



*A publication of the TIPS Diversity in the Profession Committee*



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Dedicated to Sharing Ideas that Create a Diverse Profession

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## Message from the Chair

By: **H. Wesley Sunu**



This issue of "Embracing Diversity" will focus on the diversity issues relating to Lesbian, Gay, Bisexual and Transgender ("LGBT") attorneys. Our Newsletter Editor Natalie Lehman wanted to highlight in each Newsletter one of the four areas of outreach conducted by the TIPS Committee on Diversity in the Profession. TIPS has already made some inroads into the LGBT

community and we look forward to working with LGBT bar associations and bar groups to promote opportunities and outreach to all attorneys. One of the members of the TIPS Committee on Diversity in the Profession went to a board meeting for a national LGBT bar association and simply asked, "What can TIPS do for you?" He was told that no other Section of the ABA has asked such a question before nor has anyone from the ABA appeared before the board to make such an outreach effort. TIPS has been first in many outreach efforts and I believe that TIPS will continue to be a leader when it comes to diversity.

In upcoming programs at the ABA Annual meeting in New York City, the TIPS Committee on Diversity in the Profession will present to Catherine A. Christian, the first African-American President of the New York County Bar Association and counsel for special projects, Office of the Special Narcotics Prosecutor, New York County District Attorney's Office, and to the Honorable Bernice B. Donald, United States District Judge, Western District of Tennessee, the first African-American female officer of the ABA, the Liberty Achievement Award. This award is presented to an attorney or judge who demonstrates, through their career, leadership in promoting diversity in the legal profession. The reception will take place August 8, 2008, on Ellis Island, a fitting setting for the TIPS diversity award because Ellis Island was the place where people of diverse backgrounds gained entry into the land of freedom and opportunity. This will be an outstanding evening and we hope that you will be able to join us for this event.

Another program that the Committee on Diversity in the Profession is putting on at the Annual Meeting is a panel presentation for the 20<sup>th</sup> anniversary of the Commission on Women in the Profession Day of Equality program. Stephanie Carlson and Shelia Durant have put together a program entitled "7 Habits of Highly Successful Women in the Insurance

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Industry." That program will take place at the Hilton on August 7, 2008. TIPS is also a cosponsor of the Day of Equality tea reception at 5:30 p.m. at the Hilton. Stop by for the TIPS presentation and a spot of tea.

Our Committee along with Jill Marina and Randi Whitehead are also working on a program for lawyers with disabilities. This program will take place on December 5, 2008, at Stetson University School of Law in Florida and will address access to justice issues for lawyers and people with disabilities. We are very excited to have the Animal Law Committee cosponsor the program with a presentation on service and support animals in the courtroom. Can dogs be allowed in the courtroom to help witnesses stay calm and give testimony? How can technology aid people with disabilities for trials in the courtroom? Chief Justice R. Fred Lewis who received the TIPS Pursuit of Justice Award last October will be the keynote speaker. Plan on attending this program in Florida.

In other news about Committee activities, Nancy Quan, the incoming Chair of the Diversity Committee, put on a presentation at the National Conference for the Minority Lawyer in San Jose. That program was entitled "Insurance and Patent Litigation: Do We Have Insurance Coverage for This Lawsuit?" Nancy will keep the work of the Committee moving forward with subcommittees and programs. The Committee business meetings are open to

everyone and we encourage you to say hello to Nancy and find ways that you can help with the work of the Committee. As I leave as Chair of this Committee, I am confident that TIPS will continue with its diversity efforts. The Leadership Academy has been a great success. Outreach to diverse attorneys has brought new faces to TIPS. The Committee members bring fresh and new projects and issues to address. The TIPS leadership has been supportive of the work that this Committee has done. I have thoroughly enjoyed meeting all of the new attorneys interested in diversity. Most of all, I have learned much as the Chair of this Committee. I have also laughed much. As I am finishing my term as Chair of the Diversity Committee, I understand that there is more to learn about each other's differences. I hope you will continue to work in your own ways to reach out to people and attorneys who are different from you, and keep embracing diversity.

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## A Message From Jim Holmes: Vice-Chair of ABA/TIPS Diversity Committee, LGBT Issues

By: [Jim Holmes](#)



Many Different Voices Make For A Glorious Chorus

You may have noticed a theme with this issue of the Diversity Newsletter.

The Scope Statement for the ABA/TIPS Diversity Committee recognizes four areas for diversity: Gender; Ethnicity; Physical Ability; and Orientation. The Committee has decided to separately emphasize each of these four areas in the four issues of its Newsletter. In this issue, we proudly note our efforts to expand the Section's diversity efforts for lesbian, gay, bisexual and transgender (LGBT) attorneys.

We are honored to have articles from attorneys who have made and are making a difference in the practice both on an individual basis as well as efforts to encourage LGBT attorneys in law firms and in the practice of law. Finally, we are very honored to have a contribution from NLGLA, the National Lesbian and Gay Lawyers Association, an affiliate bar of the American Bar Association. I thank each of our authors, not only for their efforts in contributing material for this Newsletter, but also for the leadership in the practice of law for LGBT attorneys.

We also strongly encourage all attorneys, in particular all LGBT attorneys, who strive for pursuit of justice, strength in the profession and wish to find an environment for leadership and professional development, to contact any of the Chairs of the Section's General Law Committees, or the Section's Diversity Committee through its Chair Wes Sunu, or Chair-Elect Nancy Quan. Contact information for all of these is here in the

Newsletter. Or, please feel free to contact me directly at [james.holmes@sdma.com](mailto:james.holmes@sdma.com).

I hope to see you all at the ABA Annual Meeting in New York in August and throughout the coming years as active members of our Section.

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## Creating The Hospitable Environment For The LGBT Associate

By: [Jeff Wolf](#)



In recent years, great strides have been made for gay and lesbian attorneys entering the job market. Burgeoning diversity programs in law firms have developed new interest in the recruitment and placement of qualified lesbian and gay lawyers. The National Lesbian and Gay Law Association ("NLGLA") reports that the number of firms attending its job fair at Lavender

Law has risen from a couple of dozen firms during its first career fairs in Philadelphia and New York in 1992 and 1993 to more than 150 global firms in 2007. If your firm hired a recent graduate from the Lavender Law job fair or has hired an LGBT attorney, we commend you. There are several concrete practical steps that you and your law firm can take to encourage the success and retention of that new diversity recruit.

The integration of lesbian and gay associates into the profession can be a difficult transition for unprepared law firms. Organizations such as the National Association for Law Placement, The Minority Corporate Counsel Association, the Minnesota Bar Association, The District of Columbia Bar Association, and most recently, the Bar Association of San Francisco ("BASF") report in study after study that LGBT attorneys experience bias, barriers to advancement and even discriminatory practices, particularly in small to midsized firms. A review of these reports reveals some recurring and disturbing themes.

### Lack Of Leadership At The Top

Many small to midsized firms perpetuate negativity, bias and a culture of exclusivity by failing to include the terms "sexual orientation and gender identity/expression" in their anti-discriminatory policies and diversity statements. While the larger law firms, particularly the AmLaw 100, have become more and more inclusive by including these terms, smaller firms continue to omit these terms.

Particularly in small to midsized firms, when top management is silent on gay and lesbian issues, that silence sends a clear message to LGBT legal professionals. Simply put, these types of omissions indicate that managers are uncomfortable working with LGBT attorneys. LGBT professionals are left to infer that management prefers that they should stay closeted. Of course, those attorneys that are not comfortable at work will – at best -- be perceived as "not a team player" or "not interested in working in groups." Worse still, closeted lawyers will be perceived as

deceptive or secretive. The closet is a lose/lose situation for both the firm and the legal professional.

The failure of top management to take a leadership role in affirmatively welcoming and encouraging a culture of inclusion not only for race and women, but for LGBT legal professionals as well, filters down through the ranks. When senior attorneys find it acceptable to exclude LGBT attorneys from their practice teams, LGBT attorneys are going to start making exit strategies to find a more inclusive workplace culture.

Even the most well intentioned attorneys may be reluctant to work with LGBT associates due to irrational or inflated fears that these associates will be ill perceived by the client. As a result, senior attorneys may not provide LGBT associates with the same opportunities for client contact and professional development as they would with other similarly qualified associates. Similar to bias against people of color and women, LGBT attorneys may be subject to negativity before they even begin the work. As the larger law firms have discovered, however, the business case for diversity in the work place is firmly established. The largest clients are demanding diversity in their service providers and it behooves all sizes of law firms to begin to develop workplace customs that welcome all types of diversity.

### The LGBT Associate

For the lesbian and gay associate, the transition from law school to law firm is oftentimes intimidating even under the best of conditions. Associates are put into an unfamiliar environment, not knowing the religious or moral outlook of co-workers and supervisors slated to evaluate their work. LGBT associates often feel even more stress in this area.

For closeted associates, the reluctance to share even the most mundane aspects of their personal lives with coworkers results in perceptions that they are unfriendly. As a result, their work performance suffers. Moreover, lesbian and gay associates often find it more difficult to build strong relationships with firm attorneys who cannot empathize with them, and probably do not recognize the challenges they face.

### Adjusting Perspectives

Law firms undertake huge expense to recruit and hire the best and brightest associates. With access to good training and professional development opportunities, these individuals will become the faces who will keep clients happy and generate new business. The cost of losing an associate to burnout or, worse yet, to hop to another firm, is considerable. Moreover, associate turnover results in the depletion of associates at the more experienced levels and diminishes the firm's overall ability to handle more complex litigation.

For these reasons and others, law firms are best served by carefully selecting new hires and making the effort to retain them. Oftentimes, firms overlook obvious means to encourage the success and retention of their diversity associates.

Below are some suggested considerations for the retention of LGBT attorneys. Many of these recommendations come at little to no cost for the firm:

- A welcome message from a senior member of the firm to incoming LGBT associates;
- Incorporate LGBT into the firm's definition of diversity;
- Implement a written policy prohibiting employment discrimination on the basis of sexual orientation and gender identity/expression;
- Ensure lawyers and staff are aware of policy, and remember that policies provide a floor to build upon a culture of inclusion within the firm;
- Designate a LGBT attorney to the hiring committee;
- If feasible, participate at the career fair of the National Lesbian and Gay Law Association;
- Include information about LGBT lawyers in recruiting materials;
- Support involvement in LGBT professional associations; and
- Provide similar quality health benefits to LGBT associates and their domestic partners and their dependents as is provided to straight associates;

For a more complete list, please refer to the BASF website at <http://www.sfbar.org/diversity/lgbt.aspx>.

### What Can You Do?

Any individual effort to welcome a LGBT attorney into the workplace can make a tremendous impact on LGBT professionals and their attitudes toward the firm. While many well intentioned co-workers might like to welcome an LGBT associate to the firm, they do not take advantage of the opportunity because of concerns about saying something wrong when making usual small talk or asking questions about family or other aspects of the associate's life outside of the firm. And, when co-workers let their own comfort zone dictate the scope of their communications, they are inhibited from broaching topics and may be perceived as unwelcoming.

In short, straight legal professionals have a fear of using an inappropriate term or revealing their lack of awareness. The best words of advice are "Do not be afraid!" Exit your comfort zone! Do not let concerns about knowing the right terminology stop you from acknowledging a colleague's significant other if the topic should arise. As in all things that are new, when in doubt, ask how that person should be referred to. Follow conversation cues in the same way that you would if a comment was made by a straight legal professional. For example, if a colleague describes visiting the family of a same-sex partner over the holidays, follow up with questions such as where do they live? What did you do for the holiday? Even LGBT legal professionals fumble along the way, and LGBT associates may each have their own preferred term for their relationship – not unlike straight couples. All LGBT associates will appreciate your interest in them as people and

their lives. These associates will be so pleased that their co-workers are making a sincere effort to get to know them better that it is unlikely that they will worry that you asked after their “significant other” instead of using the term “domestic partner” – or in the case of a Massachusetts attorney, their same-sex husband or wife. After all, most LGBT attorneys are accustomed to answering questions about their relationships, just ask!

As a straight ally, you can initiate a conversation by vocalizing your support of firm policies which support an open and receptive work environment for diverse legal professional. Further, more and more young legal professionals are products of secondary schools, universities and law schools that have gay/straight alliances (GSAs). Do not assume that just because a candidate’s resume lists extra curricular activities in GSAs, that they themselves are LGBT – they may be a straight ally. In fact, some large law firms are having hospitality events sponsored by LGBT affinity groups or partners and inviting all the young legal professionals, gay and straight!

Retention of diverse associates in your firms depends directly on your efforts to create a welcoming and inclusive workplace culture. Developing foundational policies and engaging diverse associates may force you out of your comfort level, but there are real benefits in diverse attorney retention. Firm leadership that acknowledges and supports diversity by making LGBT legal professionals feel welcome and accepted will be noticeable where it matters most – in a productive team – and on the bottom line.

#### Glossary Of Terms

- Lesbian, gay, bisexual and transgender (LGBT) is an inclusive term encompassing all sexual orientation minorities. Synonym: GLBT.
- Transgender is a term that includes issues involving gender expression and identity. A transgender person may choose to be pre-, non- or post-operative.
- Most corporations and large law firms use the terms, “sexual orientation and gender identity/expression” to characterize concepts of inclusion in their workplaces.
- “Out.” Coming out is a process that never ends for LGBT people, one can be “out” to ones friends and not be “out” to ones family or at work. “Out” may soon replace the term “openly” gay.
- Gay vs. Homosexual. Gay may be a generic shorthand for the LGBT community, e.g., “The gay community.” Homosexual is less-preferred, and may have derogatory associations, especially negative is “avowed homosexual” or “practicing homosexual.”
- Orientation vs. Preference or Lifestyle. Today, the preferred term is “sexual orientation.” “Homosexual preference” and “homosexual lifestyle” are disfavored terms.
- Partner vs. Spouse. Generally, those in the community use the term “partner” as a short hand for “domestic partner.” Spouse, or in the alternative, husband or wife, is appropriate in jurisdictions that allow for same sex civil marriage.

For more glossary terms, please refer to the Gay and Lesbian Alliance Against Defamation web page at <http://www.glaad.org/media/guide/glossary.php>.

#### References

The below references provide additional information to assess your firm’s work environment as well as offer constructive suggestions for improvement.

Zuckerman and Simons, *Sexual Orientation in the Workplace: Gay Men, Lesbians, Bisexuals, and Heterosexuals Working Together* (1995)

Minority Corporate Counsel: <http://mcca.com/>.

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## A Personal Perspective On Creating A Supportive Environment For LGBT Attorneys

By: [Gail H. Morse](#)<sup>1</sup>



The title of this article begs the question of whether law firms<sup>2</sup> *should* create a supportive environment for their lesbian, gay, bisexual or transgender (“LGBT”)<sup>3</sup> attorneys. The answer should be a simple and easy “of course!”

As an openly Lesbian partner in an inclusive and LGBT supportive national law firm,<sup>4</sup> who lives in a gay friendly large city, my perception is that the legal profession and the country are more accepting of LGBT persons than at any other time in our history, notwithstanding the use of LGBT civil rights as a political wedge issue in elections.

<sup>1</sup> [Gail H. Morse](#) is a partner in *Jenner & Block’s* Chicago office, a member of the Tax Practice and Chair of the State and Local Tax Practice Group. She co-chairs the Firm’s LGBT Forum, and is a frequent speaker on LGBT diversity issues in law firms. She is also a member of the ABA’s Taxation and Individual Rights and Responsibilities Sections. See <http://www.jenner.com/people/bio.asp?id=173>. The opinions and statements made in this article are solely those of the author, and do not necessarily reflect the views of Jenner & Block LLP.

<sup>2</sup> This article reflect the author’s personal experience and familiarity with building an inclusive environment within a law firm; the opinions expressed here are *not* limited to a law firm setting and can be applied in any employment setting. In addition, although this discussion is targeted and limited to the professionals in a law firm due to space, an inclusive environment inures to all employees and should be the goal of all employers.

<sup>3</sup> Throughout this document the L will be listed first; there is no right or wrong way to structure this acronym and many times the reference is to GLBT individuals.

<sup>4</sup> Jenner & Block was the first Chicago law firm to score 100% on the Human Rights Campaign Corporate Equality Index and is consistently rated by Vault and other third parties as among the best places to work for LGBT attorneys. See <http://www.jenner.com/firm/ourfirm.asp?type=LGBT%20Diversity>.