

Firms Say 'Out And Proud' Makes Good Business Sense

By **Nick Brown**

Law360, New York (October 18, 2010) -- Now that clients have begun to count sexual orientation as a factor in assessing firm diversity, more law firms are starting to encourage lawyers to be open about sexuality in hopes of boosting business opportunities, attorneys say.

Corporate clients have made it clear through conversations with outside counsel and changes in official requests for proposal that they prefer firms with strong lesbian, gay, bisexual and transgendered communities, according to lawyers who spoke with Law360.

For firms, that means letting lawyers know it's OK — and even beneficial — to be out professionally, Foley & Lardner LLP's Jack Lord said.

"I think the firm's job is to create an environment that shows people, if they can get over that little voice of initial discomfort, that it can help you professionally to be out," said Lord, a labor and employment partner who co-chairs Foley's LGBT Allies Affinity Group.

More companies in the past five to seven years have added LGBT questions to requests for proposal that used to focus on race, ethnicity and gender, lawyers say. And the companies that had those questions all along are starting to give them more weight, according to Seyfarth Shaw LLP employment partner Laura Maechtlen, past president of the National LGBT Bar Association.

The change may have several causes, including the likelihood that cultural norms now dictate acceptance of gays and lesbians, said Walter Lohmann, chair of Kirkland & Ellis LLP's Diversity Committee.

"Corporations tend to be competitive in nature, and they like to measure themselves against their peers in the areas where they're getting graded," he said. "In the early days, the diversity score was being kept in the areas of racial and ethnic minorities. More and more, the score is being kept also with respect to LGBT."

But clients also have business incentives for working with diverse firms, namely more comprehensive legal advice, according to Marko Mrkonich, president and managing director of Littler Mendelson PC.

"Put 10 identical people who spent their entire lives together side by side, and ask them the same question, and you get the same answer," Mrkonich said. "But have 10 different perspectives, and you get 10 answers. And then you have the opportunity to create a common solution that reflects all 10 viewpoints."

Corporations want legal teams that mirror customer demographics, lawyers say. It not only helps them plan business strategy, but comes in handy in the courtroom, where LGBT and other minority lawyers may be better able to connect with diverse judges and juries in ways straight white males cannot, they say.

For firms, the benefits of a strong LGBT community go beyond landing large corporate clients.

IP attorney Edward H. Sadtler, co-chair of Kirkland's LGBT subcommittee, said his firm has forged deep partnerships with advocate groups, including with an immigration equality group for whom it performed pro bono work helping individuals seek asylum based on sexual orientation.

Keith Wetmore, chair of Morrison & Foerster LLP, added that the LGBT community is naturally conducive to networking and relationship-building, in ways that are no different from any typical church group, alumni association or country club.

"During my career, I can think of times when my name was put forward by virtue of friendships I'd made through the LGBT Bar Association," Wetmore said. "I was not sold as a great gay lawyer, I was sold as an adept finance lawyer. But had it not been for that connection, I would not have been sold at all."

But with the benefits of LGBT inclusion clear, the challenge now facing firms is how best to promote it.

The question poses a delicate balance: On the one hand, portraying an image of inclusion and comfort is crucial for business and recruitment. On the other hand, Wetmore said, "you don't want to drag anyone out of the closet."

"It needs to feel right for the person," he said.

One common strategy is to form affinity groups for members and allies of firms' gay and lesbian populations.

Foley's LGBT Allies Affinity Group began by lobbying the firm for health and other benefits for domestic partners, and more recently has teamed with the LGBT Bar Association to up its recruiting of gay and lesbian law students.

At Kirkland, the Diversity Committee's LGBT subcommittee circulates an LGBT newsletter, according to Sadtler. The firm has also promoted sponsorship events, sought pro bono work and held client development seminars, Sadtler said.

Seyfarth's LGBT Affinity Group holds dinners and other firm events, while MoFo's general diversity committee sponsors LGBT pride month events each year.

While affinity groups can't force anyone to self-identify as gay, Sadtler said the goal is to create as many opportunities as possible to show employees who haven't come out that they will be accepted if they do.

Any event that gives employees a chance to see LGBT lawyers flourishing in a collegial setting helps the cause, he said.

"We try to have events outside the office — sometimes that makes people feel more comfortable with these issues than they would in a conference room," Sadtler said.

It's also crucial to expand efforts to include straight people, according to Lord. Lawyers at Foley have the option to display stickers affirming support of LGBT colleagues, he said.

"It's nice to understand that you're around other people who might not be gay but who will be supportive of you," he said.

Most LGBT affinity groups reported working closely with the LGBT Bar Association, which in September released its first-ever national directory for LGBT partners. D'Arcy Kemnitz, executive director of the bar association, said the directory already has about 400 names, roughly half from AmLaw 200 firms.

Kemnitz admitted the project is too new to point to direct benefits of its release, but said it has been wildly popular in the early going.

"The saying 'If you build it, they will come,' really applies," Kemnitz said. "We thought we'd have to update it in a year. Turns out we're updating it daily as more people ask to add their names."

But challenges remain, Maechtlen said. Many firms are unsure how to respond to clients' newfound focus on LGBT statistics, either because they feel it is too private a question or because they aren't sure how to pose it, she said.

In addition, the benefits to identifying as LGBT are not universal: In some parts of the country, clientele may not be as willing to accept gay lawyers, leaving attorneys with little incentive to advertise orientation, Maechtlen said.

"In certain places being gay is something you can still be fired for," she said.

Some firms take a different approach to the issue, tackling diversity as a broad-based initiative.

"I don't, and I think sophisticated general counsel don't approach LGBT diversity as a completely separate box," Wetmore said. "Rather, it's part of the conversation of firms getting their heads around the idea that sending in a team of all middle-aged straight white men might not be the most effective way to win the day."

While it offers regional affinity groups for gay and lesbian attorneys, MoFo does not have such a group on a nationwide scale. But that doesn't mean it sacrifices inclusion: the firm has 12 attorneys listed in the LGBT Bar Association's directory, more than any other in the nation.

Littler, second in the country with six attorneys listed, has had similar success with the broader approach. While the firm does have a nationwide LGBT affinity group, it generally looks at diversity through a wider lens, Mrkonich said.

"I think diversity means different things to different people at different times," he said. "For example, in corporate securities, gender might seem like a pressing issue, but in employment, that's a ship that sailed many, many years ago. So we try hard to step back from counting, and focus more on opportunity, and making sure we're always looking forward."

Firms should think about diversity on a grander scale, in the context of their objectives, strategies and personalities, Mrkonich said. That perspective, by its very nature, is more likely to yield a comprehensive and diverse team, he explained.

In general, the issue is one firms will have to keep working on, as LGBT statistics are likely to become only more important to clients over time, attorneys say.

But if the process is incomplete, it is at least progressing, according to Sadtler, who said the number of lawyers who keep sexual preference discreet is getting smaller.

"When I first started practicing about 10 years ago, I think there was more of a sense of, being gay wouldn't hurt you, but there also wasn't this community where you'd actually be nurtured," he said. "To me, that's a really big shift."