

The Prevalence of Sexual Orientation Discrimination In The Legal Profession in Massachusetts

**A report prepared by
The Massachusetts Lesbian and Gay Bar Association
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March, 1994

Executive Summary

- Seventy-five percent of lesbian and gay attorneys responding to a Massachusetts Lesbian and Gay Bar Association survey have either experienced discrimination based on sexual orientation or heard anti-gay remarks by colleagues in the office or in court.
- Over 30% of attorneys have personally suffered discrimination based on their sexual orientation, and an additional 8% were aware of discrimination against other lesbian or gay colleagues.
- Twenty-three percent report hearing attorneys in their office make anti-gay or anti-lesbian remarks while 14% have heard a member of the judiciary make anti-gay comments.
- Sixty-six percent of respondents indicate that being gay or lesbian has affected their decision about where to work or whether to take a job.
- On the positive side, no respondents indicate their office would refuse to take a lesbian or gay client solely because of their sexual preference.
- Approximately half of attorneys who did not report discrimination are sole practitioners, while most of the others work for the government or have been practicing one year or less.

The survey was conducted by the Massachusetts Lesbian and Gay Bar Association (MLGBA) at the beginning of 1993. Two hundred members of the organization were surveyed and sixty-four (32%) responses were received. MLGBA works to increase the acceptance of lesbians and gays in the legal profession, to assure fair treatment of lesbian and gay clients, and to educate the legal profession about the particular issues facing gay men and lesbians. This survey provides helpful information about the nature of discrimination against gay men and lesbians.

Discrimination

In the area of discrimination, 31% of respondents personally experienced discrimination in the workplace while 22% indicate that being gay or lesbian may be a barrier to advancement. Their comments provide insight into the way discrimination operates in the hiring process, in the area of work assignments, promotions, or raises, and as barriers to advancement. One respondent writes, "After coming out in the final interview, I was asked to withdraw from the hiring process." Another perception is that "partners [in my firm] may feel we have 'enough' gays and lesbians." For lesbians, several comments reveal the difficulty of separated sex discrimination from that based on sexual orientation. One woman states "as a single woman without kids, it is assumed I can get by without the raise." Another commented, "My reviews have always indicated I am 'too serious' or should 'lighten up a little' which I believe is because I'm not seen as feminine or flirtatious."

In terms of advancement several comments speak of a glass ceiling at "the partner level" or "top levels of administration." Others note being passed over for promotions or choice work assignments. At a more general level, lesbians and gays speak of feeling excluded from the

mentoring process. These relationships are often formed in the context of developing social relationships. Senior lawyers may choose not to develop these relationships with gay or lesbian junior associates. Lesbian and gay attorneys speak of social exclusion, or exclusion from common firm activities such as conducting hiring interviews for the firm. One response notes that the "old boys network" is not a place where gay men fit in.

Anti-lesbian or anti-gay comments

Twenty-three percent of respondents have heard attorneys in their workplace make anti-gay or anti-lesbian remarks, while 14% of those surveyed report hearing anti-gay or lesbian remarks by judges or mediators. Most report that attorney comments were "typical thoughtless, homophobic, jokes" or the "typical, hateful, things" people say about groups of people not in favor. One respondent notes an attorney who speculated to office staff that he "must have AIDS" when the respondent, an openly gay man, was home with a severe flu.

Anti-gay or anti-lesbian comments from the bench are less common, but still occur. One judge was quoted as saying "he's as queer as a three-dollar bill, I won't seal his record." Another made comments indicating sympathy with a defendant accused of attacking a gay man. Other responses report anti-gay comments from judges, but not in public session. Mediators and guardians ad litem frequently argue in custody cases that lesbian mothers must not be allowed to be affectionate with girl friends because they "can't control their sexuality." Straight parents are frequently cited as being able to provide a more "normal" and "stable" household than a gay parent.

The survey didn't ask questions about anti-gay comments by clerks and court officers, or by opposing counsel. Many respondents suggest this would be an important line of questioning.

Being Out as a Gay or Lesbian Attorney

Sixty-six percent of those surveyed say that being gay or lesbian has influenced their choice of workplace. Overwhelmingly, comments reflect that people try to avoid law firms or other work environments that are perceived to be hostile to gays and lesbians. One younger attorney suggested that not including sexual orientation in the anti-discrimination statement in a firm's hiring materials was sufficient to discourage his looking for a job there. Another person was hesitant to look for another job in order not to have to deal with coming out in a new work setting. One comment noted that most places of employment are still somewhat or very uncomfortable for openly gay and lesbian lawyers.

Thirty-two percent of respondents do not list gay-related activities on their resume. A common response was given by one attorney, "I have two resumes, of course." One respondent noted that "I don't put gay related activities on my resume but I come out in interviews."

Of attorneys responding to this survey, 82% indicate they are "out" as gay or lesbian in their workplace. Several of those qualify their response by indicating that they are out to their boss or some of their colleagues but not necessarily to support staff, police officers, or other parties with whom they interact. Some respondents indicate that being "out" improved both their personal life and their legal practice.

Workplace Benefits

Seventy-five percent of respondents do not receive benefits such as health insurance, bereavement leave, etc. for their partners. Nineteen percent indicate that they do receive such benefits, however several of those were limited to bereavement leave or sick time related to gay partners. One respondent insured his partner by claiming him as an employee. Only one

response links the absence of partner benefits to discrimination in the workplace.

Discussion

The survey responses came from a group of lesbian and gay attorneys willing to join the Massachusetts Lesbian and Gay Bar Association. With over 40,000 attorneys in Massachusetts, statistically there are approximately 2,000 to 4,000 lesbian and gay attorneys in the state. The membership of MLGBA may represent the lesbian and gay attorneys who are most likely to be open about their sexual orientation. It does not reach much larger numbers of attorneys who are less likely to be open and therefore cannot speak for the general gay and lesbian legal population.

Still, this population has found discrimination, anti-gay and lesbian comments, and barriers to advancement to be relatively commonplace in legal employment settings in the commonwealth. It is the rule, rather than the exception, that this group of attorneys choose work settings where they believe they will not be treated differently or even hostilely, but that despite those efforts they still experience discrimination. Sole practitioners may escape discrimination in the workplace, but are still exposed to anti-gay comments by court personnel, opposing counsel, occasionally from the bench, and by other parties.

Future exploration of these issues should attempt to survey or interview a larger group of gay and lesbian attorneys, as well as non-gay or lesbian identified attorneys to learn their perceptions about the acceptance of lesbians and gay men in the profession. Questions to be explored include difference in career choices, salary, and advancement between gay men and lesbians and between gays and lesbians and their straight counterparts.

More emphasis should be placed on potential methods of reducing discrimination and

discriminatory remarks throughout the legal profession. This can include workplace training, guidelines, or the establishing a special task force or commission to more thoroughly explore these issues.

The Massachusetts Lesbian and Gay Bar Association (MLGBA) is a voluntary state-wide professional association of lawyers providing a visible lesbian and gay presence within the Massachusetts legal community. Law students and other members of the legal profession are encouraged to become non-voting associate members. MLGBA is affiliated with the Massachusetts Bar Association (MBA) and the National Lesbian and Gay Law Association (NLGLA).

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Board Member Sandra Lundy, Esq. contributed to the development and the survey and report.