

# Employment Policies for Gay and Lesbian Attorneys

BASF REPORT ON

*Published by*

The Committee on Sexual Orientation Issues  
The Bar Association of San Francisco  
685 Market Street, Suite 700  
San Francisco, California 94105  
415 764 1600

**Printing and Mailing of this report was generously donated by  
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## ACKNOWLEDGMENTS

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The Bar Association of San Francisco and its Committee on Sexual Orientation Issues would like to acknowledge the significant contributions of Bonnie Berry of the Bar Association, who assisted with the design and production of this Report, and Timothy L. Legerton, who created the charts appearing in this Report.

Although many members of the Committee contributed substantially to this Report, we would like to make special acknowledgment of the statistical expertise provided by Tim Reagan, who drafted the Survey and interpreted the results.

We would also like to thank Anasuya Dubey and Elizabeth Tam of the Bar Association, who have provided valuable assistance to the Committee throughout this endeavor.

Finally, we would like to thank Heller, Ehrman, White & McAuliffe for their generosity in covering the printing and mailing costs of this report.

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## **PREFACE**

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The Bar Association of San Francisco is pleased to present this Report on Employment Policies for Gay and Lesbian Attorneys. Overall, our sponsor law firms and corporate legal departments have espoused a commitment to equal opportunity for gay and lesbian attorneys. We applaud the numerous sponsors who have adopted the Recommendations promulgated by the Bar Association in 1991 to eliminate sexual orientation discrimination.

This effort is a continuation of our Bar's commitment to encourage diversity in our profession, as shown by efforts such as our Minority Employment Goal and Timetables, and our model policies on sexual harassment in employment. However, this Report involves the more subtle—and therefore, sometimes more difficult—issue of addressing discrimination against gay and lesbian attorneys who are neither necessarily self-identified, nor otherwise known to other members of their firm.

The challenge presented by this report is to create an open and inclusive environment all day, every day—whether or not we know that a minority, woman, gay or lesbian or disabled attorney will be present at any given time. Through these efforts, we will all help in creating and maintaining a professional environment of which we can be proud.

We hope that our legal community will obtain some useful insights from this Report on our current status regarding the employment of gay and lesbian attorneys. Most of all, we hope that this Report will encourage legal employers to take more proactive steps in creating an environment conducive to diversity and equal opportunity for lesbian and gay attorneys.



Mark Schickman

PRESIDENT

BAR ASSOCIATION OF SAN FRANCISCO

## EXECUTIVE SUMMARY

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The prevailing ethic among legal employers in San Francisco is to provide full equal employment opportunity to lesbian and gay attorneys. Indeed, every firm completing this Survey espoused a commitment "to equal employment opportunity . . . for gay and lesbian attorneys." Despite this ethic, true equality has not yet been achieved. Lesbian and gay attorneys will be denied equal employment opportunity until employers provide their lesbian and gay attorneys with health benefits for their domestic partners as routinely as they extend social invitations to "guests" rather than "spouses."

In 1991, the Bar Association of San Francisco (the "Bar Association" or "BASF") adopted and sent to its sponsor firms<sup>1</sup> a manual titled *Creating an Environment Conducive to Diversity: A Guide for Legal Employers on Eliminating Sexual Orientation Discrimination*, which included twenty-three "Recommended Steps for Legal Employers to Achieve Equal Employment Opportunity for Lesbian and Gay Attorneys and Law Students" (the "Recommendations"). The "1995 Bar Association of San Francisco Survey of Employment Policies for Gay and Lesbian Attorneys" (the "Survey") investigated to what extent employers of attorneys in San Francisco have implemented the Bar Association's twenty-three Recommendations.

The Bar Association's Committee on Sexual Orientation Issues drafted the Survey, which consists of twenty-eight "yes/no" questions designed to ascertain whether the Association's sponsors have put into practice what each Recommendation advises. Of the 339 Surveys mailed to Bar Association sponsor firms, sixty-four were completed and returned, representing a response rate of 19%. It is not known how non-responding firms would have completed the Survey, nor how non-sponsor firms would have responded. Nevertheless, because of the high proportion of San Francisco legal employers who are Bar Association sponsors, sponsor firms are likely to be representative of the prevailing ethic among legal employers in San Francisco. Although it is possible that the firms completing this Survey are more likely or less likely than other firms to have adopted the Recommendations, the Recommendations most popular among responding firms are likely to be most popular among San Francisco legal employers generally.

Approximately half of the Recommendations address equal employment opportunity by addressing matters of equal treatment directly. The other Recommendations address equal employment opportunity by recommending policies and procedures that foster the less tangible goal of creating an environment conducive to diversity. Compliance with Recommendations addressing equal treatment directly was generally higher than compliance with Recommendations aimed at fostering diversity.

The Survey results demonstrate a very prevalent commitment to the goal of equal treatment among responding firms. The extent to which this commitment translates into specific policies appears to be governed by the ease with which the particular policy can be implemented. For example, all responding firms endorsed a commitment to equal employment opportunity for gay and lesbian attorneys, but over a third of them had not put this policy in writing. Similarly, all respondents that compile directories naming employees' spouses reported that they would list lesbian and gay attorneys' domestic partners, and almost all that extend social invitations to attorneys' spouses reported that they address the invitations to "guests" rather than "spouses." But most firms that provide health benefits to employees' spouses do not yet provide their lesbian and gay attorneys with health benefits for their domestic partners. Because health benefits are a key component of most employees' compensation packages, employers that fail to provide domestic partner benefits deny equal compensation to their lesbian and gay employees.

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<sup>1</sup> A Bar Association sponsor is a law firm or corporate legal department that pays Bar Association dues for all of its attorneys. Law firms and corporate legal departments are collectively referred to as "firms" in this Report. The Bar Association currently has approximately 400 sponsor firms.

Many of the Recommendations that directly address equal treatment concern whether the households of lesbian and gay employees are treated equivalently to the households of heterosexual employees. In addition to extending social invitations to lesbian and gay domestic partners, most firms reported that they are willing to extend leave benefits to their attorneys for the purposes of meeting family needs concerning domestic partners and children, if the firm provided such benefits at all. Not all firms, however, provide these types of benefits even to married attorneys with children.

The other half of the Recommendations are based on the principle that equal opportunity is achieved in part through the creation of an environment conducive to diversity. Implementation of this principle begins with recruitment and hiring. The Bar Association recommends that lesbian and gay student groups be targeted for recruitment and that a lesbian or gay man serve on the hiring committee. Most firms that engage in these recruitment and hiring activities reported that they comply with these Recommendations, but it is only the larger firms that are likely to engage in such activities at all.<sup>2</sup>

Diversity is promoted also by training all employees on sexual orientation issues, with additional training provided for interviewers. The Recommendations addressing training had among the lowest compliance rates of the Survey, with only a minority of firms saying they provide such training.<sup>3</sup>

Mentoring programs in general promote equal opportunity because they promote interaction between seasoned employees and novices, which often is not as readily available to minority novices as it is to members of the majority group(s).<sup>4</sup> Fewer than half of the firms of all sizes that employ associates reported that they provide all associates with mentors. Firms were much more likely to say that they “foster opportunities for lesbian and gay attorneys to support each other in the work environment,” but much less likely to report that they “identify a lesbian- and/or gay-sensitive contact for attorney applicants.”

Another way to promote diversity is to ensure that firm newsletters, welcome packets, firm resumé, legal-issue lunches, and the like include information of particular interest to lesbians and gay men. Most of the firms for which these Recommendations are applicable reported compliance with most of them. However, fewer than a third of all the responding firms found these Recommendations to be applicable, because smaller firms were much less likely than larger firms to engage in these activities.

Some firms commented that many of these diversity-oriented Recommendations are unnecessary because the firms employ only liberal-minded, non-discriminatory people. Even if they have accurately assessed the intent of their personnel, however, it cannot be determined from these Survey results alone whether that is enough. Further, the Survey responses represent only what firms *report* that they do, not how successful they have been in creating a non-discriminatory environment for lesbian and gay attorneys from the perspective of the attorneys themselves. What the Survey does show is a prevailing ethic among employers of attorneys in San Francisco for equal opportunity regardless of sexual orientation. The Survey also shows where the challenges to make this a reality remain, such as the need for more firms to provide health benefits to the domestic partners of lesbian and gay attorneys in the absence of their legal right to marry.

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<sup>2</sup> For purposes of this Report “smaller firms” are defined as employing from one to fifteen attorneys; “larger firms” are those employing sixteen or more attorneys.

<sup>3</sup> The “compliance rate” indicates the percentage of firms that have adopted the Recommendation in relation to the number of firms for which the Recommendation is applicable to their size and practice. The compliance rate is computed by dividing the number of firms that answered “Yes” by the number of firms that indicated the Recommendation was applicable to their practice (which includes responses of “Yes” and “No,” but excludes responses of “Not Applicable” and “Not Known”).

<sup>4</sup> The need for mentors to create an environment conducive to diversity also was recently addressed in the Association’s *Goals ’95 Report: Goals and Timetables for Minority Hiring and Advancement*.

## REASON FOR THE SURVEY

The Bar Association of San Francisco has been at the forefront of programs to ensure equal employment opportunities for gay and lesbian lawyers. In 1986, the Bar Association established a Committee on Equality, with a mandate to make recommendations to the Bar Association's Board of Directors on how to eliminate barriers to the advancement of minorities, women, lesbians and gay men, and attorneys with physical or mental disabilities in the San Francisco legal community. The Committee on Sexual Orientation Issues was established in 1990 to address the specific needs of gay and lesbian attorneys.<sup>5</sup> After exhaustive research, the Committee on Sexual Orientation Issues (the "Committee") drafted *Creating an Environment Conducive to Diversity: A Guide for Legal Employers on Eliminating Sexual Orientation Discrimination*, which was adopted by the Bar Association's Board of Directors in 1991. The Guide was disseminated to the Bar Association's sponsor law firms and corporate legal departments. It included twenty-three specific "Recommended Steps for Legal Employers to Achieve Equal Employment Opportunity for Lesbian and Gay Attorneys."

In the ensuing years, the Bar Association and the Committee have informally monitored the progress of sponsor law firms with respect to the Recommendations. For example, in June 1992, the Bar Association distributed to the managing partners, chief counsel, and recruitment administrators of sponsor law firms and corporate legal departments a Survey of Implementation of Guide for Legal Employers on Eliminating Sexual Orientation Discrimination. Of the 350 questionnaires distributed, only twenty responses were returned. Given the low response rate, no detailed report was prepared.

In an effort to more fully monitor the status of gay and lesbian attorneys in the San Francisco legal community, the Committee endeavored once again, in 1995, to survey sponsor law firms and corporate legal department with respect to their implementation of the Bar Association's Recommendations. This Report attempts to measure and report how successfully the Recommendations have been adopted by San Francisco legal employers as steps toward the achievement of equal opportunity for lesbian and gay attorneys.

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<sup>5</sup> The Committee on Sexual Orientation Issues was established as a subcommittee of the Equality Committee. Until 1995, it was known as the Committee on Gay and Lesbian Issues.

## **SURVEY METHOD AND RESULTS**

### **SURVEY DESIGN**

The goal of the Survey was to assess how widely the Bar Association of San Francisco's Recommendations on gay and lesbian employment have been adopted. In order to do this, the Survey was mailed to the Bar Association's sponsoring law firms and corporate legal departments.

Rather than require the Survey respondent to read through the full text of the Bar Association's twenty-three Recommendations before answering the Survey questions, it was thought that the response rate would be higher if the respondent were required to answer only single-sentence, "yes/no" questions. An effort was made to construct a single, simple, and direct question for each Recommendation that asks whether the responding firm had adopted the Recommendation's core principle. If the Recommendation recommends that the firm do X, then the question asks whether the firm does X. The Recommendation may offer suggestions as to how the firm might accomplish X, but the question only refers to X directly.

For example, Recommendation 2 states the following:

Employers should articulate, in all appropriate publications, policies, and procedures, the organization's commitment to and policy of equal opportunity in employment, which should specifically prohibit discrimination, including harassment, on the basis of sexual orientation and marital status. The policy should include a statement that AIDS and HIV-related conditions will be treated in the same manner as any other disability protected by law.

Because the core principle in Recommendation 2 is a written policy prohibiting discrimination, the Survey question corresponding to this Recommendation was: "Question 2. Does your firm or corporation have a written policy prohibiting employment discrimination against attorneys on the basis of sexual orientation?"

For each of three Recommendations, more than one question was required, because the Recommendation includes more than one core principle. Specifically, Recommendation 3 concerns training of employees on sexual orientation issues. Two questions related to this Recommendation: Question 3a asks whether the firm provides such training to attorneys, and Question 3b asks whether the firm provides such training to non-attorney staff members. Recommendation 19 concerns parenting leave: Question 19a asks about full leave, and Question 19b asks about part-time work opportunities. Finally, Recommendation 21 concerns care-taking and bereavement leave. Four questions relate to this Recommendation, reflecting the four combinations of care-taking and bereavement leave on the one hand, and domestic partners and children as the reasons for the leave on the other hand.

In order to make the correspondence between each question and its associated Recommendation apparent, the number of the question incorporates the number of the Recommendation. For example, Question 2 corresponds to Recommendation 2 and Questions 3a and 3b correspond to Recommendation 3. There are twenty-eight questions relating to the twenty-three Recommendations.

Respondents were asked to respond either "Yes" or "No" to each question. For some questions, an additional response alternative meaning "not applicable" is included. The Survey questions do not permit the respondent merely to check "not applicable," because that would have provided no information as to why the questions would not be applicable. Instead, where appropriate, the question includes as a response alternative a single sentence stating what was believed to be the most likely reason for the question to be

not applicable. For example, Question 4 asks: "Does your firm or corporation have at least one lesbian or gay attorney sit on the hiring committee?" Response alternatives are "Yes," "No," and "Our firm/corporation does not have a hiring committee."

In March 1995, the Survey was mailed to 339 law firms and corporate legal departments that are Association sponsors. Accompanying the Survey was the full text of the Recommendations as a separate document and a cover letter from Melvin Goldman, the 1995 Bar Association president.

Firms returning the Survey were asked to identify themselves solely for purposes of keeping track of which firms responded, and they were assured that their responses would be kept strictly confidential. As each response was received, the first page, which contained the firm's identifying information, was separated from the rest of the Survey. The part of the Survey containing the responses to questions was marked only with the firm's size category: small, mid-size, or large.<sup>6</sup> Because only five mid-size firms returned Surveys, they were analyzed together with the large firms. Accordingly, this Report refers only to "smaller" and "larger" firms.

Sixty firms responded to the Survey within six months of the Survey's first being sent out. In order to assess whether the responses of these sixty firms accurately reflected the policies of all Bar Association sponsor firms, an additional effort was made to Survey a sample of the non-responding firms. This effort will be described only briefly, because it resulted in only four additional Surveys being returned.

First, all of San Francisco's twenty largest firms, in terms of number of attorneys employed in San Francisco, which had not yet returned the Survey were identified. In addition, a random sample of thirty of the remaining firms was selected. These firms were then contacted by telephone by the Bar Association's President or Executive Director, or a member of the Committee on Sexual Orientation Issues. Although these contacts did result in a few additional Surveys being completed and returned, most of these telephone contacts were met with responses ranging from an unfulfilled promise to return a completed Survey to overt hostility.

The last Survey responses were received in January 1996.

## **RESPONDENTS**

A total of sixty-four firms responded to the Survey.<sup>7</sup> This represents a response rate of 19%. Approximately eight percent of the respondents were corporate legal departments, and the rest were law firms.

Thirty-six respondents (56%) employ one to fifteen attorneys in San Francisco and are designated "smaller firms" in this report. The median number of attorneys employed by these firms is four. Eleven percent of the smaller firms are solo practitioners. Together, these smaller firms employ approximately 175 attorneys in San Francisco and over 300 attorneys total.

Twenty-eight respondents (44%) employ more than fifteen attorneys in San Francisco and are designated "larger firms" in this report. Approximately twenty-three percent of these firms employ more than 100 attorneys in San Francisco; approximately fifty-eight percent employ more than 100 attorneys firm-wide. Together, these larger firms employ over 2,000 attorneys in San Francisco and over 5,000 attorneys total.

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<sup>6</sup> In the Survey, a firm was designated as "small" if it employed from one to fifteen attorneys, "mid-size" if it employed from sixteen to fifty attorneys, and "large" if it employed fifty-one or more attorneys in San Francisco

<sup>7</sup> One firm returned two identical sets of survey responses, and so only one set was included in the analysis. Another firm submitted two sets of responses, one from its San Francisco office and the other from an office in another city. Only the San Francisco office's responses were included in the analysis.

There are reasons for caution in interpreting the results of this Survey, in that the results might not accurately reflect actual attorney-employment practices in San Francisco. First, what the responding firms say they do has not been compared with the perceptions and experiences of their attorneys. Second, only the Bar Association's sponsor firms were surveyed. Third, only a minority of the Bar Association's sponsor firms responded. It is not known how similar responses from the non-responding firms would be.

Nevertheless, there are also reasons to believe that these Survey responses are a good index of the prevailing ethic of employment policies for lesbian and gay attorneys in San Francisco. First, Bar Association sponsor firms employ approximately 4,500 attorneys in San Francisco.<sup>8</sup> A survey of Bar Association sponsors is therefore likely to be informative about a significant body of San Francisco's legal employers. Second, although only a minority of the sponsor firms responded to the Survey, the firms that chose not to respond did so despite multiple contacts from the Bar Association on the subject. Accordingly, if the non-responding firms had strong feelings about the Recommendations—either favorable or not—they were given ample opportunity to express them. Third, the compliance rates for many of the Recommendations can be attributed to various factors such as legal requirements mandating non-discrimination policies based on sexual orientation, the ease with which a particular Recommendation can be implemented, or firms' perceptions of whether particular Recommendations are necessary. It is likely that these factors affect responding and non-responding firms equally, and that the pattern of compliance of non-responding firms would therefore mirror that of the responding firms.

### **RESPONSE ALTERNATIVES**

This Report reproduces the twenty-three Recommendations promulgated by the Bar Association.

Answers checked, together with any comments supplied, were considered carefully in coding each respondent's response to each question. Two members of the Committee on Sexual Orientation Issues independently reviewed each response. Responses were classified as "Yes," "No," "Not Applicable," or "Not Known," depending upon the answer checked and any comment provided for each question. In some cases the response was classified differently from the response checked because a comment suggested that a different classification would be more accurate. "Not Applicable" responses include both the checking of the statement provided that means not applicable as well as responses including a comment that means not applicable. "Not Known" responses include comments indicating that the person completing the Survey did not know the answer, as well as ambiguous answers or no answer at all. Responses are tabled in this Report for each question.

For each question a "Compliance" score has been calculated, which represents the number of firms that have adopted the Recommendation among the responding firms for which the question was applicable. Compliance is equal to the number of "Yes" responses divided by the total number of "Yes" and "No" responses.

### **COMMENTS**

For each question, a few especially interesting comments provided by responding firms are presented as "Selected Comments."

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<sup>8</sup> In addition to the approximately 4,500 attorneys employed by Bar Association sponsor firms, the Bar Association has approximately 4,000 other attorney members.

## **OVERALL SUMMARY OF RESPONSES**

This report contains a question-by-question analysis of Survey responses. Twenty-eight questions covered twenty-three Recommendations. When the Recommendations were promulgated they were grouped into four subject categories. A brief summary of responses by Recommendation category is presented here, followed by the question-by-question analysis.

### General Employment Policies and Practices

The three Recommendations in this section address each firm's general commitment to equal employment and anti-discrimination training concerning sexual orientation issues. All respondent firms represented that they have a commitment to equal employment opportunity for gay and lesbian attorneys. Larger firms are more likely than smaller firms to have written anti-discrimination policy and to provide formal anti-discrimination training concerning sexual orientation issues.

### Recruitment and Hiring

The six Recommendations in this section address each firm's recruitment efforts to make itself accessible to gay and lesbian applicants. To the extent that the Recommendations were relevant to their overall recruitment and hiring practices, most larger firms have adopted these Recommendations. Smaller firms are both less likely to find the Recommendations compatible with their overall recruiting practices and to adopt them.

### Retention, Advancement, and Compensation

The eight Recommendations in this section address each firm's efforts to create an environment in which gay, lesbian, and heterosexual attorneys are equally able to integrate their personal and professional lives at the firm. A vast majority of firms regard lesbian and gay professional associations as equivalent to other comparable associations and regard domestic partners as spousal equivalents for social purposes. Recommendations concerning mentors, mutual support, newsletters, and legal issue lunches have been adopted by about half of the firms for whom they are relevant. Nearly all firms have a policy against bias on the basis of sexual orientation in performance evaluations, work assignments, and grievance procedures.

### Employee Benefits

The six Recommendations in this section address each firm's provision of employment benefits to gay and lesbian attorneys and their families. With the notable exception of health benefits, a solid majority of firms provide benefits to the households of lesbian and gay attorneys that are equivalent to the benefits provided to the households of married attorneys.

## **RECOMMENDATIONS AND SUMMARIES OF RESPONSES**

**RECOMMENDATION I**

## Management Commitment to Equality and Diversity

- ▶ Legal employers must make a commitment to the fair and equal recruitment, hiring, retention, advancement, and compensation of gay and lesbian employees and applicants. In order to effectively move the entire institution toward adoption of these goals as important business and management objectives, the managing partner/chief counsel, or a formally and publicly designated high-profile attorney with authority and clout, should assume an active leadership role in the organization's efforts.

## Selected Comments

**“We always have been committed to equal employment opportunity.”**

—SMALLER FIRM RESPONDING “YES”

**“In the sense that we pay absolutely no attention to such matters.”**

—SMALLER FIRM RESPONDING “YES”

**“We were founded as a lesbian law collective. We have recently hired heterosexual women for the first time. (I suppose this is a form of equal employment!)”**

—SMALLER FIRM RESPONDING “YES”

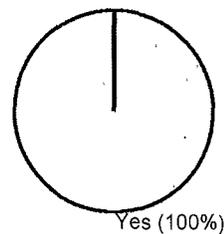
# Question ?

Is your firm or corporation committed to equal employment opportunity (including recruitment, hiring, retention, advancement, and compensation) for gay and lesbian attorneys?\*

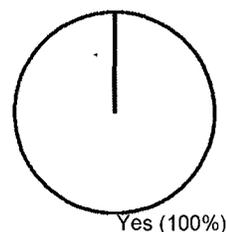
## Summary of Responses

Every firm endorsed a commitment to equal employment opportunity for gay and lesbian attorneys. Some of the smaller firms commented that although they are too small to have formal policies or to have hired associates or staff, they nevertheless are “in accord” with BASF’s policies or intended to abide by non-discrimination policies if they had an opportunity to hire in the future. One of the larger firms specifically noted that its non-discrimination policy applies to all employees, regardless of job title or position. The high rate of commitment to equal employment opportunity may be attributable in part to the existence of California Labor Code, section 1101.2, which prohibits employment discrimination based on sexual orientation.

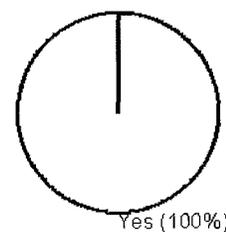
### Smaller Firms



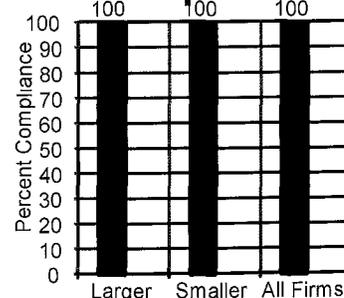
### Larger Firms



### All Firms



### Compliance



\*NO "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED.

**RECOMMENDATION 2**

## Anti-Discrimination and Equal Employment Opportunity Policies

- ▶ Employers should articulate, in all appropriate publications, policies, and procedures, the organization's commitment to and policy of equal opportunity in employment, which should specifically prohibit discrimination, including harassment, on the basis of sexual orientation and marital status. The policy should include a statement that AIDS and HIV-related conditions will be treated in the same manner as any other disability protected by law.

## Selected Comments

**“Part of our Affirmative Action Plan.”**

—LARGER FIRM RESPONDING “YES”

**“Not needed.”**

—SMALLER FIRM RESPONDING “NO”

**“Everyone knows there's a strong unwritten policy against discrimination.”**

—SMALLER FIRM RESPONDING “NO”

**“We are a very small, primarily lesbian office, so this hasn't been necessary.”**

—SMALLER FIRM RESPONDING “NO”

# Question ?

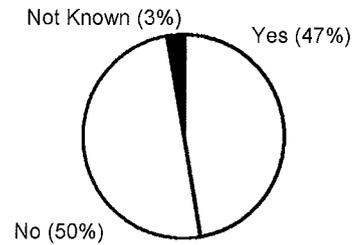
2

Does your firm or corporation have a written policy prohibiting employment discrimination against attorneys on the basis of sexual orientation? \*

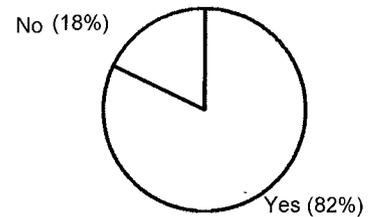
## Summary of Responses

Although written anti-discrimination policies concerning sexual orientation are not universal, many firms that do not have such policies do not have any written policies concerning discrimination. Among larger firms, where written anti-discrimination policies are more common, 82% have a written policy that includes sexual orientation. One of the larger firms that did not include sexual orientation in its written employment manual indicated an intent to revise the manual to include it. Other larger firms without written equal employment opportunity policies indicated their commitment to anti-discrimination policies' including sexual orientation. As for smaller firms, the primary reason stated for not having a written anti-discrimination policy concerning sexual orientation was their small size.

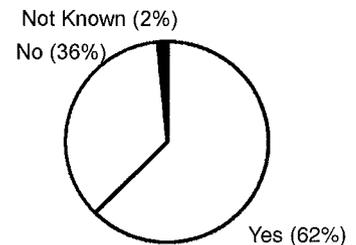
### Smaller Firms



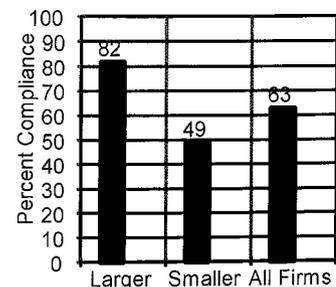
### Larger Firms



### All Firms



### Compliance



\*NO "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED.

## Training

### RECOMMENDATION 3

- ▶ Employers should conduct educational and training programs and provide employees with written guidelines intended to educate all employees, including non-lawyer staff, about sexual orientation issues, including HIV-related issues. Human relations workshops, either led by experienced outside consultants or by gay and lesbian attorneys or others within the firm, and focused on issues affecting lesbians and gay men as well as minorities, women and individuals with disabilities, can serve as an ideal first step in such efforts. These workshops can result in a frank exchange of views among employees, bringing to the attention of heterosexual employees the everyday realities of law firm life as experienced by gay and lesbian employees.

## Selected Comments

**“ We showed *Inside/Out* for MCLE credit.”**

—LARGER FIRMS RESPONDING “YES”

**“ We had a firmwide meeting in April 1992 on diversity issues (sexual orientation, ethnic, cultural, etc.). We have ongoing training on sexual orientation issues as they relate to attorney recruitment.”**

—LARGER FIRMS RESPONDING “YES”

**“ Not formal, but since the managing partner is gay, I suppose they get some kind of training.”**

—SMALLER FIRM RESPONDING “NO”

**“ We have no ‘training’ on anything other than how to practice law well.”**

—SMALLER FIRM RESPONDING “NO”

**“ This firm only hires liberal-minded people, but if, per chance, an employee was discovered to be homophobic an effort would be made to educate the employee to understand their ignorance and to shape-up or ship-out.”**

—SMALLER FIRM RESPONDING “NO”

# Question 3

**3 a.**— Does your firm or corporation provide training for attorneys on sexual orientation issues? \*

**3 b.**— Does your firm or corporation provide training for non-attorney staff members on sexual orientation issues? \*

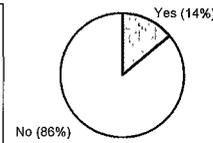
## Summary of Responses

**3 a.**— Larger firms are much more likely to provide attorneys with training on sexual orientation issues than are smaller firms. From the comments received, it appears that most firms that address sexual orientation issues do so in the context of general diversity training. Of the larger firms that do not provide sexual orientation training, three firms indicated that they do not provide formal training, and one firm stated its intention to include such training later in the year. Not surprisingly, only a small percentage of smaller firms answered yes to this question, primarily because such firms consider themselves too small to require diversity training of any kind.

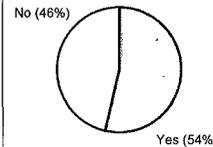
**3 b.**— Firms were somewhat less likely to provide training to non-attorneys than to attorneys on sexual orientation issues, apparently because firms are less likely to provide training on diversity issues to non-attorney staff than to attorneys. Several firms noted, however, that although they did not provide formal training, the presence of gay or lesbian attorneys or staff, and in one case “a beloved office partner who died of AIDS,” had helped both to educate and sensitize employees to these issues.

### Question 3 a.

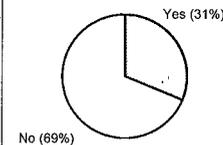
#### Smaller Firms



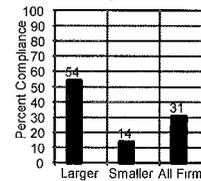
#### Larger Firms



#### All Firms

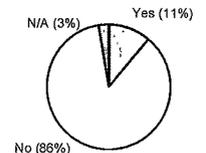


#### Compliance



### Question 3 b.

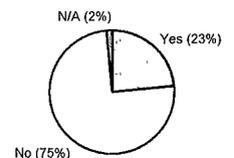
#### Smaller Firms



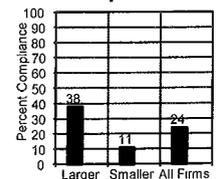
#### Larger Firms



#### All Firms



#### Compliance



\*NO “NOT APPLICABLE” RESPONSE ALTERNATIVE PROVIDED.

RECOMMENDATION 4

## Representation on Hiring Committees

- ▶ Employers should ensure that at least one lesbian or gay attorney sits on the hiring committee.\* This attorney can review resumes that are submitted to ensure that openly lesbian and gay candidates (and those whose resumes indicate that this may be the case) are matched with lesbian and gay-sensitive attorneys in the course of their call-back interviews, and are steered away from those who have consistently manifested bias based on the sexual orientation of applicants.

Active participation of openly lesbian or gay members in the recruitment and hiring process can often change the dynamics of the committee, educating and sensitizing the other members, confronting and challenging overt or subtle bias on the part of committee colleagues when necessary, and causing the committee as a whole to be more objective and fair in its deliberations and decisions.

## Selected Comments

**“I’m the hiring committee.”**

—SMALLER FIRM RESPONDING BOTH “YES” AND “OUR FIRM/CORPORATION DOES NOT HAVE A HIRING COMMITTEE” AND CLASSIFIED AS RESPONDING “NOT APPLICABLE”

**“Because we do not inquire as to the sexual orientation of our employees, we have not established a mechanism to identify gay or lesbian representation. We do, however, welcome participation by interested and qualified gay and lesbian attorneys.”**

—LARGER FIRM RESPONDING “NO”

\* If an employer wishes to place an openly lesbian or gay attorney on its hiring committee, it can send a memo to all attorneys indicating its desire to place such a person on the committee and asking that anyone interested in this role contact the person in charge of hiring. The employer can then make its selection from among the volunteers

# Question ?

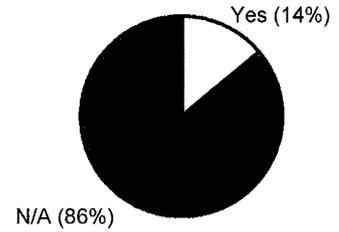
4

Does your firm or corporation have at least one lesbian or gay attorney sit on the hiring committee? \*

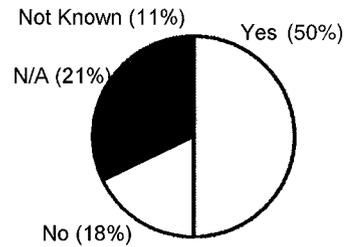
## Summary of Responses

■ Among the firms with a hiring committee, a solid majority declared that they did have at least one gay or lesbian attorney on the committee. Favorable responses to this question capture only whether the committee currently includes a gay or lesbian member. Thus, one larger firm noted: "Although this is true at present, there is no policy requiring it. Hence, it may not always be the case." Of the firms with hiring committees that answered no to this question, all indicated their commitment to have diverse representation on their committees.

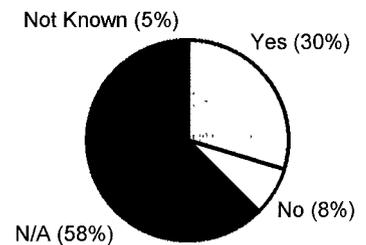
### Smaller Firms



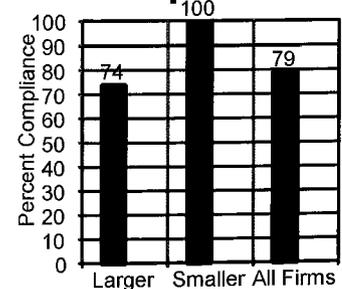
### Larger Firms



### All Firms



### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT HAVE A HIRING COMMITTEE."

**RECOMMENDATION 5**

**Recruitment Letters**

- ▶ Employers should ensure that recruitment letters are sent to law school lesbian and gay student organizations. These letters should convey the employer's commitment to workforce diversity, including assurances that an applicant's sexual orientation, or openness about his or her sexual orientation, will not adversely affect the employment prospects of that individual.

## Selected Comments

**“When sending distributions to student interest groups, we include the gay, lesbian, and bisexual organizations on campus in such mailings.”**

—LARGER FIRM RESPONDING “YES”

**“We do send notices of openings to gay and lesbian bar associations.”**

—LARGER FIRM RESPONDING “NO”

# Question ?

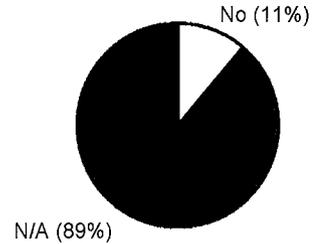
5

Does your firm or corporation send recruitment letters to lesbian and gay student organizations? \*

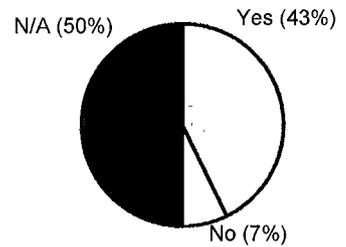
## Summary of Responses

Most firms do not send recruitment letters to lesbian and gay student organizations simply because they do not target any student organizations. Among the larger firms that do send recruitment letters, the vast majority do include lesbian and gay student organizations in their recruitment efforts. One of the two larger firms that did not send letters to lesbian and gay student organizations did note, however, that it sends notices of available positions to gay and lesbian bar associations. None of the four smaller firms who send recruitment letters to student organizations do so to lesbian and gay student organizations.

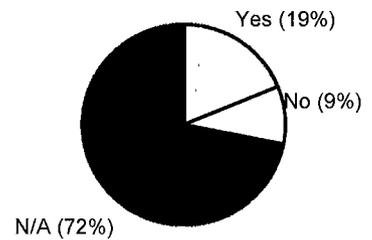
### Smaller Firms



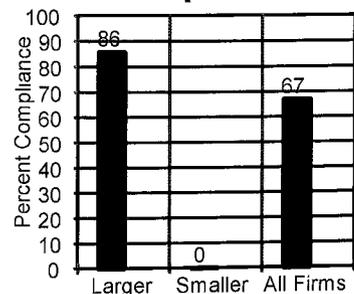
### Larger Firms



### All Firms



### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT SEND RECRUITMENT LETTERS TO ANY STUDENT ORGANIZATION."

**RECOMMENDATION 6**

**Gay-Sensitive Contacts**

- ▶ Employers should identify and publicize the names of lesbian and gay-sensitive contacts (ideally, at least one male and one female) within the organization whom applicants can contact with questions that they might not feel comfortable raising during an interview. These individuals can be identified in recruitment literature sent to lesbian and gay law student organizations, or in more generic materials sent to placement offices. If there are currently no openly gay or lesbian attorneys in the organization, a heterosexual attorney who is sensitive to lesbian and gay issues should serve as the contact. This person must be fully briefed on the employer's policies concerning gay and lesbian issues, understanding the applicants must be given the option of having these discussions kept confidential.

## Selected Comments

**“One of our partners has been contacted by a potential employee, because of a listing in the BALIF\* directory. (One such candidate is now an attorney with our firm.)”**

—SMALLER FIRM RESPONDING “NO”

**“We do nothing like this for any group of any sort.”**

—SMALLER FIRM RESPONDING “NO”

\* Bay Area Lawyers for Individual Freedom.

# Question ?

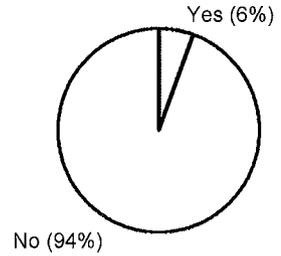
6

Does your firm or corporation identify a lesbian—and/or gay-sensitive contact for attorney applicants? \*

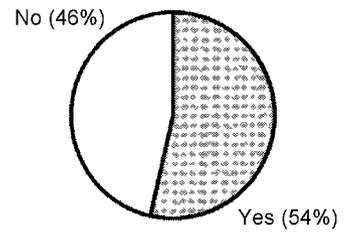
## Summary of Responses

■ A slight majority of larger firms identify a lesbian-and/or gay-sensitive contact for attorney applicants, but only a small minority of smaller firms do. One larger firm that does not provide such contacts noted “privacy considerations” as its reason. Among the smaller firms, the primary reason stated for not doing so was that they do not recruit.

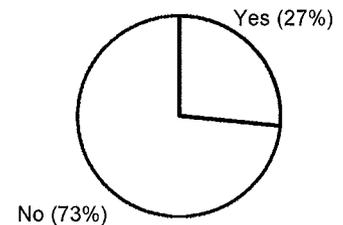
### Smaller Firms



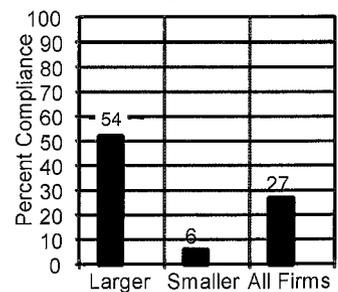
### Larger Firms



### All Firms



### Compliance



\*NO “NOT APPLICABLE” RESPONSE ALTERNATIVE PROVIDED.

## Firm Resumes

# RECOMMENDATION 7

- ▶ Firm resumes and brochures that include reference to *pro bono* activities should include lesbian or gay-related *pro bono* services performed by members of the firm, such as service on the AIDS Legal Referral Panel. Similarly, service on the boards of lesbian, gay or HIV-related community organizations should be highlighted along with the firm's other community service activities.

## Selected Comments

**“If ALRP\* counts.”**

—SMALLER FIRM RESPONDING “YES”

**“We do much pro bono work for gay-related organizations, but we do not identify clients in our resume.”**

—LARGER FIRM NOT CHECKING RESPONSE, BUT CLASSIFIED AS RESPONDING “NO”

\* AIDS Legal Referral Panel.

# Question ?

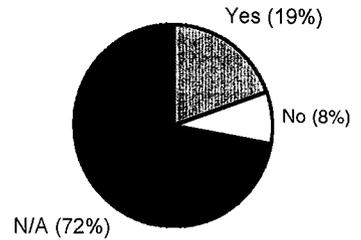
7

Does your firm or corporation's resume refer to lesbian- and/or gay-related pro bono services? \*

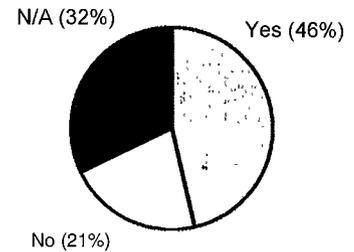
## Summary of Responses

- Slightly fewer than half of the firms responded that they had firm resumes with pro bono services identified, and among these, a solid majority responded that they included lesbian- and/or gay-related services. A number of firms noted that they include their support of the AIDS Legal Referral Panel.

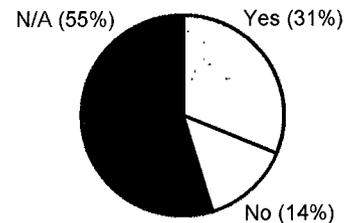
### Smaller Firms



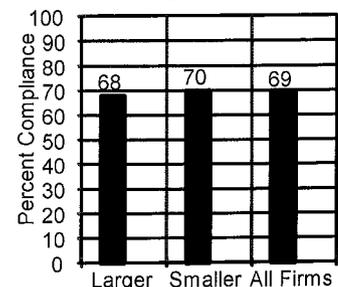
### Larger Firms



### All Firms



### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION'S RESUME DOES NOT REFER TO ANY PRO BONO SERVICES."

**RECOMMENDATION 8**

## Specialized Training for All Interviewers

- ▶ Training for interviewers should include identification both of inappropriate areas of inquiry, such as the candidate's sexual orientation (unless volunteered), marital or relationship status or family plans. It should also emphasize exploring appropriate areas of inquiry, such as lesbian and gay-oriented activities or employment listed on the resume. It is important to note that this is a sensitive area. Therefore, questions should be restricted to activities and employment experiences that are disclosed, unless an applicant volunteers information about his or her private life.

## Selected Comments

**“We show the *Inside/Out* video at least twice a year.”**

—LARGER FIRM RESPONDING “YES”

**“Our interviewers know that sexual orientation is irrelevant to hiring and employment issues.”**

—SMALLER FIRM RESPONDING “NO”

**“We do not ‘train’ interviewers on anything.”**

—SMALLER FIRM RESPONDING “NO”

**“Interviewers are liberal-minded people.”**

—SMALLER FIRM RESPONDING “NO”

# Question ?

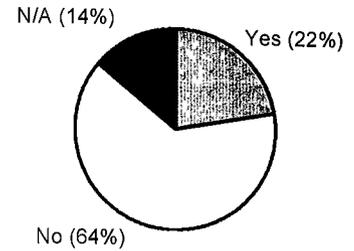
## 8

Does your firm or corporation train employment interviewers on the appropriate handling of sexual orientation issues? \*

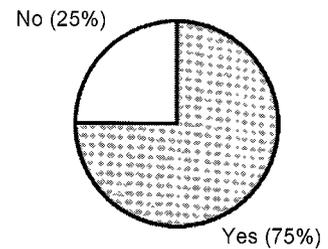
## Summary of Responses

■ Larger firms are more likely than smaller firms to provide interviewer training on sexual orientation issues. A majority of larger firms provide some type of training ranging from informal discussions to more formal presentations, including screenings of the video *INSIDE/OUT: A Portrait of Lesbian & Gay Lawyers*. Most smaller firms do not provide interviewer training on sexual orientation issues. Some of the firms that do not provide this training commented that they do not provide interviewer training on any subject. Among those firms that do not train interviewers, a few firms commented that their interviewers were “liberal minded people” or knew how to handle sexual orientation issues.

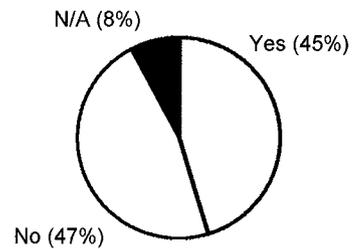
### Smaller Firms



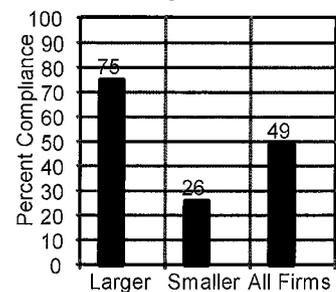
### Larger Firms



### All Firms



### Compliance



\*NO “NOT APPLICABLE” RESPONSE ALTERNATIVE PROVIDED.

**RECOMMENDATION 9**

**Welcome Packets**

- ▶ If a “Welcome Packet” is given to new employees or summer associates, the packet should include the firm’s policy of non-discrimination on the basis, *inter alia*, of sexual orientation, marital status or HIV-status. It may also identify gay and lesbian contacts within the firm. Community resources should include those oriented toward the gay and lesbian communities. If a summer associate or new employee has clearly identified herself or himself as lesbian or gay, a publication such as the *B.A.R.*, the *Sentinel*, and/or the *Bay Times* can be included in the packet. If professional associations are listed, lesbian and gay organizations such as BALIF and the Bar Association’s Committee on Lesbian and Gay Issues should be included. Calendars of local events should contain the Lesbian/Gay Freedom Day Parade, the San Francisco International Lesbian & Gay Film Festival, and the AIDS Walk.

# Selected Comments

**“Included in our orientation materials is the firm’s policy on discrimination on the basis of sexual orientation.”**

—LARGER FIRM RESPONDING “YES”

**“To the same extent it would be of interest to all attorneys.”**

—LARGER FIRM RESPONDING “YES”

**“We provide new attorneys and summer associates with various firm-related materials (although we would not label them a ‘welcome packet’), but we believe it would be inappropriate to target materials to gay or lesbian attorneys, summer clerks, or staff. We do ensure that each new attorney has a mentor (two mentors for summer clerks) to ensure that he or she is properly integrated into the firm. Also, an Orientation Session, consisting of two to three meetings, is provided to new associates as a group in the fall to achieve this goal.”**

—LARGER FIRM RESPONDING “OUR FIRM/CORPORATION DOES NOT PROVIDE NEW ATTORNEYS OR SUMMER ASSOCIATES WITH WELCOME PACKETS.”

# Question ?

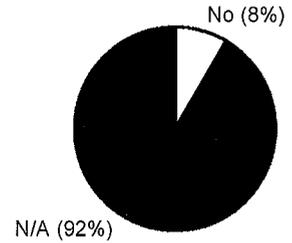
9

Do your firm or corporation's welcome packets for new attorneys and summer associates include information of particular interest to lesbians and gay men? \*

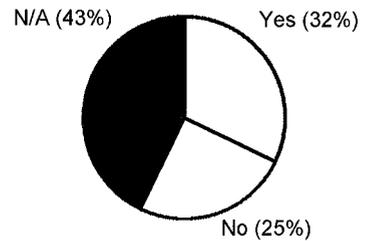
## Summary of Responses

- Nearly half of the larger firms and almost all of the smaller firms do not provide welcome packets. Among the larger firms that provide welcome packets, approximately half reported that they included information of interest to gay and lesbian attorneys. Some firms indicated that they satisfied this recommendation because they included copies of their anti-discrimination policy.

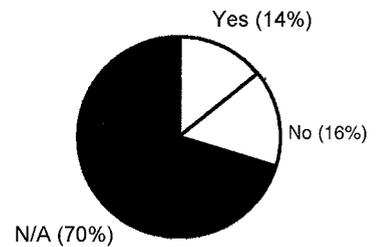
### Smaller Firms



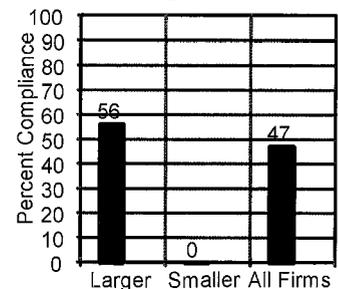
### Larger Firms



### All Firms



### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT PROVIDE NEW ATTORNEYS OR SUMMER ASSOCIATES WITH WELCOME PACKETS."

RECOMMENDATION 10

## Mentoring Program

- ▶ Employers should provide their attorneys with formal support structures, such as a mentoring program. The importance of the assignment of an advisor or a mentor cannot be overemphasized. This is especially the case for gay men and lesbians, women, minorities, and individuals with disabilities, who have traditionally been excluded from the informal networking process existing in the workplace. The mentor can serve as a resource in numerous ways: as a teacher of the law and lawyering; as a source of business opportunities and career-enhancing work assignments; as a source of feedback and publicity for the newer lawyer's accomplishments; as a bridge/link for connecting to the organization; as a troubleshooter; as a career counselor; as a source of collegiality and friendship; and, as an advocate for the newer lawyer's advancement and promotion.

The mentor should be a partner or comparable-level supervising attorney, who may or may not be in a direct line supervisory relationship with the new lawyer. It is important that the mentor have the necessary position and authority, and the commitment, ability, and sensitivity, to fulfill the role effectively.

## Selected Comments

**“ For almost twenty years, we have recognized the importance of a mentoring program to the development and success of all new attorneys and have made a strong commitment to our program. Our firm has had a formal mentoring program for all associates for the last eight years, the functions of which are now part of the duties of our Diversity and Associate Mentoring Committee.”**

—LARGER FIRM RESPONDING “YES”

**“ We don't have mentors—It's sink or swim.”**

—LARGER FIRM RESPONDING “NO”

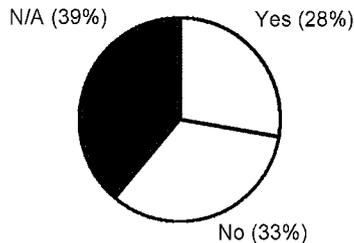
# Question 10

Does your firm or corporation provide all associates with in-house mentors? \*

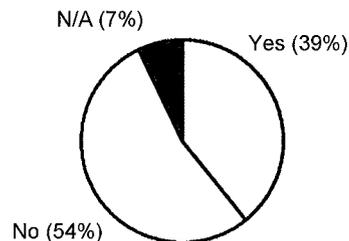
## Summary of Responses

- Of the firms that employ associates, fewer than half have formal mentoring programs. Other firms noted that they have informal mentoring or provide mentor programs in specific departments.

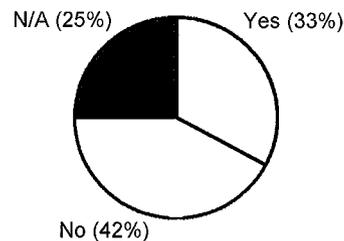
### Smaller Firms



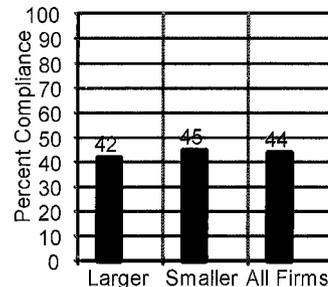
### Larger Firms



### All Firms



### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT EMPLOY ASSOCIATES."

**RECOMMENDATION II**

**Non-Discrimination in Performance Evaluations, Work Assignment, and Grievance Procedures**

- ▶ An employer’s anti-discrimination policy with regard to sexual orientation is given life through its application to existing personnel. Employers should promote fairness and objectivity in performance reviews by making special efforts to identify and overcome subtle bias in the evaluation of gay and lesbian employees. Similarly, presumed or actual client preference should play no role in the assignment of work to gay and lesbian lawyers, just as racist or sexist client biases are not honored. If an employer exhibits confidence in an employee, the client is likely to do the same. Finally, to ensure that homophobic hostility can be remedied when it arises, an employer should provide employees with a neutral mechanism, independent of an immediate supervisor, for discussion of perceived bias. This could take the form of a general announcement of the ability to raise diversity-related concerns to line management, mentors, or a designated representative or committee, or by the employer’s use of independent evaluators—separate from those actually providing the substantive evaluation—who invite response from the employee and are in a position to probe and challenge evaluators as to their conclusions.

The difficult question may arise as to whether a partner/supervising attorney/mentor should initiate a discussion with an openly gay or lesbian lawyer concerning issues relating to sexual orientation if the employee has not first raised them. Although some lawyers may regard this as intrusive, there are many others who would prefer greater management recognition of and sensitivity to their concerns, but who do not wish to be perceived as malcontents with an “attitude problem.”

If a manager does decide to inquire about the comfort level of an openly gay or lesbian employees in the work environment, it should be done privately on an individual basis. One opening might be, “We realize that there are only a few openly gay or lesbian lawyers here and we recognize the issues that may be posed by this. If there are any concerns you have in that regard that you would like to discuss, please feel free to discuss them with me or [other designee].”

**Selected Comments**

**“ Successful.”**

—SMALLER FIRM RESPONDING “YES”

**“ In the sense that we have no bias on any subject; we have not set down in a meeting and made a list of things against which we have no bias.”**

—SMALLER FIRM RESPONDING “YES”

# Question ?

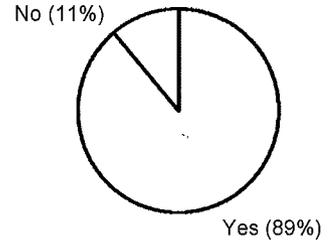
II

Does your firm or corporation have a policy against bias on the basis of sexual orientation in performance evaluations, work assignments, and grievance procedures? \*

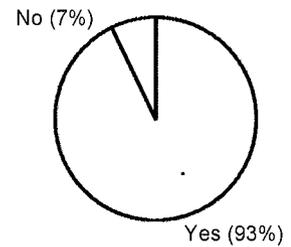
## Summary of Responses

■ The vast majority of all firms reported having a policy against bias in these areas. In contrast, as required by California Labor Code, section 1101.2, *all* firms reported a “commitment” to equal employment opportunity for gay and lesbian attorneys. (See Question 1.) Firms responding “No” to this question commented that they do not have a *specific* policy addressing these areas.

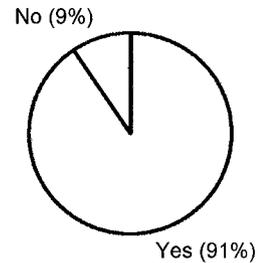
### Smaller Firms



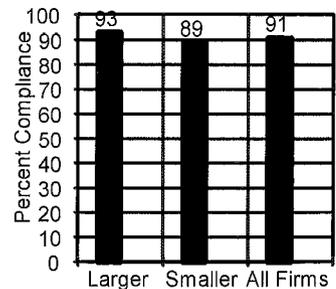
### Larger Firms



### All Firms



### Compliance



\*NO “NOT APPLICABLE” RESPONSE ALTERNATIVE PROVIDED.

## Social Function Policy

### RECOMMENDATION 12

- ▶ Employers should establish a policy, communicated in personnel manuals and orientation meetings, stating that invitations to office functions or other employer-sponsored events should use neutral designations such as “guest” rather than “spouse.”

## Selected Comments

**“ Absolutely.”**

—SMALLER FIRM RESPONDING “YES”

**“ Firm does not have social events.”**

—SMALLER FIRM NOT CHECKING RESPONSE, CLASSIFIED AS RESPONDING “NOT APPLICABLE”

# Question ?

12

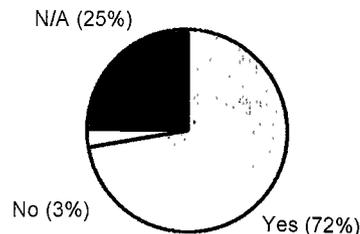
Does your firm or corporation extend social invitations to "guests" rather than "spouses"? \*

## Summary of Responses



Almost all of the firms that extend social invitations use the term "guests" or its equivalent, rather than the term "spouses."

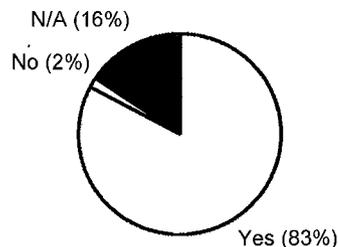
### Smaller Firms



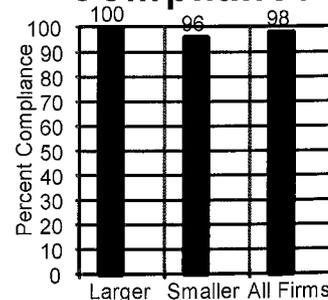
### Larger Firms



### All Firms



### Compliance



\*NO "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED.

RECOMMENDATION 13

“Spouse” Lists

- ▶ Employers should list the domestic partners of lesbian and gay employees who so desire in the same manner that the spouses of heterosexual employees are listed, for example in “spouse” lists or “face books” distributed either in-house or to applicants and clients.

## Selected Comments

**“We would if I could get a boyfriend.”**

—LARGER FIRM NOT CHECKING RESPONSE, BUT CLASSIFIED AS RESPONDING “YES”

**“Upon request.”**

—LARGER FIRM RESPONDING “YES”

**“The matter has not arisen.”**

—SMALLER FIRM NOT CHECKING RESPONSE

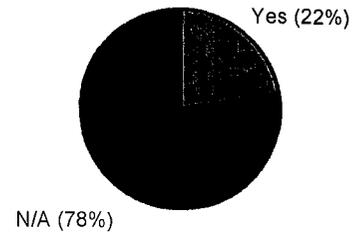
# Question 13

Does your firm or corporation list the domestic partners of lesbian and gay attorneys in the same manner as spouses of heterosexual attorneys? \*

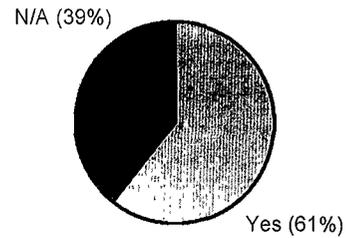
## Summary of Responses

Every firm that maintains a list of attorneys' spouses reports that it will include domestic partners in the list. Larger firms are more likely than smaller firms to maintain such lists. Several comments suggest that employees may have to request that their domestic partners be listed while spouses are listed as a matter of course.

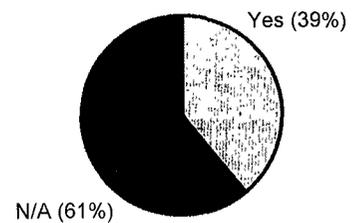
### Smaller Firms



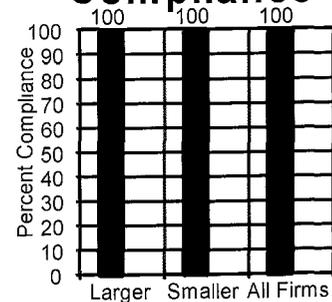
### Larger Firms



### All Firms



### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT IDENTIFY THE SPOUSES OF HETEROSEXUAL ATTORNEYS IN ANY WAY."

## Professional Associations

- ▶ Employers should pay employees' membership dues to lesbian and gay professional associations, such as BALIF, on the same basis as the employer pays for memberships in other professional associations. Employees' activities in lesbian and gay professional associations should be supported on the same basis as activities in other professional associations, such as table sponsorship at annual dinners and fundraising events.

## Selected Comments

**“The firm pays for any two bar memberships at the choice of the attorney.”**

—LARGER FIRM RESPONDING “YES”

**“Firm policy states the firm pays for state bar dues and sections only.”**

—LARGER FIRM RESPONDING “NO”

**“The issue has never arisen.”**

—LARGER FIRM NOT CHECKING RESPONSE, CLASSIFIED AS RESPONDING “NOT APPLICABLE”

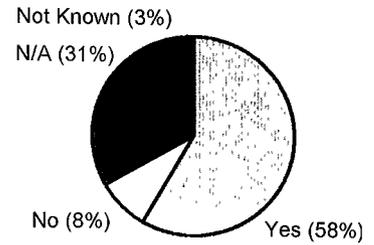
# Question 14 ?

Does your firm or corporation pay membership dues for lesbian and gay professional associations on the same basis as other professional associations? \*

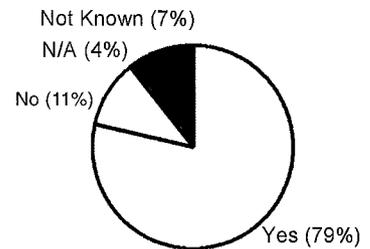
## Summary of Responses

■ A clear majority of both larger and smaller firms reported that they do pay or would be willing to pay membership dues for lesbian and gay professional associations on the same basis as other professional associations. Some firms indicated either that the issue of paying dues for gay and lesbian professional associations had never arisen or that they have a policy of paying dues only for a select group of professional associations.

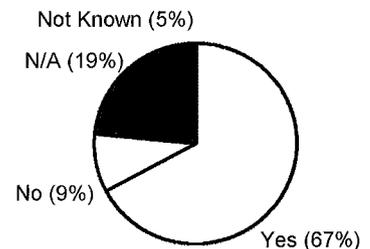
### Smaller Firms



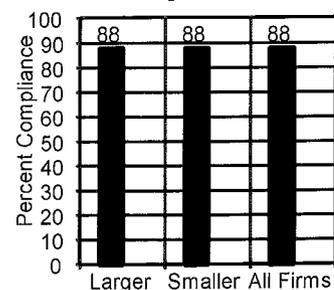
### Larger Firms



### All Firms



### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT PAY MEMBERSHIP DUES FOR ANY PROFESSIONAL ASSOCIATIONS."

RECOMMENDATION 15

## Internal Newsletters

- ▶ If the employer has an internal newsletter, it should periodically include items of particular interest to lesbian and gay employees. Internal newsletters may also be used to help educate heterosexual employees about issues affecting lesbians and gay men. Additionally, newsletters should report the achievements of those who work within the lesbian and gay community.

## Selected Comments

**“I.e., AIDS walks, gay and lesbian picnics, or brown bag lunches.”**

—LARGER FIRM RESPONDING “YES”

**“Our newsletter does not attempt to identify items as being of ‘particular interest’ to any group or sub-group.”**

—LARGER FIRM NOT CHECKING RESPONSE, BUT CLASSIFIED AS RESPONDING “NO”

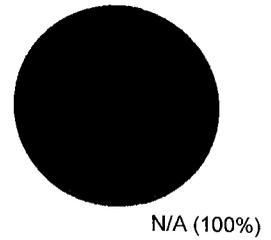
# Question 15 ?

Does your firm or corporation's internal newsletter periodically include items of particular interest to lesbian and gay employees? \*

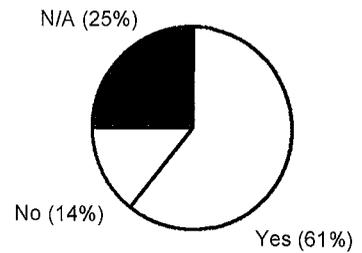
## Summary of Responses

- Three quarters of the larger firms but none of the smaller firms have internal newsletters. Of the firms with newsletters, a large majority reported that they periodically include items of particular interest to lesbian and gay employees.

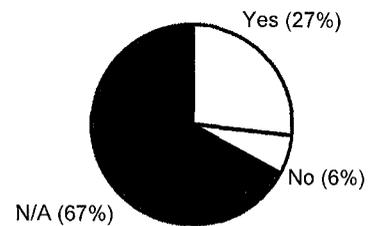
### Smaller Firms



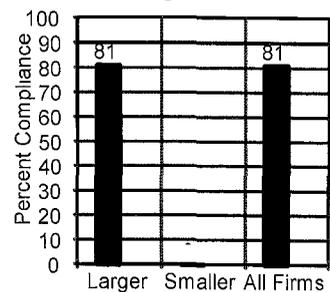
### Larger Firms



### All Firms



### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT HAVE AN INTERNAL\* NEWSLETTER."

## Informal Exchanges

- ▶ Employers should foster opportunities for gay and lesbian attorneys to support each other in the work environment. For instance, an employer may sponsor a periodic luncheon, dinner, or other appropriate social event for lesbian and gay employees. Events should also be sponsored for lesbian and gay employees that include heterosexual employees, to build mutual understanding and respect.

## Selected Comments

**“ I’m the only one!”**

—SMALLER FIRM RESPONDING “NO”

**“ This corporation does not seek to identify the sexual orientation of its employees. Employees, including attorneys, may associate with each other as they see fit.”**

—LARGER FIRM NOT CHECKING RESPONSE, CLASSIFIED AS RESPONDING “NO”

**“ Too small to be relevant. Frankly the biggest problem has been closeted associates who are afraid of guilt by association.”**

—LARGER FIRM NOT CHECKING RESPONSE, CLASSIFIED AS RESPONDING “NOT APPLICABLE”

**“ I do not understand the question. Nor would I if any other adjective were substituted.”**

—SMALLER FIRM NOT CHECKING RESPONSE, CLASSIFIED AS RESPONDING “NOT KNOWN”

# Question ?

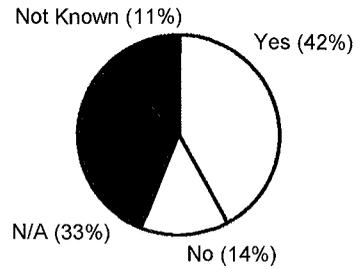
16

Does your firm or corporation foster opportunities for lesbian and gay attorneys to support each other in the work environment? \*

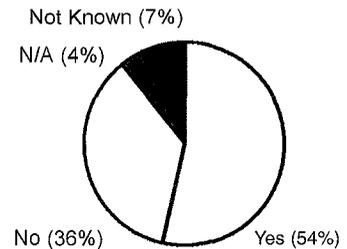
## Summary of Responses

■ Slightly more than half of the larger firms and slightly fewer than half of the smaller firms reported that they did foster opportunities for lesbian and gay attorneys to support each other in the work environment. Other firms commented that either the question was not applicable or that they had no formal mechanism for offering these opportunities. One corporate legal department noted that the company has a support group for gay and lesbian employees.

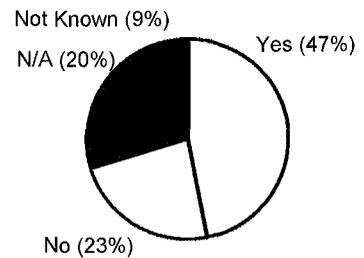
### Smaller Firms



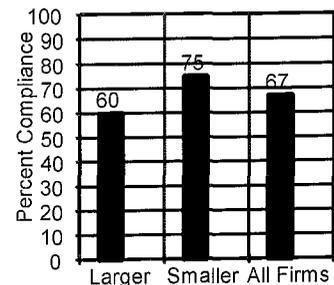
### Larger Firms



### All Firms



### Compliance



\*NO "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED.

**RECOMMENDATION 17**

**Lunch Programs**

- ▶ Employers who sponsor regular firm lunches focusing on legal issues of interest to their attorneys should include programs on lesbian and gay legal issues, pro bono opportunities with local lesbian and gay rights groups, or the work of local lesbian and gay professional associations. The employer may contact such organizations as BALIF, the National Center for Lesbian Rights, the AIDS Legal Referral Panel, Lambda Legal Defense and Education Fund, the Committee on Lesbian and Gay Issues of the Bar Association of San Francisco, or the Gay Rights Chapter of the ACLU of Northern California to provide guest speakers for such programs.

## Selected Comments

**“The firm has periodically sponsored lunches on matters involving diversity and equal employment opportunity issues, including gay and lesbian issues.”**

—LARGER FIRM RESPONDING “YES”

**“Not as a specific group.”**

—LARGER FIRM NOT CHECKING RESPONSE, CLASSIFIED AS RESPONDING “NO”

# Question ?

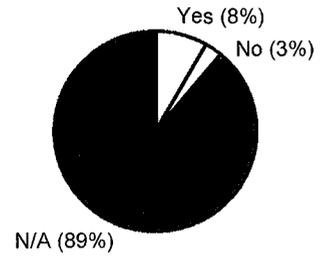
17

Do your firm or corporation's legal-issue lunches periodically address issues of particular interest to lesbian and gay attorneys? \*

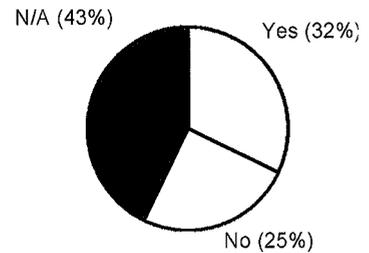
## Summary of Responses

Approximately half of the larger firms, but only four of the smaller firms, sponsor legal-issue lunches. A majority of the firms that sponsor such lunches report that they include topics of particular interest to lesbian and gay attorneys. However, two of these firms commented that their lunches were of interest to lesbian and gay attorneys "as people" and "to the same extent that issues are of interest to all attorneys."

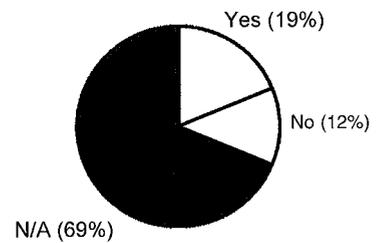
### Smaller Firms



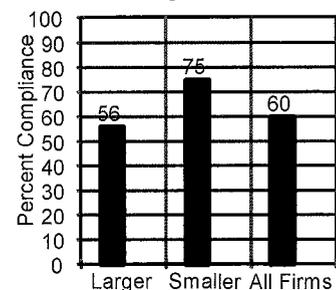
### Larger Firms



### All Firms



### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT HAVE LEGAL-ISSUE LUNCHES."

## Health Benefits

- ▶ Employers should offer health benefits to the domestic partners of lesbian and gay employees, to the extent possible under the federal tax law rules, on the same terms that they are available to the spouses of heterosexual employees.\* Children of lesbian and gay couples should also be eligible for coverage on the same basis as the biological children, adopted children and stepchildren of married employees. See the appended Resources list for further information on domestic partner health benefits.

## Selected Comments

**“ For support staff.”**

—SMALLER FIRM RESPONDING “YES”

**“ We are presently looking at adding this provision.”**

—LARGER FIRM RESPONDING “NO”

**“ We offer a financial subsidy to gay and lesbian couples equivalent to what traditional coverage for a dependent would be (net). This is offered to all employees who are gay or lesbian.”**

—LARGER FIRM RESPONDING “OUR FIRM/CORPORATION DOES NOT OFFER ANY HEALTH BENEFITS TO OUR ATTORNEYS’ SPOUSES.”

\* Employers should seek the admission of domestic partners to a covered group, with the cost of coverage to be paid on an after-tax basis. If an employer is unable to obtain such coverage, it can pay the premium for outside individual insurance for domestic partners, though this usually costs more, covers less and excludes more pre-existing conditions. Since the value of this benefit is not a non-taxable employee benefit under ERISA, and, therefore, taxable income to the employee, the employer should additionally pay the employee a dollar amount equal, after taxes, to the income tax liability for the benefit. Employers are advised to seek the advice of tax counsel in promulgating their policies in this area.

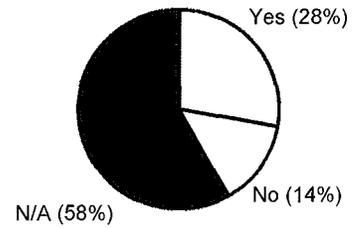
# Question 18 ?

Does your firm or corporation offer health benefits to the domestic partners of lesbian and gay attorneys, to the extent legally allowable, on the same terms as are offered to the spouses of heterosexual attorneys? \*

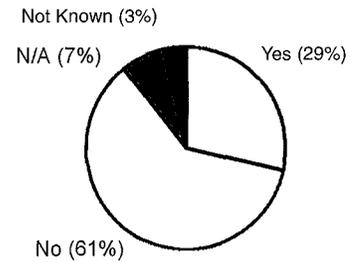
## Summary of Responses

Most larger firms offer benefits to spouses, but exclude domestic partners of lesbian and gay attorneys. Most smaller firms simply do not offer health benefits to any of their employees' spouses or domestic partners. Among those smaller firms that offer spousal benefits, most include domestic partners. Overall, about a quarter of the firms currently offer health benefits to domestic partners. Some firms allow domestic partners to participate in something other than full health coverage, such as a dental plan or an employee assistance program. Several firms noted that they are considering the addition of domestic partner benefits.

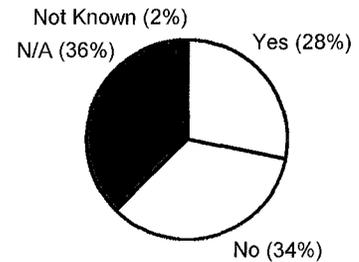
### Smaller Firms



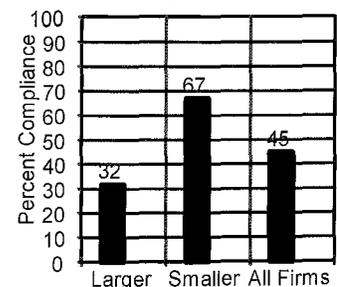
### Larger Firms



### All Firms



### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT OFFER ANY HEALTH BENEFITS TO OUR ATTORNEY'S SPOUSES."

## Parenting Leave

- ▶ Employers should ensure that all parenting leave policies and part-time policies accommodating parenting are gender-neutral and are not dependent on the biological relationship between the parent and the child.\* This will ensure that the families of lesbian and gay employees, which may include children legally adopted only by the employee's partner, including those where a primary caregiver is not the biological parent, are treated in the same manner as are the families of heterosexual employees.

## Selected Comments

**“ Codified policy specifically applies to women. Neutral as to sexual orientation. Leave for men is case by case.”**

—LARGER FIRM RESPONDING “YES”

**“ Our corporation offers parenting leave for foster care and adoption. We fully comply with FMLA.”**

—LARGER FIRM RESPONDING “YES”

**“ May be considered on a case by case basis.”**

—LARGER FIRM RESPONDING “NO”

**“ Part-time schedules are discretionary. The decision is based on the feasibility of a part-time schedule in individual circumstances without regard to sexual orientation.”**

—LARGER FIRM RESPONDING “YES”

**“ We have allowed it in the past but are unlikely to do so in the future.”**

—LARGER FIRM RESPONDING “OUR FIRM/CORPORATION DOES NOT ALLOW ATTORNEYS TO WORK PART-TIME TO ACCOMMODATE PARENTING”

\* The children of lesbians and gay men may be adopted, foster children, the product of donor insemination, or the children of an earlier marriage of one of the parents. It may be that neither parent has a biological relationship to the child, or that a parent without a biological tie is taking primary caretaking responsibility for the child.

# Question 19 ?

**19 a.**—Do your firm or corporation’s parenting leave policies apply to lesbian and gay attorneys, regardless of the biological relationship between attorney and child? \*

**19 b.**—Do your firm or corporation’s policies allow attorneys to work part-time to accommodate parenting apply to lesbian and gay attorneys, regardless of the biological relationship between attorney and child? \*\*

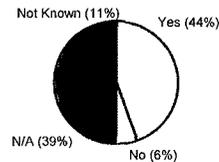
## Summary of Responses

■ **19 a.**—The vast majority of firms that offer parental leave include lesbian and gay attorneys in their policies without regard to the attorney’s biological relationship to the child. Smaller firms are less likely to provide any parenting leave. Comments suggest that most firms’ parental leave policies do not expressly address this issue.

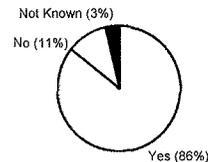
**19 b.**—Nearly all firms that permit attorneys to work part-time to accommodate parenting reported that they include lesbian and gay attorneys in such policies without regard to an attorney’s biological relationship to the child. Comments suggest that most firms’ policies provide for discretionary, case-by-case decisions on requests to work part-time.

### Question 19 a.

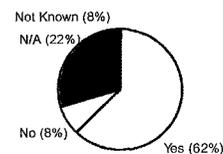
#### Smaller Firms



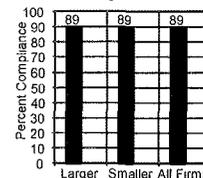
#### Larger Firms



#### All Firms

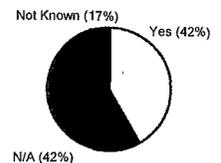


#### Compliance

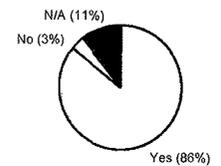


### Question 19 b.

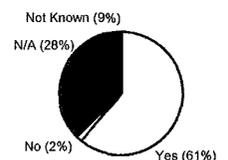
#### Smaller Firms



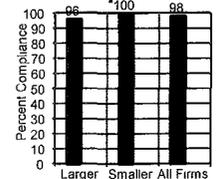
#### Larger Firms



#### All Firms



#### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT PROVIDE PARENTING LEAVE."

\*\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT ALLOW ATTORNEYS TO WORK PART-TIME TO ACCOMMODATE PARENTING."

## Child Care

# RECOMMENDATION 20

- ▶ Where child care is provided to employees, it should be made available to employees' non-biological children.

## Selected Comments

**“ We subsidize emergency childcare through a consortium.”**

—LARGER FIRM RESPONDING “YES”

# Question ?

## 20

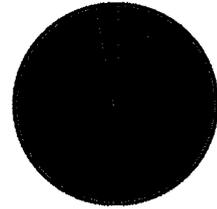
Does your firm or corporation provide childcare for attorneys' children, regardless of the biological relationship between attorney and child? \*

## Summary of Responses

- Only five firms, all of them larger firms, provide child care. Four of those firms responded that it is available to their attorneys' children regardless of biological relationship.

### Smaller Firms

Not Known (3%)

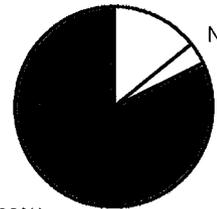


N/A (97%)

### Larger Firms

Yes (14%)

No (4%)



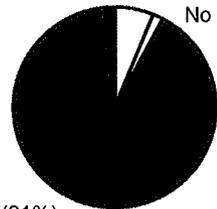
N/A (82%)

### All Firms

Not Known (2%)

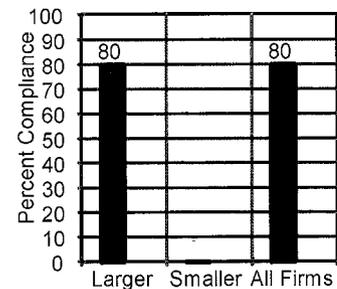
Yes (6%)

No (2%)



N/A (91%)

### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT PROVIDE CHILDCARE."

**RECOMMENDATION 2I**

**Care-Taking Policies and Bereavement Leave**

- ▶ Caretaking leave policies should allow leave time to be taken for the care of domestic partners and non-biological children. Employers should also provide leave time for the death of a domestic partner or immediate relative of such a partner on the same terms that they provide leave time for the death of a spouse or immediate relative of a spouse.

**Selected Comments**

**“ The company does not provide caretaking leave for unmarried partners regardless of sexual orientation.”**

—LARGER FIRM RESPONDING “NO” TO QUESTION 2I A

**“ Issue has never arisen.”**

—LARGER FIRM NOT CHECKING RESPONSE TO QUESTION 2I A

**“ Caretaking leave is available for biological or legally adopted children.”**

—LARGER FIRM RESPONDING “YES” TO QUESTION 2I B

**“ If situation arose, yes it would.”**

—SMALLER FIRM RESPONDING “YES” TO QUESTION 2I C

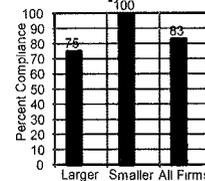
**“ Not codified in policy, but requests considered on a case by case basis.”**

—LARGER FIRM NOT CHECKING RESPONSE TO QUESTION 2I C, CLASSIFIED AS RESPONDING “NOT KNOWN”

**Question 21a.**



**Compliance**



# Question 21 ?

**21a.**—Do your firm or corporation’s caretaking leave policies apply to lesbian and gay attorneys taking leave to care for their domestic partners just as they do to heterosexual attorneys taking leave to care for their spouses? \*

**21b.**—Do your firm or corporation’s caretaking leave policies apply to lesbian and gay attorneys taking leave to care for their children, regardless of the biological relationship between attorney and child? \*

**21c.**—Do your firm or corporation’s bereavement policies apply to lesbian and gay attorneys taking leave to mourn their domestic partners just as they do to heterosexual attorneys taking leave to mourn their spouses? \*\*

**21d.**—Do your firm or corporation’s bereavement policies apply to lesbian and gay attorneys taking leave to mourn their children, regardless of the biological relationship between attorney and child? \*\*

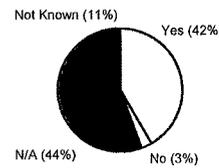
## Summary of Responses

■ A vast majority of larger firms provide caretaking and bereavement leave for their attorneys’ spouses and children. Of these firms, a substantial majority reported that they provide such leave to their gay and lesbian attorneys for their domestic partners and their children, regardless of biological relationship. Compliance was lowest with respect to provision of caretaking leave for lesbian and gay domestic partners. Interestingly, two firms with opposite responses both cited their “compliance with the Family and Medical Leave Act.”

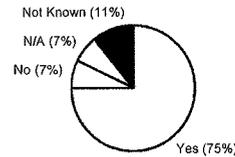
A minority of the smaller firms provide caretaking and bereavement leave. Of these firms, nearly all reported that they provide equivalent leave to their gay and lesbian attorneys.

### Question 21c.

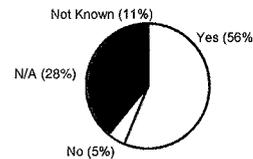
#### Smaller Firms



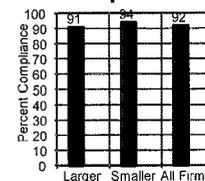
#### Larger Firms



#### All Firms



#### Compliance

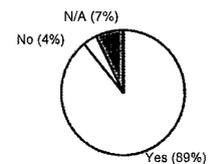


### Question 21d.

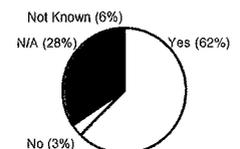
#### Smaller Firms



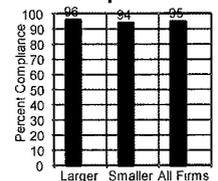
#### Larger Firms



#### All Firms

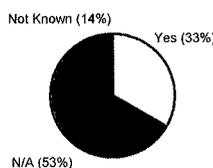


#### Compliance

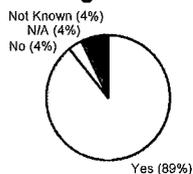


### Question 21b.

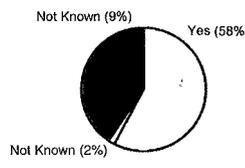
#### Smaller Firms



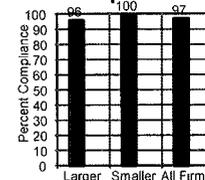
#### Larger Firms



#### All Firms



#### Compliance



\* “NOT APPLICABLE” RESPONSE ALTERNATIVE PROVIDED: “OUR FIRM/CORPORATION DOES NOT PROVIDE CARETAKING LEAVE.”

\*\* “NOT APPLICABLE” RESPONSE ALTERNATIVE PROVIDED: “OUR FIRM/CORPORATION DOES NOT PROVIDE BEREAVEMENT LEAVE.”

**RECOMMENDATION 22**

**Relocation Benefits**

- ▶ Employers should reimburse new employees for the cost of relocating the employee's domestic partner to the Bay Area from other parts of the country on the same terms as are expenses of an employee's spouse. One nondiscriminatory approach used by a growing number of legal employers, is to distribute to all employees who relocate a lump sum for relocation, with no restriction as to whom the allowance may be applied.

## Selected Comments

**“ Our firm does not have any formal policy regarding payment of relocation expenses for attorneys and their spouses or domestic partners. The matter is handled on an ad hoc basis. However, the same principles would be applied to the domestic partners of gay and lesbian attorneys as to the spouses and domestic partners of heterosexual attorneys.”**

—LARGER FIRM RESPONDING “YES”

**“ We do not pay any benefit to non-married partners.”**

—LARGER FIRM RESPONDING “NO”

**“ Our firm does not pay relocation expenses for anyone.”**

—SMALLER FIRM RESPONDING “NO,” BUT CLASSIFIED AS RESPONDING “NOT APPLICABLE”

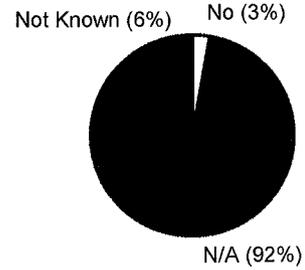
# Question 22 ?

Does your firm or corporation pay relocation expenses for lesbian and gay attorneys' domestic partners on the same terms as it pays relocation expenses for heterosexual attorneys' spouses? \*

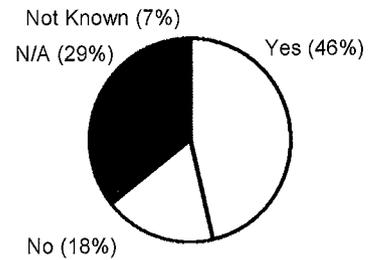
## Summary of Responses

■ Most larger firms pay relocation expenses for spouses, and a solid majority of these firms extend these benefits to the domestic partners of gay and lesbian attorneys. Smaller firms do not pay for the relocation of either spouses or domestic partners.

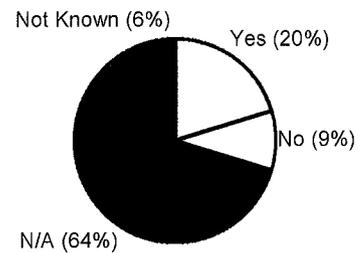
### Smaller Firms



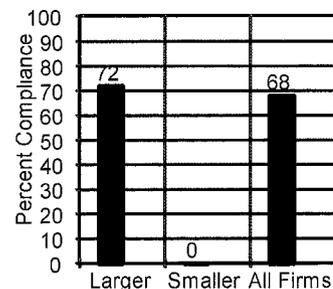
### Larger Firms



### All Firms



### Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT PAY RELOCATION EXPENSES FOR OUR ATTORNEYS' SPOUSES."

RECOMMENDATION 23

## Employee Assistance Programs

- ▶ If the employer has an Employee Assistance Program through which various benefits are made available to employees and their families, including drug and alcohol counseling or crisis counseling such as that provided by many employers in the wake of the 1989 earthquake, the definition of “family” for such benefits should include domestic partners and non-biological children.

## Selected Comments

**“While EAP is generally available only to employees and their ‘dependents,’ occasionally it has been made available to other members of the household.”**

—LARGER FIRM RESPONDING “OUR FIRM/CORPORATION DOES NOT PROVIDE EMPLOYEE ASSISTANCE PROGRAMS TO OUR ATTORNEYS.”

Question

23



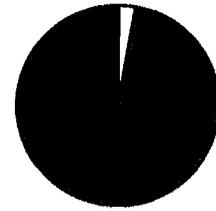
Does your firm or corporation extend Employee Assistance Programs to lesbian and gay attorneys and their households on the same basis as heterosexual attorneys and their households? \*

# Summary of Responses

■ Most of the larger firms reported that they provide Employee Assistance Programs to their attorneys, and the vast majority of these firms include gay and lesbian households. Smaller firms do not provide these services at all.

## Smaller Firms

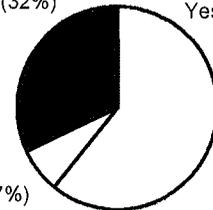
Not Known (8%) Yes (3%)



N/A (89%)

## Larger Firms

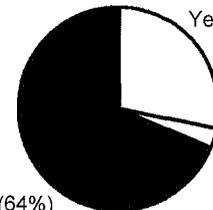
N/A (32%) Yes (61%)



No (7%)

## All Firms

Not Known (5%)

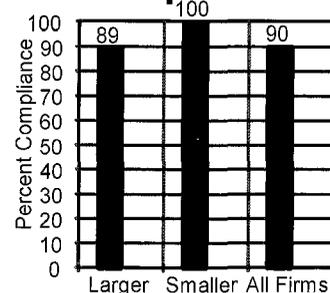


Yes (28%)

No (3%)

N/A (64%)

## Compliance



\* "NOT APPLICABLE" RESPONSE ALTERNATIVE PROVIDED: "OUR FIRM/CORPORATION DOES NOT PROVIDE EMPLOYEE ASSISTANCE PROGRAMS TO OUR ATTORNEYS."

## CONCLUSIONS

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The prevailing ethic among San Francisco legal employers is to provide lesbian and gay attorneys with professional equality. Indeed, every firm completing this Survey espoused a commitment “to equal employment opportunity (including recruitment, hiring, retention, advancement, and compensation) for gay and lesbian attorneys.”

Universal commitment to equal employment opportunity is not surprising now that the California Labor Code prohibits employment discrimination on the basis of sexual orientation. But firms appeared willing to foster equality in ways that the law may not require. For example, all firms that maintain “spouse lists” of their attorneys’ spouses reported that they will include domestic partners of lesbian and gay attorneys. Also, all firms but one that extend social invitations to attorneys’ spouses reported that the invitations are addressed to “guests” rather than “spouses.”

By no means have all of the Bar Association of San Francisco’s Recommendations for eliminating sexual orientation discrimination been universally adopted. Of course, surveyed firms ranged in size from sole practitioners to San Francisco’s largest attorney-employers, so not all Recommendations were applicable to every firm’s practice. But even among the Recommendations that firms identified as applicable to them, there was substantial variability in the number of firms reporting compliance with each Recommendation. For example, although all responding firms will list a domestic partner in its spouse list, most firms do not provide health benefits for that same partner.

Perhaps the most useful single index of how many firms have adopted each Recommendation is a “compliance rate,” which expresses the percentage of firms adopting the Recommendation among those firms that identified the Recommendation as applicable to their size and practice. The compliance rates themselves, however, should be interpreted with caution, because it is not known how representative the firms responding to this Survey are of all legal employers in San Francisco. Nevertheless, a very high compliance rate may be interpreted as the incorporation of the Recommendation into a prevailing ethic for employing attorneys in San Francisco. Moreover, even if the firms responding to this Survey are not representative of all San Francisco legal employers in all respects, they nevertheless are likely to provide valuable general information about the employment of attorneys in San Francisco. The extent to which firms not responding to this Survey have adopted the Recommendations may be different from the extent to which responding firms have, but it is likely that Recommendations most widely adopted by responding firms have been most widely adopted by non-responding firms, and Recommendations least widely adopted by responding firms also are least widely adopted by non-responding firms. In other words, even if the absolute compliance rates of responding firms are not strictly representative of all San Francisco legal employers, the relative rates of compliance with different Recommendations are likely to be comparable for responding and non-responding firms.

When the Recommendations were promulgated originally they were categorized by subject: General Employment Policies and Practices (Recommendations 1-3); Recruitment and Hiring (Recommendations 4-9); Retention, Advancement, and Compensation (Recommendations 10-17); and Employee Benefits (Recommendations 18-23). For purposes of analyzing the firms’ compliance with the Recommendations, it is useful also to classify the Recommendations into two categories according to whether they address *equal treatment* directly, or instead they address the less tangible goal of creating an atmosphere conducive to *diversity*.

## RECOMMENDATIONS REGARDING EQUAL TREATMENT

Twelve Recommendations may be classified as addressing equal treatment directly.<sup>9</sup> Firms tended to show higher compliance rates with these Recommendations than with the Recommendations directed more toward fostering diversity.

All firms answered “yes” to the Survey’s first question, which asked whether they had a policy of equal employment opportunity.<sup>10</sup> The vast majority of firms also reported having a policy against bias in performance evaluations, work assignments, and grievance procedures.<sup>11</sup> Firms without such a policy reported that they had no *specific* policy addressing these issues. Indeed, although it is unusual for a larger firm not to have a written anti-discrimination policy, only about half of the smaller firms reported that they had such a policy in writing.<sup>12</sup>

Most of the other Recommendations directly addressing equal treatment concerned whether lesbian and gay households are treated equivalently to heterosexual households. As already mentioned, essentially all firms will list domestic partners on spouse lists and extend social invitations to “guests” rather than “spouses.”<sup>13</sup> Two other Recommendations concern the allowance of time off from work to meet family needs.<sup>14</sup> Compliance with these Recommendations is not universal, but is very high. Compliance is in the same high range for the provision of Employee Assistance Programs to lesbian and gay attorneys and their households and relocation expenses for employees’ domestic partners.<sup>15</sup> In general, only some of the larger firms provide such benefits, but if they provide them for any of their attorneys they usually provide them for their lesbian and gay attorneys. Similarly, only five responding firms reported that they provide their attorneys with childcare, but four of them provide it to lesbian and gay attorneys.<sup>16</sup>

The household Recommendation with the lowest compliance rate is nevertheless a very important one—health care benefits for domestic partners.<sup>17</sup> Most firms in San Francisco do not yet provide this benefit, although almost half of the responding firms that reported that they provide health care benefits for spouses reported that they also provide such benefits for domestic partners. Some of the firms that do not provide domestic partners with health benefits commented that they were considering doing so in the future, and one firm reported that it offered lesbian and gay attorneys a cash subsidy in lieu of such benefits. Domestic partner health benefits are an essential component of equal compensation for lesbian and gay attorneys. The Bar Association has adopted a “1995 Model Policy on Domestic Partner Health Benefits” (which is available on request), which includes model documents and a list of insurers that have offered domestic partner coverage to sponsor firms. Further inducement to provide domestic partner health benefits likely will come from San Francisco’s November 1996 ordinance forbidding contractors, including law firms, from doing business with the City and County of San Francisco if they discriminate between legal spouses and registered domestic partners in the provision of health benefits.

The remaining Recommendation that directly addressed equal treatment concerned firms’ paying membership dues for lesbian and gay professional associations on the same basis as other professional associations.<sup>18</sup> Compliance with this Recommendation was quite high.

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<sup>9</sup> Recommendations 1-2, 11-14, and 18-23.

<sup>10</sup> Recommendation 1

<sup>11</sup> Recommendation 11

<sup>12</sup> Recommendation 2

<sup>13</sup> Recommendations 12 and 13

<sup>14</sup> Recommendations 19 and 21

<sup>15</sup> Recommendations 22 and 23

<sup>16</sup> Recommendation 20.

<sup>17</sup> Recommendation 18.

<sup>18</sup> Recommendation 14

## RECOMMENDATIONS FOSTERING DIVERSITY

Eleven Recommendations encourage practices that create equal employment opportunity by creating a professional environment that fosters diversity.<sup>19</sup> Compliance rates for these Recommendations were generally lower than the compliance rates for Recommendations that address equal treatment directly.

Two Recommendations concern recruitment and hiring.<sup>20</sup> Most firms have not adopted the Recommendations that they send recruitment letters to lesbian and gay student organizations and have a lesbian or gay man on their hiring committees, because most firms do not send out recruitment letters or have hiring committees. But of those firms that do, compliance with the Recommendations is fairly high.

Four Recommendations reflect the idea that lesbian and gay attorneys may be more likely than other attorneys to be interested in certain issues. Of these, the Recommendation with the highest compliance is the inclusion of “items of particular interest to lesbian and gay employees” in firm newsletters.<sup>21</sup> This Recommendation, however, was applicable only to three-quarters of the larger responding firms, which were the only ones to have firm newsletters. Compliance is nearly as high for the Recommendation that firm resumé refer to lesbian- and/or gay-related *pro bono* services.<sup>22</sup> Compliance is more modest for the Recommendations that legal-issue lunches periodically address issues of particular interest to lesbian and gay attorneys, and that welcome packets for new attorneys include information of particular interest to lesbians and gay men.<sup>23</sup> Fewer than one-third of the responding firms identified these Recommendations as applicable, but approximately half of those reported that they comply with these Recommendations.

Three Recommendations derive from the idea that equal employment opportunity is fostered by an atmosphere of collegiality. Approximately half of the responding firms reported that they “foster opportunities for lesbian and gay attorneys to support each other in the work environment.”<sup>24</sup> Substantially fewer firms “provide all associates with in-house mentors.”<sup>25</sup> Fewer still reported that they “identify a lesbian- and/or gay-sensitive contact for attorney applicants.”<sup>26</sup>

Finally, two Recommendations concern diversity training. These Recommendations have some of the lowest compliance rates of the Survey. About half of the firms reported that they train employment interviewers on the appropriate handling of sexual orientation issues.<sup>27</sup> Compliance here appears largely to be a function of size: A large majority of larger firms reported that they provide such training, but a large majority of smaller firms reported that they do not. As for the training of attorneys generally on sexual orientation issues, the pattern is similar, with overall compliance substantially lower.<sup>28</sup> Compliance is lower still on training non-attorney staff members on sexual orientation issues, with this question having the lowest compliance rate of the whole Survey.<sup>29</sup>

Comments by responding firms indicate that some firms consider the implementation of many of these diversity-oriented Recommendations unnecessary because of the firms’ general non-discriminatory

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<sup>19</sup> Recommendations 3-10 and 15-17.

<sup>20</sup> Recommendations 4 and 5.

<sup>21</sup> Recommendation 15

<sup>22</sup> Recommendation 7

<sup>23</sup> Recommendations 9 and 17

<sup>24</sup> Recommendation 16.

<sup>25</sup> Recommendation 10.

<sup>26</sup> Recommendation 6

<sup>27</sup> Recommendation 8

<sup>28</sup> Recommendation 3

<sup>29</sup> *Ibid.*

environment. For example, among firms not offering training on sexual orientation issues, one smaller firm commented that: "Everyone knows thereís a strong unwritten policy against discrimination." Another firm stated that: "Interviewers are liberal-minded people." Other firms noted that, although there is no formal training, there were many opportunities for attorneys at the firm to discuss issues related to sexual orientation. Similarly, one smaller firm reporting that it did not provide gay- and lesbian-sensitive contacts for recruits commented: "Everyone here is sensitive to these issues." Surely, management's confidence about what "everyone" knows or believes is possible, if at all, only for the smaller firms.

### **SUCCESS OF THE RECOMMENDATIONS**

These Survey results indicate that the Bar Association of San Francisco's Recommendations on how to eliminate sexual orientation discrimination are compatible with the prevailing ethic of San Francisco law firms and corporate legal departments. No Recommendation had a compliance rate less than twenty-five percent. No firm expressed hostility to the Recommendations as a whole or to the goals on which they are based. Most of the Recommendations with low compliance rates appear to be associated with a judgment that the specific Recommendation is not necessary to achieve the goal of equal opportunity in the particular firm environment.

In order to achieve equal opportunity for lesbian and gay attorneys, law firms and corporate legal departments should generally comply with all applicable Recommendations. The biggest challenge for the future appears to be the encouragement of more firms to provide health benefits to the domestic partners of lesbian and gay attorneys (who are not legally permitted to marry) on the same basis as spouses. In addition, firms should resist making assumptions that they need not adopt the Recommendations aimed at fostering diversity on the ground that their employees are all "open-minded." It is an essential component of equal employment opportunity that those both qualified and able to make it through the door feel welcome once they arrive. Reaching that goal will in most cases require not only a non-discriminatory intent but also taking steps to create an environment conducive to diversity.

# Employment Policies for

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Gay and Lesbian Attorneys

BASF REPORT ON

## APPENDICES

*Published by*

The Committee on Sexual Orientation Issues

The Bar Association of San Francisco

685 Market Street, Suite 700

San Francisco, California 94105

415 764 1600

Printing and Mailing of this report was generously donated by  
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**BASF – Eliminating Bias in the Legal Workplace**  
**Margalynne Armstrong & Stephanie Wildman**

**Suggested Readings**

**BOOKS**

- Bell, Derrick Gospel Choirs (1996)  
Faces at the Bottom of the Well (1992)  
And We Are Not Saved (1987)
- Bender Leslie & Daan Braveman Power, Privilege and Law: A Civil Rights Reader (1995)
- Crenshaw, Gotanda, Peller, Thomas (eds.) Critical Race Theory: The Key Writings that Formed the Movement (1995)
- Dalton, Harlon Racial Healing (1995)
- Delgado, Richard The Rodrigo Chronicles (1996)  
ed. Critical Race Theory -- The Cutting Edge (1995)
- Haney Lopez, Ian White By Law (1996)
- Lopez, Gerald Rebellious Lawyering (1992)
- Omi, Michael & Winnant, Howard Racial Formation in the United States (2nd ed., 1994)
- Scales-Trent, Judy Notes of a White Black Woman (1995)
- Wildman, Armstrong, Davis & Grillo Privilege Revealed (1996)
- Williams, Patricia The Alchemy of Race and Rights (1991)

**ARTICLES**

- Cain, Patricia Feminist Jurisprudence: Grounding the Theories 4 Berkeley Women's Law J. 191 (1988-89)
- Chang, Robert S. Towards an Asian American Legal Scholarship... 81 California Law. R. 1243 (1993)
- Davis, Peggy Law as Microaggression 98 Yale Law J. 1559 (1989)
- Flagg, Barbara Was Blind, But Now I See... 91 Michigan Law R. 953 (1993)
- Harris, Angela Race and Essentialism in Feminist Legal Theory 42 Stanford Law R. 581 (1990); Foreword: The Jurisprudence of Reconstruction 82 California Law R. 741 (1994)
- Lawrence, Charles R. The Id, the Ego and Equal Protection: Reckoning with Unconscious Racism 39 Stanford Law R. 317 (1987)

## **Eliminating Sexual Orientation Discrimination in the Legal Workplace**

- I. Sexual Orientation Discrimination in Law Firms
- II. What Does the Law Require?
- III. Bar Association and Law Firm Standards and Policies
  - A. BASF Guidelines
  - B. Law Firm Guidelines
    1. Equal employment opportunity
    2. Freedom from sexual harassment
    3. Domestic partner benefits - health care
    4. Bereavement leave of absence
- IV. Issues in the Workplace
  - A. Major Issues
    1. Hiring
    2. Work Assignment
    3. Promotion
    4. Social Issues
    5. Benefits
    6. Rainmaking
    7. Isolation, Fear, Loss of Productivity
    8. Morale of Entire Workforce
  - B. Resources
    1. Videotape for firm training sessions
    2. BASF Guidelines
- V. Bigotry and Diversity: Costs and Benefits
- VI. Enhancing the Firm's Training Program
  - A. Sensitize management
  - B. Provide accurate information to employees
  - C. Correct stereotypes
  - D. Dispel myths
  - E. Encourage and support constructive interaction among staff
  - G. Consider experience in other law firms, in other professions

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*Diplomate American Board  
of Psychiatry and Neurology*

*Psychiatric Consultation  
and Treatment*

San Francisco Bar Association - Panel Presentation

January 30, 1997

Prejudice: Eliminating Bias in the Legal Workplace

I Defining the Issues

1. "Prejudice" and "bias" - related but different concepts

II Psychological bases of prejudice

III Practical applications of psychological insights

IV Conclusion

1. Limitations imposed by "human nature"

2. Difference in strategies for dealing with prejudice and bias

## Eliminating Disability Discrimination in the Legal Workplace

1. Disability Discrimination in Law Firms
  - Is it more or less likely than in other work settings?
2. State and Federal Law
  - How does protection of people with disabilities differ from other civil rights?
  - What is a disability?
3. Issues in the Workplace
  - Hiring those with potential, current or previous disabilities
  - Accommodating an employee
  - Promotions or demotions
  - Confidentiality, confidentiality, confidentiality

**Prejudice: Eliminating Bias in the Legal Workplace**  
**Bar Association of San Francisco**  
**January 30, 1997**  
**Patricia Jeanne Howze**

**Lessons from Law School**

- ◆ Bias of professors
- ◆ Grading procedures
- ◆ Opportunities to interview with Firms/Companies
- ◆ Opportunities for extra curricular activities

**Why Diversify the Legal Workplace**

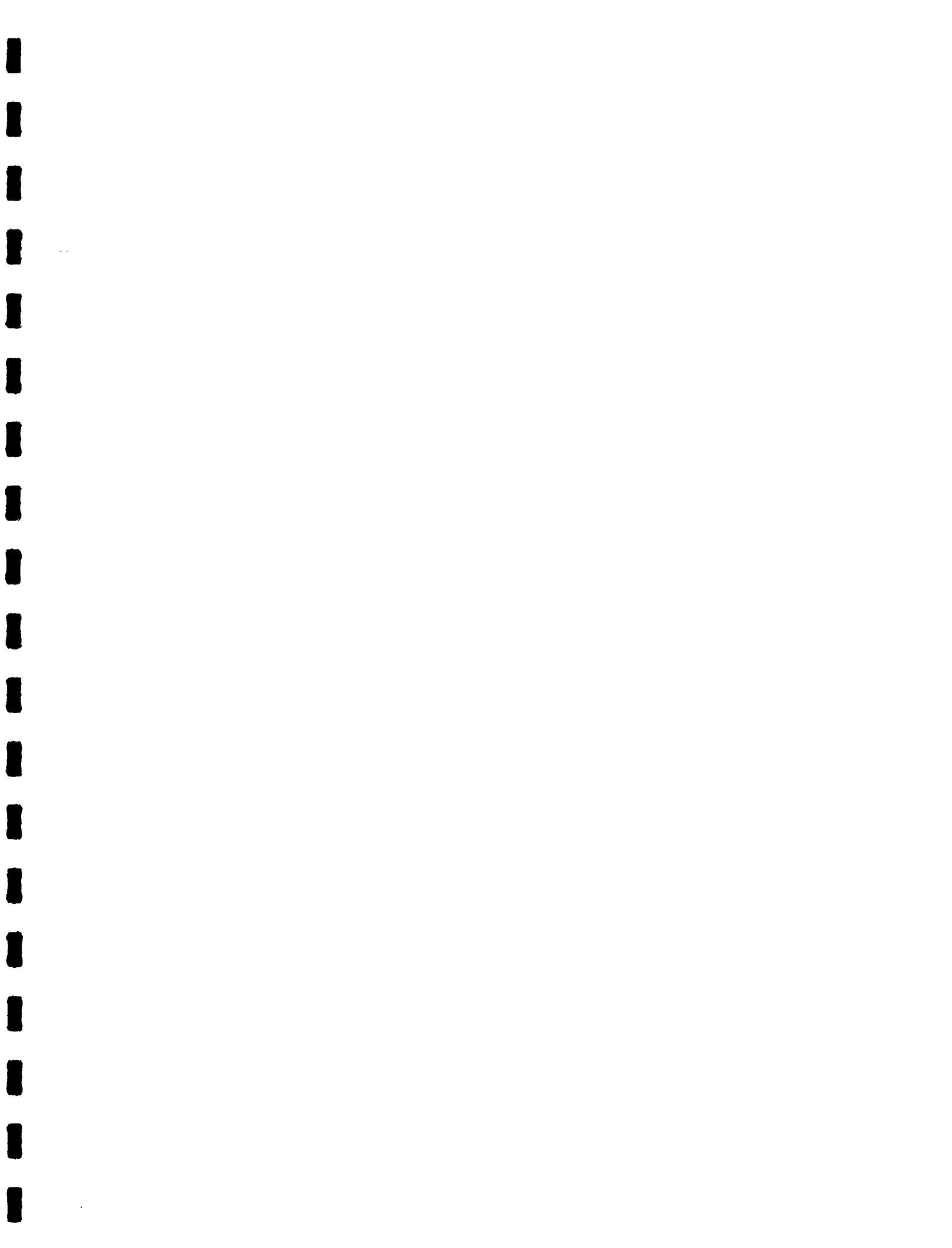
- ◆ Makes good business sense
- ◆ Meets needs of the client
- ◆ Values different experience, perspectives, management styles
- ◆ Increases candidate pool
- ◆ By the year 2005 women and minority men will make up 62% of the U.S. workforce

**Recruitment**

- ◆ Creating a diverse candidate pool
- ◆ Looking beyond the traditional top schools
- ◆ Recruitment Resources Guide
- ◆ Trade schools, colleges, universities, professional organizations
- ◆ Word-of-mouth recruitment does not work

**Retention**

- ◆ Recognizing and shattering the glass ceiling
- ◆ How are work assignments made
- ◆ Are jobs posted for all to see
- ◆ Opportunity to work in career enhancing positions
- ◆ Access to high level managers
- ◆ Opportunities to work on important/visible projects
- ◆ Attributing the failure of one member of the group to the entire group



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## RACIAL BIAS AND THE JUDICIARY



STEPHANIE TURNER

**JUDGE BRENDA HARBIN-FORTE:** "There are hundreds, if not thousands of us . . . who can tell these types of stories."



STEPHANIE TURNER

**JUSTICE ARTHUR SCOTLAND:** He cautioned against accepting all of the report's anecdotal evidence as fact.

# Lively Debate Animates Council's Discussion

By **SCOTT GRAHAM**

As the Judicial Council moved forward Wednesday with plans for reducing bias in the legal system, its own small racial and gender gap became apparent.

The council received a 247-page report from its advisory committee on racial and ethnic bias, which concludes that many minorities do not believe they receive equal justice in California's legal system. The report is based on the perceptions of more than 1,000 people, from within and outside the court system, expressed through phone and mail surveys and testimony at public hearings.

As council members offered their initial reactions at a meeting Wednesday, several white male members — while lauding the report's goals — cautioned against reading too much into the anecdotal findings. But three of the

See **REACTION** page 2

# Reaction Seems to Break Along Race, Gender Lines

Continued from page 1

council's women of color disagreed, insisting that the perceptions documented in the report are in fact reality.

Council member Arthur Scotland, who is white, began the debate by observing that the committee's assessment of bias in the system is largely anecdotal.

"I'm not so naive to suggest there's no actual bias in the court system," said Scotland, a justice on the Third District Court

of Appeal. But he cautioned against "accepting as fact" that bias is as rampant as characterized by the report.

Personal experience has taught him that litigants who bring unmeritorious cases sometimes look for other sources of blame when they lose, Scotland said.

"Obviously, we need to take steps to deal with that public perception" of bias, Scotland said. Nevertheless, "I'm just concerned about how this is going to be

characterized" in the press.

Several other white council members voiced agreement with Scotland, including Brian Walsh of San Jose's McTeeman, Stender, Walsh & Weingus and Second District Justice Roger Boren.

"I don't read the report to say they've come up with a scientific way of saying there's bias," Walsh said.

But Alameda County Superior Court Judge Brenda Harbin-Forte, who is African-American, had a different take. It is demeaning to characterize the evidence in the report as "merely anecdotal," she said.

"These stories are legion. There are hundreds, if not thousands of us who are attorneys [and judges] who can tell these types of stories," she said. "The reality is that a large segment of society perceives that it is not gaining access to the judicial system.

"I hope in fact that the press would report it as what it is: the legitimate conclusions that have been made regarding these experiences."

## STUDY IN BLACK AND WHITE

Council member Martha Escutia, a Democratic assemblywoman from the central Los Angeles community of Bell, said the report had a particular impact on her.

"I felt that this report, in black and white, told my story," said Escutia, who described herself as a minority woman attorney "from the barrio of East L.A."

Escutia said she once worked as a judicial research attorney, where one particular judge used to "run me ragged — instead of nurturing me, constantly putting me down." She had similar experiences in private practice, and now, as a member of the Assembly, she said she again is facing bias in the form of "the good ol' boy network."

"It is not perception. I am telling you it is reality," she said, inviting Scotland to visit her in the courts of East Los Angeles. "I wish I could trade skins with a white male, because I think they have it good," she added. "And then you trade skins with a woman of color."

Next, Sacramento County Municipal Court Judge Rudolph "Barry" Loncke, a member of the advisory committee, reminded the council that the committee's report is a result of compromise. In his own opinion, the report "understates the

problem."

"In Sacramento, on a daily basis from my perspective of the bench, we do have a problem," said Loncke, who is African-American. Specifically, he expressed concern about the court's failure to provide interpreters to all non-English-speaking litigants.

"I hope that this report is taken seriously, and is not just given lip service," he said.

Another black council member, Santa Clara County Municipal Court Judge Rise Pichon, cautioned against characterizing the report as "simply a collection of anecdotes."

"There are some real things that have happened to people that we should know about," she said.

A couple of council members struck conciliatory notes.

Orange County Superior Court Judge

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**'It is not perception. I  
am telling you it is  
reality.'**

**— Assemblywoman  
Martha Escutia**

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William McDonald, who is white, said he didn't see what was so bad about using anecdotes.

"Quite frankly, I am more comfortable with a warm anecdote than cold statistics," McDonald said.

Ventura County court administrator Sheila Gonzalez, a Latina, agreed. "This subject matter really has nothing to do with numbers. It's about people."

Perhaps anticipating the debate, California Chief Justice Ronald George, the council's chairman, said in opening remarks that council members need not agree with every finding of the committee. He said the goal is to "move ahead with the big picture in mind."

"We have a special interest," George said, "in seeing that the administration of justice is not only free from bias, but also free from the perception of bias."

*Courts editor Scott Graham's e-mail address is [sgraham@counsel.com](mailto:sgraham@counsel.com)*

## Committee Offers Plan for Stemming Bias in the Courts

By ALLYSON QUIBELL

After almost six years of study, state judicial leaders are proposing ways to eliminate racial and ethnic bias in the courts, ranging from educating judges to urging the governor to appoint more minorities to the bench.

A committee established in 1991 by former California Chief Justice Malcolm Lucas to canvass lawyers, judges, litigants and others about bias in the state's judicial system delivered a 247-page report Wednesday to the state Judicial Council.

The panel found an overall perception that "minority group members do not believe that they will receive equal justice in the California courts."

The report also found that 87 percent of the state's 1,554 judges are white, compared with 57 percent of the general population. In addition, 3 percent of judges are black, 5 percent are Hispanic, 3 percent are of Asian descent, and .1 percent — only one judge — is Native American.

"There have been peak periods for judicial appointments of members of some minority groups, 1980 being one year, but for the most part the percentage increase and actual number of appointments have not varied that dramatically over the years, while the number of minority law school graduates has almost doubled in the past 10 years," the

*See STUDY page 2*

# Study Cites Lack of Minority Judges

Continued from page 1  
report states.

The report also found some stark illustrations of the lack of minority judges. In Los Angeles, for instance, a black justice has not been appointed to the Second District Court of Appeal since 1982.

"[R]arely do minorities become judges through the electoral process. Accordingly, it is clear that any increases in the number of minority judges will be brought about primarily through the appointment process," the report continues.

A spokesman for Gov. Pete Wilson defended the administration's record. Since he was elected in 1990, Wilson has appointed 459 trial and appellate judges, including four current members of the California Supreme Court.

"Governor Wilson has an outstanding record of diversity in his judicial appointments, which nonetheless are based on qualifications, not gender or ethnic background," said spokesman Steve Tatum. "The only way to increase the diversity of the bench is to increase the diversity of the State Bar and in turn the diversity of the judicial applicant pool."

In addition to advising Wilson to

increase diversity on the bench, the committee's report also makes numerous other recommendations. Among them are:

- The State Bar should make diversity

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**'The only way to increase the diversity of the bench is to increase the diversity of the State Bar and in turn the diversity of the judicial applicant pool.'**

— Spokesman for  
Gov. Pete Wilson

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training a larger part of the mandatory continuing legal education program for attorneys.

- Judicial Council staff should draft a proposed amendment to California Rule

of Court 985(i) that would require that the government pay the cost of interpreters in civil actions for indigent non-English-speaking litigants.

- The Judicial Council should urge courts to hire and train bilingual workers.
- Existing bias and fairness commissions should add a subcommittee on minority women and explore ways to convene a national conference.

"The recommendations throughout the report reflect the committee's concern about the gap between the public's perceptions and experiences [of bias] and the genuine commitment to service and fairness shared by most court personnel," the report concludes. "Education looms large as a means of bridging that gap."

The report was written by the Advisory Committee on Racial and Ethnic Bias in the Courts. It was presented to the Judicial Council by co-chairman John Arguelles, a former state Supreme Court justice who is now of counsel in the Irvine office of Los Angeles' Gibson, Dunn & Crutcher.

The Judicial Council forwarded the report to another committee for further study.

The effort was dedicated to the memory



RECORDER FILE (1989)

**JOHN ARGUELLES:** The former state Supreme Court justice presented proposals following a six-year study into racial and ethnic bias in the courts.

of the late high court Justice Allen Broussard, the committee's co-chairman, who died in November 1996.

*Editorial assistant Allyson Quibell's e-mail address is aquibell@counsel.com*



**THE BAR ASSOCIATION OF SAN FRANCISCO**

COMMITTEE ON MINORITY EMPLOYMENT

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**GOALS '95 REPORT**

GOALS AND TIMETABLES FOR  
MINORITY HIRING AND  
ADVANCEMENT

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November 1996

# **GOALS '95 REPORT**

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## **GOALS AND TIMETABLES FOR MINORITY HIRING AND ADVANCEMENT**

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Bar Association of San Francisco  
Committee on Minority Employment  
November 1996

## DEDICATION

In memorium, the Bar Association of San Francisco and its Committee on Minority Employment dedicate this *Goals '95 Report* to Justice Allen E. Broussard. Justice Broussard was an indefatigable advocate for equality and affirmative action on behalf of all who did not have a place at this country's bountiful table.

Allen, as he encouraged us to call him, was a mentor for all lawyers of color and all who strive for equality. The gains noted in this *Report* are due in great measure to Allen's relentless efforts to have our profession reflect our population. He fought the great, good fight, and so we bid farewell to our colleague, our friend and our champion. We shall miss Allen's gentle spirit, his graceful manner and his passion for our cause. For all Californians, his was a sure and steady voice for rights, liberty, fairness and justice. His intellect, integrity and humility made him the quintessential jurist. Yet he walked with us, talked with us and told us of his and our duty to continue the unfinished work. He was proud of us when we lived up to the highest calling of the profession, and he let us know it. He challenged us when we erred. He cajoled us when he knew we were doing less than our best, and he comforted us when we failed, having given our all.

Shadowed beneath his greatness, may we forever stand true to his love of justice and true to his passion for service to all.

Lindbergh Porter, Jr.

## ACKNOWLEDGEMENTS

The Bar Association of San Francisco and its Committee on Minority Employment would like to gratefully acknowledge the generosity of the law firm of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP, which provided the resources and funding associated with the design and printing of this Report.

We would also like to gratefully acknowledge the contributions of Susan Springborg, of the firm of SPRINGBORG & NOGUERA, who provided the materials and training for the cadre of volunteer interviewers for the Study. We also wish to thank Russell Fung, Esq. for his contributions to the Report.

The Association and the Committee are greatly indebted to the dozens of attorney-interviewers who gave so generously of their time and want to thank the many general counsel, managing partners, minority partners and minority associates who participated in the interviews.

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## PREFACE

The Bar Association of San Francisco is pleased to present this *Goals '95 Report*, on the *BASF Goals and Timetables for Minority Hiring and Advancement*. We think that these results are important for several reasons.

The *Report* notes that many legal employers have met the 1995 goals for both minority partners and associates, some have met one, and some have met neither. Overall, our law firms exceeded the 15% Associate Goal and came close to the 5% Partner Goal, while San Francisco's corporate law departments and government law offices exceeded both. We applaud all of the signatories to the *Goals and Timetables*, whether or not they achieved the 1995 Goals, for their determination to end the underrepresentation of minorities in our profession.

Although we report many statistics, those figures are not the core of the *Report*. Rather, the bulk of the study is based upon the insights provided by partners and general counsel, as well as associates and junior counsel at employers that have devoted years of time and attention to the promotion of diversity in hiring and retention.

The *Report* demonstrates that legal employers have a better handle on hiring issues than issues regarding retention. It also identifies specific programs which have aided hiring and retention efforts, and specific reasons why minority lawyers choose to remain or leave their employment.

Finally, this *Report* is issued a few weeks before Californians will vote on Proposition 209, which would prohibit most affirmative action efforts to combat discriminatory practices against women and minorities. BASF, together with many of our brothers and sisters in the bar statewide, have fought hard against Proposition 209. If the Initiative passes, however, the task of creating equality and eliminating bias in our profession and in our business community will be harder still. Even tougher will be the task of convincing disenfranchised Americans that our society cares about equal opportunity. Regardless of the vote on Proposition 209, the Association will remain committed to both of those goals.

We hope that our legal community will obtain some useful insights from this snapshot of our current status regarding diversity in hiring and retention. Most of all, we hope that this *Report* helps legal employers better understand, recognize and address the conscious and unconscious factors which have created and maintained today's under-utilization of minorities. That sensitivity is at the heart of this effort.

Mark I. Schickman  
President  
Bar Association of San Francisco

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# GOALS AND TIMETABLES FOR MINORITY HIRING AND ADVANCEMENT

## GOALS '95 REPORT

### I. INTRODUCTION

The Bar Association of San Francisco has historically served as a national leader in efforts by the organized bar to achieve equal employment opportunity for minority attorneys in the legal profession. These efforts have greatly intensified since 1988, in the wake of a disturbing University of California study commissioned by the Association, which found that racial and ethnic minorities, as a class, encounter profound objective and subjective disadvantages within the City's legal workplaces.<sup>1</sup>

By Resolution dated June 14, 1989, the Association adopted a set of Goals and Timetables for Minority Hiring and Advancement as the lynch pin of its efforts to advance the progress of racial and ethnic minorities in the San Francisco legal community. Subsequently adopted by 98 San Francisco legal employers,<sup>2</sup> the Goals and Timetables consist of target dates and corresponding percentages of minority attorneys sought to be employed by those dates within a subscribing organization's total attorney population in San Francisco, as follows:

Target Date	% Associates/Jr. Counsel	% Partners/Sr. Counsel
12/31/1995	15%	5%
12/31/2000	25%	10%

Over the course of the seven years following the Association's initial adoption of the Goals, it has become clear that while all in our community would agree that equal treatment of minority law students and lawyers should be a hallmark of the workplace, the experience of minorities in the legal profession continues to belie any assumptions of a color-blind meritocracy. Rather, as BASF's President Mark Schickman stated in his Inaugural Address in December 1995:

"We have always been a race conscious society, from the day the Constitution's framers wrote the three-fifths compromise, to the present, as Americans of color have a harder time flagging a cab, renting an apartment or cracking the overwhelming white male bastion of corporate upper management.

Interviews with the broadest scope of employers show that women and minorities must accomplish more, and falter less, than their white or male counterparts, to achieve the same

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<sup>1</sup> *Bar Association of San Francisco Minority Employment Survey: Final Report*, U.C. Berkeley, 1988.

<sup>2</sup> See Attachment A.

degree of employer approval and job advancement. Twenty-five years after the first goals and timetables were ordered by Richard Nixon under federal construction contracts in Philadelphia, African Americans still comprise less than 1% of the supervisory force in the construction industry.

Those women and minorities who have succeeded did so in spite of, not because of, their class in society, as they remain the recipients of prejudice rather than preference."

This Report on Goals '95 attempts to measure the success of San Francisco legal employers in meeting the 1995 Goals. The 1995 Report's conclusions are drawn from empirical data collected since 1990, and information derived from over 130 personal interviews conducted with managing partners, general counsel, minority partners and minority associates in 44 legal offices across the City. These offices included all of San Francisco's largest law firms, 23 of its mid-sized and smaller firms, ten corporate law departments and four government law offices.<sup>3</sup>

It is the Association's belief that the responsibility to desegregate the legal profession falls squarely on the shoulders of all attorneys, but especially the private bar. In issuing the findings, conclusions and recommendations contained in this Report, BASF intends to signal the renewed and redoubled commitment of the organized bar to the aggressive affirmative efforts which are so clearly necessary if we are ever to witness true equality for minority attorneys in our lifetime.

As BASF's first African American President, Raymond C. Marshall, stated in his Inaugural Address in 1993:

"Racism is real. As noted by Andrew Hacker in his book, *Two Nations, Black and White, Separate, Hostile, Unequal*, the evil of racism goes beyond prejudice and discrimination and even transcends bigotry, largely because it arises from outlooks and assumptions of which we are largely unaware.

Commitment must be demonstrated by action. We must demonstrate the strength of our conviction. And we must do so or risk losing what progress has been made. Commitment to diversity must be long-term and it must be sustained through good times and bad times alike. The issues are simply too important, and the stakes too high, to allow anything to be used as an excuse to prevent us from doing what we must to end bias in the profession.

It is the hope of the Bar Association of San Francisco that in 1995, and again in the Year 2000, when we revisit our legal community's progress in attaining the Goals and Timetables, we will find that the gains of the last several years were not transitory, but instead marked the beginning of a permanent transformation from 'two legal communities' to one."

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<sup>3</sup> Three recent studies which provide valuable data and recommendations are "Ethnic Diversity in Los Angeles County Law Firms: Findings from the survey by the L.A. County Bar Association and the Joint Minority Bar Task Force on Diversity," December 1995; Boston Law Firm Group, "Report on Implementation of Guidelines for Retention and Promotion of Minority Attorneys," December 22, 1995; and David B. Oppenheimer, "Understanding Affirmative Action," 23:4 *Hastings Const'l. L. Qly.* 921 (1996). See also, *Hennepin County (Minn.) Bar Assn. Glass Ceiling Task Force Report*, 4/20/93.

## II. METHODOLOGY OF GOALS '95 STUDY

In order to fairly assess the progress made with respect to the 1995 Goals, all signatories to the Goals were asked to confidentially provide demographic data on the racial and ethnic minorities in their organizations; five public offices and a small group of firms with primary offices outside San Francisco also supplied statistical profiles. Eighty employers returned the questionnaire. A cross-section of these employers was selected for closer study, including substantially all those for whom historical data were available from the Association's earlier *1993 Interim Study*. This included all eight of the San Francisco-based firms which were the largest firms at the time the Goals were adopted ("large firms"), and a cross-section of "large mid-sized firms," averaging 50-100 employees, smaller firms and corporate law offices. Interview and/or demographic data was also collected from additional employers in most categories. Firms were selected for closer study by the Committee on Minorities representing a wide variety of office sizes and cultures. Because the BASF Goals apply by their terms solely to the San Francisco office of each signatory, the information contained in this Report accordingly applies only to the San Francisco offices of the law firms studied.

The Association's Committee on Minority Employment selected and trained a group of 44 interviewers, the vast majority of whom were attorneys, to perform the interviews, and each was assigned to conduct all the interviews at an office dissimilar in size or kind from his/her own employer. An expert consultant conducted a two-hour training session, stressing the necessity for confidentiality and outlining the six major areas of inquiry: (1) the interviewee's overall assessment of where his/her office stood, both subjectively and objectively, on the issue of racial and ethnic diversity among its attorneys; (2) the office's successes and (3) failures with respect to this issue, and the reasons therefor; (4) the efforts of the office to ensure that minorities experienced equal opportunity in assignment to advantageous partners, practice groups, individual matters and/or clients; (5) the office's efforts to present marketing opportunities to minorities; and (6) the probable future in the office with respect to racial and ethnic diversity. Interviewers were also asked to explore the prevailing attitudes in the office with respect to the relative qualifications and competence of minority attorneys compared to their white peers, and the basis for these attitudes.

Over 130 confidential interviews were conducted over the first eight months of 1996 with: (1) the managing partner/general counsel; (2) a senior minority partner/senior counsel, where applicable; and (3) a junior minority associate/counsel, where applicable. The interview notes were sent to a designated Association employee who removed identifying individual and employer names and classified them by the employment status of the attorney and the type of employer (*e.g.*, "managing partner, large firm"). These notes, together with the statistical data, were then collected and analyzed.

## III. SUMMARY OF CONCLUSIONS

- A. The numbers and percentages of minorities rose overall in the groups of employers for which 1990-1995 longitudinal data were available, a pattern repeated in the data of the larger universe for which solely 1995 demographic data were available. This was especially true for corporate law departments and governmental law offices. Moreover, these gains occurred against a backdrop of significant downsizing in most of the larger firms.

- B. The convergence of these two trends produced minority percentages in all the groups of legal employers studied that exceeded the 1995 Minority Associate Goal of 15% and approached or exceeded the 1995 Minority Partner Goal of 5%. Thus, minorities comprised 4.7% of the partners and 18.1% of the associates in the eight largest firms studied, 4.9% of the partners and 17.4% of the associates in the 18 large mid-sized firms which submitted statistics, 10.6% of the partners and 21% of the associates in the smaller firm group, 18.3% of all attorneys in the 9 corporations which submitted statistical data, and 30% of the three local governmental offices for which data were available.
- C. However, the substantial increases in the minority population of the larger firms studied were almost entirely attributable to the period between 1990 and 1993; thereafter a retrenchment occurred. The number of minority partners in the largest firms, for example, fell 13.3% from 30 to 26 between 1993 and 1995 (including a decrease in African American partners from 9 to 8, and a fall in Asian American partners from 12 to 9). More strikingly, between 1993 and 1995 there was a 39% decline in African American associates (from 34 to 21), a 23% drop in Latino associates (from 30 to 23) and a 63% decline in Native American associates (from 8 to 3). Finally, there are only 10 minorities among the 105 associates in the largest firms eligible for partner in 1996 or 1997, including only three African Americans and one Latino.
- D. Absent aggressive, carefully conceived programs and efforts by legal employers to enhance minority recruitment and retention, the ranks of minority associates and partners will experience substantial depletion, particularly among African Americans and Latinos. The 1995 study's interviews revealed, for example, significant differences among the large firms, centering mainly on the degree of the firm's tangible commitment to diversity, as variously perceived by managing partners, minority partners and minority associates. There was a high correlation between a firm's concrete programs and its ability to attract and keep minority attorneys.

The large firms which were most successful in recruiting and retaining minorities shared some or all of the following characteristics: (1) the firm had developed and maintained concrete programs for the recruitment, hiring, retention and advancement of minorities, and had experienced some success in creating a diverse work environment; (2) the minority partners and associates knew of, and participated in, these efforts and felt a correspondingly higher level of commitment to the business enterprise; (3) the known and ongoing commitment of some of the firm's most prominent white male partners to issues of diversity — both intra-firm and, often, in the greater legal community — had helped the firm to create and maintain a climate more open and susceptible to attracting, hiring and advancing minorities; (4) the firm's earlier and sustained efforts had produced a small group of minority partners, some of whom had become prominent both inside and outside the firm. In addition to their otherwise valuable contributions to the firm's business and reputation, these partners had served as role models, and, as such, had both advanced the firm's minority recruitment efforts outside the firm and the firm's retention efforts inside the firm; and (5) these firms were more likely to have advanced a reasonably large number

of women into the partnership, and often had one or more women on the management committee.

- E. Programs successful in recruiting and retaining minorities include: formal mentoring programs; periodic and ongoing diversity training for all attorneys and staff; participation in one or more successful bar-sponsored programs, such as the California Minority Counsel Program and the Bay Area First Year Minority Clerkship Program; the hiring of minority laterals; formal programs for work assignment, evaluation and business development to ensure and enhance the success of minority attorneys, including financial incentives for supervisory success in this area; structured and aggressive recruitment programs designed to increase the pool of minority applicants considered for hire in the firm; and policies to ensure that the criteria for hiring include recognition of the value of diversity, prior community service and other indicia of excellence beyond grades and test scores.

#### **IV. GENESIS AND BACKGROUND OF GOALS AND TIMETABLES**

San Francisco's societal and legal history is replete with examples of the most odious and overt discrimination. Kearny's Sandlots were the place of savage racism against Asian immigrants; Irish Americans could claim economic disadvantage in the early days when many lived "south of the slot." In our legal community, Jewish law firms were formed at a time when other professional opportunities were not available. For years, African-Americans and Latinos were not seen as groups suitable to supply members of the profession, although there were some early pioneers. As late as the 1970's, women's role in the law was limited to those specialties thought by men to be more "feminine" and/or conveniently back room. Gay and lesbian lawyers and those with disabilities continue to face formidable barriers to equal participation in the legal community. In sum, the broader history of the legal profession, here as elsewhere across the United States, reflects that every non-mainstream group has been at one time or another subjected to systematic patterns of discrimination.

In the mid and late 1980's, bar leaders on both the local and national level noted with growing concern the fact that minority representation in large law firms and in corporate and governmental law departments lagged far behind the growing numbers of minority law school graduates.

The American Bar Association took the lead in evaluating this phenomenon in 1986, conducting a survey of the managers of large law firms across the nation and producing its Task Force on Minorities in the Profession's "Report with Recommendations." The ABA study concluded that "[A]n objective assessment [of the status of minorities] leads to the inevitable conclusion that the legal profession remains largely segregated." At the same time the ABA noted that those surveyed generally subscribed to the view that a lack of "qualified" minorities lay at the root of the problem.<sup>4</sup>

In an effort to compare the experiences and perceptions of minority attorneys to those of their white peers, The Bar Association of San Francisco commissioned the Sociology Department

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<sup>4</sup> American Bar Association Task Force on Minorities in the Profession, "Report and Recommendations," January 1986.

of the University of California, Berkeley to perform a comprehensive survey of minority hiring and advancement in the San Francisco legal community. The completed survey was released in April 1988.<sup>5</sup>

The primary objective of the survey was to determine whether different patterns in hiring, retention, advancement and working conditions existed for white and minority attorneys, and, if so, to identify the mechanisms which produced those differences. Questionnaires were distributed to all minority attorneys in San Francisco who could be identified and to an equal number of randomly selected white attorneys who had been admitted to practice after 1970. Responses were received by 523 minority attorneys and 752 white lawyers. In order to enrich the analysis of the quantitative material provided by the returned questionnaires, a number of key informant interviews were conducted.

Although few in the legal community doubted the existence of some degree of racial discrimination in its ranks, the survey's findings, particularly in the more subjective areas of firm culture, became the primary catalyst to action by the organized bar in San Francisco.

Minority attorneys were generally revealed to have experienced less favorable hiring, work and promotion experiences than their white counterparts, differences which were not attributable to class rank, law school reputation or other objective determinants. They were more likely than comparably situated whites to be asked inappropriate and offensive questions during their hiring interviews, earned significantly less than white attorneys at similar points in their careers, and were twice as likely as white attorneys to be passed over or denied promotion.

Perhaps most compelling, minorities were excluded from the informal networks within the workplace that are generally viewed to be essential to advancement. A large majority of both minority and white respondents reported that minority attorneys were less likely to be asked to lunch by their more senior colleagues, less often invited to dinner at the home of a partner, for a round of golf on the weekend or for a night at the symphony, and less frequently approached for informal collegial or professional advice at the office. Minority attorneys were also believed to labor largely outside the system of informal mentoring relationships existing between powerful white partners and young white male associates within the firms.

Successive BASF Boards of Directors grappling with the problem of diversity have determined that the recruitment, hiring and advancement pattern for minority lawyers at majority legal organizations has been and largely continues to be rooted in systematic attitudes and patterns of behavior. These attitudes exist among managers, peer lawyers and non-lawyer staff (sometimes overtly and consciously but more often subtly and seemingly unconsciously) and act as exclusionary barriers to the acceptance of minorities on equal terms with their white peers.

In response, in 1988 the Association formally established as a top priority the achievement of economic equality for minority attorneys, and appointed a prestigious ten-person Committee on Minority Employment to recommend and implement policies and programs to identify and overcome the obstacles encountered by minorities in the legal workplace. Chaired by former BASF President James Brosnahan, of Morrison & Foerster, the Committee's members

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<sup>5</sup> For purposes of the survey (and this *Report*) minorities were identified as members of at least one of the following groups: Asian American/Pacific Islander; African American/Black; Hispanic/Latino; and Native American.

included and still includes Wells Fargo Bank Chief Counsel Guy Rounsaville, Jr. and Raymond C. Marshall, of McCutchen, Doyle, Brown & Enersen. Over the course of the ensuing eight-year period, the Committee has pursued an ambitious agenda which has included:

- Leadership of efforts of the statewide organized bar to defeat Proposition 209
- Organization of a 1,000-person Celebration of Diversity, which raised over \$75,000 for BASF's diversity-related efforts
- Leadership of the effort to establish and maintain the California Minority Counsel Program, which has grown since 1989 to become a dynamic, self-funded, statewide program currently numbering over 65 corporations, 100 majority firms and 180 minority-owned firms as participants, and which continues to be housed in, and to benefit from, the ongoing support of the Association
- Publication and nationwide distribution of the *1993 Interim Report on the BASF Goals and Timetables for Minority Advancement*
- Presentation of a wide variety of annual and/or biannual seminars for managing partners, hiring partners, general counsel, minority partners, minority associates, minority law students and recruitment personnel on topics ranging from hiring and retention of minorities to interviewing skills, effective marketing, business development and survival skills in a recessionary economy
- Production and national distribution of *A Firm Commitment*, an award-winning videotape funded by Wells Fargo Bank, 10 bar associations, 30 law firms and local foundations and the National Association for Law Placement (NALP), designed to help legal employers examine and overcome obstacles to the advancement of minority attorneys in their workplace
- Co-sponsorship of the Bay Area First Year Summer Law Clerk Internship Program, a successful program designed to afford first year minority students whose credentials include demonstrated service to their community to gain exposure to practice in a large law firm

Early in its work, the BASF Committee on Minority Employment determined that the momentum generated by the Association's survey could be sustained only if specific aspirational goals and timetables were formally adopted by legal employers. The numbers chosen were considered to be realistic undertakings in light of the substantial numbers of minorities which had been and continue to be enrolled in most major California "feeder" law schools since the early 1980s. This has subsequently proven to be the case.

The response from the legal community was immediate and overwhelming. Dozens of employers adopted the goals within a few weeks of its passage, and the local and national legal media and law school admissions offices were periodically kept abreast of which employers had made this commitment. To date, 98 San Francisco employers have signed the Goals and Timetables, and numerous other bar associations have made similar efforts in their communities. A list of the employers is attached in Attachment A.

As the following *Report* demonstrates, the San Francisco legal community now stands at a historical crossroads, where the road next taken will largely dictate the future of racial integration of the legal profession. As Harvard Professor David Wilkins has recently observed:

"Few would dispute that the campaign to end legal segregation culminating in *Brown v. Board of Education* is the legal profession's finest accomplishment — just as the profession's complicity in the regime that this campaign demolished was its darkest hour. The fact that the country's most prestigious law firms are nearly as segregated today as the entire legal system was forty years ago stands as a constant rebuke to the profession's attempt to claim the noble side of this heritage. At the same time, initiatives such as the Minority Counsel Demonstration Program and the efforts by state and local bar associations to promote workplace diversity demonstrate that the ideals captured by *Brown* can still energize lawyers to work for institutional change. As the legal profession confronts the uncertainties of the next millennium, it is this energy that holds the best hope for charting a new path that connects the profession's future to the best of its past."

## V. LARGE FIRMS

### A. The Numbers

In the period between February 1990 and December 1995, the San Francisco offices of the eight largest firms in San Francisco had reduced in size by 25.8%, from 1,526 attorneys to 1,133. During that same time period, their minority ranks increased 12.9%, from 116 attorneys to 131, and the large firm group as a whole approached the 5% minority partnership goal, at 4.7%, and had exceeded the 15% associate goal, at 18.1%.<sup>6</sup> Four of the firms met the partner goal, five exceeded the associate goal — four of them substantially — and three firms met or exceeded both. Minorities as a whole comprised 11.6% of all the attorneys in the large firm group.<sup>7</sup>

As discussed in the Summary above, these figures tend to obscure, however, a number of troublesome trends revealed by the raw data. First, the number of African American

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<sup>6</sup> 1995 data from the National Association for Law Placement (NALP) indicate that San Francisco-based firms, inclusive of all offices, "stood out as consistently ranking near the top in terms of both women and minorities across all levels of the law firm." These numbers are consistent with those reported in the *National Law Journal's* 4/29/96 study of the 250 largest firms in the country, which revealed that minorities comprised 3% of partners (up from 2.6% in 1991) and 10% of associates (up from 6.8%). San Francisco-based firms ranked behind only Miami in minority representation.

<sup>7</sup> In summary, as of 12/31/95, minorities comprised 11.6% of all attorneys in the large firm group (v. 7.6% in 1990), including 4.7% of the partners (v. 3% in 1990), and 18.2% of the associate attorneys (v. 11% in 1990). African Americans, Asian Americans, Latinos and Native Americans represented 2.6%, 5.9%, 2.6%, and 0.44%, respectively of all attorneys in 1995, as compared to 2.2%, 3.2%, 2% and .26%, respectively, in 1990. African Americans, Asian Americans, Latinos and Native Americans represented 1.44%, 1.63%, 1.27% and .36%, respectively, of the partners in 1995, as compared to 1.43%, .64%, .80% and .16%, respectively, in 1990. 1995 levels for African American, Asian American, Latino and Native American associates stand at 3.6%, 10%, 4.0% and .51%, respectively, as compared to 2.67%, 5%, 2.78% and .33%, respectively, in 1990.

partners actually declined in the large firm group between 1990 and 1995 (from 9 to 8), as did the number of African American associates (from 24 to 20) and Latino associates (from 25 to 23).

A comparison with the *1993 Interim Study's* figures raises concerns for the future of diversity in the large firms. While both the overall attorney pool and the minority attorney pool in the eight firms decreased by about the same percentage between 1993 and 1995 — 10% — the number of minority partners fell 13.3%, from 30 to 26 during that period, while the entire partnership pool fell 8.5%. The number of African American partners fell from 9 to 8, while Asian American partners fell from 12 to 9. And while the 10.3% decline in the minority associate pool, from 117 to 105, was less than the 13% overall decline in associates in these firms, a detailed breakout of associates reveals a 39% decline in African American associates (from 34 to 21), a 23% drop in Latino associates (from 30 to 23) and a 63% decline in Native American associates (from 8 to 3). The only group of minority attorneys to gain in numbers over this period were Asian American associates, who increased 29%, from 45 to 58 attorneys. Latino and Native American partners held steady at 7 and 2, respectively.

Data first collected in 1995, distinguishing between junior associates and those eligible for partnership in 1996 or 1997, provide little reason to believe that the African American or Latino partnership ranks will grow in the immediate future, unless by a conscious strategy of lateral hires at the senior associate and/or partner level. Only ten of the total 1995 minority associate pool of 105 attorneys will be eligible for partner in 1996 or 1997, and these 10 included only three African Americans and one Latino.

These patterns suggest that it is the gains of the late 1980's and early '90's, coupled with the downsizing of the large firm group, which have produced the percentages which today approach or exceed the 1995 BASF goals, rather than progress made over the past three years.

## **B. Attitudes Toward Diversity: The Spectrum of Commitment**

The overwhelming consensus among the large firm attorneys interviewed was that the past several years had witnessed a retrenchment in the firm's commitment to diversity as a top priority issue. This was generally felt to be a function of at least three factors: economics, perceived as forcing an increased emphasis on profitability; the overall political climate, seen as rationalizing an already weakened resolve in the area of equal opportunity; and, in some cases, lack of a true commitment to diversity by the leadership of the firm. Hopeful signs included the recovering legal economy and the fact that the managing partners as a group (many of them relatively new to their positions) expressed an unusually open and positive attitude toward BASF efforts and other initiatives to create and maintain racial and ethnic diversity in their firms.

Regardless of where the firm stood on the commitment spectrum, the Goals were generally seen as important in setting a standard, both in offices that "seek conformity with general standards," as one minority attorney put it, as well as in offices with an independent commitment to diversity. As one minority partner commented, "The BASF goals are important. They made it important to have some diversity when the numbers came out. The firm goes out of its way to look good. At first, affirmative action was seen in the pejorative sense — they thought it could only be accomplished by lowering standards. But they looked at similar firms and heard from their clients and decided 'they've done it, so we can do it also.'" As one prominent minority partner commented, "If it weren't for the Goals and Timetables and corporate clients demanding diversity, we would not have the numbers we do have here at the firm."

Managing partners in general said that racial and ethnic diversity was important. "Our better and larger clients, like the FDIC and Westinghouse want it," said one. "Clorox, Wells Fargo, PG&E, the government, and high tech companies recognize and want diversity," said another. "Many of our clients are women and minorities, so it's important to the firm," said a third. On a more global scale, law firm managers talked in terms of gaining a "competitive edge" in light of demographic changes in the state and in their increasingly international clientele, variously termed "today's society," "expectations of the clients and community we serve — judges, juries and clients", "the real world", "proximity to the Pacific Rim and Hispanic populations", and "operating in a more international world." It was an interviewer, rather than a managing partner, who highlighted an additional value of diversity. "This firm is trying,' s/he wrote, "And the culture is being created by the effort. It is intensely important to many of the Caucasians in the firm who stay there, despite inducements from other firms, because they cannot replicate that culture of tolerance toward diversity."<sup>8</sup>

As noted in the Summary above, the 1996 interviews revealed significant differences in minority retention among the large firms, which largely were a function of the employer's apparent commitment to diversity, as manifested in concrete programs. Regardless of where a firm stood on the commitment spectrum, however, minority retention was uniformly regarded to be the paramount problem, to the point that the often substantial gains made in the early 1990's were in many instances feared to have been lost.

#### 1. The "Benign Neglect/Sink-or-Swim" Paradigm

At one end of the spectrum was an otherwise economically and politically diverse group of firms whose approach to minority retention was "benign neglect." Managing partners in these firms generally asserted the firm's philosophical belief in the virtues of diversity. Although they were candid in their appraisal, shared by all the firms in the group, that they were "not where we should be," particularly with respect to retention of African Americans and Latinos, these firms had nevertheless engaged in few retention programs. Generally operating on a self-described "sink or swim" basis, in 1996, as in 1986, these firms are again pinning their hopes on their summer clerkship programs as the "key to the firm's future." Many of these managing partners, and others, however, expressed concern that the relevant applicant pool of "qualified minorities" was insufficient, although the statistical profile of many major feeder schools would appear to the contrary.<sup>9</sup>

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<sup>8</sup> The authors of a recent *Harvard Business Review* article argue that paradigms for the advantages of diversity must go beyond the traditional rationales of fairness and/or minorities' special access to "niche" markets. Rather, they posit, the transcendent value of diversity is "the varied perspectives and approaches to work that members of different identity groups bring...[T]hese groups don't bring with them just their 'insider information.' They bring different, important, and competitively relevant knowledge and perspectives about how to actually *do work* — how to design processes, reach goals, frame tasks, create effective teams, communicate ideas and lead. When allowed to, members of these groups can help companies grow and improve by challenging basic assumptions about an organization's functions, strategies, operations, practices and procedures." "Making Differences Matter: A New Paradigm for Managing Diversity," David A. Thomas and Robin J. Ely, *Harvard Business Review*, Sept.-Oct. 1996, pp.79-90.

<sup>9</sup> Although the passage of Proposition 209 on the November 1996 California ballot could have a significant statistical effect on University of California law schools, as early as 1982 minorities already comprised over 20% of the student population at Boalt Hall, Stanford, Hastings, and UCLA, and this trend

"[Diversity] is in the mix, but has not been a top priority recently," said one managing partner in this group of firms, noting that there was "only so much time" for "extra-curricular" issues like diversity and *pro bono*. "We have paid little attention to diversity, though we are committed philosophically. But it's not a firm goal, other than making it a receptive environment," said another. "We beat the bushes for minorities and spend a great deal of firm money on recruiting efforts, but I am not happy with the payoff," said a third, who went on to note that, "We don't have programs in place to work on the retention issue. We have no handle on retention." Several managing partners acknowledged that their firm was anxious to overcome a bad reputation on diversity issues, but they reported few active programs to overcome that reputation.

Many minority lawyers in these firms, and their counterparts in the large mid-sized firms, were acutely aware of and reacted to their firm's generally passive approach to diversity with a combination of weariness, resignation, disillusionment, and, at times, outrage. "There is noticeable retrenchment in the firm's commitment to diversity because of its focus on the bottom line. We were among the first to commit to the goals, but the attitude now is one of benign neglect," said one. "We are now no longer at the goal we had once achieved and we and several other firms have quietly eliminated our diversity committees. It is gravely disappointing," said another. "There is no respect for diversity in this firm, and I don't think anything is going to change," said a third attorney, "There is too much concern with the bottom line to the exclusion of everything else." One summed it up this way: "There is the perception that diversity is no longer a moral imperative and that it is okay for it to be seen as such. I am not sure that anyone in the firm's management is truly committed to diversity. In the present political climate it is easier for the firm to continue on in the absence of a retention policy."

Managing partners appeared unaware of the negative impact which a firm's lack of active diversity programs had on the morale of minority attorneys and their ability to see a viable future for themselves in that work environment. "The firm's sink or swim attitude about retention has made it so they are not terribly concerned about the large number of minority lawyers they've lost. I feel I am going it alone with no support from the powers that be, and I will have to leave," said one minority partner. Most disheartening were the statements from minority associates. "I get the impression that there are people at the higher levels of this firm who don't believe in diversity," said a minority associate, who then continued, "I feel like an anomaly in the halls. It is no surprise that diverse attorneys join the firm, come, stay a short while, then leave [but] I am not going to be here all that much longer, so it doesn't make much difference to me."

## 2. The "Demonstrably Serious/Searching for Solutions" Paradigm

At the other end of the spectrum was a second group of economically and politically diverse large firms. This group was more likely to have had a long history of diversity

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has continued. The 1996-97 entering class at Boalt Hall, for example, includes 91 minority students, constituting 35% of the class (Asians/Asian Subgroups, African Americans, Chicanos/Latinos and Native Americans constituted 15%, 8%, 10% and 2%, respectively of the class). 38.6% of the entire student body last year was minority. The 1996-97 entering class at Stanford is 31% minority, with Asians, African Americans, Latinos and Native Americans respectively making up 8%, 9%, 10.8% and 3.4% of the class. Total 1995 enrollment stood at 34.4%. 1995 minority enrollment at UCLA and Hastings was 45.2% and 31.3%, respectively, while minority enrollment at Columbia was 31.8%, at Yale 29.7% and at Harvard 27.1%.

efforts in the areas of both hiring and retention, and was also currently creating new programs to maintain and increase the diversity they had achieved. However, both majority and minority attorneys felt frustrated over the more subtle and complex "second generation" retention issues facing them.

Managing partners in this group tended to point with pride to their firm's accomplishments, but also expressed their frustration that retention, particularly of African Americans, still loomed as a continual issue, and that minorities still felt excluded from the mainstream of firm life. "We're proud of what we've accomplished. You name it and we've done it. But people come with expectations and scar tissue. Women and minorities still don't feel they're getting a fair shake. There continues to be a feeling that we are not as sensitive as we ought to be. [Diversity] is a big issue and requires eternal vigilance," said one. "The BASF goals caused an increase in hiring and our firm's heavyweight partners have been involved in creating a more open climate than in other firms, and our numbers are a result of those efforts," said another, who added, "We have impressive minority partners, but we may be putting some strain on these partners to do more and take on issues of diversity as their own." Many others emphasized the firms' determination to do whatever was necessary to attract and retain African American lawyers, whether at the entry level, via associate advancement and/or by strategic addition of lateral partners.

As stated in the Summary above, these firms shared some or all of the following characteristics: (1) They had a small group of minority partners, some of them prominent inside and/or outside the firm, who served as role models; (2) women had advanced well within the firm; (3) prominent white male partners were visibly committed to diversity; (4) the firm had numerous on-going diversity programs; and (5) the minorities in the firm were, as a consequence, more committed to their employer.

"The firm is doing well," said one associate. "We do all the subjective things that support minority associates. I would not want to be at any other large firm. We have a long way to go, but we are doing well compared to other firms...I get great work and am frequently surprised by how much I like it here. I feel that people are looking out for me, that partners are approachable, and I can go to them when I need advice."

### **C. Views of Law Firm Life, White and Minority — Rashomon in the Bar**

The interviews drew into sharp focus the contrasting world views of whites and minorities working in the same environment. White lawyers who would blush at the suggestion that they truly believed America to be a "color-blind" society often clung to the notion that their own 150-person law firm constituted nearly a level playing field for whites and minorities. Not a single minority attorney concurred in this assumption believing, to the contrary, that minorities were subjected to differential and inferior treatment, whether intentionally or unconsciously. The statements of these attorneys closely parallel the paradigm presented by distinguished diversity consultant Jacob Herring, which he has entitled *The Everyday Realities of Minority Professional Life in the Majority Workplace*.<sup>10</sup>

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<sup>10</sup> As set forth by Mr. Herring, these realities include:

- Minorities are presumed to be incompetent until proven otherwise and must overcome this presumption anew with each new supervisor, while the opposite is true for whites.

While there was clear agreement, across racial and ethnic lines, about the overall failure of the large firms to retain their minority associates and partners, the reasons cited therefor tended to break out along racial lines.

## 1. The Challenge of Retention

### a. Isolation/Lack of Role Models

Managing partners and minority attorneys both overwhelmingly agreed that the absence of a "critical mass" of minority attorneys in these firms resulted in the professional and personal isolation of the few minorities who were there. All agreed that the problem was worst for African Americans and for minority women in general.

As in 1993 most white managers initially laid the blame for the firms' retention failure on the same racially neutral external factors which tended to cause white lawyers to leave, *e.g.*, "better opportunities" in the law, teaching or personal commitments which take lawyers elsewhere. A relatively new phenomenon has been the departure of several prominent minority partners for leadership positions in corporate law departments.

Minority lawyers, by contrast, largely traced retention failures to the biases and glass ceiling issues more fully described below. Discriminatory barriers to the advancement of minorities, together with the absence of structured retention programs and the increasing emphasis on economics and rainmaking, have, in their view, combined to make the minority partner an endangered species. "At the partner level, the pressure to perform financially is tremendous. It's a matter of counting the dollars," commented a prominent minority partner. "But it is difficult for a minority partner to flourish without access to the power structure. As Ray Marshall said, 'We plant the seed and then we let them die on the vine.' Minority partners come from a different social environment which is community based — they come from the other side of the fence. The power structure in my firm are people who share the same values and the same club memberships. If you are not part of that, you fend for yourself."

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- Minorities are regarded as representatives of their entire race when they fail, but are considered the exception when they succeed.
  - Minorities are accorded far less latitude for displays of aggressiveness than is considered acceptable for whites.
  - Minorities who are perceived to be in authoritative positions often encounter resistance from white attorneys and staff.
  - Younger minority professionals have few role models in their workplace and develop the perception that there exists a ceiling on promotions for minorities in their firm.
  - Minority attorneys are often excluded from informal networks of communication within the firm and do not receive the specific feedback from supervisors necessary to succeed in the firm.
  - As a result of many of the above experiences, minority attorneys tend to disproportionately experience isolation and loneliness within the organization.

Among the attendant negative consequences cited were: (a) minority associates and law students have no minority role models and/or mentors to whom they can relate within the firm, contributing to a vicious circle whereby the firm is unable to attract new minorities or to give their existing associates a sense of a future for themselves; (b) the few minority lawyers in the firm feel they must bear the burden of dispelling unfavorable assumptions and preconceptions about all minorities, enormously magnifying any mistake;<sup>11</sup> (c) conflicting pressures are created for minorities to minimize "differences" to put white people at ease while, on the other hand, struggling to maintain their own cultural identity; (d) as earlier noted in BASF's original Minority Study in 1988 and *Interim Report* in 1993, minority attorneys remain largely on the outside of the ordinary informal "networking" mechanisms that are critical to advancement in any workplace, ranging from the informal discussions at the water cooler to inclusion in lunches, dinners in people's homes, sports outings and other social events; and (e) attorneys and other staff perceive that minorities have no future in the firm and, therefore, produce substandard work for them.

"I don't have much in common with the non-minority lawyers in the firm" said one associate. "It makes you feel isolated and it's difficult to overcome." Employing a metaphor often used in the interviews with minority attorneys, s/he further stated, "This will always be a country club and a question of identity for those of us who are 'new admittees.'" Other minority lawyers commented on the painful experience of attending firm functions at resort hotels and other venues where the only other minorities present were the waiters, bellhops and parking attendants. "The firm isn't in tune enough with issues that are important to diverse attorneys to consider the impact of that kind of experience on diverse attorneys," commented one associate.

"When you're a minority attorney, it's difficult to create a comfort level," agreed one managing partner. A second noted, "It's easier to get lost if you're different." In addition to aggressive recruitment measures, however, this partner cited the firm's acquisition of lateral minority partners, its mentoring program, the holding of informal small luncheons, his/her own personal efforts to work with associates, and the beginnings of a more structured program to perform legal work in smaller groups and to move associates around more, as ways in which the firm hoped to ameliorate the perceived isolation of its minority associates.

#### **b. The Role of Race and Ethnicity**

Most minority attorneys believed that the absence of a critical mass was largely attributable to subtle but pervasive racial stereotypes and other race-based barriers which continued to impede the hiring and advancement of minorities and to exacerbate the impact of institutional failures affecting all the firm's attorneys.

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<sup>11</sup> One highly respected minority partner, for example, related instances in which minority associates who had performed below standard on one project were immediately and permanently stigmatized and thereafter received less responsibility on future projects, while similarly erring white associates had greater leeway and opportunities to quickly redeem themselves.

**i. The "Standards/Presumption of Incompetence/Affirmative Action" Debate**

The frequently interjected question of "standards" and the related issues of competence and affirmative action were flashpoints for most of the minority lawyers interviewed. They generally believed that there continues to be a pervasive linkage in the minds of many of their white colleagues, equating affirmative efforts to diversify with lowering standards of quality. "It doesn't occur to them that it's offensive to bring in the 'standards' question every time they talk about increasing diversity," said one. "Because I am a minority, the partners think I am an 'affirmative action hire,'" said another. "Then, when they learn I went to Harvard and got good grades, they just assume 'he got the Harvard gig on the same basis.'" "Minority associates are presumed to be less competent until they prove themselves," said a third. "The partners hold the minority lawyers in the City in low esteem," said a fourth. "That may reflect the lower esteem in which they hold their own minority attorneys and candidates." Two others felt that their firm's cutback on minorities being hired in bad economic times, especially African Americans, indicated that the firm presumed minorities to be less competent. Another commented, "This firm is not malevolent. They assume that 'if you have the makings you will be a great partner.' But it's the superstar minority reality — the minority attorney who would be in the President's Cabinet anyway will make it here. But the majority of partners are not in that league."

Although resistance to diversity among some partners was mentioned by a number of managing partners,<sup>12</sup> most did not speak pejoratively about fears of "lowering standards" in order to achieve diversity as many of their counterparts had in 1993. The tenor turned more to frank discussion of a broadening firm perspective as to what constituted the qualified applicant pool. Although there was no discussion of whether the firm had historically employed variable standards in the case of whites (a view strongly held by many minorities), some managing partners stated their firm's policy to, "look beyond grades," *e.g.*, to "speaking skills, technical background, whether an applicant had to work while in school, and, as one partner put it, that special 'spark — someone who will make it.'" <sup>13</sup> Another discussed how the firm had moved away from insisting on "the top 10% in the top 10 schools," and had seen "no drop in quality"; two stated that as between two otherwise "equal" candidates, the firm would hire a minority. One went on to say, "This is too tough a business, so you can't diminish quality."

**ii. Racial/Ethnic Differentials**

Although the statistics are clear that African American attorneys do better in San Francisco's largest firms than in those of any other major city except Miami, the perception of several managing partners and some African American attorneys was that San Francisco firms (and the city as a whole) are hostile to African Americans, especially men. One partner, for example said, "There is subtle but pervasive racism at all levels that

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<sup>12</sup> One partner commented that, "The lack of clarity and the entire subject makes some people queasy;" another thought some people in the firm believed minorities to be less competent.

<sup>13</sup> Several years ago, a major San Francisco firm had performed an analysis to determine what qualities were most predictive of making partner, analyzing grades, LSAT scores and performance on a variety of objective and subjective measures. When the smoke cleared, the only factor that stood out was "pizzazz."

impacts mainly on blacks." Another stated, "It's the unwillingness of white America to give up its racially-based fears of black men that ultimately makes their position untenable in the law firm." An African American associate in another firm said, "No African American has ascended to partner from a first year associate position, none ever, in 100 years." Touching on a theme mentioned by several African American attorneys, s/he continued, "As the color of the skin darkens, a person's progress here lessens. There is a presumption of failure and always a question of ability and talents. The staff knows that an African American attorney will never make partner, and favors whites and Asian Americans over blacks, which slows and distracts you."

A number of other minority attorneys commented on perceived discrimination against African Americans, by both attorneys and staff. One Asian partner, for example, stated that African Americans were, with rare exceptions, assigned to the least lucrative and least prestigious department of the firm, and, as a consequence, never made partner. A minority associate noted his/her firm's historical pattern of assigning African Americans to "bad" partners, causing them to leave prematurely.

Asian Americans were perceived by other minorities and by managing partners to be making better headway than either African Americans or Latinos in the large firms, and the statistics bear that out (although the number of Asian partners decreased by 3, from 12 to 9, between 1993 and 1996.) One Asian American commented that perhaps firms see it as "less risky" to hire Asians, because of a perception that they are "better qualified." Managing partners cited the growing Pacific Rim practice of many firms as the reason for the growth.

On the other hand, many Asian Americans, women in particular, reported feeling isolated and ignored and saw no future for themselves in the firm. Particularly disturbing to them was the frequency with which one Asian American woman would be taken for another. Two Chinese American attorneys also commented upon the experience of being included in meetings with Japanese clients on a partner's mistaken assumption that they were Japanese.

This experience was not limited to Asian Americans. Two minority lawyers commented on the fact that an associate in each of their respective firms was thought to be from one particular racial group, but was, in fact, from another.

## **2. Selected Issues Affecting Retention**

### **a. Differential Assignment<sup>14</sup>**

While managing partners generally said that assignments, both as to particular attorneys or as to particular matters, were made on a color-blind basis, numerous minority respondents, across all racial lines, noted the tendency of senior white male attorneys to reach out and "bring along" more junior white male attorneys much like themselves. "Even if you're a star," said one minority partner, "it is impossible to get into certain practice areas, which are reserved for the fair-haired attorneys." "No minority associate has ever risen from one

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<sup>14</sup> For an excellent discussion of the institutional and other factors which adversely affect the employment prospects of African American and other minority lawyers, see David B. Wilkins and G. Mitu Gulati, "Why are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis," 84 Cal. L. Rev. 493 (1996).

particular department in our firm, including an extremely talented person whose failure to make partner continues to have repercussions for younger associates in the firm," said another. "Every day is white male day," said a third.

Several minorities noted, however, that they had been used to "front" on cases in which race discrimination was an issue. Others had on occasion found themselves in the firm's marketing materials, or unexpectedly taken on a beauty contest. "I was once taken on one, but I had no role except to sit there and be black," said one minority lawyer. And, although all the large firms in the study are longstanding participants in the California Minority Counsel Program (CMCP), managing partners and minority attorneys alike viewed the program as primarily beneficial to minority-owned firms. Nevertheless, many felt that the CMCP's goals, even if honored only in the breach, were helpful in focusing the firms' attention on diversity as a client-driven consideration. No firm reported having stressed the possible advantages of the CMCP to their minority lawyers and/or to the firm as a whole.

Unlike a few of the mid-sized firms, very few large firms reported any formal mechanism to ensure against unconscious bias in assignment. "You can't be obvious in assignments," said one managing partner, "or it would be perceived as unfair and as stigmatizing." Another firm manager noted that the lack of trials in today's law practice made it much harder for newer lawyers to "show their stuff," making it that much more necessary to "hustle good assignments," but that firm had no mentoring or other retention programs in place. One managing partner, however, stated that the firm was always looking for opportunities to include minorities, and deliberately structured committees and work assignments to assure diversity. Notably, minority attorneys in this second firm were among the most positive in the entire study.

One minority partner, commenting on the situation faced by his peers, put it this way: "We, the newer minority partners, are late to come to the table. The dinner is already over and we are picking up the dishes and cleaning up."

#### **b. Differential Marketing Opportunities**

Despite the efforts of the CMCP and a few major clients — Wells Fargo in particular — most minority lawyers said they never received any training in marketing and were rarely included in "beauty contests" and other forms of marketing and contact with the firm's prospective or current clients. One partner reported being taken along on such a marketing foray, to find that s/he was not put on the work that had been successfully secured. Another partner was blunt. "Our partners refuse to involve their minority partners in personal relationships with clients even when it means developing incremental work, and the reason in part is an almost hysterical interest in protecting their back, and in part it's racism." "I am looked upon as the minority 'golden child,'" commented a minority associate, "[But] it is the white guys who are included in marketing."

## **VI. LARGE MID-SIZED FIRMS**

### **A. The Numbers**

By 1995, the large mid-sized group of firms for which longitudinal data were available had closely approximated the levels of minority representation on the largest firms in the City. Between 1990 and 1995, while the San Francisco offices of the ten large mid-sized firms studied had reduced in size by 17%, from 752 attorneys to 624 (substantially all attributable

to a 32% drop in associates), the minority ranks in these firms had risen 36%, from 44 to 60 attorneys. Minorities thus represented 9.6% of all attorneys in these firms, as compared to 5.8% in 1990<sup>15</sup> and as compared to 11.6% in the large firm group. Minorities comprised 4% of all partners in large mid-sized firms in 1995 (as compared to 3.3% in 1990), or 1% short of the 1995 partnership goal of 5%, but 16.5% of all associates in these firms were minorities (up from 9% in 1990), exceeding the 1995 associate goal of 15%.<sup>16</sup> Five firms met the partner goal, six met the associate goal, three met both and two met neither. Two of the firms, however, had no minority partners, and two had no minority associates.

In contrast to the more dramatic vicissitudes in absolute numbers of minorities in the largest firms over the 1990-1993-1995 period, the large mid-sized firms as a group followed a more even progression, and in 1995 had lost comparatively few of the gains they had made between 1990 and 1993. In fact, the total number of minority partners increased slightly between 1993 and 1995, from 12 to 14, while the total number of all partners in these firms decreased by 14, from 360 to 346. And although the already minuscule number of Latino partners decreased by 1, from 3 to 2 and, the number of African American associates dropped from 19 to 15, African American partners and Latino associates rose slightly in numbers, and Asian partners and associates held steady.

The starkest statistic was that of the 14 associates eligible for partnership in these ten firms in 1996 or 1997, not one was a minority.

## **B. Attitudes Toward Diversity**

The large mid-sized firms were far more varied than the large firm group in size, age, history and culture, and consequently came at diversity issues from a wider range of perspectives. A number of them began as "boutiques," specializing in, *e.g.*, insurance defense, international law, insurance coverage, or labor and employment; most have since grown dramatically and have become more full service law firms. They run the gamut from old-line "white shoe" firms to more recently formed, rapidly expanding partnerships, some of which were hit hard by the recession. As a group they are less likely to have branch offices than the larger firm group, and if they do, they are likely to be within the State of California. Their salary levels are generally lower than those in the largest firms and they view their resources as more limited for purposes of implementing diversity initiatives. Lastly, many of them have not been as closely involved in the local bar's diversity efforts as their large firm counterparts have been. The

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<sup>15</sup> Currently, African American, Asian Americans, Latinos and Native Americans constitute 3%, 3.8%, 2.1% and 0.64%, respectively of all attorneys in these ten firms. African Americans, Asian Americans, Latinos and Native Americans constitute, respectively, 1.1%, 1.4%, 0.57% and 0.86% of all partners, and 5.4%, 6.8%, 4% and 0.4% of all associates in these firms.

Eight additional large mid-sized firms that were not studied in 1993 were asked to submit statistical information for 1995 only. This combined group of 18 firms produced slightly higher minority averages. Minorities overall were 10.4% of all attorneys in the 18-firm group; 4.8% of the partners and 17.1% of the associates in this larger group were minority.

<sup>16</sup> While all partners in these firms rose only 1% between 1990 and 1995, minority partners rose 56%. Similarly, while the total of all associates dropped 32% over this period, minority associates rose 31%.

managing partners, therefore, tended to be less familiar with the Goals, and less knowledgeable about their own firm's diversity efforts or those in the larger legal community.

As in the larger firms, the managing partners of the large mid-sized firms were disappointed about their inability to retain minority attorneys, but many also felt that they stood second in line to the higher paying larger firms in their ability to recruit minorities. A few also felt that their firm's particular "niche" was not attractive to minorities. The pattern once again, however, was that the firms which were making a more systematic, sustained, tangible investment in minority diversity had more to show for it, and the minorities in those firms were more likely to express satisfaction with their work environment.

At one end of the spectrum were firms whose managing partners and/or minority attorneys felt that the firm was a "reluctant participant" in the Goals and Timetables program, with very serious problems in the diversity area. "What BASF wants is nice, but it doesn't matter," said one. Although s/he said s/he was frustrated and discouraged about the firm's poor record of minority retention and stated that s/he felt that every minority who had left had had performance problems, s/he nevertheless said s/he would not consider "checking in" with the few minorities in the firm to give encouragement or to help avert problems before they became insurmountable, because s/he was "colorblind" in his/her treatment of attorneys in the firm. The firm had engaged in few if any special programs targeted at recruitment or retention of minorities, and s/he saw little room for improvement since it planned to concentrate on laterals in the future and "there are no Latino or African American laterals out there." Another managing partner in one of the larger firms in this group — which had no Latinos and one African American — nonetheless felt there was no need for the firm to change its approach to hiring and retention.

Minorities in these and several other firms with poor records did not mince words. "It is a horrible place to work," said one, adding that minority attorneys were given inferior work assignments, were assigned poor secretaries, were not included in the firm's hiring process or in any other part of the firm's management, and were subjected to insulting presumptions of incompetence. Another said, "The firm has no programs of any sort, no plan, no idea. The summer associates get blonder and whiter every year." A third commented, "There is absolutely no way that the hiring partner is committed to the goals, and the managing partner is too busy and does not care. There is no future for diversity here and the firm doesn't care."

Several firms presented a graphic divergence of opinion between the managing partner and the minorities in the firm. The managing partner of one firm, for example, stated that the firm made an "all out effort," had "bent over backwards to get as much diversity as possible" and had "no problems whatsoever." The minorities in this firm stated that the firm was not open to diversity, had no programs for recruitment, summer clerkships, mentoring, assignment or training or any other diversity-based initiatives, fostered an atmosphere of cut-throat competition, openly discriminated against women, and was, in general, "doing very poorly" on every diversity dimension.

Another managing partner in a large firm with no minority partners and one African American associate described his/her firm's culture as "extremely open to diversity...built by open and caring people," but noted that in spite of the firm's poor retention record, the firm felt no need to participate in programs like the CMCP or the First Year Minority Clerkship Program, and had discontinued a number of affirmative efforts it had earlier made to attract and keep minorities. S/he was frankly flummoxed by the situation, but was "not sure what we can do... We have high standards and are not about to give those standards up."

The minorities in the firm, while cautiously optimistic about slowly evolving changes, were less sanguine about the firm's overall approach to diversity. "Our problem is that the firm is made up of good people for the most part, with a sincere interest in diversity. But as a result, it is very difficult for these people to see that they could be biased," said one. "The firm has no idea that it has a different standard for white men and for everybody else. The firm tends to pitch white males, and they are treated better." Echoing Jacob Herring's paradigm, this person continued, "If a white male messes up, there are always excuses made for him. If a woman or person of color has a problem, 'they can't cut it.' If a white guy is nervous, he's nervous. If an African American is nervous, he or she lacks confidence." Both s/he and other minorities in the firm noted the firm's apparent preference for minorities who "seem to be white and mainstream and don't identify with their communities...There is an inability in the firm to focus on different models of excellence," said one. "The partners have no sense of how minorities contribute to the firm's ability to serve an increasingly diverse and global clientele, or even what to say to minorities. They don't think being a minority adds a different perspective, a different point of view, but it does, and they are unaware of how diversity makes the place more interesting and comfortable for everyone."

At the other end of the spectrum were firms which had very actively pursued and were continuing to pioneer a variety of programs to recruit and retain minority attorneys, including lateral hires, diversity committees, diversity training, mentoring programs, centralized case assignment, an associate rotation system, personal efforts by the managing partner and other senior white attorneys to check in with and work with minority attorneys, and some combination of the other programs outlined at the end of this *Report*. These firms were more likely to have one or more strong minority partners who had aggressively sought to attract others. "I told them that if I didn't see another person who looked like me sitting across the partners table soon, I'd leave," said one. "I want this firm to be a safe place [for minorities] to practice, so that attorneys don't have to worry about carrying the weight of their race on their shoulders." The minorities in this group of firms still fought the battles of isolation and struggle to maintain identity in an overwhelmingly white workplace, but they generally felt more positive about their work environment because of their firms' efforts. "The diversity committee helps to create a comfortable environment," said one. "Diversity training helps to ease the burden of isolation," said another, "But we sorely need minorities to rise to senior levels in the firm as role models — It's the key to retention." "This firm gives people the opportunity to succeed. They are gentleman lawyers," said a third. "I measure success by the numbers, and five of the new six associates are minority," said a fourth. "Being minority or multicultural is an advantage here and we do not feel like tokens or stigmatized...The managing partner often checks in with the minority attorneys and the firm generally tries to make this a comfortable environment."

The Goals and Timetables had proven to be useful in both kinds of firms. "The Goals are good because they force the firm as a competitive enterprise to meet the standards it has committed to," said one attorney. "We were initially passive but now take a more aggressive position on diversity." As Harvard Professor David B. Wilkins has written, "The solution is...to extend [voluntary affirmative action in hiring] to decisions regarding the choice of associates for projects and other internal firm decisions. Designing affirmative measures that will ensure that [minority] associates have meaningful access to the training track is a complex task. Goals and timetables for promotion as well as hiring are a good start, but standing alone, they are unlikely to change the way that partners assign work or decide whom to mentor. If firms are truly serious about improving the prospects of their black lawyers, they must implement policies that change the incentives of partners."

## VII. SMALL MID-SIZED AND SMALLER FIRMS

### A. The Numbers

Because the numbers are so small in several of the nine firms studied longitudinally, very slight population changes exerted a dramatic impact on percentage calculations. Individual experiences among the different firms also vary widely.

In contrast to the larger firms in the Study, the nine firms in this group have steadily grown between 1990 and 1995, from 206 to 263 attorneys, or 27.6%. The minority population in these firms more than doubled over this period, increasing from 14 to 30 attorneys, although substantially all of this growth occurred between 1990 and 1993. Taken as a group, these firms have exceeded both the partner and associate goals, at 5.7% minority partners and 17.9% minority associates. Four of the firms have no minority partners, three have one, two have no minority associates, and one has no minority lawyers at all.<sup>17</sup> Only one (an African American) of the 12 associates eligible for partner in 1996 or 1997 is a minority.

Data collected in 1995 from small/small-mid-sized firms which had signed the Goals yielded statistics from 35 firms, 14 of which had two or fewer total associates, and, at the other end of the spectrum, eight of which had ten or more associates. Of these 35 firms, 19 had no minority partners, eight had one, and, at the high end, four firms had three or four. This group as a whole exhibited higher minority percentages than the smaller group studied longitudinally, far exceeding both the partnership goal, at 10.6% and the associate goal, at 21%. These numbers, however, are largely reflective of gains by Asian Americans only, who exceeded African American partners by a factor of 3 to 1 (18 v. 6), and outstripped Latino partners by a factor of 3.6 to 1 (18 v. 5). Similarly, Asian American associates exceeded African American associates by a factor of 2.9 to 1 (29 v. 10), and Latino associates by a factor of 5.8 to 1 (29 v. 5).

### B. Attitudes Toward Diversity

Adoption of the BASF Goals had had more of a conscious impact here than in the larger firms. "There is wider acceptance within the firm, since our adoption of the Goals, of the need to diversify as a real goal, not just a nice notion," said one attorney. There was, however, a distinction similar to that noted in larger firms, between firms which were actively involved in systematic, self-conscious affirmative efforts to retain (as well as recruit) minorities, as contrasted to those that adhered to a relatively passive self-described "color blind" approach on retention. The minority attorneys tended to express a degree of job satisfaction and commitment to the firm roughly commensurate with their perception of the firm's commitment to diversity.

Firms whose leadership articulated, in general, a commitment to hiring minorities, but color-blindness when it comes to retention tended to have fewer diversity programs, and in some instances resisted even important symbolic gestures of firm commitment, *e.g.*, firm recognition of Dr. Martin Luther King's birthday. Their minority attorneys, in turn,

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<sup>17</sup> In 1995, African American, Asian American, Latino and Native American associates comprised, respectively 6.5%, 9.8%, 1.6% and 0% of the 123 total associates in the nine firms. The 1995 minority partnership ranks are composed of one African American, four Asian Americans, three Latinos and no Native American, representing, respectively, .71%, 2.9%, 2.1% and 0% of the 140 partners in the nine firms.

were highly cognizant of this sink-or-swim mentality and its consequences. "I'd like to tell you a success story. I just can't think of any" said one. "There are no policies or programs to collectively address diversity issues." In discussing the lack of a mentoring program, for example, s/he said, "Consequently, minority attorneys suffer from an alienation that non-minorities don't face because non-minorities can integrate without a mentoring program." At another firm whose managing partner said "I feel very strongly that no attorney here feels minorities are less competent" and that "if race is a factor, it's a positive in the person's favor," an associate said, "No one at the firm really cares enough to make retention of minorities an issue to be reckoned with at the firm...Many partners subscribe to stereotypes including the belief that minorities aren't quite as competent and Asians are passive." While the leadership of that firm was fairly pessimistic, it expressed the hope that the hiring of laterals might make the firm's future "reasonable or fair;" that firm's minorities felt that retention failures would continue to vitiate the firm's hard-fought gains in hiring. "Without some type of policy change," said one, "minorities will continue to go into a revolving door."

One minority attorney closed the interview with the thought that if any changes were ever to take place in that firm, it would only be through his/her efforts, but "only if I stay that long."

## VIII. FIRMS WITH OFFICES OUTSIDE SAN FRANCISCO

### A. The Numbers

Firms which had offices in the City but were not headquartered in San Francisco were not studied in the *1993 Interim Study*, but statistical information was collected for purposes of the *Goals '95* study from a group of six such offices, two of which had signed onto the Goals. Interviews were conducted at four of these firms.<sup>18</sup>

As a group, the six firms for which data were available had a level of minority partners that was similar to that of the large firms, constituting 4.9% of all partners, but their associate level was far lower than that of the large San Francisco-based firms, constituting 11.6% of all associates.<sup>19</sup>

### B. Attitudes Toward Diversity

As smaller branch offices of very large firms headquartered elsewhere, and as relatively new kids on the block, this group of firms were a hybrid. Though they exhibited many of the same patterns as the homegrown firms, Latinos were particularly poorly represented.

As new start-ups, these firms had very few minority partners, except for the occasional lateral hire, and there was more of an emphasis on hiring minority laterals than in many San Francisco based large firms. To the extent that a firm had engaged in affirmative efforts in recruitment and/or retention, to the extent its leadership was seen as committed, its

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<sup>18</sup> Interviews were also conducted at, and statistical data was collected from, a large firm located outside San Francisco in a nearby city. That information is not reported in this Study because it would be clearly identifiable as coming from that particular employer.

<sup>19</sup> The two firms which had signed the goals had slightly higher minority representation than the four which had not.

minorities knew about it and in general felt more positively about the firm and their future — even if the numbers were not there yet.

In one firm, for example, although the minority associate deplored the firm's "hit or miss" approach to retention, s/he felt that the firm's strong commitment to the CMCP, as well as a recently commissioned retention study, were hopeful signs. S/he appreciated the fact that the managing partner and most others in the firm were genuinely interested, even though retention was not yet an overall clear firm objective.

Conversely, an associate in a firm seen as having little commitment to diversity spoke of minority isolation, application of different standards, and a "flavor of the year" approach regarding hiring. "The prevailing attitude in the firm these days is that it's okay to be indifferent to the concerns of minorities."

## **IX. CORPORATE LAW DEPARTMENTS**

### **A. The Numbers**

In a pattern similar to, but less drastic than that of the larger firms, the total attorney population of the five corporate law departments which were studied longitudinally declined 14.7%, from 252 to 215, between 1990 and 1995. Even taking into account the fact that most of these offices are relatively small, averaging only 44 attorneys, their overall percentages of minority attorneys at all levels outstripped those of the large corporate firms, and included two minority general counsel. The number of minority attorneys in these departments rose 32.2%, from 31 in 1990 to 41 in 1995, and represented 19.1% of all attorneys in 1995 as compared to 12.3% in 1990.<sup>20</sup> 12.6%, or 16 of 126, of the higher-level counsel in these departments and 28%, or 25 of 89, of the remaining counsel were minority.<sup>21</sup>

### **B. Attitudes Toward Diversity**

The eight corporate law departments at which interviews were held varied widely in their diversity efforts and results and in the perceptions of their attorneys. Most were also coping with the uncertainty of corporate mergers and/or downsizing, combined with efforts by their parent corporation to downsize or hold static the legal department while re-doubling scrutiny of their work. This often occurred despite tremendous growth in the corporation itself, as well as an exponential increase in the legal complexity of its business transactions. However, in part

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<sup>20</sup> In 1995 African Americans constituted 7%, Asian Americans 8.4%, Latinos 3.7% and Native Americans 0%, respectively of the total of 215 attorneys in the corporate law departments which were longitudinally studied, as compared to 4%, 4%, 2.7% and 0% of the 252 total in 1990. Similar to the smaller group, the total minority percentage was 18.3% for the entire group of nine corporations who submitted statistics in 1995, although both African Americans and especially Asian Americans were better represented. African Americans, Asian Americans, Latinos and Native Americans constituted 6.7%, 8.7%, 3.6% and 0%, respectively, of all attorneys in these nine departments. It should be noted that by 1995 the numbers of Latinos have fallen even farther behind those of African Americans and Asian Americans, and Native Americans have had no presence at all in these departments.

<sup>21</sup> The statistics of the four additional corporate signatories to the Goals who submitted statistics for 1995, when combined with the five corporations longitudinally studied, yielded substantially similar results.

because large corporations have historically been more active than law firms in seeking to institutionalize diversity, and in part because corporate general counsel often have more control over their departments than do law firm managing partners, some corporate law departments of major corporations had been more self-consciously aggressive than were their law firm counterparts in their efforts to diversify their inside and/or outside counsel ranks.

At one end of the spectrum was a well integrated law department of a newer corporation whose general counsel was him/herself a minority, who commented, "Our standard of quality is inclusive of race, not exclusive of race. Since we have simply sought the best attorneys we could hire, diversity has followed quite naturally." A minority attorney in the department agreed, noting that corporation as a whole was open to diversity, celebrating *e.g.*, Black History Month and Dr. Martin Luther King, Jr.'s birthday. "We're doing phenomenally well. The main reason is the standard set by the general counsel. The atmosphere in our department is warm and hospitable. Diversity is not only considered good here, it is considered a part of excellence. People are happy here and they stay."

Another general counsel felt that the legal department's success went hand in hand with the corporation's "wonderful success in promoting diversity...Women and minorities are unquestionably taking positions of real power in the corporation, making decisions that have a profound impact on the corporation's future. The whole corporation markets its diversity." One minority attorney in this department noted that while senior counsel had their favorites, many of them were minorities, so it had no racial impact. "Many minorities," s/he said, "have developed halos." The real threat to continued gains in the corporation was said to be the merger with a less diverse company and, as in many law departments, the potential of layoffs or a no-growth posture.

Another general counsel who had focused heavily on diversity stated, "The company has had a cultural diversity program for a long time, and there is support from top management. God forbid if there were not, since we have had to use new law firms to meet our diversity goals. But the efforts of the legal department are part of the broader corporate environment, which is sensitive to issues of diversity. Our success in recruiting is a result of institutionalizing new procedures that go outside previously established processes. We're starting to see how the process feeds on itself."

Membership and sometimes leadership in the CMCP, as well as an overall corporate commitment to diversity, had resulted in most of the corporations' active insistence, in retainer agreements and informally, that minorities be used by outside law firms on their matters. "We seek and demand diversity in outside counsel," said one. "In our retention letter we ask that the first person we see on any matter be either a woman or a minority. We also ask for annual reporting on the women and minorities in the firm and on our work, both to counter a firm's presumption that we wouldn't want minorities on our work, and to make sure that they think about diversity in making their assignments to our matters." Another general counsel said they had done well with the CMCP goal of retaining more minority-owned firms. Despite requiring reporting from large firms about minority participation, "We have done a less credible job of holding a pistol to their heads," s/he said, although a minority attorney in his/her department said that s/he had recently replaced a firm with one that had a minority partner who could handle the work. Some minorities in general counsel offices, however, including a few senior managers, stated that they had not actively pursued the goals of the CMCP. The reasons stated by one were similar to those of non-minorities. "I already have good attorneys working for me," s/he said. "I

have a sense that my firms focus on diversity in any event, and, I suppose, it's a result of a sense of complacency...It seems like a 'stick' approach. There's no carrot."

Minorities in departments whose general counsel had made few diversity efforts had the same views as their similarly situated minority colleagues in law firms, although there was the added problem that attitudes of the "client," *i.e.*, the larger corporation in which these attorneys worked, were sometimes to the right of the department's own leadership. "The higher ups are hesitant to rely on minority attorneys," said one. "Our record is abysmal," said another, in a corporation whose general counsel exhibited little concern at the dearth of minorities in the department. "The Goals are almost an irritant. The people here who get opportunities are those that don't make waves — the good corporate soldiers. Minorities need to understand reality and stop asking for diversity. The only answer is minority-owned businesses." Conversely, minorities in departments whose low minority numbers were attributable in part to promotions into higher management were more positive about their work environment, especially where the CEO and general counsel were well regarded. "The CEO has pushed for true diversity, is proactive in training employees, enforces rules that racism and sexism won't be tolerated, and people of color have advanced dramatically into management," said one minority in a department with only two minority attorneys. "The guy running the department is an open, honest manager who has a large amount of experience working with all types of people and is willing to delegate."

Yet even in corporations whose general counsel had had reasonable success in achieving diversity, conscious in-house efforts often focused primarily on recruitment rather than on retention and advancement, with few minorities having reached the ranks of upper management. Often unbeknownst to the general counsel, some minorities in their departments expressed a serious sense of isolation and exclusion from the dominant corporate culture and a feeling that diversity was not truly valued. "As a minority male, I think differently, I am just a different person from some of my white colleagues...We don't have anything in common, and people need to feel connected. I don't feel anybody is looking out for me...[and] presumptions do operate here. If I make a mistake, it's amplified all the more," said one. "Minorities are not being placed in the pipeline to rise within the organization," said another. "We are experiencing a sense of complacency, but in fact we lack a critical mass, and are especially underrepresented in management," said a third. "We are held to a higher standard and are more likely to be second guessed." This stood in contrast to the views of a senior manager, who touted extensive diversity efforts, which were apparently unknown to the junior attorney. "We are developing a critical mass," said the senior counsel. "The idea that diversity can be beneficial is gaining moment within the corporation as a whole," s/he added.

Finally, some minority counsel cited the low turnover in these departments, causing the minorities to be the lowest-tenured, and, therefore, lowest paid employees, even though most of them were experienced laterals. This created a wage gap that has widened with time. "There is a feeling here that women and minorities don't need to make as much...The company says your experience is different and somehow less valuable," commented one senior minority counsel.

## **X. GOVERNMENT LAW DEPARTMENTS**

### **A. The Numbers**

Although none of the government law offices in San Francisco had been asked to sign the Goals and Timetables, the Committee felt it important to assess the progress they had made with respect to diversity, particularly as compared to the private bar. Statistics were

gathered and interviews conducted at the City's three major public law offices, as well as the U.S. Attorney's Office and the California Attorney General's office.

The combined minority percentages of the offices of the San Francisco City Attorney, District Attorney and Public Defender were very substantially higher than in any other employer group, with minorities constituting an overall 29.8% of all of the 336 attorneys in these three offices. African Americans, Asian Americans, Latinos and Native Americans constituted, respectively, 8.3%, 12.8%, 8% and .6% of all attorneys in the combined offices.

## **B. Attitudes Toward Diversity**

Both the statistical representation of minorities and the subjective views of those working in most of these offices represented a sea change from the tenor of interviews with their private bar counterparts. In three of the offices, both the head of the office and the minorities within the office emphasized the high degree of diversity in their workplace, although the head of the office tended to have a rosier view of the situation. A fourth office had suffered from the vagaries of politics, with its future highly dependent upon who occupied the top spot.

The office chiefs generally considered themselves to be, and were observed by the minorities in their offices as, aggressively committed to diversity over the long haul, and their statistics bore it out. "It's a matter of commitment," said one office head. "Diversity is a part of the office culture and minorities blend in well. Offices missing minorities are missing good lawyers." A senior level minority attorney agreed. "There's a high level of sensitivity here because we are diverse up to the highest levels." A newer minority lawyer felt that, "Management wants a diverse office and uses this in hiring." Another office chief spoke proudly of his/her recent hires, 47% of whom were minorities, and stressed that s/he had made it a top priority to promote minorities to managerial spots and other positions of authority, particularly in certain practice areas that had not traditionally been held by minorities. A third office head felt that the office had experienced enormous success in increasing diversity well above the BASF goals. The minority interviewees agreed. "This is a healthy work environment which attracts minorities, due in large part to the head of the office. We are not tokens, but one of many in a diverse, healthy work team." This person stressed that the office chief had a "concrete plan and goals which were well established." S/he also commented that minorities were frequently assigned to key cases, which helped them to develop strong skills and to achieve high visibility.

All stressed the importance of word-of-mouth recruitment by other minorities in the office. One minority noted that the office chief's conduct of "informational interviews" on an ongoing basis for future openings ensured a strongly diverse applicant pool. S/he also stated that s/he had left a prestigious downtown firm to come to this office because of the office's reputation, the office chief's known commitment to diversity, and because s/he had felt like a token minority in a predominantly white corporate culture that had no minority support or retention policies.

Among the problems discussed by this group were: (1) These offices are not growing, diminishing the opportunity to bring in new minority attorneys; (2) The tight employment market, combined with the increasing dissatisfaction of lawyers in downtown firms and a perceived drop in African American and Latino law graduates, were believed to have combined to create a larger, but a whiter, applicant pool; (3) As a corollary to (2), the flight from other walks of legal life had produced more people, including minorities, who were using the government law office as an interim "vehicle for trial experience," rather than viewing criminal or municipal practice as a career goal; (4) Similar to the problem cited in the corporate departments, because of low turnover in the higher level positions, and, in some offices, a policy of basing

salary solely on tenure in the particular law department, minorities tended to be locked into a comparatively lower salary structure than longtime white employees, even if their work was of the same quality and level of difficulty as that of an attorney with more tenure in the department; (5) There was viewed to be a serious shortage of Latino attorneys and others with bilingual skills; and (6) The policy of many offices to hire temporary or contract lawyers, and then promote them into regular positions as they came open, produced fewer minorities.

## XI. RESPONSIVE PROGRAMS

Although San Francisco employers have employed a number of approaches to enhance recruitment and retention of minority attorneys with (varying success over the years), the managing partners/chief counsel generally seemed unaware of the enormous symbolic value, in the eyes of their minority attorneys and recruits, of the office's perseverance in these efforts. The interviews as well as the statistical evidence suggest, however, that the impact of an employer's insistence upon creating, evaluating, remolding and enlarging upon structured programs cannot be overemphasized and these efforts should be made known to all attorneys in the workplace. Successful programs cited by interviewees included:

### A. Effective Recruitment Programs

- Participation in the **Bay Area First Year Minority Clerkship Program** or similar programs (*e.g.*, Tulane): Although one managing partner commented that other minority clerks felt the program demeaned their success in having been hired "on the merits," the Program has had a number of success stories and has broadened the pool of talented minority law students who ultimately secure jobs in prestigious corporate law firms and elsewhere.
- Use of **headhunters who specialize in minority attorneys**; specific requests to headhunters for minority candidates, for both new graduates and laterals.
- Concerted commitment of the firm's hiring committee to **inclusion of a large percentage of minority students in their summer program.**
- **Award of "bonus points" to recruiting attorneys** which are calculated into decisions on salary, bonus and advancement.
- Inclusion of **minority lawyers on the Hiring Committee**, including the Chair; recognition and use of the firm's minority attorneys for informal "word-of-mouth" and formal recruiting and follow-up of minority law students and possible laterals. Interviews revealed how important the special efforts of a firm's minority partners and associates were in seeking out and convincing promising minority recruits that the firm was a good place for minorities to work, and in convincing the firm to broaden the recruitment pool and look more closely at qualified minority candidates.

- **Special training for interviewers**, including videotapes, manuals, use of diversity consultants and frequent in-firm discussions of the importance of diversity and of screening for minorities.
- Broadening the pool of feeder schools, no matter how small and select a firm may consider itself to be, to include **schools with greater numbers of minority law students**, e.g., Howard. One minority attorney noted with dismay the fact that his/her firm had dropped interviewing at Howard as an economy measure.
- Communications to law schools, and to minority law student groups at the schools where the firm ordinarily interviews, **encouraging minority applicants** and touting the firm's adoption of the Minority Goals and Timetables and participation in programs like the California Minority Counsel Program and the Minority Clerkship Program.
- **Holding receptions** or substantive programs geared to emphasizing the firm's commitment to diversity at the firm or at law schools.
- **Asking** minority and other respected **law professors** to recommend promising candidates.
- Attending **minority job fairs**, in order to meet promising students who don't necessarily attend the firm's usual feeder schools.
- Holding "**informational interviews**" for minorities with senior partners who later can be contacted when positions open up.

#### **B. Effective Retention Programs<sup>22</sup>**

- **A highly visible and substantial** commitment by top-level firm management.
- A well funded **minority associate retention committee** of which the managing partner is a member or Chair and which he/she regularly attends.
- **Hiring of minority laterals:** Although this has been more common at the large mid-sized firm level, several large firm managing partners were seeking to attract minority lateral partners (and, in some instances, associates), particularly African Americans. These firms understood that many minority laterals were unlikely to have a large book of business, but felt that it was in their firm's long run economic interest to achieve better diversity in the partnership at a faster rate than their associate pipeline could provide. Minority partners and associates welcomed such a development, believing that competition for minority partners would raise the stock of the minority partner group as a whole

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<sup>22</sup> See more detailed Recommendations in Attachment B.

(though some firms were seen as posing insurmountable barriers to the success of any minority partner, lateral or not.)

- More strategic use of the **California Minority Counsel Program**: Only one firm had systematically tried to ensure that everyone in the firm, including the management committee and practice group leaders and all (other) minority attorneys in the firm, is made familiar with the CMCP and encouraged to take advantage of the opportunities it provides for access to corporate counsel. These include: participation by managing and senior minority partners on the CMCP Steering Committee, which includes the General Counsel of many of the state's largest corporations; participation in quarterly Round Tables, at which general counsel and minority attorneys together focus on opportunities and hot issues in a particular substantive area of law; attendance at the CMCP Annual Conference, including the Corporate Awards Dinner and numerous interviewing opportunities; and profiling the firm's minority attorneys in the printed and online *CMCP Directory*. The corporate membership of the CMCP has grown dramatically in 1996, including the addition of major corporations like Disney and Sun Microsystems, and the Program has grown increasingly sophisticated in recognizing, for example, the importance of retaining minority partners as the billing partner on client matters. Firms should regularly monitor and include routine reports to the management committee on the progress which has been made on achieving the CMCP goals.
- Implementation of a **formal mentoring program**: Despite the *ennui* with which most managing partners and some minorities view mentoring programs, it is clear that a formal, written mentoring program is a necessity for maximizing minority retention. Issues may include whether the program should include only minorities or all associates, whether mentors should come from the minority lawyer's own practice group or from elsewhere in the firm, and whether minorities should be allowed to indicate their preferred mentor. Mentors must have the necessary position, authority, commitment, ability and sensitivity to fulfill the role effectively.
- **Informal efforts by the managing partner** to become personally acquainted with, and to periodically check in with, minority attorneys.
- A sustained program of mandatory in-house **sensitivity training for legal and non-legal staff** on diversity issues. Although white partners and others were sometimes said to resent and resist such programs, and although their success is widely variable depending on the level of support from the firm's top leadership, the talent of the trainers and the degree to which the program is tailored to the particular workplace, nevertheless the need for and success of sensitivity training to bridge enormous gaps of knowledge and understanding was clear. As one minority put it, "Minorities always carry the burden of dispelling unconscious assumptions and perceptions, of putting people at ease. But at the same time, they struggle to maintain their ethnic identity, and

consequently experience greater stress than their white counterparts and have to work harder to succeed. Diversity training in the firm has helped to ease that burden."<sup>23</sup>

- **Supervisory training** for legal and non-legal staff on managing diversity.
- Creation of structures and procedures for the **assignment of work** that fairly distribute opportunities to work in growing areas within the firm and for advantageous clients and partners, and which are evaluated to ensure against unconscious bias. In some firms, for example, smaller practice groups, centralization of assignments within the group, and rotation between groups to enhance exposure of new attorneys to a variety of reviewing or assigning lawyers and, where appropriate, to facilitate recovery in the event of a problem, have proven advantageous to minorities. Particular care and sensitivity in initial placements and assignments for minority lawyers have prevented later problems, and "channeling" of minorities has been examined and avoided in some firms. For example, minorities have often been steered to litigation rather than transactional work or to labor and employment rather than intellectual property or environmental law.
- Creation of **procedures for performance evaluation** that will spot problems early in order to help forge solutions, and **ensure fairness and freedom from bias** are an important factor in a firm's successful retention of minorities.
- **Financial incentives** or "bonuses" for increasing/supporting diversity and the success of minorities within the firm.
- **Training to enhance marketing skills** of minority attorneys; creation of procedures to ensure that minority partners as well as associates are provided **access to marketing opportunities** to prospective new clients and to new matters of current clients.
- Creation of **ombudsperson mechanism** for lawyers to discuss perceived unfair treatment or perceived racism, independent of an immediate supervisor.
- Law firm **support for outside community and minority bar affiliations**, such as the purchase of tables and payment of dues, as well as firm recognition and/or celebration of holidays and events important to minority communities, *e.g.*, *Cinco de Mayo*, Chinese New Year, Dr. Martin Luther King's birthday.

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<sup>23</sup> One minority partner, however, remarked of his/her firm's diversity training program, which had been enthusiastically described by the managing partner as a bonding experience, "I was depressed for two weeks after that, realizing that things were not going to change anytime soon."

- Procedures to ensure **inclusion of minority attorneys in tables purchased** at, *e.g.*, judges' dinners and other prestigious or otherwise professionally advantageous social events.

## RECRUITMENT AND RETENTION OF MINORITY ATTORNEYS

### GOALS AND TIMETABLES

Please indicate your firm's/law department's commitment to the Goals and Timetables on Minority Employment established by the Bar Association of San Francisco by completing this form or notifying by letter.

On behalf of my firm/law department, I pledge that we will use our best efforts to meet the goals and timetables contained in the Bar Association's June 14, 1989 Resolution, as follows:

- (1) By December 31, 1995, at least 15% of the associates/corporate counsel equivalent positions and at least 5% of its partners/corporate senior positions shall be minority attorneys; and,
- (2) By December 31, 2000, minorities shall comprise at least 25% of the employer's associates/corporate counsel equivalent positions and at least 10% of its partners/corporate counsel senior positions.

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
FIRM/LAW DEPARTMENT

Please return this form to:

BAR ASSOCIATION OF SAN FRANCISCO  
Attention: Drucilla Ramey  
685 Market Street, Suite 700  
San Francisco, CA 94105

**Bar Association of San Francisco Goals and Timetables  
for Minority Hiring and Advancement — 1989 Signatories**

By December 31, 1995, minorities shall comprise at least 15% of the employer's associates and at least 5% of its partners;

By December 31, 2000, minorities shall comprise at least 25% of the employer's associates and at least 10% of its partners.

Angell, Brunner & Angell	Landels, Ripley & Diamond
Arnelle & Hastie	Leland, Parachini, Steinberg, Flinn, Matzger & Melnick
AT&T Communications of California	Lew & Fong, APC
Baker & McKenzie	Lilienthal & Fowler
Bancroft & McAlister	Lillick & Charles
Berman & Glenn	Littler, Mendelson, Fastiff & Tichy
Beveridge & Diamond	Long & Levit
David Michael Bigeleisen, APC	Majestic, Parsons, Siebert & Hsue
Broad, Schultz, Larson & Wineberg	McCutchen, Doyle, Brown & Enersen
Brobeck, Phleger & Harrison	McGee, Lafayette, Willis & Greene
Bronson, Bronson & McKinnon	McKesson Corporation
Buffington & Konigsberg	McTernan, Stender & Walsh
Bushnell, Caplan & Fielding	Minami, Lew, Tamaki & Lee
Carroll, Burdick & McDonough	Morrison & Foerster
Cassidy & Verges	Murphy, Weir & Butler
Cooley Godward LLB	Nichols, Doi, Rapaport & Chan
Cooper, White & Cooper	Niesar Pahl Cecchini & Gosselin
Crosby, Heafey, Roach & May	Nossaman, Guthner, Knox & Elliott, LLP
Crymes, Hardie & Heer	Oracle Corporation
Cullum & Sena	Orrick, Herrington & Sutcliffe
Dinkelspiel, Donovan & Reder	Pacific Gas & Electric
Erickson, Beasley & Hewitt	Pacific Telesis Group
Farella, Braun & Martel	Pettit & Martin
Feldman, Waldman & Kline	Pillsbury Madison & Sutro
First Nationwide Bank	The Recorder
Flehr, Hohback, Test, Albritton & Herbert	Remcho, Johansen & Purcell
Fleischmann & Fleischmann	Rogers, Joseph, O'Donnell & Quinn
Folger & Levin	Rosen, Bien, & Asaro
Furth, Fahrner & Mason	Rosenblum, Parish & Isaacs
Goldberg, Stinnett & Macdonald	Rothschild & Goldin
Goldfarb & Lipman	Rouda, Feder & Tietjen
Gordon & Rees	Saperstein, Mayeda, Larkin & Goldstein
Graham & James	Sawamura, Chin & Nishimi
Gutierrez & Associates	Sedgwick, Detert, Moran & Arnold
Hancock, Rothert & Bunshoft	Severson & Werson
Hanson, Bridgett, Marcus, Vlahos & Rudy	Shartsis, Friese & Ginsburg
Hedani & Choy	Shute, Mihaly & Weinberger
Heller, Ehrman, White & McAuliffe	Silk, Adler & Colvin
Anne Haring, Esq.	Steeffel, Levitt & Weiss
Law Offices Marc Van Der Hout	

Howard, Rice, Nemerovski, Canady,  
Falk & Rabkin  
Law Offices of Helen Y. H. Hui  
Jackson, Tufts, Cole & Black  
Jeffrey & Heinerniann  
Jonas & Matthews  
Jordan, Keeler & Seligman  
Kadushin.Fancher.Wickland  
Knox & Cincotta  
Lagarias & Masson

Stein Lubin & Lerner  
Steinhart & Falconer  
Tandem Computers Incorporated  
Tarkington, O'Connor & O'Neill  
Thelen, Marrin, Johnson & Bridges  
Townsend and Townsend  
Transamerica Corporation  
Law Offices of Chandler Visher  
Wells Fargo Bank  
Willdorf & Stevens

Every organization must scrutinize its own internal environment, and must devise the approach or solution that best fits its own structure, management, philosophy and culture at any particular time. No matter how enlightened an employer's practices may be, or how hard an employer may try, some level of attrition among minority lawyers, as among white lawyers, is inevitable. However, the following recommended procedures are believed to be realistic and achievable tools that legal management should strongly consider implementing — with skill and sensitivity — in a greater effort to improve minority retention and to achieve the goals of workplace integration and diversification.

### **RECOMMENDATION 1**

**Top-level management must make a highly visible and substantial commitment to retention and advancement of minority lawyers.**

The entire institution must ultimately adopt the goal of retaining and advancing minority lawyers as a bona fide business and management objective, rather than as a part-time social experiment or temporary expedient.

This goal cannot be accomplished by the efforts of only a few minority lawyers, or a handful of sympathetic white supervisory attorneys. Rather, the highest-level managers of the firm should lead the effort to scrutinize the organization's history and environment to identify and address any minority retention issues or barriers that may exist.

As a part of this effort, it is recommended that the firm perform a thorough review of its history of minority employment: how many minorities have been employed; when they were hired; how long they were employed, in what practice groups, and under the supervision of which attorneys; when they left and why; and why those who remained chose to stay. When minority lawyers depart from the workforce, exit interviews about their professional experience with the organization should be conducted and the results reported to senior management.

This review and analysis may reveal policies, patterns, attitudes, and behaviors in need of attention and change. These may range from, *e.g.*, methods of work, case or department assignments or performance evaluations which are particularly vulnerable to distortion by subtle biases, to identification of supervisory attorneys or practice groups which have proven to be unsuccessful in developing, retaining and advancing minority attorneys.

Positive action plans should be devised and implemented to address any issues identified. These may include some or all of the following recommendations.

### **RECOMMENDATION 2**

**The managing partner/chief counsel of the organization, or a formally and publicly designated high-profile partner or attorney with authority and clout, should assume the active leadership role in the institution's efforts to address minority-related issues.**

### RECOMMENDATION 3

**The organization should clearly articulate, in all appropriate publications, policies, and procedures the organization's commitment to and policy of equal opportunity in employment.**

In a comprehensive effort to make clear and enforce its commitment to create and maintain a racially/ethnically diverse workforce, an employer should publicly articulate this commitment (1) outside the firm, in recruitment and hiring materials and practices and in communications with clients and prospective clients and (2) inside the firm, to staff and attorneys, in personnel manuals, newsletters, bulletin board postings, staffing policies, criteria for supervisory responsibility and success, criteria for promotion, and in communication of expectations of employee collegiality and cooperation.

### RECOMMENDATION 4

**Formal support structures, such as a mentoring program, should be provided.**

The mentor program concept formalizes a critical component of a firm's informal networking process that has proven successful for generations of white lawyers, but from which minorities have often been excluded.

The importance of the assignment of an advisor or mentor cannot be overstressed. The mentor can serve as a resource to the junior lawyer in numerous ways: as a teacher of the law and lawyering; as a source of business opportunities and work assignments, particularly those that are career-enhancing; as a source of praise and publicity for the younger lawyer's accomplishments; as a bridge/link for connecting to the organization, and advice and counsel; as a troubleshooter for resolution of problematic situations; as a career counselor; as an advocate for the newer lawyer's advancement and promotion; and as a source of collegiality and friendship.

The mentor may or may not be a lawyer who is in a direct line supervisory relationship with the newer lawyer, but should be a partner, or comparable-level supervising attorney, who has the necessary position and authority and sufficient commitment, ability and sensitivity to fulfill the role effectively.

The advisor/mentor need not, and often should not, be a minority lawyer. In many firms, for example, there may be few, if any, minority attorneys in positions of real power within the organization. Moreover, exclusively minority pairings may incorrectly project the impression that the issue of minority lawyer retention is not the responsibility of the entire organization, but rather that of minority lawyers only. Additionally, minority lawyers should not uniquely be assigned the mentoring responsibility without equal sharing of the duty by white attorneys.

It is also suggested that the organization provide training, guidelines or other formal communication to mentor lawyers about the structuring of the mentor relationship, and the expectations for lawyers serving in that role.

## RECOMMENDATION 5

**Management should consider implementing training for supervisory attorneys in effective personnel practices and techniques, which should include training in the area of managing diversity.**

Many problems in the workplace — for minority and white attorneys alike — are the result of or are exacerbated by poor personnel management, but minority attorneys may disproportionately bear the brunt of poor personnel practices. Although an essential part of the partner's or supervising attorneys' job is management, supervision, training and development, and evaluation of less senior lawyers, little formal attention or training has traditionally been devoted to this dimension of the job.

Although resistance may be encountered due to time constraints, it is recommended that a training program be instituted for supervisory and other senior attorneys in personnel management skills (*e.g.*, performance evaluations; handling sensitive or volatile employee situations; handling charges of unfair treatment). This program should include a specific component on the effective management of a racially and ethnically diverse workforce.

## RECOMMENDATION 6

**The organization should consider conducting one or more human relations workshops or sessions specifically intended to sensitize all employees, including non-lawyer staff, to race and ethnic-related issues that may exist or arise with increasing diversification of the lawyer workforce.**

Although all would agree that equal treatment of minority lawyers should be a hallmark of the workplace, the experience of minorities in the legal profession has long belied widely held assumptions of a color-blind meritocracy, and demonstrates that effective integration has not been and will not be an automatic process.

Rather, the low rate of minority lawyer retention at majority legal organizations has been and largely continues to be rooted in systematic attitudes, patterns of behavior, and forces. Such attitudes — which often exist not only among management, but also among peer lawyers and non-lawyer staff — operate sometimes overtly and consciously, but more often subtly and seemingly unconsciously as exclusionary barriers to acceptance of minorities on equal terms with their white peers.

As consultant Jacob Herring demonstrates in the video, human relations workshops on issues surrounding minority retention can dramatically call to the attention of majority attorneys and staff the everyday realities of corporate life as experienced by minority professionals. Listed below are some of these realities, more fully explained by Mr. Herring in the workshops he conducts:

- Minorities are presumed to be incompetent until proven otherwise and must overcome this presumption anew with each new supervisor, while the opposite is true for whites.

## Attachment B

- Minorities are regarded as representative of their entire race when they fail, but are considered the exception when they succeed.
- Minorities are accorded far less latitude for displays of aggressiveness than is considered respectable for whites.
- Minorities who are perceived to be in authoritative positions often encounter resistance from white attorneys and staff.
- Younger minority professionals have few role models in their workplace and develop the perception that there exists a ceiling on promotions for minorities in their firm.
- Minority attorneys are often excluded from informal networks of communication within the firm and do not receive the specific feedback from supervisors necessary to succeed in the firm.
- As a result of many of the above experiences, minority attorneys tend to disproportionately experience isolation and loneliness within the organization.

Human relations workshops led by experienced outside consultants, using as discussion tools films like *A Firm Commitment* and its predecessor, *All Things Being Equal*, can serve as an ideal first step in an employer's exploration of these and other barriers to minority retention in its own workplace.

### RECOMMENDATION 7

**Mechanisms should be developed to ensure open lines of communication with minority lawyers and should include a neutral mechanism, independent of an immediate supervisor, for lawyers to discuss perceived unfair treatment or perceived racism.**

Because of the historical legacy of racism in our society, the perennial question inevitably raised for the minority lawyer who has an adverse experience is: "Did this occur because I am a minority?" It should be made clear that the employee can raise this or any other professional/ career concerns he/she may have in this regard without fear of reprisal or retaliation.

The very difficult question may arise as to whether a partner/supervising attorney/mentor should initiate with a minority lawyer issues relating to race or ethnic status if the employee has not first raised it. Although many minority lawyers may regard this as intrusive, there are many other minority lawyers who would prefer greater management recognition of and sensitivity to the fact that they are different from most, if not all, other lawyers in the workplace; however, lawyers among this latter group may be reluctant to assert their concerns to management for fear of being perceived as malcontents with an "attitude problem" or a chip-on-their-shoulder about race.

While every workplace differs, employers should develop policies to handle and respond to diversity-related concerns raised by employees, rather than simply ignore them.

- The employer might generally announce throughout the lawyer workforce its receptivity to discussion of an employee's diversity-related concerns, and specify the forum or mechanism through which any such concerns can be raised, *e.g.*, to line management, to mentors, to a designated committee, or to a designated representative of management.
- Where a manager decides to inquire about the comfort level of a minority lawyer in the work environment, it should be done privately on an individual basis. One opening might be, "We realize that there are only a few or a small number of minority lawyers here, and we recognize that that circumstance may [pose issues] for some individuals. If there are any concerns you have in that regard that you would like to discuss, please feel free to discuss them with me or [other designee]."
- An employer might periodically disseminate, perhaps on an annual basis, a questionnaire among all staff/associate lawyers about various aspects of the employer job experience, such as quality of work assignments and supervision, and opportunity for and quality of training.

#### **RECOMMENDATION 8**

**Legal employers should consider use of career development plans or guidelines that can provide some objective criteria for assignment, training, development, and performance evaluation of employee lawyers.**

Although the realities of law practice make it difficult to calibrate lawyer development along a rigid timeline, there do exist, often uncommunicated to the employee, certain expectations of basic skills development and performance standards that attorneys are expected to meet within general time parameters.

It is recommended that supervising attorneys make use of individually tailored plans for each employee attorney that set concrete, but flexible, guidelines for the lawyer's performance and improvement. This ensures that both the supervising and employee attorneys focus on mutually understood and communicated objectives against which performance can be measured and plans for improvement can be implemented in identified areas of deficiency.

#### **RECOMMENDATION 9**

**Particular care and sensitivity should be exercised in the procedures for initial placement/assignment of the incoming minority lawyer and in subsequent work assignments.**

Initial mismatches of minority lawyers with racially insensitive supervisors, or in work situations with known deeply-rooted problems have historically caused a significant number of departures of minorities from many legal organizations. Placement of minority lawyers with more effective and sensitive supervisors/managing lawyers or in strong departments is recommended.

## Attachment B

Channeling of the minority lawyer to perceived "minority" areas of practice, such as employment discrimination, as opposed to permitting such a lawyer the choice of other areas of work where practicable (e.g., environmental, employee benefits), should be avoided.

Employers should consider rotating the minority lawyer among various reviewing or assigning lawyers to enhance that lawyer's developmental experience and exposure.

### **RECOMMENDATION 10**

**The organization should promote fairness in the performance review process, both in the standards used and in their application, with particular efforts made to identify and overcome subtle bias in the evaluation of minority lawyers. This should include development of an early warning system for performance deficiencies.**

The criteria used in performance evaluation should be scrutinized by the organization for job relatedness and for their fair, rational and consistent application to each employee. Evaluations determined to be unsound or unfair should be appropriately modified, and the subject discussed with the reviewing lawyer to ensure that future evaluations are accurate and unbiased.

### **RECOMMENDATION 11**

**The representation of minority lawyers in the organization should be increased.**

Recruiting and retention issues are interdependent. The experience of white women in the legal profession, for example, shows that as many legal organizations have attained a "critical mass" of successful women lawyers and role models, these organizations have been able to attract and retain more women attorneys.

Just as informal support structures have developed among growing numbers of women attorneys in legal organizations, increasing their comfort and identification with the institution, so too, will increased hiring and retention of minority attorneys increase their prospects for success in the firm and cause the attorneys to feel encouraged to remain.

Accordingly, legal employers must redouble their efforts, not only to recruit more minority attorneys into their organizations, but also to develop and retain them as competent and valued members of the legal workforce.

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## REPORT AND RECOMMENDATIONS REGARDING SEXUAL ORIENTATION DISCRIMINATION IN THE CALIFORNIA LEGAL PROFESSION

The Committee on Sexual Orientation Discrimination ("CSOD") is charged, in part, to assess and report to the Board of Governors on the scope and impact of sexual orientation discrimination in the legal profession in California. This Report summarizes CSOD's initial efforts and makes a number of recommendations for review and adoption by the Board of Governors. CSOD believes that the data from the State Bar's 1991 Demographic Survey and the 1994 Los Angeles County Bar Association's Report on Sexual Orientation Bias presents substantial and statistically persuasive evidence of widespread discrimination. But perhaps even more compelling are the narratives of anti-gay<sup>1</sup> bias recounted by hundreds of lawyers in Los Angeles and San Francisco.

CSOD respectfully submits that this summary merits the serious attention of the Board of Governors for two reasons. First, employment discrimination and harassment based upon sexual orientation is illegal: it violates Sections 1101 through 1102.1 of the California Labor Code. Indeed, recently the Court of Appeal held that this kind of discrimination based upon sexual orientation "is invidious and violates a fundamental public policy of this state." *Liebert v. Transworld Systems, Inc.*, 32 Cal. App. 4th 1693, 1707 (1995). Second, Rule 2-400 of the California Rules of Professional Conduct bars lawyers and law firms from employment discrimination based upon sexual orientation. As its author, the Board of Governors should, we submit, play a pivotal role in enforcing the Rule. A Board of Governors resolution addressing illegal discrimination against attorneys by legal employers, which is aimed at insuring compliance with a Rule of Professional Conduct approved by the Supreme Court of California, clearly falls within the purview of the State Bar's charter.

After reviewing the data, CSOD is convinced that remedial action is required. Accordingly, CSOD requests that the Board of Governors adopt a resolution: (1) reminding lawyers and law firms that employment discrimination on the basis of sexual orientation is illegal; and (2) endorsing the attached recommendations, which are based upon those previously adopted by the Los Angeles County Bar Association and the Bar Association of San Francisco.

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<sup>1</sup> As used here, "gay" means gay, lesbian and bisexual.



THE COMMITTEE ON SEXUAL ORIENTATION DISCRIMINATION  
**THE STATE BAR OF CALIFORNIA**

355 FRANKLIN STREET  
SAN FRANCISCO, CA 94102-4498  
(415) 661-8200

November 15, 1996

Dear Bar Association President:

Please find enclosed a copy of the recently adopted State Bar resolution calling upon legal employers to take affirmative steps to ensure full integration of attorneys, regardless of sexual orientation. Under California law, and under Rule of Professional Conduct 2-400, legal employers have a duty to take remedial actions to facilitate full participation by lesbian, gay and bisexual attorneys in the workplace and to accord those attorneys full and equal employment opportunities.

The Board of Governors adopted the resolution based upon studies prepared by the Los Angeles County Bar Association and Bar Association of San Francisco. The studies documented the pattern of pervasive sexual orientation bias within our legal community.

Specifically, the State Bar calls upon legal employers to:

- adhere to their obligation, under the California Rules of Professional Conduct, to avoid discrimination against lesbians, gay men, and bisexuals;
- consider the adoption of anti-discrimination policies that include prohibitions on discrimination based on sexual orientation;
- consider the adoption of effective grievance procedures for attorneys who believe they may have been discriminated against on the basis of their sexual orientation;
- consider the adoption of non-discriminatory recruitment and hiring practices and non-discriminatory procedures for promotion, compensation and work assignments;
- consider the adoption of benefit packages with the same set of benefits for all employees; and
- refrain from maintaining work environments where lesbian, gay or bisexual attorneys are encouraged or feel compelled to remain "closeted."

I urge you to read the enclosed resolution and to inform legal employers in your community about the State Bar's historic action. If you have any questions, please feel free to contact me at (213) 937-2728. I can provide further information or copies of the studies documenting bias based upon sexual orientation. Thank you in advance for your help in fulfilling complete integration of the legal profession.

Very Truly Yours,

A handwritten signature in cursive script that reads "Myron D. Quon".

Myron Dean Quon  
Chair, Committee on Sexual Orientation Discrimination

A. Studies Of Sexual Orientation Discrimination In The Legal Profession

1. *The 1991 Demographic Survey of the State Bar of California*

In 1991, the State Bar conducted a demographic survey of 14,300 randomly-selected active Bar members. At CSOD's request, SRI International reanalyzed that data in 1994 to determine if there were significant differences between gay, lesbian and bisexual lawyers and other members of the Bar. A copy of the January 1994 *Comparison of Gay and Non-Gay State Bar Members* is attached at Tab 1. The results confirm the beliefs held by many gay, lesbian and bisexual attorneys that they are disadvantaged in hiring, evaluation, promotion and compensation.

For example, the data shows that gay lawyers are less likely to make partner at law firms. After 10 years in the profession, 26% of the gay lawyers were partners in law firms, as opposed to 38% of the non-gay lawyers. For lawyers with less than 10 years in practice, just 4% of the gay lawyers are partners, as compared to 11% of the non-gay attorneys. Moreover, after 10 years in practice, gay partners are concentrated in the largest and smallest firms while their non-gay counterparts are more evenly distributed in firms of all sizes. Gay lawyers are more likely to work outside of law firms. Thirty percent of the gay lawyers who have been in practice for 10 years or more work in government or as in-house counsel (as opposed to 21% of the non-gay lawyers).

As might be expected from the profile of their practice, gay lawyers earn less money than non-gay lawyers. After 10 or more years in practice, 67% of the gay and lesbian lawyers earn under \$100,000. By contrast, just 46% of the non-gay attorney's earn under \$100,000. Forty-one percent of all non-gay lawyers earn over \$125,000 after 10 years of practice, yet just 27% of the gay attorneys earn that much. And while 44% of gay lawyers earned under \$75,000 after 10 years in practice, just 26% of the non-gay lawyers did.

While the State Bar Survey is based only on demographic data, other California bar associations have conducted studies of gay and lesbian attorneys which also include powerful statistical and anecdotal evidence of the extent of discrimination against gay and lesbian attorneys. Thus, for example, two of the largest County Bar Associations in the State have conducted studies regarding sexual orientation discrimination which confirm and expand upon the data from the State Bar Survey.

2. *The Los Angeles County Bar Association  
Report on Sexual Orientation Bias*

In June 1994 the Board of Trustees of the Los Angeles County Bar Association adopted a Report prepared by its Committee on Sexual Orientation Bias ("the LA Report"). This Report and its Appendices, published in the Spring 1995 Southern California Review of Law and Women's Studies, are attached at Tab 2. The Report is based upon surveys of attorneys and employers and on focus groups which collected anecdotal information.

The Los Angeles Report found a broad-based perception that significant discrimination against gay lawyers is prevalent in Los Angeles County. By way of illustration, thirty-nine percent of all attorneys said that they had seen or experienced discrimination against gay or lesbian attorneys. Almost 68% of the lesbian attorneys and 58.3% of the gay attorneys reported witnessing or experiencing anti-gay discrimination in Los Angeles County. 4 S. Cal. Rev. L. & Women's Stud. 195, 311 (1995).

The LA Report found evidence of discrimination in virtually every aspect of legal employment: hiring, work environment, assignments, evaluation, compensation and promotion. About 15% of the attorney respondents said that their offices discriminated against gay and lesbian attorneys in hiring. *Id.* at 311. The written responses underscored the depth of the negative feelings directed to gay and lesbian attorneys. For example, even though employment discrimination on the basis of sexual orientation is illegal and violates the Rules of Professional conduct, employers replied:

We are not interested in lawyers with this type of disability --  
a mental and emotional problem of obvious magnitude.

We will not hire them . . . We have discussed the issue and how to  
prevent having them as lawyers . . .

4 S. Cal. Rev. L. & Women's Stud. at 313.

The LA Report also suggests that once hired, gay lawyers are frequently subjected to a hostile work place, complete with anti-gay comments and "jokes." Thus, 66% of the attorney respondents reported that they heard such comments at their firms and it appears as one gay attorney noted, that "[i]t is acceptable . . . to verbally ridicule gays and lesbians in a way that is not acceptable toward other minorities." 4 S. Cal. Rev. L. & Women's Stud. at 314-15. Comments about "faggots" and "dykes," and about how

gay attorneys spend their time "playing with . . . homosexual friends" were all recounted in the Report. *Id.* at 315-16.

The LA Report also found that there was substantial anti-gay bias among colleagues and clients. About 15% of the respondents said that their clients did not want to work with gay lawyers. Twelve percent of the respondents said that partners or supervisors in their offices preferred not to work with gay attorneys. Over 8% of the attorneys said that their offices have denied gay lawyers work simply because they were gay and over 11% of the respondents saw or experienced sexual orientation bias in attorney work assignment. 4 S. Cal. Rev. L. & Women's Stud. at 320-21.

The LA Report is extraordinarily comprehensive and paints an alarming picture for gay attorneys. Not only is discrimination extensive, its impact is minimized by law firms and legal employers. Discrimination against gay, lesbian and bisexual lawyers is simply not seen in the same light as discrimination against other minorities, and is largely dismissed as not being a problem.

3. *Bar Association of San Francisco 1991 Report on Eliminating Sexual Orientation Discrimination*

In August 1991 the Board of Directors of the Bar Association of San Francisco ("BASF") unanimously adopted a resolution which approved and adopted "Creating an Environment Conducive to Diversify: A Guide for Legal Employers on Eliminating Sexual Orientation Discrimination" ("Guide"), a document drafted by the Bar Association's Committee on Gay and Lesbian Issues. This Guide is attached at Tab 3. The BASF Guide was based upon a study of gay and lesbian attorneys conducted in 1988 and interviews and information from a number of other sources. It echoes many of the same problems brought to light by and documented in the Los Angeles Report.

The Guide noted that by 1991, many employers had not even adopted a policy of non-discrimination on the basis of sexual orientation. Gay attorneys had a difficult time getting hired. Openly gay applicants and heterosexual applicants whose resumes revealed that they had worked on gay causes were often not interviewed. As an example, the Guide related the experience of a heterosexual applicant who spent a summer working at National Gay Rights Advocates, and did not get a single job interview until after he removed the reference from his resume. Many gay and lesbian attorneys reported the same problem. Guide at p. 6.

Once applicants did receive interviews, some potential employers made offensive comments. A partner at a major firm told an applicant that one of the few disadvantages of San Francisco was its "gay community." Other applicants were asked about their views regarding marriage. Guide at p. 7.

The Guide also noted problems with retention, advancement and compensation. Many firms tolerated a work place where words such as "fags" or "queers" were used and employees were free to make homophobic jokes and comments. Guide at p. 8. Gay lawyers were expected to keep their sexual orientation under wraps and said to have shown "a lack of judgment" in being openly gay. Guide at pp. 9-10, n. 18.

BASF adopted 23 specific recommendations to address the problems identified in the Guide. In 1995, the BASF Committee sent out surveys to all of its member firms to determine their compliance with the BASF recommendations. A written report will be published later this year.<sup>2</sup>

**B. Recommendations For Action By Legal Employers**

The Bar Association of San Francisco and the Los Angeles County Bar Association adopted recommendations for action by legal employees in light of the disturbing and pervasive nature of sexual orientation bias they discovered within the legal profession. Consistent with the resolutions of these local bar associations, CSOD recommends that the State Bar adopt a resolution urging legal employers to:

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<sup>2</sup> The San Diego County Bar is conducting a survey regarding the existence and scope of all types of discrimination in its legal community, including sexual orientation discrimination. Several bar associations outside California have also undertaken sexual orientation studies. For example, the Association of the Bar of the City of New York Special Committee on Lesbians and Gay Men in the Legal Profession Subcommittee on Employment Practices has issued a Report on the Experience of Lesbians and Gay Men in the Legal Profession; the King County Bar Association in the State of Washington has adopted a report entitled In Pursuit of Equality: the Final Report of the King County Bar Association Task Force on Lesbian and Gay Issues in the Legal Profession; and the Massachusetts Lesbian and Gay Bar Association has prepared a report entitled The Prevalence of Sexual Orientation Discrimination in the Legal Profession in Massachusetts.

**1. Adopt, implement and publicize anti-discrimination policies.**

Most firms have anti-discrimination policies. These policies should include discrimination on the basis of sexual orientation and should be publicized to current and future employees. Since there is a high incidence of anti-gay comments and "jokes" in the workplace, the policies should explicitly address verbal harassment.

It is also important that a visible and authoritative person, such as a managing partner, champion the cause of anti-gay bias in the workplace. Employers may demonstrate their commitment to the policy by conducting in-house training and MCLE programs.

**2. Adopt, implement and publicize effective grievance procedures.**

There should be a well-publicized and neutral mechanism to enforce the employer's anti-discrimination policies. Because many people perceive anti-gay bias as acceptable, employers must act promptly and adequately to investigate and resolve complaints.

**3. Adopt, implement and publicize non-discriminatory recruitment and hiring practices.**

Gay lawyers should participate in hiring and recruitment and should be identified as contacts for potential employees interested in these issues. If there are no openly gay lawyers, any attorney who is sensitive to gay and lesbian issues might fill this role. Interviewers must avoid subtle bias, such as asking about sexual orientation or marital status. At the same time, interviewers should not discourage candidates from discussing their sexual orientation. On-campus gay, lesbian and bisexual groups should be included in a firm's recruitment efforts and firm resumes or other material which lists *pro bono* activity should include lesbian and gay *pro bono* services.

**4. Adopt, implement and publicize non-discriminatory procedures for promotion, compensation and work assignments.**

Employers should make efforts to identify and overcome subtle bias in the evaluation and assignment of work. Work assignments and promotions should not be based upon the perception of how a client might react to working with gay lawyers. Because much of the evaluation of a lawyer's skill is subjective and personal, gay lawyers

should be included in the mentoring and formal and informal support that is given to all lawyers, including the same opportunity to socialize with colleagues.

**5. Adopt, implement and publicize benefit packages with the same set of benefits for all employees.**

Because California does not recognize gay marriage, gay attorneys and their partners cannot obtain the medical coverage and other benefits that are universally offered only to the spouses of heterosexual employees. This is one of the most obvious forms of discrimination in compensation. The most effective method of demonstrating that employers are serious about equality for their employees is to provide domestic partner benefits. Employers should offer health and other insurance to same sex partners and their children on the same terms as provided to married, heterosexual employees. There is a growing number of law firms and legal employers who now offer this benefit.

Other benefits, such as parenting leave, part-time policies, sick leave, caretaking leave and bereavement leave may easily be tailored to avoid discrimination against gay employees. Relocation benefits and employee assistance programs should also apply to same-sex domestic partners and their children. Some benefits appear minor, but are still important. For example, be sure to include "guests," "partners" or "significant other" in firm sponsored social events.

**6. Refrain from maintaining work environments where encouraging gay attorneys are encouraged or feel compelled to remain "closeted."**

Gay employees should have the same freedom as heterosexual attorneys to determine whether and to what extent they wish to reveal their personal relationships at work or in their profession. When a heterosexual employee mentions his or her spouse, displays family pictures or wears a wedding ring, it is not seen as a discussion of the employee's sex life. Yet employers often believe that "to reveal that one is gay is to talk about 'who you're sleeping with' -- nothing more -- while heterosexuality is expanded to encompass friendship, love and family." Woods, *The Corporate Closet* 70 (1993). Some of the participants in the Los Angeles Study reflected this view. For example, one respondent said, "sex lives of any personnel are not appropriate topics for the law office." 4 S. Cal. Rev. L. & Women's Stud. at 440-45. Yet acknowledging a gay relationship or orientation is no more a discussion of "sex" than acknowledging a heterosexual marriage. The objective is to create a workplace that is unbiased and supportive for all employees: heterosexual or gay.

C. Recommendations For Action By The Board Of Governors

CSOD urges that the Board of Governors, as the author of the Rules of Professional Conduct and the leaders of an organization chartered to uphold the highest ethical standards, continue its commitment -- evidenced when it approved the formation of CSOD -- to acknowledging and addressing the widespread invidious discrimination against lesbian, gay and bisexual lawyers demonstrated by the Bar's own survey and by the comprehensive studies of two large metropolitan Bar Associations. CSOD asks that the Board adopt a resolution: (1) reminding lawyers and law firms that employment discrimination on the basis of sexual orientation is illegal; and (2) endorsing the recommendations made herein by CSOD to address this problem. A proposed resolution is provided herewith.

**RESOLUTION BY THE STATE BAR  
BOARD OF GOVERNORS**

**WHEREAS,**

The State Bar of California has long been committed to eradication of illegal discrimination in the legal profession (as evidenced, in part, by its chartering of standing committees on Ethnic Minority Relations, Women in the Law, Sexual Orientation Discrimination and Legal Professionals with Disabilities); and

**WHEREAS,**

Under the California Rules of Professional Conduct, Rule 2-400, California lawyers have an ethical obligation not to discriminate in their employment practices on grounds of an attorney's sexual orientation; and

**WHEREAS,**

Under California law, California lawyers also have a legal obligation not to discriminate in their employment practices on grounds of an attorney's sexual orientation (see, e.g., California Labor Code §§ 1101 through 1102.1; *Lebart v. Transworld Systems, Inc.*, 32 Cal. App. 4th 1693, 1707 (1995) (employment discrimination based upon sexual orientation "is invidious and violates a fundamental public policy of this state"); and

**WHEREAS,**

The Board of Governors has been presented with persuasive statistical and other data suggesting that discrimination against attorneys on the basis of their sexual orientation continues to be a significant problem within the California legal community.  
**NOW THEREFORE,**

**BE IT RESOLVED, that**

1) Members of the State Bar, and legal employers within the State of California, should be cognizant of their obligations, under Rule of Professional Conduct 2-400 and California law, to avoid discriminating, or knowingly permitting discrimination, in the hiring, promoting, discharging or otherwise determining the conditions of employment of any person, or in accepting or terminating representation of any clients; and

2) In order to promote fair and equal treatment of lesbian and gay attorneys within the California legal community, members of the State Bar and legal employers within the State of California are urged to consider the following steps:

(a) The adoption, implementation and publicizing of anti-discrimination policies that include prohibitions on discrimination on the basis of sexual orientation; and

(b) The adoption, implementation and publicizing of effective grievance procedures for attorneys who believe they may have been discriminated against on grounds of their sexual orientation; and

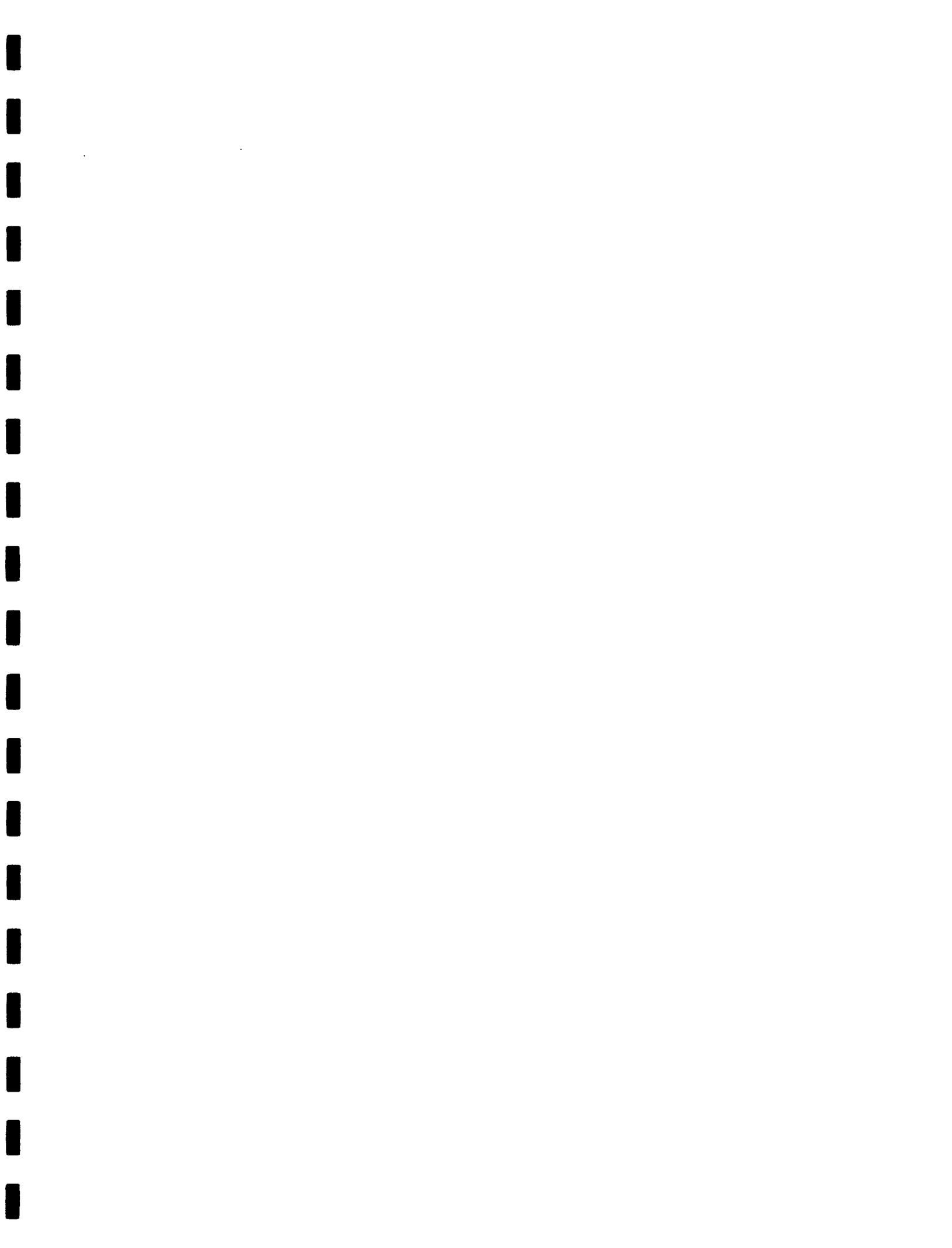
(c) The adoption, implementation and publicizing of non-discriminatory recruitment and hiring practices; and

(d) The adoption, implementation and publicizing of non-discriminatory procedures for promotion, compensation and work assignments; and

(e) The adoption, implementation and publicizing of benefit packages with the same set of benefits for all employees; and

(f) Refraining from maintaining work environments where gay attorneys are encouraged or feel compelled to remain "closeted"; and

(3) In making these recommendations, the Board of Governors takes note of the fact that many legal employers (as well as other employers) in the State of California have already made significant progress in adopting and implementing policies along the lines suggested above. Those legal employers are urged to continue their efforts, and other legal employers are encouraged to follow their lead.



**BAR ASSOCIATION OF SAN FRANCISCO  
MODEL DOMESTIC PARTNER HEALTH BENEFITS POLICY**

**INTRODUCTION**

This Model Policy for Domestic Partner Health Benefits was drafted to encourage Bar Association of San Francisco ("BASF" or "the Association") member law firms and corporate law departments to offer same-sex domestic partner health benefits to their employees and to assist Association members and other employers who are considering offering such benefits.<sup>1</sup> BASF believes that making health benefits available to same-sex domestic partners is a crucial component of creating and maintaining a work environment that is free from sexual orientation discrimination and bias. Without such benefits, employees with same-sex domestic partners are deprived of a valuable form of compensation that is routinely offered to married employees, and therefore do not receive equal pay for their work. The Association considers the elimination of sexual orientation discrimination to be a matter of great importance and urges all of its members to implement domestic partner health benefits as a means of furthering that goal. In BASF's 1991 *Creating an Environment Conducive to Diversity: A Guide for Legal Employers on Eliminating Sexual Orientation Discrimination*, the Association formally recommended that its members offer health benefits to the domestic partners of lesbian and gay employees, to the extent possible under federal tax law, on the same terms that they are made available to the spouses of married employees.

Over the last few years, a number of BASF member firms — including several of San Francisco's oldest firms — have successfully negotiated with insurers and health maintenance organizations ("HMOs") to provide domestic partner health coverage.<sup>2</sup> As more and more employers in the legal profession and elsewhere have expressed interest in providing domestic partner benefits, insurers and HMOs have become increasingly willing to offer domestic partner health coverage. Accordingly, employers who wish to offer such benefits are often able to do so through their existing insurers and HMOs. Moreover, the experience of employers who have been offering such benefits for a number of years demonstrates that the costs for employees with domestic partners do not exceed those for employees with spouses.<sup>3</sup>

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<sup>1</sup> The Model Policy was drafted by the Bar Association's Committee on Sexual Orientation issues. Ruth N. Borenstein and Michael J. Sears, co-chairs. It was approved by the Association's Board of Directors on November 22, 1995.

<sup>2</sup> BASF member firms offering domestic partner health benefits include McCutchen, Doyle, Brown & Enersen, Morrison & Foerster, Orrick, Herrington & Sutcliffe, and Pillsbury Madison & Sutro. A list of BASF firms that offer domestic partner health benefits is included in the Model Policy. The Association thanks these firms for their pioneering efforts in affording health benefits to domestic partners.

<sup>3</sup> "Generally speaking, and contrary to warnings and predictions by insurers and others, extending coverage to domestic partners has not resulted in statistically significant differences in cost . . . . Experience thus far indicates employers are at no more risk when adding domestic partners than when adding spouses." Hewitt Assoc., *Domestic Partners and Employee Benefits* 9 (1994). See C.R. Colbert III & J.G. Wofford, *Sexual Orientation in*

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The BASF Model Policy is comprised of an Overview of Issues Relating to Domestic Partner Health Benefits, which addresses the various issues that must be considered in implementing domestic partner health benefits, and Model Documents (a summary of benefits, statement of eligibility, and notice of termination) that are typically required by insurers that provide domestic partner health coverage. The Model Documents can be modified by individual employers to meet their own particular needs as well as the requirements of their insurers and/or HMOs. The Model Policy also contains lists of BASF members who are currently providing domestic partner health benefits and of insurers and HMOs that have provided such benefits.

Although virtually all of the provisions in the Model Documents have been implemented in some form in existing policies, because the Model Policy was designed with the goal of providing health benefits to the domestic partners of gay and lesbian employees that are, wherever possible, the equivalent of, and offered on the same terms as, the benefits offered to the spouses of married employees, the Model Documents include some provisions that may not yet have been approved by insurers and HMOs and omits others that are frequently required. Accordingly, employers seeking to implement the Model Policy will likely have to negotiate with their insurers and/or HMOs to gain approval of some of its provisions. To assist employers in such negotiations, the Model Policy discusses the rationale of its major provisions and also includes suggested alternatives should any insurer be unwilling to accept specific provisions.

While these documents focus exclusively on health benefits, there are a number of other benefits that employers frequently provide to married employees that can easily be extended to employees with domestic partners in order to ensure equality and fairness. For example, employers can and should include domestic partners when offering bereavement leave or sick-care leave. For more information on eliminating sexual orientation in the workplace, please consult *Creating an Environment Conducive to Diversity: A Guide for Legal Employers on Eliminating Sexual Orientation Discrimination*, which is available from BASF's offices.

The BASF Model Domestic Partner Health Benefits Policy is not intended to be legal advice; employers should consult with their benefits, employment, and/or tax advisors to tailor model policy terms to their individual circumstances.

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*the Workplace: The Strategic Challenge*. 8 Compensation & Benefits Mgmt. 1 (1993); C. Iannuzzo & A. Pink, Benefits for the Domestic Partner of Gay and Lesbian Employees at Lotus Development Corporation (Simmons College Graduate School of Management, 1991).

## OVERVIEW OF ISSUES RELATING TO DOMESTIC PARTNER HEALTH BENEFITS

Employers considering offering domestic partner health benefits to their employees will have to make decisions concerning domestic partners' eligibility for benefits, the manner in which domestic partners will be required to demonstrate their eligibility, and the scope of coverage to be provided to domestic partners.<sup>4</sup> The major issues for decision are discussed below. Other issues are discussed in annotations to the Model Documents.

**DEFINING ELIGIBLE DOMESTIC PARTNER RELATIONSHIPS.** In contrast to marriage, which is defined by law, society has not yet adopted a common definition of domestic partner relationships.<sup>5</sup> Thus, the first step that employers must take in implementing domestic partner health benefits is to establish the criteria that domestic partners must satisfy in order to be eligible for benefits.

While some employers have attempted to define eligible relationships in part by attempting to describe the emotional bond or commitment shared by a couple, the Association believes that it would be as difficult to describe those bonds in a manner that would encompass all domestic partner relationships as it would be to describe the bonds among all married couples. Instead, BASF's Model Documents require that the employee and partner be each other's "sole domestic partner" and expressly exclude coverage for roommates, relatives, and others who are not in domestic partner relationships.

Employers who offer domestic partner health benefits typically have defined eligible relationships by specifying some combination of emotional and financial ties that must exist among the partners and/or by requiring that the partners register their domestic partnership with the City and County of San Francisco. The Association's Model Documents follow this approach, by requiring that the employee and domestic partner be each other's sole domestic partner and that they either register their partnership with the City and County of San Francisco or possess at least three of seven specified indicia of emotional and financial interdependence that are common among persons in committed relationships (e.g. joint lease, mortgage or deed; joint ownership of a vehicle; joint checking account or credit account; and designation of the domestic partner as a

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<sup>4</sup> Because this Model Policy was drafted as part of an effort to eradicate discrimination and bias against lesbians and gay men, it addresses coverage for same-sex domestic partners only. Employers who choose to offer benefits to opposite-sex as well as same-sex domestic partners could modify the Model Documents to apply to all domestic partners.

<sup>5</sup> Although there may not yet be a common definition of domestic partners, recognition of domestic partner relationships is well-established in the lesbian and gay community and increasingly widely recognized in society at large. One dictionary defines domestic partner as a "person with whom one cohabits in a sexual relationship." *American Heritage Dictionary* (3d ed.). Another defines it as "either member of an unmarried, cohabiting and especially homosexual couple that seeks benefits usually available only to spouses." *Random House Unabridged Dictionary* (2d ed.).

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beneficiary of the employee's life insurance, retirement benefits, or will). The Model Policy includes an alternative to domestic partner registration to establish eligibility because of concerns in the lesbian and gay community that the registration offered by the City and County of San Francisco is an inadequate substitute for legal marriage and does not offer sufficient benefits for the obligations that it imposes. For example, San Francisco's Declaration of Domestic Partnership obligates the partners to pay third parties for the costs of each other's living expenses, but affords no corresponding tax benefits or inheritance rights. In light of these concerns, BASF believes it is appropriate to make registration sufficient to establish eligibility but also to provide an alternative to registration.

Similarly, although many employers and insurers have required domestic partners to live together or to wait a specified period before becoming eligible for benefits, the Model Documents do not impose such requirements, because they typically are not required of married couples. BASF recognizes that domestic partners, like married couples, may live separately due to work or other obligations without terminating their relationship. In addition, by requiring domestic partners either to register with the City and County of San Francisco or possess at least three indicia of emotional and financial interdependence, the Model Documents ensure that domestic partners have established significant objective manifestations of their relationships before they are eligible for benefits. To the extent that employers and insurers have imposed such requirements out of concern that domestic partner benefits not be abused by employees seeking coverage for persons who are not truly their domestic partners, the experience of employers who have offered domestic partner benefits demonstrates that such concerns are unfounded.<sup>6</sup> Employers who are concerned about potential abuse of domestic partner benefits should consider that employees who enroll a same-sex domestic partner in their employers' health plans must be prepared to identify themselves as gay men or lesbians to at least some of their fellow employees, a step that many employees are reluctant to take. Moreover, because the IRS does not recognize domestic partners to be qualified dependents, employees will have to pay income taxes on the value of the benefits their domestic partners receive and, therefore, will have financial disincentives from abusing domestic partner benefits. Where a provision requiring domestic partners to live together is nonetheless included in a policy, BASF recommends that the policy permit employees to obtain coverage for their domestic partners if one of the partners is temporarily living away from the joint residence but intends to return on a permanent basis.

**DEMONSTRATING ELIGIBILITY.** While most employers have extended health benefits to employees' spouses solely on the basis of the employees' identification of their spouses, most insurers that provide domestic partner health coverage have been unwilling to accept a comparable representation from employees in domestic partner relationships and have instead required employees seeking such benefits to submit some form of documentation of their eligibility. Most often, the required documentation is a declaration of eligibility signed under

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<sup>6</sup> Dennis Hostetler & Joan E. Pines, *Domestic Partnership Benefits: Dispelling the Myth*, 15 Rev. Pub. Personnel Admin. 41 (Winter 1995); E. Murphy, *Understanding the Domestic Partner Dilemma: Perspectives of Employer and Insurer*, (City of West Hollywood, 1992); Bureau of Nat'l. Aff., *Recognizing Non-Traditional Families*, Special Report #38 (1991)

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penalty of perjury, which some insurers require to be notarized. BASF believes that married employees and lesbian and gay employees with domestic partners should be treated equally with respect to how they are required to demonstrate their eligibility for benefits. Thus, where an insurer insists upon written documentation of eligibility or where an employer prefers to obtain such documentation, BASF recommends that documentation be required from married couples as well as domestic partners.<sup>7</sup> Requiring the same documentation from married couples and domestic partners ensures that gay and lesbian employees are not singled out as unreliable or untrustworthy in representing to their employers that they have satisfied the established criteria for eligibility for benefits coverage. To ensure that this is not an onerous burden, the document establishing eligibility could be incorporated into the document in which employees identify the spouse or domestic partner to be enrolled in the plan. In addition, to minimize inconvenience, where married employees have enrolled their spouses in the benefits plan before implementation of the domestic partner policy, those employees could be exempted from the requirement of submitting documentation of their spouses' eligibility until the next open enrollment period, and could then submit their documentation of eligibility at the same time they submit any other required enrollment documents. BASF also recommends that employers consider negotiating with their insurers to omit notarization of the statement of eligibility, as this requirement will cause needless expense and inconvenience to all employees who seek to enroll a spouse or domestic partner in a benefits plan.

**SCOPE OF COVERAGE.** BASF recommends that domestic partners be offered the same benefits that are offered to employees' spouses and on the same terms. For example, if an employer pays 100% of the cost of benefits for employees' spouses, it should also pay 100% of the cost of benefits for employees' domestic partners. Similarly, although a domestic partner does not have a right to COBRA coverage under existing law, employers should extend the equivalent coverage to employees' domestic partners that is offered to employees' spouses.

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<sup>7</sup> As examples of employers with this type of provision, Orrick, Herrington & Sutcliffe requires employees with spouses as well as those with domestic partners to submit declarations of eligibility, and Cooley Godward Castro Huddleson & Tatum requires that employees who seek to enroll spouses or domestic partners possess at least three specified documents, such as a joint lease or durable power of attorney, in order to be eligible for benefits.

## MODEL DOCUMENTS

### SUMMARY OF HEALTH BENEFITS FOR DOMESTIC PARTNERS

[Name of Employer] now offers its employees the opportunity to obtain domestic partner health benefits. Coverage is available for couples in same-sex domestic partner relationships.<sup>8</sup> Coverage does not extend to roommates, siblings, parents, or persons related in a way that would prohibit marriage in California. Complete details are available in the [refer to name of plan documents]

**ELIGIBILITY:** Coverage is available for couples in same-sex domestic partner relationships. It is not available to roommates, siblings, parents, or persons related in a way that would prohibit marriage in California. To be eligible for domestic partner health benefits, the employee and domestic partner must be:<sup>9</sup>

- The sole domestic partner of each other;
- At least 18 years of age; and
- Not legally married.

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<sup>8</sup> BASF believes that the term "domestic partnership" is commonly understood, at least in the gay and lesbian community, to denote a committed relationship between two people. As noted in footnote 5, *supra*, it has been defined by at least two modern dictionaries. The Association has not attempted to define domestic partner relationships with reference to the emotional bonds and commitments shared by a couple because it believes that it would be as difficult to describe those bonds in a manner that would encompass all domestic partner relationships as it would be to define the bonds among all married couples. Nevertheless, some employers have included in their eligibility requirements that the partners have "an intimate, committed relationship of mutual caring" or that they "have a committed relationship" and consider themselves "life partners."

Because employers have used a variety of different methods to define eligible domestic partner relationships, the Association has appended to this Model Policy excerpts from the actual policies of three BASF member firms.

<sup>9</sup> Some insurers and HMOs require that domestic partners live together in order to obtain benefits. These Model Documents do not include such a requirement because it typically is not required of married couples. BASF recognizes that domestic partners, like married couples, may live separately due to work or other obligations without terminating their relationship. Any requirement that domestic partners live together should permit them to obtain benefits if one of the partners is temporarily living away from the joint residence but intends to return on a permanent basis.

Insurers may also require that the domestic partners be mentally competent. The BASF Model Documents do not include a competency requirement because no comparable requirement is imposed on married employees when they enroll their spouses. If an insurer insists upon a competency requirement, BASF recommends that the employer negotiate a provision requiring that the domestic partners were competent at the beginning of the domestic partner relationship, just as a married employee is typically able to obtain benefits for a spouse who was competent on the date of their wedding, regardless of any subsequent incompetency.

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In addition to the criteria set forth above, the employee and domestic partner must either

1. Have obtained a Domestic Partnership Certificate from the City and County of San Francisco or from any other city, county, or state offering the ability to register a domestic partnership, and have not obtained a dissolution of the domestic partnership;<sup>10</sup> **OR**
2. Have at least three of the following:<sup>11</sup>
  - joint lease, mortgage, or deed;
  - joint ownership of vehicle;
  - joint ownership of checking account or credit account;
  - designation of the domestic partner as a beneficiary for the employee's life insurance or retirement benefits;
  - designation of the domestic partner as a beneficiary of the employee's will;

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<sup>10</sup> While the Model Documents make registration of a domestic partner relationship sufficient to establish eligibility for benefits, they do not *require* registration but instead permit eligibility to be established through satisfying three or more indicia of emotional and financial interdependence. There has been some concern in the gay and lesbian community that the registration offered by the City and County of San Francisco is an inadequate substitute for legal marriage and does not offer sufficient benefits for the obligations that it imposes. For example, San Francisco's Declaration of Domestic Partnership obligates the partners to pay third parties for the costs of each other's living expenses, including medical expenses not covered by insurance where one of the partners obtains health insurance through a domestic partner benefits policy, but affords no corresponding tax benefits or inheritance rights. In light of these concerns, the Association believes it is appropriate to offer an alternative to registration.

For similar reasons, although required by some insurers, the Model Policy does not require employees to represent that they are responsible for their domestic partners basic necessities or welfare. BASF does not believe that employees should be required to sign a document that could obligate them to third parties for their partners' expenses where the only benefit associated with that obligation is enrollment in the employers' health plan. Although health coverage is certainly a valuable and significant benefit, it is dwarfed by assuming a burden to third parties for living expenses and medical expenses incurred by the employee's partner where the employee does not also receive inheritance, tax, and other benefits. To the extent that insurers view a requirement that domestic partners be responsible for each other's expenses to be an indication of serious commitment between the partners, BASF believes that, because of the problems with that requirement, satisfying at least three of the seven listed indicia of emotional and financial interdependence is an appropriate surrogate.

<sup>11</sup> Some policies that include similar indicia of financial and emotional interdependence require not only that the employees submit statements of eligibility but also that they provide proof that they satisfy the criteria (e.g. a copy of a lease). BASF does not recommend that employers require such documentation, as that requirement would likely prove to be cumbersome not only for the employees who have to provide the documentation but also for the employers who would have to process the documents that were submitted.

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- designation of the domestic partner as holding power of attorney for health care; or
- shared household expenses.

**ENROLLMENT OF DOMESTIC PARTNER:** An employee can enroll a domestic partner within the same time periods as apply to the enrollment of spouses.<sup>12</sup> At the time the employee seeks to enroll a domestic partner, the employee must complete a Statement of Marriage or Domestic Partnership.

**BENEFITS COVERAGE FOR DOMESTIC PARTNERS:** The benefits provided to domestic partners are the same benefits as provided to spouses of married employees.

**BENEFITS COVERAGE FOR CHILDREN OF DOMESTIC PARTNERS:** Children of domestic partners are eligible for benefits under the same conditions as the children of employees' spouses.

**COVERAGE CONTINUATION:** Domestic partners and their enrolled dependents will receive the same or the equivalent benefits as spouses and their enrolled dependents receive for group continuation of health coverage through COBRA and/or individual conversion.<sup>13</sup>

**TERMINATION OF ELIGIBILITY:** Upon termination of the domestic partner relationship, or if the domestic partner no longer meets the criteria for eligibility, the employee must notify the plan administrator within 31 days, by submitting a Notice of Termination of Eligibility.<sup>14</sup>

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<sup>12</sup> The references in the Model Policy to provisions that are applicable to spouses should be replaced in an employer's plan documents with language identifying the specific plan provisions that will apply to both spouses and domestic partners.

Most policies permit a spouse to be enrolled either during an open enrollment period or within a specified time after the employee marries. The Association recommends that domestic partners be eligible for enrollment during open enrollment periods, for a specified time period after domestic partner coverage is first made available, and for a specified time period after the partners first satisfy the criteria for eligibility set forth in the plan documents.

<sup>13</sup> COBRA and individual conversion are typically made available to employees' spouses at the termination of the employment relationship or upon divorce. For domestic partner relationships, such benefits should be made available at the termination of employment or upon dissolution of the domestic partnership, which should be defined as the date on which the partnership no longer satisfies the criteria for eligibility set forth in the plan documents.

<sup>14</sup> Some insurers require employers to impose a waiting period after termination of a domestic partner relationship before the employee is permitted to enroll a new domestic partner. BASF recommends that employers who include such a requirement in their plans impose a comparable waiting period on married employees who seek to enroll a new spouse.

BAR ASSOCIATION OF SAN FRANCISCO  
MODEL POLICY FOR DOMESTIC PARTNER HEALTH BENEFITS

**TAX CONSEQUENCES OF ENROLLMENT:** Because the IRS does not recognize domestic partners to be qualified dependents, employees will have to pay income taxes on the value of the benefits their domestic partners receive, unless a domestic partner meets the eligibility criteria for tax dependent status under the Internal Revenue Code.<sup>15</sup> Employees who seek to enroll their domestic partners in the benefits plan should consult a tax advisor concerning the tax consequences of obtaining such benefits.

**CONFIDENTIALITY:** Enrollment forms and Statements of Marriage or Domestic Partnership will be kept confidential, and will be shared with human resources, accounting, and payroll department employees only for the purpose of implementing and administering the benefits, and as required or permitted by law.

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<sup>15</sup> For plans that include flexible benefits, the plan documents should note that although married employees can use pre-tax dollars to purchase coverage for their spouses in the flexible benefits portion of the plan, employees with domestic partners must use after-tax dollars to purchase the same coverage.

BAR ASSOCIATION OF SAN FRANCISCO  
MODEL POLICY FOR DOMESTIC PARTNER HEALTH BENEFITS

STATEMENT OF MARRIAGE OR DOMESTIC PARTNERSHIP<sup>16</sup>

PART A.

I submit this Statement of Marriage or Domestic Partnership to establish the eligibility of the person named below as my Spouse or Domestic Partner for health benefits available through [Name of Employer]

\_\_\_\_\_  
[name of employee]

\_\_\_\_\_  
[name of Spouse or Domestic Partner]

PART B.

I acknowledge as follows:

1. **For Marriage:**

The Spouse named above and I are legally married as recognized by the laws of California.

<sup>16</sup> Most employers have extended coverage for health benefits to their employees' spouses solely on the basis of the employees' identification of their spouses. Most insurers that offer domestic partner health benefits have been unwilling to accept a comparable representation from employees seeking benefits for their domestic partners, and have instead required them to submit documentation of eligibility. Where an insurer insists upon written documentation of eligibility from domestic partners, or an employer prefers such documentation, BASF recommends that documentation be obtained from married employees as well as employees with domestic partners, so that employers do not single out gay and lesbian employees as untrustworthy in representing to the employer their eligibility for benefits. This document could be modified so that it serves not only to establish eligibility but also to enroll the spouse or domestic partner in the relevant benefit plan. In addition, where married employees have enrolled their spouses in the benefits plan before implementation of the domestic partner benefits policy, they could be exempted from the requirement of submitting documentation of eligibility until the next open enrollment period. Should the employer prefer and the insurer agree, there would be no need for documentation of eligibility from either married employees or employees with domestic partners

BAR ASSOCIATION OF SAN FRANCISCO  
MODEL POLICY FOR DOMESTIC PARTNER HEALTH BENEFITS

**2. For Domestic Partnership:**

The Domestic Partner named above and I are each other's sole domestic partner, and we are each at least 18 years of age, not legally married, and not related in a way that would prohibit marriage in California.<sup>17</sup> In addition, we either:

- a. Have obtained a Domestic Partnership Certificate from the City and County of San Francisco or from any other city, county, or state offering the ability to register a domestic partnership, and have not obtained a dissolution of the domestic partnership; **OR**
- b. Have at least three of the following:
  - joint lease, mortgage, or deed;
  - joint ownership of vehicle;
  - joint ownership of checking account or credit account;
  - designation of the domestic partner as a beneficiary for the employee's life insurance or retirement benefits;
  - designation of the domestic partner as a beneficiary of the employee's will;
  - designation of the domestic partner as holding power of attorney for health care; or
  - shared household expenses.

**PART C. For Marriage or Domestic Partnership:**

I understand that I am obligated to file a Notice of Termination of Eligibility with the plan administrator within 31 days of the earliest of: (a) the death of my Spouse or Domestic Partner; (b) the date of the divorce decree ending my marriage; or (c) the date on which my Domestic Partner and I no longer meet the criteria for domestic partnership set forth above.

**PART D. For Domestic Partnership:**

I understand that acknowledging my domestic partner relationship in this Statement may subject me to legal obligations to my domestic partner, taxing authorities, or other third parties, and that I should consult an attorney to learn the extent of those obligations.

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<sup>17</sup> If changes were made to the list of eligibility criteria that appears in the Summary of Health Benefits for Domestic Partners, comparable changes should be made in this Statement of Marriage or Domestic Partnership.

BAR ASSOCIATION OF SAN FRANCISCO  
MODEL POLICY FOR DOMESTIC PARTNER HEALTH BENEFITS

**PART E. For Marriage or Domestic Partnership:**

I acknowledge that the statements above are true and correct <sup>18</sup>

Dated: \_\_\_\_\_  
\_\_\_\_\_ [signature of employee]

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<sup>18</sup> Some insurers may require that statements of eligibility for domestic partner benefits be notarized and signed under penalty of perjury. BASF believes that a notarization requirement imposes needless expense and inconvenience on employees. However, where an insurer insists on notarization, the same requirements should be imposed on married employees who enroll their spouses, in order to ensure that employers do not single out gay and lesbian employees for disfavored treatment.

BAR ASSOCIATION OF SAN FRANCISCO  
MODEL POLICY FOR DOMESTIC PARTNER HEALTH BENEFITS

**NOTICE OF TERMINATION OF ELIGIBILITY**

I submit this Notice of Termination of Eligibility as notification that my Spouse or Domestic Partner is no longer eligible to obtain health benefits through [Name of Employer]

\_\_\_\_\_  
[name of employee]

\_\_\_\_\_  
[name of Spouse or Domestic Partner]

**1. For Marriage:**

My Spouse is no longer eligible to obtain health care benefits through my employment because (a) we are divorced; or (b) my Spouse is deceased.

**2. For Domestic Partnership:**

My Domestic Partner is no longer eligible to obtain health care benefits through my employment because (a) we no longer meet the criteria for domestic partnership as set forth in my Statement of Marriage or Domestic Partnership; or (b) my Domestic Partner is deceased.

**3. For Marriage or Domestic Partnership:**

The date on which my Spouse or Domestic Partner became ineligible to continue to obtain health benefits through my employment was: \_\_\_\_\_.

Upon signing this Notice of Termination, I will provide a copy to my former Spouse or Domestic Partner.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[signature of employee]

BAR ASSOCIATION OF SAN FRANCISCO  
MODEL POLICY FOR DOMESTIC PARTNER HEALTH BENEFITS

BAR ASSOCIATION OF SAN FRANCISCO MEMBERS  
THAT OFFER DOMESTIC PARTNER HEALTH BENEFITS<sup>19</sup>  
AS OF NOVEMBER 1995

Bronson, Bronson & McKinnon

Carroll, Burdick & McDonough

Cooley Godward Castro Huddleson & Tatum

Heller, Ehrman, White & McAuliffe

Howard, Rice, Nemerovski, Canady, Robertson, Falk & Rabkin

Long & Levit

Morrison & Foerster

McCutchen, Doyle, Brown & Enersen

Orrick, Herrington & Sutcliffe

Pillsbury Madison & Sutro

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<sup>19</sup> This list is not comprehensive.

BAR ASSOCIATION OF SAN FRANCISCO  
MODEL POLICY FOR DOMESTIC PARTNER HEALTH BENEFITS

HEALTH CARE PROVIDERS THAT HAVE PROVIDED  
DOMESTIC PARTNER COVERAGE TO BAY AREA LAW FIRMS<sup>20</sup>  
AS OF NOVEMBER 1995

Aetna

Blue Cross California Care

CIGNA

Delta Dental

DeltaCare PMI

Health Net

Health Plan of the Redwoods

Kaiser

Mass Mutual Dental

Occupational Health Services Corporation

PacifiCare

Qual-Med

TakeCare

Vision Service Plan

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<sup>20</sup> This list is not comprehensive

BAR ASSOCIATION OF SAN FRANCISCO  
MODEL POLICY FOR DOMESTIC PARTNER HEALTH BENEFITS

**APPENDIX OF SAMPLE DOMESTIC PARTNER BENEFITS POLICIES**

This appendix includes excerpts from the domestic partner health benefits policies of the following Bar Association of San Francisco member firms:

Cooley Godward Castro Huddleson & Tatum

Morrison & Foerster

Pillsbury Madison & Sutro

**WHO IS ELIGIBLE TO PARTICIPATE**

- Full-time associates, staff attorneys, special counsel, managers, administrators, or members of the support staff who regularly work a minimum of 35 scheduled hours a week are eligible for *Cooley Choices*.

The following dependents are eligible:

- Your spouse, provided you can produce a marriage certificate or three of the following documents:
  - Copy of joint income tax return
  - Joint Lease/Mortgage deed
  - joint ownership of auto, credit card or checking account
  - designation of spouse as Durable Power of Attorney
  - designation of spouse as life plan beneficiary
- Your domestic partner:

If both partners are eligible for registration as domestic partners pursuant to an applicable local ordinance, such registration is required and will suffice as evidence of the domestic partnership. In this case you must be able to provide proof of such registration.

Where domestic partner registration pursuant to an applicable local ordinance is not available to both partners, eligibility for coverage will extend to your domestic partner who is:

- of the same sex
- living at the same address with you for six or more months, (if partner is temporarily living away from joint residence, he/she must intend to return on a permanent basis)
- not married to anyone else
- not a blood relative
- mentally competent at the beginning of the partnership, and
- jointly responsible with you for each other's care and living space

- If you enroll under this provision, you must be able to produce three of the following documents:
  - Joint Lease/Mortgage deed.
  - Joint ownership of auto, credit card or checking account.
  - Designation of spouse as Durable Power of Attorney.
  - Designation of spouse as life plan beneficiary.

Additionally, the employee cannot be married to anyone else at the time they enroll a domestic partner.

- Unmarried children who are:
  - under age 19
  - under age 25 if full-time students, that is, taking a minimum of 12 units
  - handicapped before age 19 and financially dependent on you

MEMORANDUM

TO: Insurance Benefits Department  
San Francisco Office

FROM: \_\_\_\_\_

DATE: \_\_\_\_\_

RE: Domestic Partner Health Care Subsidy or Health Insurance Benefits

I am applying for the subsidy or the firm-sponsored insurance benefits and enclose a completed Affidavit of Same Sex Domestic Partnership. If applying for the subsidy, I am enclosing evidence of individual health care coverage purchased for my domestic partner and eligible children and proof of coverage or qualification for coverage during the current year. (This evidence cannot be the domestic partner's contribution for coverage through his or her own employer health care plan except for COBRA continuation). I understand that I will receive confirmation of this benefit.

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**MORRISON & FOERSTER  
AFFIDAVIT OF SAME SEX  
DOMESTIC PARTNERSHIP**

**We declare:**

1. We have an intimate, committed relationship of mutual caring;
2. We live together;
3. We are both at least 18 years of age;
4. Neither of us is married according to the laws of this State;
5. We are not related by blood closer than would bar marriage in the state in which we reside, and we are mentally competent to consent to contract;
6. We are each other's sole domestic partner and intend to remain so indefinitely;
7. Neither of us has had a different domestic partner in the last six months. (This condition does not apply if you had a partner who died; if you did, cross this item out.)
8. The children listed below:
  - Are mainly dependent on us for care and financial support;
  - Are living with us in a parent-child relationship; and
  - May be claimed by one of us as a dependent as defined in the Internal Revenue Code 152.

**WE ARE APPLYING FOR: (Check either subsidy or health insurance boxes)**

- The firm's subsidy; or
- Delta Dental or CIGNA DHMO and/or  
the Vision Service Plan

Note: All medical plans in California and New York have documentation requirements which replace this affidavit.

**DEPENDENT INFORMATION**

If you have chosen dependent coverage, please complete the following information. Attach a separate sheet if necessary. Put an "X" in the column which indicates which plans you want to enroll your dependents in.

Relation to Employee	Last Name, First Name, Middle Initial	Date of Birth (M/D/Y)	Social Security Number	Sex (M/F)	Medical Plan	Dental Plan	Vision Plan
Spouse							
Domestic Partner							
Child							
Child							
Child							
Child							

**If You Decline Cooley Choices Medical Coverage**

If you elected no medical coverage, you must fill in the following information:

Name of employer where you have other medical coverage	Telephone number of contact for benefits	Insurance company and group policy number

**BENEFICIARY DESIGNATION**

I designate the following individuals to be my *primary* beneficiaries under the life insurance plan:

Name and Address	Relationship	Percentage of Benefit

I designate the following individuals to be my *secondary* beneficiaries under the life insurance plan. Your secondary beneficiary receives benefits at your death only if your primary beneficiary is no longer living or cannot be located.

Name and Address	Relationship	Percentage of Benefit

**ACKNOWLEDGEMENT AND SIGNATURE**

I understand that I have made elections for my Cooley Godward dental coverage from \_\_\_\_\_ through \_\_\_\_\_ and other benefits for \_\_\_\_\_ through \_\_\_\_\_. I understand that I may alter my elections only as a result of a change in family or employment status as defined by the Cooley Godward benefit plans. I understand that any amounts in either of my spending accounts will be forfeited if expenses incurred on or before \_\_\_\_\_ are not claimed by \_\_\_\_\_. If I have declined medical coverage for myself or my dependents, I certify that I have coverage elsewhere. If I am paying the non-smoker rate for life insurance, I certify I have not smoked in the past six months. If I am covering my spouse or domestic partner, I certify I can provide the documentation outlined on page 3. If I am covering my domestic partner, I understand that the amount I pay and the amount Cooley pays is subject to taxes. I understand that if total of price tags and Spending Account contributions is more than \$100, I will pay the difference with before-tax payroll deductions. If total of price tags and Spending Account contributions is less than \$100, I can take the difference as taxable cash or spend it on additional coverage.

Name \_\_\_\_\_

Date \_\_\_\_\_

		Child of Employee	Child of Domestic Partner
Child	Date of Birth	_____	_____
Child	Date of Birth	_____	_____
Child	Date of Birth	_____	_____
Child	Date of Birth	_____	_____

9. We understand that the domestic partner and the children of the domestic partner listed above will be ineligible for either the domestic partner subsidy or the health insurance benefits on the date we cease to be domestic partners. However, revocation of this affidavit will not affect coverage of children otherwise covered under other provisions of the employee's benefit plans.
10. We agree to notify Morrison & Foerster if there is any change of circumstances attested to in this Affidavit within thirty (30) days of the change by filing a Revocation of Affidavit of Domestic Partnership. Such revocation shall be on a form provided by the firm and shall affirm that the partnership is dissolved, and that a copy of the revocation has been mailed to the other partner.
11. We agree to indemnify the firm for false statements contained in this Affidavit.
12. We provide the information in this Affidavit to be used by the firm for the sole purpose of determining our eligibility for the domestic partner health care subsidy or health insurance benefits including medical, dental and vision. We understand that this information will be held confidential and will be subject to disclosure only upon our express written authorization or pursuant to legal process.
13. We understand that, once approved, the subsidy or the health insurances we have enrolled for will be effective on January 1 or the first of the month following the submittal and verification of the Affidavit and evidence of coverage, whichever is the later event.

We declare that the statements above are true and correct. We certify that to the best of our knowledge and belief, all information stated is correct and complete. We understand that this form is not an application for insurance and that the purpose of this form is to establish the eligibility of the persons named herein for the domestic partner health care subsidy or health insurance benefits provided by the firm.

Signed on \_\_\_\_\_, 19\_\_ in \_\_\_\_\_

Signature \_\_\_\_\_  
Employee

Print Name \_\_\_\_\_  
Address \_\_\_\_\_  
Date of Birth \_\_\_\_\_  
SSI \_\_\_\_\_

Signature \_\_\_\_\_  
Domestic Partner

Print Name \_\_\_\_\_  
Address \_\_\_\_\_  
Date of Birth \_\_\_\_\_  
SSI \_\_\_\_\_

**Warning: The domestic partner health care subsidy or health insurance benefits may affect your taxes. Check with your accountant for possible tax implications.**

PILLSBURY MADISON & SUTRO  
CERTIFICATION OF DOMESTIC PARTNERSHIP

We, the undersigned, \_\_\_\_\_ [please print name of employee], and \_\_\_\_\_ [print name of domestic partner], each hereby certify as follows:

- We reside together in the same household and intend to do so indefinitely;
- We are of the same sex;
- Neither of us is married;
- We are both at least 18 years old and mentally competent;
- We are not related by blood (or of a relationship that would prohibit marriage in the state in which we reside); and
- We are responsible for each other's common welfare and share financial obligations.

In addition, we currently possess the following [check all that apply; at least three boxes must be checked]:

- A written domestic partnership agreement
- A joint real estate mortgage, lease or deed (either as tenants in common or joint tenants with right of survivorship)
- A current beneficiary designation naming the employee's domestic partner as a primary beneficiary of the employee's life insurance or retirement plan benefits payable at death
- A current will naming the employee's domestic partner as a primary beneficiary of the employee's estate
- A durable power of attorney for property and health care executed by the employee in favor of the domestic partner
- Joint ownership of a motor vehicle or a joint checking or joint credit account

I, \_\_\_\_\_ [print employee's name], agree to notify Pillsbury Madison & Sutro in writing within 30 days of the termination of our domestic partnership relationship. I understand that I cannot cover another domestic partner under a Firm-sponsored health insurance plan for at least 12 months from the termination date of the partnership.

We both understand that a domestic partner who is terminated from the employee's health insurance plan regardless of the circumstances is not eligible for COBRA continuation coverage.

We provide the information in this Certificate to be used by Pillsbury Madison & Sutro for the sole purpose of determining our eligibility for domestic partnership health care benefits.

Each of us declares under the penalties of perjury that the statements in this Certificate are true and correct and that he or she executed this Certificate at \_\_\_\_\_ [please print place where Certificate is signed] on the date set forth below.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Domestic Partner

\_\_\_\_\_  
Date