the following section in order to safeguard the confidentiality of the participants.

Small Community, Big Challenges

The number of transgender attorneys working in large law firms is largely unknown, as the members of this community are determined mostly anecdotally

and informally, if at all. Only a handful are out and willing to share the challenges they have faced in the workplace.

I believe that there are very, very, very few transgender lawyers in what we'd call large law firms. I don't know if we're defining this as the AmLaw 200 or exactly what the population is, but for firms of significant size, it's very, very rare. I will pass on one anecdote about this. There was a piece in *The American Lawyer* probably a little over two years ago — maybe it was April of 2007 — about the LGBT presence in large law firms. And it drew a letter to the editor by a woman who is in a medium-sized New York law firm who wrote that the T is an afterthought in this whole process because, as best she could tell, she had never been able to identify a single [transgender] person who was employed by a large law firm in Boston, New York, Chicago, or Washington. She said she thought there might be somebody on the West Coast. I happen to be in a firm that's in one of those cities, and I responded to her that there was at least one. But it simply illustrates there are very, very, very few.

The fact that a sizable population doesn't self-identify as transgender does not mean that they're not there. There's a huge amount; for every one you see, there are dozens probably that won't show up either because they're sufficiently closeted that they wouldn't voluntarily self-identify even if they thought their confidentiality would be assured, but also because a number of people who complete a transition wish to leave the fact of their prior life behind and no longer would go out of

their way to self-identify as transgender. So you could be looking at a number of men or women who have gone through a transition who would not go out of their way to self-identify as transgender.

The Role of Gender in Transitioning

Males and females face unique types of professional issues and stereotypes in the workplace, and transgender men and women must learn to navigate a new set of gender-related challenges.

I definitely think it's an easier transition in a law firm from female to male. Firms are still modeled on a male dynamic and the expectation of priorities and behavior, I think, tends more to a stereotypically male model. Women have to think about what they're going to wear, and I've definitely heard female partners talk about when they go before a jury, you know, in certain parts of the country, they always wear a dress and they always wear makeup and they always wear a wedding ring, and they show their pictures of their kids to the bailiff. And men don't have to worry about those considerations. Other than maybe, there might be some inclination to wear a wedding ring.

Insurance Policies and Coverage Necessary for Transitions

According to the Human Rights Campaign Foundation, a number of AmLaw 200 firms now have transgender-inclusive health insurance, which includes coverage for most related treatment such as genital or other surgeries, mental health counseling, and hormone therapy.

Hav[e] the firm buy its insurance policies so that [they] cover transitioning and there

are a couple different levels [of coverage and procedures of which to be mindful]. You know, whether it's surgery or hormones, or mental health care or to get a prescription, making sure you have an insurance carrier that provides that coverage and that the plan you're using includes that coverage, I think, is a pretty key piece.

Insurance coverage is important. For most people, the financial cost of transitioning or maintaining transition and broadly covering things that relate to transition is a very good thing. That should be part of the LGBT policies.

The answer is, for the most part, insurance doesn't cover most of the costs associated with transition. It covers some aspects of it. Some of the psychological requirements are covered. Some of the prescription requirements are covered. But more of the things that one incurs are not covered. This has been changing in *Fortune* 500 companies. There are now lots of them — maybe not yet a majority, but it's a very strong plurality that have now modified their insurance programs to pay for at least a good chunk of the cost of transition. But law firms, I think, have not, and even my firm, which purports to otherwise be receptive to this, has not. And I haven't pressed the issue. I simply took what we had and was grateful for what I got.

The Transition Journey

A decision to transition one's gender is a choice that not every transgender person will make.

It is a very difficult individualistic question

that people struggle with, and many people struggle with it for the bulk of their lives, trying to decide whether to transition, whether to come out, and, if so, how.

There is a particular difference between the trans experience and the lesbian/gay experience insofar as it relates to transition. A gay or lesbian lawyer chooses to announce that to friends and colleagues or not, and that seeps out or it doesn't. They move on and can function pretty easily in life. It may be uncomfortable to keep things that important in a closet, but it can be done and they sort of decide whether they want to or not. In the case of trans folks, if you are in a professional environment and are transitioning, you are public. You are the "ugly duckling," and there is no way to get to "being a swan" without going through that process. And it's very visible. It's uncomfortable. But the only way you get from point A to point B is going through that. So if you transition in place, everybody can see that, whereas people do not see you suddenly become gay or lesbian. You announce it with lights glowing or it just sort of seeps out in conversation over a period of months or years.

It's a different question when it's applied to hiring someone, for example, who has already transitioned and is more or less stable and functioning in their [sic] new gender identity. In those cases, it's a lot like other diverse groups — be it lesbians or gays or African Americans or others — to simply be unflinchingly welcome to them, and to make it possible to include them in professional development and client



development and good projects and so forth, so that they have an opportunity to advance and to thrive. The special problem in the trans world is with regard to transitioning in place, which has a lot of components, because people literally change before others' eyes. That takes a lot more sensitivity and support, and particularly long-term support, because it's just not something that most people are able to accomplish in the space of a weekend or a month, or two or three or six. It's a process. Some people argue that transition doesn't really ever end. That's probably a bit extreme, but it is not a short-term process and there are a lot of disruptions. What firms have to do, if they really want to be successful and meaningful with this, is to take a very long view and to recognize that there will be disruptions and there will be problems, and to move earnestly and sensitively to support the individuals in that experience and to recognize that

there will be inevitably losses internally and externally and try to create an environment where those can be counterbalanced so that net-net, the person has a fighting chance to stay in the organization as a successful and productive member.

The Realities of Transition

The decision to transition will take a great personal toll as the transgender person must reestablish himself or herself in the workplace.

When I look at the list of people that I know who have transitioned who are not self-employed, the likelihood of them keeping their employment through the transition is pretty remote. And I don't think in most cases it's a voluntary choice. I think it's accepted that in a lot of circumstances, the job position is no longer tenable in light of their transition.

Negative/Offensive Comments and Behaviors

There is a lack of awareness and sensitivity regarding transgender attorneys and this often results in their exclusion from discussions about diversity. In addition, training and education are necessary to prevent negative comments and offensive behaviors directed to or about transgender people.

There's not uniformity in the trans community about this, but in my personal opinion, the word "tranny" is insensitive. And to hear that jokingly or otherwise is profoundly offensive to me. That's an example to me of hate speech. But I don't think that's understood by the vast majority of people.

The things that you would hear that just come up all the time — I mean, pretty much any aspect of popular culture is positively rife with them. If you want to ridicule a man, you put him in a dress on a commercial. You want somebody to get an instant sort of gut laugh, you put him in a tutu and parade him on TV or whatever. And a lot of that just sort of unconsciously seeps into a vernacular where ascribing overt feminine characteristics to a man, for example, is viewed as OK. This all too often does not rise to the level of making a stereotype, for example, about an African American or, for that matter, for a homosexual these days. It's not like I sit around and chalk up the grievances as they arise. As I said, you develop a fairly thick skin about these things, whether you want to or not. But I do remember two firms ago, we had diversity training. It was one of the most effective I've ever heard, and the trainer was extremely adept at pointing out that diversity does not always show, that you cannot conduct yourself intelligently as an organization that welcomes diversity by hunting out visual clues, by hunting out cues in how somebody behaves as to whether or not they're diverse. And that was an eye-opener for a number of the people who were in that seminar with me, many of whom had plainly been more accustomed to diversity training in the context of somebody who plainly presents them as a diverse person. Anyway, it's just this notion that reminding people that not seeing us does not mean that we're not there.

That's a process that every person who goes through transition simply has to work with, because there will be people who do

not get pronouns right. They do not get names right. Sometimes it's hurtful. Sometimes it's just negligent and many just don't think. Every individual has to cope with it on an incident-by-incident basis, and you kind of decide whether or not it's somebody who just sort of fumbled or whether it's somebody who's being intentionally hurtful to you. That's something that a firm cannot really teach. People get it and if they don't get it, then at a certain level the individual transgender person has to deal with it. If it gets very extreme, then it gets uploaded to HR and becomes an issue of potential disciplinary action, you know, if someone is being willfully obnoxious and unaccepting — but in our firm, in my case, to my knowledge it never got to the latter level. But I certainly had a lot of experiences with people who can't get the name or the pronoun right, and you just have to deal with it. The best way to deal with it is with a bit of humor, but that's again something that's difficult to enshrine in a policy.

Recommended Practices for Employers Regarding Transgender Attorneys

Employers have to rethink their policies for addressing the challenges and concerns of transgender lawyers. The challenges are not the same as with women, race/ethnic minorities, or LGB personnel, among others. They're fundamentally different.

Policies must explicitly recognize time frames in a transgender person's life, and address the attendant challenges and needs associated with each of the following experiences.

- Non-transitional: This is a person whose gender identity may range from androgynous to fluid in



self-perception or presentation, and/or who may choose to manifest gender diversity privately. This also may include a person who has decided for financial, health, or other reasons that transition is not a viable option. This is the largest part of the transgender population and is probably closest — if one needs comparison - to the 'closeted' LGB person.

- Pre-transitional: This is a person who has decided (or is in the process of deciding) to transition genders, but who is struggling with whether, when, and how to do so. Such a person usually is required to comply with the World Professional Association for Transgender Health (WPATH) Guidelines for diagnosis and treatment, which includes psychological evaluations, permission to take hormones, hair removal or growth, "cosmetic" surgery (e.g., facial reconstruction, breast alteration), and so forth before beginning a one-year "Real Life Test" in order to decide whether to undergo genital surgery.

- **Transitional:** This is the person who has decided to change genders and is now “coming out.” He or she is declaring this intention usually by changing names, changing appearance, and presenting as a very different person. This stage generally is obvious to the world, and presents the most vulnerable period for the individual. This person often loses family, friends, jobs, clients, respect, inclusion, and/or acceptance. But because transition is a process and not an event, employers who seek to be inclusive must demonstrate patience, sensitivity,

and vigilance during this time. A person in the transitional phase may, or may not, elect to have gender reassignment surgery.

- **Post-transitional:** After some time has passed since the announcement of transition (often a few years), a transgender person reaches a post-transition phase: surgeries are completed or forgone; hormones are stable; cosmetic changes (like hair removal or growth) are substantially complete; relationships have adjusted or been lost; and the person is out, accepted, and functioning. This person wants to be respected for who he or she is, not reminded of

Additional Dos and Don'ts

In most workplaces, a lot of misinformation and a lack of education regarding transgender people still exists. Therefore, it is important for all employers to educate their employees in order to prevent insensitive or intolerant behavior toward transgender employees. The following practices have been taken from the Gay and Lesbian Alliance Against Defamation (GLAAD) Media Reference Guide, 8th Edition. Although most of these measures may appear to fall into the category of “common sense,” this list reflects types of bigotry and inappropriate behavior that have occurred in the workplace and should be prevented in the future.

- **Always use a transgender person's chosen name.**
Many transgender people have not taken official steps to change their name legally. Nonetheless, they should be afforded the same respect for their chosen name as anyone else who lives by a name other than their actual birth name.
- **When referring to a transgender person, use the pronoun that he or she prefers and is consistent with the person's appearance and gender expression.** *A person who identifies as a certain gender, regardless of whether that person has taken hormones or had some form of surgery, should be referred to using the pronouns appropriate for the gender by which the person identifies and is consistent with his or her gender expression. For example, if a person*

wears a dress and uses the name “Susan,” then use of feminine pronouns would be appropriate.

- **It is never appropriate to put quotation marks around either a transgender person's chosen name or the pronoun that reflects that person's gender identity.** *Use of quotation marks suggests a lack of respect and ignorance regarding the person's name and gender identity.*
- **When describing transgender people, please use the correct terms to describe their gender identity.** *A person who is born male and transitions to become female is a transgender woman, whereas a person who is born female and transitions to become male is a transgender man.*
- **Never use or tolerate the use by others of bigoted actions, hostility, or dehumanizing pronoun references that are directed at or used to reference transgender people.** *Use of ambiguous or dehumanizing pronouns or references, such as, “she-male,” “he-she,” “it,” “trannie,” “tranny,” or “gender-bender” are never appropriate. Employers should adopt zero-tolerance stances for any acts of bigotry or hostility towards transgender people, and appropriate disciplinary action should be taken in the event of violation of the zero-tolerance policy.*

who he or she once was, and allowed to function equally and professionally with peers and colleagues.

Throughout this spectrum, employment policies must include and support a range of medical treatment needs, including psychological counseling, prescriptions, and medically necessary surgeries. These policies must provide allowance for the time needed for each of these steps, in addition to the cosmetic requirements involved in advancing through transition. Policies also must anticipate the gains and losses that may occur through a possibly lengthy process.

The period of non-transition is a lifetime; from pre-transition to post-transition will usually last a minimum of several years. During this time, a transgender attorney is likely to lose clients, and may be abandoned or rejected by colleagues, a phenomenon that unfortunately reflects an all-too-common human reaction. Although policies to counteract this are required, they cannot easily “fix” the problem completely due to the fact that such unaccepting, intolerant, or dismissive behavior is so personal and subjective, and often silent.

Nevertheless, employers need to be sensitive to these challenges, and put into place proactive policies that support the transgender lawyer and mitigate the adverse effects that may accompany transition.

Supplemental Materials

Overview of Research Methodology and Objectives

In 2008, MCCA conducted an in-depth, data-driven analysis balancing quantitative and qualitative findings about the experience of a diverse group of attorneys who practice in large, competitive law firms. The objective was to uncover relevant data about the perceptions and experiences of attorneys at large law firms regarding a variety of subjects relevant to diversity through the use of a comprehensive survey questionnaire.

The resulting report of findings, titled *Sustaining Pathways to Diversity:® The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms (Sustaining Pathways)*, achieved a noteworthy level of participation among lesbian, gay, bisexual, and transgender (LGBT) attorneys in large law firms. While the findings revealed that law firms have improved considerably in acknowledging, respecting, and valuing the talents and perspectives of LGBT lawyers, the data also illuminated that law firms have a long way to go before achieving a level of inclusion in which LGBT lawyers have equal and unfettered access to opportunity and success.

This report continues the work that MCCA has performed on issues related to diversity and inclusion for LGBT attorneys. This title integrates the findings from quantitative survey data collected from LGBT attorneys who participated in *Sustaining Pathways* with qualitative information transcribed from a series

of eight focus groups held with LGBT lawyers who volunteered to answer questions and share perspectives about their professional lives.

The findings reported in this report were compiled through a combination of qualitative and quantitative sources. First, quantitative data was derived from MCCA's survey of more than 4,400 attorneys in large law firms as part of its *Sustaining Pathways* research; the survey responses of those who self-identified as lesbian, gay, bisexual or transgender were segregated for analysis. Qualitative data was then collected from a series of teleconference focus groups which MCCA conducted with the specific intent of inviting LGBT attorneys to share their experiences and offer perspectives regarding some of the quantitative data gathered in the earlier survey.

About the Focus Groups and Collection of Qualitative Information

MCCA elected to perform substantial new focus-group research in order to supplement the quantitative data from *Sustaining Pathways*. MCCA conducted a total of eight teleconference focus groups from July through August of 2009. These teleconferences were organized into several discrete groups: male attorneys, female attorneys, transgender attorneys, partners, associates, and mixed groups (i.e., consisting of men, women, partners, and associates).

MCCA solicited individuals to participate in the focus groups by distributing an e-mail questionnaire to members of its network; the Human Rights

Campaign Foundation sent the same questionnaire to its law-firm contacts. Responding individuals were required to complete the questionnaire before they could be confirmed to participate in one of the teleconference-based focus groups. The response to participate was overwhelming; 211 attorneys submitted a completed questionnaire. Some participants were randomly selected and assigned to a focus group by MCCA, while others were assigned to a focus group because they matched the demographic criteria for that particular group. MCCA also sought to achieve geographic and organizational diversity by not having multiple participants from the same city or law firm. To the extent possible, MCCA sought to include LGBT attorneys of color in the focus-group discussions. The use of individual access codes ensured that only those who had been selected in advance would be able to dial in to participate in the focus group.

To encourage people to speak frankly and thoughtfully, MCCA guaranteed anonymity for all participants in the focus groups. Each participant was instructed that the call would be recorded and that notes would be taken, but that no comments would be attributed to any individual. Consequently, this report makes no specific reference to the sources of the quotes contained herein.

Each teleconference was between 60 and 120 minutes in duration, and the number of participants varied between five to thirteen lawyers. With the exception of the focus groups dedicated to transgender lawyers, each focus group averaged six attorneys per call.

Dr. Arin Reeves served as the moderator for each focus group call, with the exception of the male-only teleconference. The research team felt that having a male moderator for the male-only call might encourage greater candor; therefore, a male representative of the Human Rights Campaign Foundation served as the moderator for that focus group call.

E-mail Invitation Requesting Volunteers for LGBT Teleconference Focus Groups

Dear Colleague:

Thanks to the generosity of the Minority Corporate Counsel Association, Inc.'s supporters, including the donors to its 10x10x10 Campaign, MCCA is publishing a new report on the experiences of lesbian, gay, bisexual, and transgender lawyers in Am Law 200 firms based upon the research from its *Sustaining Pathways to Diversity* research report.

MCCA is collaborating with the Human Rights Campaign Foundation (HRCF) and The Athens Group, MCCA's long-time research partner, to develop this new report on LGBT lawyers.

MCCA, HRCF, and The Athens Group want to conduct focus groups to supplement MCCA's statistical research.

Please click http://www.surveymonkey.com/s.aspx?sm=uzQMgqpP_2fj8HyNFpkk4rA_3d_3d to answer the following VERY SHORT questions to let us know if you'll be able to participate and to help us ensure that we have adequate representation in each focus group.

Please respond on or before July 6, 2009. Please email brandonfitzgerald@mcca.com with any questions that you have. Thank you.

— MCCA

Focus Group Questionnaire

Availability & Contact Information

- 1. On which day and time would you be willing to participate in a focus group via conference call?
 - ☐ July 13 @ 11:00 AM ET
 - ☐ July 14 @ 12:00 PM ET
 - ☐ July 16 @ 12:00 PM ET
 - ☐ July 17 @ 2:00 PM ET
 - ☐ July 20 @ 2:00 PM ET
 - ☐ July 22 @ 5:00 PM ET
 - ☐ July 24 @ 11:00 AM ET

Do you have any other questions or comments?

- 2. Please provide us an email address so that we can contact you about participation in the focus group once calls are scheduled. (You can provide either a work or personal email address. Your email WILL NOT be provided to any third party and will remain strictly confidential.)
- 3. In what state is the office in which you spend the most time? (We need this information to ensure the geographic diversity of the focus groups.)
State: _____

AmLaw 200 Attorneys

Thank you for answering questions regarding your eligibility and availability for the focus groups.

Each focus group will involve 7-15 lawyers.

We will reach out to you about participation as soon as we can.

We would also appreciate it if you could distribute the link to other LGBT lawyers that you know at AmLaw 200 firms so that we have the widest possible pool from which to populate our focus groups.

Other Demographic Data – Optional Questions

A. What is your gender?

- ☐ Male
- ☐ Female
- ☐ Other

B. Is your gender identity different from your sex at birth, or do you otherwise identify as transgender?

- ☐ Yes
- ☐ No

C. What is your sexual orientation?

- ☐ Bisexual
 - ☐ Gay man
 - ☐ Gay woman/lesbian
 - ☐ Heterosexual
 - ☐ Other
- Other (please specify)

Non-AmLaw 200 Attorneys

Unfortunately, the statistical data that MCCA originally collected was on lawyers from AmLaw 200 law firms. Accordingly, our focus group participants must be lawyers from AmLaw 200 firms.

Please know that MCCA and HRCF both remain committed to advancing diversity for ALL lawyers irrespective of the size of the firm in which you practice.

You can review MCCA's other research reports by following this link: <http://tiny.cc/MCCAResearch>

Thank you!

MCCA, HRCF, and The Athens Group thank you for your time!

Focus Group Teleconference Discussion Outline

Questions

Work Environment/Inclusion

Overall, do you feel included in the workplace? Is your work environment a safe and inclusive place to be open? Are there variances within your work environment between practice groups, working for specific partners, different offices, etc.? What do you look to in the environment to assess how inclusive the workplace is for you? How much of a factor does your specific geographical location play within the larger law firm in regards to inclusion?

Professional Development

What aspects of your professional development are affected by your LGBT identity? Work allocation? Client development opportunities? Mentoring? Evaluations? Access to key partners in the firm?

Gender

Do you feel that your experiences in your firm are more a result of your gender or your LGBT identity? With inclusion? With professional development? In which ways, if any, do the two identities intersect in your life?

Generational Differences

Do you feel that your seniority or age impacts the way you perceive and negotiate your work environment in relation to your LGBT identity? Do you see differences between how LGBT associates navigate your law firm in comparison to LGBT partners? What are other generational differences in the workplace that impact how LGBT issues are understood and addressed in your law firm?

Racial/Ethnic Differences

Do you feel that your experiences in your firm are more a result of your race/ethnicity or your LGBT identity? With inclusion? With professional development? In which ways, if any, do the two identities intersect in your professional life at your firm?

Strategies for Success

What are the solutions to creating more inclusion around LGBT issues in law firms? Is it done through networking groups and structural changes or raising awareness on these issues or both? What are key strategies that law firms leaders should be pursuing within firms to make firms more inclusive of LGBT attorneys? What about LGBT attorneys themselves? What about external organizations like MCCA, HRC, etc.?

About the Survey and Collection of Quantitative Information

The statistical quantitative research examined for this report comes from MCCA's *Sustaining Pathways to Diversity:® The Next Steps In Understanding & Increasing Diversity and Inclusion in Large Law Firms* (also known as the Red Book). The Red Book study was an in-depth, data-driven analysis that balanced quantitative and qualitative findings about the experiences of a diverse group of attorneys who practice in large, competitive law firms. The project was designed to reach the maximum possible number of U.S. attorneys in law firms ranked in the top 200 (by revenue) by *The American Lawyer* magazine (AmLaw 200 firms). Its objective was to uncover relevant data on the perceptions and experiences of attorneys at large law firms regarding a variety of subjects relevant to diversity and inclusion through use of a comprehensive survey questionnaire that measured several major thematic categories.

Overview of the Survey Instrument

The comprehensive survey consisted of eighty-three forced-choice items that were organized according to the following thirteen major thematic categories:

- Myth of the Meritocracy
- Strategic Leadership and Commitment
- Experience of Exclusion
- Supervision
- Work Environment
- Work/Life Balance
- Advancement/Leadership
- Personal Involvement/Commitment
- Training and Development
- Coaching and Mentoring
- Recruitment—General
- Recruitment—Importance of “Traditional” Meritocracy Criteria
- Career Impact of Law Firm Changes

The possible responses for each of the eighty-three items or statements were arranged on a five-point Likert scale. For many of the survey categories, the choices included: 1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; and 5) Strongly Agree. For other survey categories and related items, the choices in the Likert scale were different, depending on the issue explored and the type of information sought.

For example, in the category of Exclusion, respondents were given a list of typical forms of exclusion and asked to respond in terms of whether, and how frequently, they had experienced each form of exclusion over the past five years. In this circumstance, the scale included the following choices: 1) Frequently; 2) Sometimes; 3) Neutral; 4) Infrequently; 5) Never.

In another example, for the category of Career Impact of Law Firm Changes, respondents were asked to rate each proposed change in terms of: 1) No effect; 2) Little Effect; 3) Neutral; 4) Positive Effect; 5) Very Positive Effect on their careers.

For each category, as well as the individual survey items, the percentage of responses across the scale was calculated and conveyed using descriptive statistics. These percentages frequently were compared and contrasted across demographic and organizational groups to uncover correlations between these characteristics, attorneys' perceptions, and their experiences relevant to diversity and inclusion. Cross-tabulations also were created and analyzed where appropriate (e.g., codifying responses related to job level by gender as well as race/ethnicity).

Survey Administration

The survey instrument was administered electronically through the Novations Group Website, for which

each law firm was provided a unique access code. The survey site was launched on December 6, 2007, and closed on May 15, 2008.

The survey focused on the perceptions and experiences of attorneys in a variety of areas relevant to diversity and inclusion. Although the identity of individual respondents remained completely anonymous, the survey team used background information to sort the data by important variables such as gender, attorney level, race/ethnicity, law firm tenure, and sexual orientation in order to analyze trends and patterns within and between groups.

Key Demographics of Overall Survey Population

The survey asked respondents to provide their own background information in several areas, including gender, race/ethnicity, sexual orientation, job level, disability, marital status, caretaking responsibilities, and years of tenure in a law firm. Here are a few highlights regarding the overall survey population:

- 4,406 lawyers participated, representing 124 of the nation's 217 largest law firms
- 49.3% were partners; 40.7% were associates; 8.2% were counsel/of counsel
- 58.5% were men; 41.5% were women
- 22.6% identified themselves as belonging to one or more racial/ethnic minority groups;
- 75.1% identified themselves as White/Caucasian/Anglo-American (and not Hispanic)
- 4.9% identified themselves as lesbian, gay, bisexual, or transgender
- 1.8% identified themselves as having a disability

Key Demographics of LGBT Population

Almost 5% of the total survey respondents self-identified as lesbian, gay, bisexual, or transgender (LGBT). Here are a few highlights regarding the composition of the LGBT respondents:

- 126 were associates; 24 were counsel/of counsel; 58 were partners; 5 were "other"
- 132 were men; 79 were women
- 165 identified as White/Caucasian/Anglo-American (and not Hispanic)
- 46 identified as members of one or more racial/ethnic minority groups

Please see *Sustaining Pathways*, pages 40-50, for complete information regarding the statistical data, respondent demographics, research team, and methodology for the collection of quantitative data through its related survey.

Appendices

Appendix I

Survey Instrument

Minority Corporate Counsel Association Creating Pathways to Diversity Research Project

INTRODUCTION

The Minority Corporate Counsel Association (MCCA) is sponsoring this comprehensive survey to update and expand on our current research publications: the Blue Book, *Creating Pathways to Diversity*; and the Purple Book, *The Myth of the Meritocracy*. (Both publications are available on MCCA's Website at www.mcca.com.)

We are inviting the attorneys in your firm along with those in all other AmLaw 200 firms across the United States to participate. The survey will focus on the perceptions and experiences of attorneys in a variety of areas relevant to diversity and inclusion. The identity of individual respondents will remain completely anonymous. We will, however, use background information to sort the data by important variables such as gender, attorney level, race/ethnicity, marital status, and sexual orientation in order to analyze trends and patterns within and between groups.

Although we will not be sorting the data by individual law firm, your firm and others will benefit from the findings and recommendations that emerge from the research as you seek better understanding and strategies for strengthening your own diversity efforts. Each firm that has at least a 10% participation rate from its lawyers will be listed in the report as a supportive participant. We do stress, however, that data will only be analyzed in the aggregate across all firms. There will be no individual firm data compiled or analyzed. A key part of this effort is for you to provide thoughtful and honest feedback based on your perceptions and experiences related to the areas addressed. There are no "right" or "wrong" answers. So please record your impressions as accurately as possible, regardless of why you have them.

INSTRUCTIONS

The survey consists of a number of statements. Following each statement is a series of possible responses arranged along a scale. Please select the response that most closely matches your perception and experience. If you feel as though you cannot respond to the statement, please select "Don't Know/Not Applicable" as your choice.

There are also two open-ended questions near the end of the survey. Please take some time to share any additional thoughts you have on these issues.

The survey should take no longer than 30 minutes, and

we recommend that you complete it in one sitting. If you are interrupted you can use the "save for later" button. However, if you click this, you will be given a new, unique password that you must use to log back on. The original password will no longer be valid.

If you have any questions about the survey you can email the vendor, the Novations Group, at the following email address: MCCA-Survey@novations.com.

Thank you for participating in this important research project.

Strategic Leadership and Commitment

- 1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable
- In my experiences and observations at my firm, diversity has been communicated and addressed by key firm leaders.
 - My firm has a Diversity Committee or a comparable entity, and I am aware of who is on that committee and what the committee is doing.
 - If I have a concern or complaint about my work environment, I have someone I can go to in order to seek a resolution.

Work Environment

- 1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable
- I feel that that I am treated as an equal by my peers.
 - I feel that I am treated differently by my peers because of my race.
 - I feel that I am treated differently by my peers because of my gender.
 - I feel that I am treated differently by my peers because of my sexual orientation.
 - In my work environment, I sometimes hear negative comments or slurs/ jokes based on gender, race, ethnicity, sexual orientation, or disability.

Supervision

- 1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable
- I feel that the senior lawyers for whom I work treat me differently because of my race.
 - I feel that the senior lawyers for whom I work treat me differently because of my gender.

- I feel that the senior lawyers for whom I work treat me differently because of my sexual orientation.
- I feel that the evaluation of my work by senior lawyers for whom I work is free of assumptions or stereotypes based on my background.

Training and Development

- 1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable
- I am satisfied with the opportunities I have received to actively participate in business development efforts with important clients.
 - I feel that I have to perform at a higher level to gain the same credibility and career opportunities as my peers.
 - I receive appropriate training for the work that I do.
 - I receive the assignments I need in order meet the firm's billing requirements.
 - I receive timely and useful feedback on my work so that I understand both my strengths and what I need to do to improve.
 - In my department, work assignments are apportioned according to attorneys' knowledge, skills, and experience.
 - I am satisfied with the level of client contact I receive.

Coaching and Mentoring

- 1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable
- I have had at least one mentor (formal or informal) in my firm who has played an important part in supporting my career development.
 - It is very difficult for me to advance in this firm because I don't have an influential sponsor.
 - I have a mentor who provides assistance in getting high-visibility assignments and desirable feedback.
 - I have a sponsor in my firm to vouch for my skills and champion my advancement.
 - I have a mentor in the firm who serves as a confidential resource for navigating the "informal rules," career advice, and/or conflict resolution.

Advancement/Leadership

- 1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable
- I aspire to advance into leadership positions in this firm.

- I believe that my gender will not hinder my advancement in this firm.
- I believe that my race/ethnicity will not hinder my advancement in this firm.
- I believe that my sexual orientation will not hinder my advancement in my firm.
- I understand what the criteria are for advancement in my firm.

Work-Life Balance

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- If I choose to reduce my hours, telecommute, make my work schedule more flexible, or seek other alternative work arrangements, I feel that I can exercise those choices without any negative consequences for my career.
- My firm has alternative work arrangement policies in place that are easy to access, understand and utilize by all attorneys in the firm.

Personal Involvement/Commitment

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- I prefer to work in a diverse and inclusive law firm.
- If I overhear negative comments based on race, gender, sexual orientation, or other differences, I feel comfortable voicing my disapproval.
- I actively participate in diversity-related events and initiatives sponsored by my firm — for example, serve as member of the Diversity Counsel (or comparable group), attend Minority Corporate Counsel events, or other specialty bar associations for non-majorities (e.g., NBA, HNBA, NAPABA, Lavender Law, etc).
- I actively support my firm's efforts to recruit and hire a diverse group of attorneys—for example, by participating in special recruitment events on or off site and/or visiting schools.

Recruitment – General

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- My firm recruits at schools with a high percentage of law students of color.

Recruitment — Myth of the Meritocracy

How important do you think the following criteria should be in decisions related to the recruitment and hiring of lawyers in your firm?

1) Most Important; 2) Very Important; 3) Neutral; 4) Balanced with Other Criteria; 5) Of Little Importance; 6) Don't Know/Not Applicable

- Law school rank
- Moot Court Board
- Member of the Law Review (the top journal at his/her school)
- Federal Judicial Clerkship
- Recommendations from law school professors
- Grade point average
- Community service

- Recommendations from firm attorney(s)
- Diverse backgrounds
- Prior work experience
- Interview performance
- Informal impressions of recruiters
- Informal impressions of influential firm members

Career Impact of Law Firm Changes

Rate the following changes in your current law firm in terms of the positive effect each would have on your career.

1) No Effect; 2) Little Effect; 3) Neutral; 4) Positive Effect; 5) Very Positive Effect; 6) Don't Know/Not Applicable

- The establishment of formal policies for reduced/alternative work arrangements.
- Consistent implementation of current policies relating to the workplace.
- Less pressure to engage in client development.
- Lower billable hours.
- More flexibility from the firm in accommodating my personal life.
- Greater opportunity to shape the future direction of the firm.
- More and better mentoring by senior attorneys/partners.
- More opportunities for pro bono work.
- Less subjectivity in the work allocation processes.
- Less subjectivity in the promotion processes.
- More racial diversity in the workplace.
- More gender diversity in the workplace.
- More receptive/inclusive environment for LGBT attorneys

Experience of Exclusion

Over the past five years of your work experience in a law firm, have any of the following happened to you based on your gender, race, sexual orientation, and/or physical disability?

- 1) Frequently; 2) Sometimes; 3) Neutral; 4) Infrequently; 5) Never; 6) Don't Know/Not Applicable.
- Experienced demeaning comments or other types of harassment.
 - Was excluded from assignments that I sought out.
 - Was excluded from informal or formal networking opportunities.
 - Was excluded from client development and client relationship opportunities.
 - Experienced unfair performance evaluations.
 - Was denied advancement or promotional opportunities.
 - Experienced one or more other forms of discrimination.

Myth of the Meritocracy

1) Strongly Disagree; 2) Disagree; 3) Neutral (sometimes agree, sometimes disagree); 4) Agree; 5) Strongly Agree; 6) Don't Know/Not Applicable

- I possess and exhibit the necessary interpersonal/communication skills I need in order to succeed at my law firm.
- The formal and informal performance reviews and feedback that I have received regarding my interpersonal/communication skills accurately reflect my skills.

- I possess and exhibit the necessary client relationship skills I need in order to succeed at my law firm.
- The formal and informal performance reviews and feedback that I have received regarding my client relationship skills accurately reflect my skills.
- I possess and exhibit the necessary technical skills I need in order to succeed at my law firm.
- The formal and informal performance reviews and feedback that I have received regarding my technical skills accurately reflect my skills.
- I possess and exhibit the necessary research and writing skills I need in order to succeed at my law firm.
- The formal and informal performance reviews and feedback that I have received regarding my research and writing skills accurately reflect my skills.
- I have a high level of commitment to my career and to the firm.
- The formal and informal performance reviews and feedback that I have received regarding my level of commitment to the firm and to my career are accurate.
- I possess and exhibit the necessary time management skills I need in order to execute my responsibilities at work.
- The formal and informal performance reviews and feedback that I have received regarding my time management skills accurately reflect my skills.
- I present myself in a professional manner that is appropriate for the various contexts in which I represent the firm.
- The formal and informal feedback that I have received regarding my professional appearance is accurate.

COMMENTS

Are there any other thoughts on diversity and inclusion in law firms that you would like to share with us?

Are there any recommendations that you have for increasing diversity and inclusion in law firms that you would like to share with us?

BACKGROUND INFORMATION

This information will be used to help us compare and contrast survey responses between and among different groups of attorneys. No group will be formed with less than five participants. At no time will anyone other than the Minority Corporate Counsel Association researchers have access to this information.

Level

- Associate
- Counsel/Of Counsel
- Partner
- Other

Gender

- Male
- Female

Sexual Orientation

- Heterosexual
- Gay, Lesbian
- Bi-Sexual
- Transgendered

Person With a Disability

- Yes
- No

Race/Ethnic Background

- Asian/Asian American (incl. South Asian)
- Black including Caribbean and African/African American
- Caucasian/White (excluding Hispanic)
- Arab/Arab-American
- Native American/Alaskan Native
- Hispanic/Latino
- Pacific Islander
- Bi-racial/multi-racial
- Other

Current marital status?

- Single, never married
- Married, heterosexual couple
- Domestic Partner/Married, same-sex couple
- Divorced
- Widowed

Caretaking Responsibilities

At any time during your tenure at your current firm what kind of caretaking responsibilities do/did you have for the following people?

Own biological or other children (adopted, step) under 18:

- Primary
- Shared
- Some, not primary
- Little
- None

Someone else's children under 18:

- Primary
- Shared
- Some, not primary
- Little
- None

Elderly parents including in-laws or other adult relatives over 18:

- Primary
- Shared
- Some, not primary
- Little
- None

Law School Attended

- Boston College
- Boston U
- Columbia
- Cornell
- Duke
- Emory
- Fordham
- George Wash. U
- Georgetown
- Harvard
- Northwestern
- NYU

- Stanford
- U of Chicago
- U of Iowa
- U of I-Urbana
- U of Michigan-AA
- U of Minn-TC
- U of Notre Dame
- U of Pennsylvania
- U of Texas-Austin
- U of Virginia
- U of Washington
- U of Wisconsin
- UC Berkeley
- UC Davis
- UC Hastings
- UCLA
- UNC Chapel Hill
- USC
- Vanderbilt
- Wash. & Lee
- Washington U
- Yale
- Other

Year Graduated from Law School

- 1987
- 1988
- 1989
- 1990
- 1991
- 1992
- 1993
- 1994
- 1995
- 1996
- 1997
- 1998
- 1999
- 2000
- 2001
- 2002
- 2003
- 2004
- 2005
- 2006
- 2007
- Other

Please tell us about your law school academic honors or achievements.

Check all that apply:

- I graduated in the top 10% of my class and/or was selected to Order of the Coif.
- I graduated in the top 20% of my class, but not in the top 10% of my class.
- I did not graduate with academic honors or in the top 20% of my class and/or I would characterize my law school performance as "good/average" but not "stellar."
- I did poorly in law school and credit my post-law school work experience for the success I have been able to achieve in a law firm.

- I did poorly in law school and credit my personal contacts/networks for the success I have been able to achieve in a law firm.
- I was selected for and served as a member of my law school's Moot Court Board.
- I was selected for and served as a member/editor of the top Law Review/Journal for my school.
- I was selected for and served as a member/editor of an alternative law review or journal.
- I completed a Federal Judicial Clerkship.
- I cannot answer this question regarding class ranking because my law school did not rank students.
- I do not remember the specifics about my grades, class rank, or other information in order to respond to any of the above.

Appendix II

Glossary of Acronyms and Terms

Source: The following definitions are adapted from the Gay and Lesbian Alliance Against Defamation (GLAAD) Media Reference Guide, 8th Edition. To download a copy of the guide, please visit the “Press” section of GLAAD’s Website (<http://www.glaad.org>).

Bisexual (Bi)

An individual who is physically, romantically, and/or emotionally attracted to both men and women. Bisexuals need not have had sexual experience with both men and women; in fact, they need not have had any sexual experience at all to identify as bisexual.

Closeted

A person who is not open about his or her sexual orientation.

Coming Out

A lifelong process of self-acceptance. People forge a lesbian, gay, bisexual, or transgender identity first to themselves, and then may reveal it to others. Publicly identifying one’s orientation may or may not be part of coming out.

Cross-Dressing

To occasionally wear clothes traditionally associated with people of the other sex. Cross-dressers are usually comfortable with the sex they were assigned at birth and do not wish to change it. “Cross-dresser” should NOT be used to describe someone who has transitioned to live full-time as the other sex, or who intends to do so in the future. Cross-dressing is a form of gender expression, and is not necessarily tied to erotic activity. Cross-dressing is not indicative of sexual orientation.

Gay

An adjective used to describe people whose enduring physical, romantic, and/or emotional attractions are to people of the same sex (e.g., gay man, gay people). In contemporary contexts, lesbian (used as either a noun or adjective) is often a preferred term for women. It is important to avoid identifying gay people as “homosexuals,” an outdated term considered derogatory and offensive to many lesbian and gay people.

Gender Expression

The external manifestation of one’s gender identity, usually expressed through “masculine,” “feminine,” or gender-variant behavior, clothing, haircut, voice, or body character. Typically, transgender people seek to make their gender expression match their gender identity, rather than birth-assigned sex.

Gender Identity

One’s internal, personal sense of being a man or a woman. For transgender people, their birth-assigned legal identity and their own internal sense of gender identity do not match.

Heterosexual

An adjective used to describe people whose enduring physical, romantic, and/or emotional attraction is to people of the opposite sex. Also straight.

Homosexual

(an offensive term to avoid) — An outdated clinical term considered derogatory and offensive by many gay and lesbian people. Gay and/or lesbian is the appropriate way to describe those who are attracted to people of the same sex.

Intersex

A term describing a person whose biological sex is ambiguous. There are many genetic, hormonal, or anatomical variations make a person’s sex ambiguous (e.g., Klinefelter Syndrome). Parents and medical professionals usually assign a sex to intersex infants, and perform surgical operations to conform the infant’s body to that assignment. This practice has become increasingly controversial as intersex adults speak out against the practice. The term intersex is not interchangeable with or a synonym for transgender.

Lesbian

A woman whose enduring physical, romantic, and/or emotional attraction is to other women. Some lesbians may prefer to identify as gay (adj.) or as gay women. Avoid identifying lesbians as “homosexuals,” an outdated term considered to be derogatory and offensive to many lesbian and gay people.

LGBT / GLBT

Common acronyms for “lesbian, gay, bisexual, and transgender.” LGBT and/or GLBT are often used because they are more inclusive of the diversity of the community. Care should be taken to ensure that audiences are not confused by their use.

Lifestyle

(an offensive term to avoid) — An inaccurate term used by anti-gay extremists and the intolerant to denigrate lesbian, gay, bisexual, and transgender lives. Just as no one “straight” lifestyle exists, so too is there no single lesbian, gay, bisexual, or transgender lifestyle.

Openly Gay

A term that describes people who self-identify as lesbian or gay in their personal, public, and/or professional lives. Also openly lesbian, openly bisexual, openly transgender.

Outing

The act of publicly declaring (sometimes based on rumor and/or speculation) or revealing another person’s sexual orientation or gender identity without that person’s consent. Considered inappropriate by a large portion of the LGBT community.

Queer

A traditionally pejorative term that has been appropriated by some LGBT people to describe themselves. It is important to note, however, that it is not universally accepted even within the LGBT community, and should be avoided unless quoting or describing someone who self-identifies that way.

Sex

The classification of people as either male or female. At birth, infants are assigned a sex based on a combination of bodily characteristics, including chromosomes, hormones, internal reproductive organs, and genitals.

Sexual Orientation

(also Orientation) — The scientifically accurate term for an individual’s enduring physical, romantic, and/or emotional attraction to another person, whether that may be to members of the same and/or opposite sex; it encompasses lesbian, gay, bisexual, and heterosexual (straight) orientations. Gender identity and sexual orientation are not synonymous. Transgender people may be straight, lesbian, gay, or bisexual. For example, a man who transitions from male to female and is attracted to other women would be identified as a lesbian or a gay woman. Avoid the offensive term “sexual preference,” which is used to suggest that orientations other than heterosexual/straight constitute a voluntary choice, and therefore capable of being changed.

Sex Reassignment

A term referring to surgical alteration, and is only one small part of transition. Preferred term to “sex change operation.” Not all transgender people choose to or can afford to have sex reassignment surgery (SRS). Journalists should avoid overemphasizing the role of SRS in the transition process.

Transgender

An umbrella term (adj.) for people whose gender identity and/or gender expression differs from the sex they were assigned at birth. The term may include, but is not limited to, transsexuals, cross-dressers, and other gender-variant people. Transgender people may identify as female-to-male (FTM) or male-to-female (MTF). Use the descriptive term (transgender, transsexual, cross-dresser, FTM, or MTF) preferred by the individual. Transgender people may or may not decide to alter their bodies hormonally and/or surgically.

Transition

A term describing the process of altering one’s birth sex. Transition is not a one-step process; it is a complex process that occurs over a long period of time. Transition includes some or all of the following personal, legal, and medical adjustments: telling one’s family, friends and/or co-workers; changing one’s name and/or sex on legal documents; hormone therapy; and possibly (though not always) one or more forms of surgery.

Transsexual

(also Transsexual) — An older term that originated in the medical and psychological communities. While some transsexual people still prefer to use the term to describe themselves, many transgender people prefer the term transgender to transsexual. Unlike transgender, transsexual is not an umbrella term, as many transgender people do not identify as transsexual. It is best to determine which term an individual prefers.

APPENDIX III

A Select List of Key National LGBT Bar Associations and Organizations

American Bar Association Commission on Sexual Orientation and Gender Identity

A national commission with the mission 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. Through education efforts, policy development, building relationships with leaders in the profession, and other activities, the Commission seeks to secure equal treatment in the ABA, the legal profession, and the justice system without regard to sexual orientation or gender identity, remove barriers to professional advancement, and promote diversity. www.abanet.org/sogi.

American Civil Liberties Union

A national organization that works daily in courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed to all people in the country by the Constitution and laws of the United States. www.aclu.org/issues/gay/hmgil.html.

Gay & Lesbian Alliance Against Defamation (GLAAD)

A national organization dedicated to promoting and ensuring fair, accurate, and inclusive representation of people and events in the media as a means of eliminating homophobia and discrimination based on gender identity and sexual orientation. www.glaad.org.

Human Rights Campaign

A bipartisan organization that works to advance equality based on sexual orientation, gender expression, and identity. It represents a grassroots force of more than 750,000 members and supporters nationwide. As the largest national lesbian, gay, bisexual, and transgender civil rights organization, HRC envisions an America where LGBT people are ensured of their basic equal rights and can be open, honest, and safe at home, at work, and in the community. www.hrc.org.

Intersex Society of North American

An organization devoted to systemic change to end shame, secrecy, and unwanted genital surgeries for people born with an anatomy that someone decided is not standard for male or female. www.isna.org

LAMBDA Legal Defense and Education Fund

A national organization committed to achieving full recognition of the civil rights of LGBT people and those with HIV or AIDS. Through impact litigation, education, and advocacy, the organization strives to make the case for equality in state and federal court, the Supreme Court, and in the court of public opinion. Its legal work is carried out principally through cases selected to establish positive legal precedents that will affect LGBT people and individuals with HIV or AIDS. www.lambdalegal.org.

National Center for Lesbian Rights

A national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. www.nclrights.org.

National Lesbian Gay Bisexual and Transgender Bar Association

A national association of lawyers, judges, and other legal professionals, law students, activists, and affiliate lesbians, gay, bisexual, and transgender legal organizations. The LGBT Bar promotes justice in and through the legal profession for the LGBT community in all its diversity. www.lgbtbar.org.

The Accord Alliance

An organization whose mission is to promote comprehensive and integrated approaches to care that enhance the health and well-being of people and families affected by disorders of sex development by fostering collaboration among all stakeholders. www.accordalliance.org

Transgender Law and Policy Institute (TLPI)

A nonprofit organization dedicated to engaging in effective advocacy for transgender people in our society. The TLPI brings experts and advocates together to work on law and policy initiatives designed to advance transgender equality. www.transgenderlaw.org

Transgender Law Center (TLC)

A civil rights organization advocating on behalf of transgender communities and working to change laws and systems that fail to incorporate the needs and experiences of transgender people. www.transgenderlawcenter.org

APPENDIX IV

Additional Recommended Resources

1. Ark Group's *Attracting, Advancing, and Retaining LGBT Lawyers* is a comprehensive step-by-step guide to overcoming the challenges associated with the complex issues that lesbians, gays, bisexuals, and transgender (LGBT) lawyers face in today's legal profession, and how these issues impact their law firms.

Authored by Lisa Linsky (McDermott Will & Emery) and Amy Beard (formerly of McDermott Will & Emery), the first part of this guide provides a comprehensive overview exploring:

- The challenges that LGBT attorneys face;
- Initiatives that firms can use to recruit LGBT attorneys,
- Strategies that attorneys and law students can use to seek out LGBT-friendly law firms and programs; and
- The ways in which firms can make their own workplaces more welcoming to LGBT attorneys.

The second part of this guide consists of case studies, insights, contributions, and practical examples from LGBT individuals who have achieved high levels of success and recognition within the legal profession.

Copies of *Attracting, Advancing, and Retaining LGBT Lawyers* may be ordered by contacting Daniel Smallwood at dsmallwood@ark-group.com; members of the MCCA network may receive a discount by using code WCST-1.

2. Thompson Publishing Group's *Domestic Partner Benefits: An Employer's Guide*, 5th Edition, helps employers, plan administrators, and human resources professionals investigate the pros and cons of offering benefits to employees' domestic partners and same-sex spouses, and guides them through the process of establishing and running a benefits program that offers parity for same-sex partners or spouses.

This one-of-a-kind book by Todd A. Solomon features a model launch and timeline, model policies, notices, forms and affidavits, as well as real-life examples of what today's employers are doing. *Domestic Partner Benefits: An Employer's Guide* also provides key insights on such critically important matters as:

- Defining "domestic partner;"
- Deciding who should be eligible to receive domestic partner benefits;
- The nuts and bolts of setting up and running a plan;
- Tax and payroll/withholding;
- FMLA, COBRA, and HIPAA administrative issues;
- Effect of federal, state, and local laws and court rulings; and
- The complexities of offering benefits to same-sex spouses, and how same-sex marriage relates to domestic partner benefits.

For more information or to order a copy of *Domestic Partner Benefits: An Employer's Guide*, visit <http://www.thompson.com/public/offerpage.jsp?promo=DOME>.



Additional resources from MCCA's *Pathways* Research series



A Study of Law
Department
Best Practices
(1st Edition)



A Set of Recommended
Practices for Law Firms



Metrics for Success:
Measurement in
Diversity Initiatives



The Myth of the
Meritocracy: A Report
On the Bridges and
Barriers to Success
in Large Law Firms



From Lawyer to
Business Partner:
Career Advancement
in Corporate Law
Departments



Perspectives From
The Invisible Bar: Gay
& Lesbian Attorneys
in the Profession



Mentoring Across
Differences: A Guide
to Cross-Gender and
Cross-Race Mentoring



A Study of Law
Department
Best Practices
(2nd Edition)



The Next Steps in
Understanding and
Increasing Diversity
& Inclusion in Large
Law Firms



The New Paradigm
of LGBT Inclusion:
A Recommended
Resource for Law Firms

