Is It Time for a LGBT Call to Action?

By: Gail H. Morse

It has been ten years since the corporate community formally challenged law firms to make themselves more representative of the communities in which they operate by becoming more diverse. That challenge, and the steps corporations have taken to ensure that the challenge has consequences by holding their servicing law firms accountable to specific diversity metrics, have made diversity among the top priorities for many law firms. Law firms now focus on the recruiting and retention of diverse attorneys in ways not imagined ten years ago.

The focus on diversity has also led many law firms to remove barriers toward inclusion of LGBT attorneys. While full diversity in general and LGBT inclusion specifically has made great strides, neither initiative is complete. As reported by the National Association for Law Placement (“NALP”) in its 2008 Directory of Legal Employers (“NDLE”), the number of openly LGBT attorneys has increased every year since 2003, the year NALP began analyzing this data, but the overall number of LGBT attorneys remains small. In the 2008 Directory, the total number of LGBT attorneys reported for all firms nationwide was 2,050, representing only 1.7 percent of all lawyers reported in the survey. Since 2003, the net increase in LGBT lawyers has been negligible.

The reason for the low number of reported LGBT lawyers cited by NALP’s Executive Director, James Leipold, “is not because there are actually so few GLBT lawyers practicing in the law firms represented in the NDLE, but because collecting accurate GLBT demographic data is difficult. While NALP encourages member law firms to allow lawyers to voluntarily self-identify as GLBT, some firms remain uncomfortable implementing such a process, or [are] unwilling to do so, and even at firms that do a good job of collecting this data, for a variety of reasons some GLBT attorneys choose not to identify themselves.” If a law firm is not willing to ask the question, or a lawyer is not willing to self-identify, the law firm is not as far down the road to LGBT inclusiveness or diversity in general as it might think.

One way of respecting LGBT professionals and creating a welcoming environment is for management to actually be able to say the words “lesbian, gay, bisexual or transgender” or the acronym LGBT without stumbling. Additionally, simply asking lawyers to self-identify as being openly LGB or T goes a long way toward establishing the firm as welcoming. A firm should not be afraid to ask. Yet before that kind of question can be meaningful, the firm must also create a safe and welcoming environment for its LGBT attorneys to feel comfortable self-identifying. There are many articles on how law firms can create a more inclusive environment for LGBT attorneys, including in this publication. At the core, those articles basically state that simply recognizing LGBT attorneys and creating a language that is inclusive rather than exclusive take a very large step toward creating a welcoming environment.

In this article, the discussion about creating an inclusive environment for LGBT attorneys is taken to the next level by asking whether it is time for an LGBT Call to Action to challenge law firms and corporations to include LGBT statistics in the metrics used by in-house counsel to measure the diversity efforts of their outside counsel. Once clients begin routinely asking law firms to report the hours spent by LGBT attorneys on their legal work, law firms are more likely to be encouraged to keep track of such statistics which will further require them to ensure that the firm create and maintain an inclusive environment for LGBT attorneys.

A Call to Action

I am not talking here about taking to the streets with signs, chants and marches, but creating awareness both within law firms and their clients that LGBT diversity should be included in law firm’s diversity statistics and corporate diversity scorecards.

In 1998, as part of an active campaign to promote diversity, Charles Morgan, the former general counsel of Bell South, published Diversity in the Workplace - A Statement of Principle (the “Statement”). The Statement has been signed by the chief legal officers of close to 500 national corporations and promotes the signatories’ commitment to diversity to the law firms with whom they work. It was intended to be a mandate for law firms to make immediate and sustained improvements toward diversity.

In the Statement, the chief legal officers speak directly to the law firms which represent them by first stating that the companies they represent “highly value the perspectives and varied experiences which are found only in a diverse workplace. Our companies recognize that diversity makes for a broader, richer environment which produces more creative thinking and solutions. Thus, we believe promoting diversity is essential to the success of our respective businesses. It is also the right thing to do.” The Statement then sets out the companies’ expectation that the law firms that represent the signatories will “work actively to promote diversity within their workplace.” It ends by warning law firms that the signatories will “give significant weight to a firm’s commitment and progress” to diversity in making decisions about the selection of outside counsel.

By 2004, all objective assessments of law firm adherence to the Statement showed that the efforts and gains of law firms had stagnated. The former general counsel of Sara Lee Corporation, Roderick Palmore, recognized that the Statement was an important first step, but found that law firms needed more incentive to reach full diversity. The result was publication of the Call to Action, the purpose of which “is to take the general principle of interest in advancing diversity and translate that into action, into a commitment to act on, to make decisions about retaining law firms based in part on the diversity performance of those law firms.”

The Call to Action focuses on three major elements: a principle interest in diversity; law firm diversity performance especially in hiring and retention; and a commitment to limiting or eliminating law firms that were not interested in diversity initiatives. The heart of the Call to Action is a commitment on the part of its signatories to “make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the law firms. We intend to look for opportunities for firms we regularly use which positively distinguish themselves in this area. We further intend to end or limit our relationships with firms...
whose performance consistently evidences a lack of meaningful interest in being diverse.”

The goal of the Call to Action is obvious, to create a “business case” for diversity. It is too early to tell if the Call to Action has created a significant change in law firm attitudes toward diversity but most law firms at least express a commitment to diversity. Moreover, more law firm clients are asking their outside counsel to report on the diverse attorneys working on their cases and taking even more proactive steps to ensure that law firms are getting the message. As the signatories to the Call to Action begin to enforce the challenge of the Call and cease doing business with firms who do not heed the Call, the thought is that the goal of a truly diverse profession will be attained because law firms will begin to incorporate their diverse attorneys into all aspects of the practice, making them an important asset of the firm.

To achieve a truly diverse profession, LGBT attorneys should be included in the Call to Action.

**A Call to Action for LGBT Attorneys--It is Ok to Count**

Many companies that ask their outside law firms to report diversity statistics for the attorneys working on their matters do not include LGBT attorneys within that request. The lack of a uniform definition of who qualifies as an LGB or T

Attorney has been cited as an impediment to an accurate reporting of the number of openly gay lawyers by NALP and that “impediment” might also prevent diversity scorecards from including questions about LGBT lawyers. More likely, however, the reluctance to ask is related to a general uneasiness with the question. However, for the same reasons that tracking diversity statistics illuminates the need to increase diversity in a law firm with respect to women and attorneys of color, asking for statistics on LGBT attorneys will increase the likelihood that law firms become welcoming places for LGBT attorneys.

While there is no general definition for how “out” one has to be to be counted for purposes of NALP reporting, there is no magic definition for client reporting. In fact, the same metrics used for NALP can be used for client reporting. Because the purpose of the question is to accurately reflect those individuals who are secure enough in their self-identification to not fear “outing” the answer to how “out” someone has to be to be “openly gay” necessarily requires a degree of public self-identification, while also being respectful of the personal journey in the coming out process.

**LGBT Call to Action**

The coming out process is very personal, and thus is a process that is also dependent on the atmosphere of the particular firm for which the person is associated.

At the beginning of the journey, there is personal awareness of “being different.” The next impulse is often denial leading to behavior that conforms to the behavior of the majority (e.g. opposite sex dating). The person in denial will likely not identify as LGB or T and thus will not be among those counted as “openly gay.” Subsequently, there may be personal acknowledgement of being LGBT, which may include self-identification to a small group or close circle of friends, but is unlikely to lead to self-identification in any public way or in any employment related survey. At this stage, being LGB or T is a secret that is strictly guarded.

Guarding the secret is exhausting—who will tell or who will guess? As self-acceptance increases, the burden of keeping the secret outweighs the perceived downside to coming out. The individual begins to come out to an ever increasing group, including co-workers. Eventually the group widens until one is “publicly” out; that is someone who will freely speak of being LGBT in a public setting. Someone who is “openly gay” is likely in the later stages of the coming out process.

It is important to note, however, that this journey is not linear. LGB or T individuals must make a determination of how “out” they are with each new situation and each new person or group they encounter. Even the most publicly out attorney may not feel the need to be out to a perspective client when meeting for the first time, or ever, if the situation never requires that level of personal identification.

Recognizing this very personal journey, a law firm should not fear asking its attorneys to self-identify as being openly gay either for its own reporting purposes, for NALP or for purposes of reporting diversity statistics to clients. Moreover, companies should not fear asking their law firms to provide such numbers. Those individuals who are further along in the process will likely want the opportunity to self-identify. By simply asking the question, a firm and its clients acknowledge the journey to being out and that they support the process—a large factor in making the firm a welcoming place for LGBT attorneys.

Some will ask whether a law firm should care. Of course it should.

The consequences of failing to create an inclusive environment for LGBT attorneys are not unlike those for other diverse attorneys. It illustrates a lack of commitment to diversity in general, which might cause the firm to lose business. Moreover, the firm and its clients lose out on the richness of talent and perspective when the diverse attorneys and their allies ultimately leave the firm for a more inclusive environment, or choose not to come to the firm at all.

**Conclusion**

As a first step toward ensuring a truly diverse legal profession, LGBT statistics should be included in corporate diversity scorecards. While scoring alone is not enough to fully advance any one diverse group of attorneys, simply asking for such statistics provides a focus that is necessary to remove barriers for diverse attorneys. For LGBT lawyers, just being on the scorecard would be a huge step forward for LGBT inclusiveness.
Few companies currently request such statistics. For those that do not, their outside counsel can be a great catalyst for encouraging such reporting. Even if a company does not ask a law firm to specifically report LGBT statistics, the firm can illustrate its commitment to diversity by voluntarily providing its LGBT statistics in annual diversity surveys. As a result, companies will, at a minimum, begin to understand that it is ok to ask for such numbers and eventually begin to score LGBT results in the same way as other diversity statistics. As acceptance of LGBT reporting grows, the fear of outing for an LGB or T attorney lessens and ultimately allows that attorney to bring his or her full self to the profession and provide clients with a truly diverse legal team.

References

i 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, is a member of the Firm’s Diversity Committee 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.


iii Id.

iv Id.

v Id.


ix Id.

x Id.


xii Id.

xiii See www.tools.mcca.com for complete Call to Action statement.