

Overlooked No Longer

A new ABA commission will address sexual orientation and gender identity issues in the legal profession

BY SIOBHAN MORRISSEY

DAVID YOUNG, who was an openly gay judge in Miami before stepping down earlier this year to join the ranks of syndicated television jurists, knows firsthand that the profession still has not come fully to terms with issues of sexual orientation.

Young, who served as a state court trial judge, cites one instance in which an assistant public defender asked him to recuse himself from a case involving a man who was beaten outside of a nightclub with a gay clientele.

"The public defender comes sidebar and says, 'Judge, I really feel uncomfortable, but can you be fair?'" Young recalls. "I looked at him and I said, 'Well, let me ask you a question. If I were a black judge and this had to do with a racial issue, would you ask the black judge the same question? Or if it was a rape case, would you ask a woman judge the same question? Or I'm Jewish, and it's an anti-Semitic case, would you ask me to recuse myself based upon the fact that I'm Jewish? I suspect all the answers to those questions are no. So, why are you asking me that question to begin with?'"

Young says that kind of misperception gives him reason to applaud the ABA's creation of a Commission on Sexual Orientation and Gender Identity. He hopes the commission will reinforce efforts to reduce bias within the profession against lawyers, judges and support staff who are lesbian, gay, bisexual or transgen-



Jeffrey Gibson: "Lawyers really want to do the right thing."

der. The transgender category is applied to those who live as the opposite gender.

The commission is a follow-up to February policy action by the ABA House of Delegates. That action affirmed that the association's commitment to promoting full and equal participation in the legal profession encompasses people of differing sexual orientations and gender identities. Until then, the commitment to diversity—as stated in Goal IX of the association's mission state-

ment—only specifically identified minorities, women and, after a 1999 amendment, people with disabilities.

"While progress is being made, discrimination against lesbian, gay, bisexual and transgender people

within the profession persists," states a report that the Section of Individual Rights and Responsibilities submitted to the House in support of its recommendation that Goal IX's scope be expanded.

The report notes that such individuals "still receive little statutory protection from discriminatory employment practices." According to the report, fewer than 20 states (and the District of Columbia) prohibit employment discrimination on the basis of sexual orientation, and only six prohibit employment discrimination on the basis of gender identity. (A number of municipalities around the country also prohibit such discrimination.)

In June, the ABA's Board of Governors authorized creation of the commission to develop programs that will help turn an aspirational policy into practical reality. The commission's 13 members, appointed by ABA President William H. Neukom of Seattle, were

to gather at the end of November to start setting an agenda.

A FULL PLATE

REDUCING WORKPLACE DISCRIMINATION is likely to be high on the commission's to-do list, says chair Jeffrey G. Gibson. Bringing a personal perspective to the issue, he recalls an incident at a Los Angeles law firm where he worked in 1985.

"I walked into a meeting one day and my boss turned to me and asked, 'Are you gay?'" says Gibson, now a

partner at Goldstein, Gellman, Melbostad, Gibson & Harris in San Francisco. "I was so stunned I was, 'Ah, ah, ah, why do you ask?'" The boss said he wanted to know whether he should stop trying to pick up women for Gibson when they socialized. "It was so jarring," Gibson says. "I didn't know if he was going to fire me or not. I did know of other people who were fired because they were gay. I was nervous, and I knew there was no recourse."

(Since 1985, the California Assembly has adopted legislation that prohibits job discrimination on the basis of sexual orientation or sexual identity.)

After years of effort, proponents of a federal bill that would specifically protect lesbians, gays and bisexuals from job discrimination believe they may be able to muster enough votes for passage. But the current version of the proposed Employment Non-Discrimination Act also has received some criticism from the LGBT community because it wouldn't extend those protections to transgender people.

Rep. Barney Frank, D-Mass., a key sponsor of the bill, said in a House speech Oct. 9 that, while he shares those feelings, political realities must be recognized.

"I am convinced that the votes are there to pass a bill that bans discrimination based on sexual orientation in employment," said Frank, who is gay. "I am also convinced that if we were to put up a bill that included people of transgender, that part would be stricken on a vote—and, unfortunately, a fairly heavy vote."

Such a result would make it harder to bring up legislation at a later date that addresses rights of transgender people, said Frank. Moreover, he said, "the notion that you do not pass an anti-discrimination bill protecting large numbers of people until you can protect everybody, in my judgment, is flawed—morally and politically."

That position leaves Shannon Minter, legal director at the National Center for Lesbian Rights in San Francisco, feeling somewhat aban-

doned. Minter transitioned to male in 1995.

"I think that the efforts by Rep. Frank and others to cut transgender people out of federal protections underscore just how urgently we need more advocacy and education," says Minter, a member of the new ABA commission.

Minter says education should be one of the commission's priorities. "Lawyers are an enormous influence," he says. "If we can make some headway with increased acceptance and understanding for transgender people in our community, I think it will have a huge effect on our society."

A HIDDEN CONSTITUENCY

OTHERS SAY THE COMMISSION CAN serve as a forum for LGBT lawyers to share stories about making their way in a profession in which discrimination still occurs.

Just knowing there are others who share those experiences can be an important step, says Phyllis Randolph Frye, who was born male and transitioned to female in the late 1970s. After passing the Texas bar in 1981, she opened a practice in Houston and gradually gained prominence representing transgender clients. She also has become something of a mentor for other lawyers dealing with sexual identity issues, many of whom tell her they fear reprisals and ridicule if they are open about it.

"I get calls all the time," says Frye, whose firm is Simoneaux, Frye and Thomason. "I get business cards all the time. I meet other attorneys all the time who are trans but closeted and tell me how much they admire me and tell me that some day in their life they will be able to come out without losing their job in a law firm. Despite all of that, there are only four out-of-the-closet transgender attorneys in the state of Texas."

Alyson D. Meiselman, a Baltimore lawyer who transitioned from male to female in 1998, practices with the firm of Scurti, Meiselman & Bledsoe and is a member of the ABA Commission on Women in the Profession. She says the new commission will

face difficulties in identifying its constituency.

"This particular commission has a harder and more difficult task before them than any other commission," Meiselman says, "because how are they going to identify whom they are serving?"

Meiselman's own experiences help illustrate the reluctance of many lawyers to come out. She practiced law for nearly two decades as a male before transitioning to female.

"I had a reputation; people respected me," Meiselman says. "But when I transitioned, I was treated really horribly by the local bar. I got calls from members of the bar. They didn't say who they were. Not threatening kind of stuff. It was just prejudicial. One particular woman lawyer called me 'it' in the courtroom," she says. "I'm not an it."

Things are getting better, if only gradually, say lawyers in the LGBT community.

Law schools, for instance, now account for LGBT individuals in their student statistics at the behest of the National Association for Law Placement, says Richard A. Wilson of Chicago, chair of the National Lesbian and Gay Law Association and principal in the Law Office of Richard A. Wilson. Law firms are taking advantage of that policy to bolster their own diversity efforts, he says. In September, 156 firms attended a career fair that his association sponsored in conjunction with a conference in Chicago focusing on issues relating to LGBT lawyers.

At one time, Wilson says, "people wouldn't even put on their resumé anything that would identify them as LGBT. Now it's flipped over. Law firms are reaching out to LGBT lawyers because they can use them in their rankings."

Gibson is hopeful that the new ABA commission will help lesbian, gay, bisexual and transgender lawyers find a greater comfort zone in the profession.

"Generally, law firms and lawyers really want to do the right thing," Gibson says. "They just need a little assistance." ■