



NEW YORK
CITY BAR

**COMMITTEE ON LESBIAN, GAY,
BISEXUAL, TRANSGENDER AND QUEER RIGHTS**

August 14, 2019

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By Email

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Re: Comments on Proposed Amendment to the Optional Demographic Questionnaire on the Attorney Biennial Registration Statement (22 NYCRR § 118.1[e][12])

Dear Mr. McConnell:

The New York City Bar Association (the “City Bar”) is an organization of over 24,000 lawyers and judges dedicated to improving the administration of justice. The Committee on Lesbian, Gay, Bisexual, Transgender and Queer Rights (the “Committee”) addresses the legal and policy issues affecting people based on their sexual orientation or gender identity. The Committee thanks the Administrative Board of the Courts for proposing to collect sexual orientation and gender identity (SOGI) data as part of the attorney biennial registration statement (22 NYCRR § 118.1[e][12]). We strongly support this amendment.

In our February 2, 2018, comments on and recommended changes to the Office of Court Administration’s proposed amendment of various non-discrimination rules of the Unified Court

System, we detailed the discrimination facing transgender individuals, including attorneys.¹ As our own committee members can attest, attorneys also face discrimination and harassment on the basis of sexual orientation,² leading to attorneys having to hide their sexual orientation in the workplace and in courtrooms. LGBTQ attorneys of color experience additional marginalization, and the National Association for Law Placement (NALP) tracks sexual orientation, but it does not track LGBTQ attorneys of color.³

OCA's current proposal would allow UCS to track the population of LGBTQ attorneys, thereby allowing for a more accurate view of the LGBTQ presence in the legal community. This would allow the UCS and legal organizations such as the City Bar to better support LGBTQ attorneys, including promoting diversity and inclusion. Demographic data on sexual orientation and gender identity ("SOGI") have historically been scarce, particularly in the field of employment, which has hindered successful implementation of programs designed to aid or study that particular population. Without data, it is difficult to determine the extent of problems known to disproportionately affect LGBTQ people.

To date, New York State has been at the forefront of states seeking to identify disparities and to collect SOGI demographic data. In 2014, Governor Andrew M. Cuomo announced a multi-agency effort to address LGBT disparities in state services.⁴ In 2016, the New York City Council adopted, and Mayor Bill DeBlasio signed, a law requiring numerous City agencies to also track SOGI data.⁵ In May 2017, the office of New York City Comptroller Scott M. Stringer surveyed LGBTQ New Yorkers and found disparities in adverse employment actions and discrimination or negative treatment in homelessness, public transportation, government benefits, and healthcare settings.⁶

Demographic information on working LGBTQ people is, however, hard to locate. The City and State surveys are all linked to agencies that provide services or supervision, such as the New York State Department of Corrections and Community Supervision, the Department of Health, and the New York City Department of Education. The City Comptroller's survey was not based

¹ LGBT Rights Committee, *Recommended Changes to OCA Nondiscrimination Rules*, NYC BAR (Feb. 2, 2018), https://s3.amazonaws.com/documents.nycbar.org/files/2017323-Court_nondiscrimination_comments_LGBT_2.1.18.pdf. (All websites cited in this letter were last visited on August 13, 2019).

² See M.V. Lee Badgett et al., *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination*, WILLIAMS INST. (2007), <https://escholarship.org/uc/item/5h3731xr>; Takeia R. Johnson, *LGBT Attorneys of Color in the Legal Profession: A Discourse on Inclusion*, THE FEDERAL LAWYER (Jan/Feb 2017), http://www.fedbar.org/Resources_1/Federal-Lawyer-Magazine/2017/JanuaryFebruary/Features/LGBT-Attorneys-of-Color-in-the-Legal-Profession-A-Discourse-on-Inclusion.aspx?FT=.pdf.

³ Johnson, *supra* note 2, at 49.

⁴ *Governor Cuomo Announces Multi-Agency State Effort to Address LGBT Disparities* (July 23, 2014), <https://www.governor.ny.gov/news/governor-cuomo-announces-multi-agency-state-effort-address-lgbt-disparities>.

⁵ Int. 0552-2014. See also Andy Humm, *LGBT New Yorkers Will Now Be Counted by City*, GAY CITY NEWS (Nov. 9, 2016), <https://www.gaycitynews.nyc/stories/2016/23/w25813-lgbt-new-yorkers-will-now-counted-city-2016-11-09.html>.

⁶ Office of the N.Y.C. Comptroller, *Results of a Survey of LGBTQ New Yorkers* (June 27, 2017), <https://comptroller.nyc.gov/reports/results-of-a-survey-of-lgbtq-new-yorkers>.

on a representative sample.⁷ Among employers nationwide, only about half allow employees to disclose SOGI information.⁸ Meanwhile, the federal government does not track SOGI information in job data,⁹ and it has recently sought to block or discontinue SOGI data collection in a variety of ways, including removing SOGI questions from the list of proposed topics on the United States Census and from federal surveys.¹⁰ Such actions by the Trump administration have drawn the attention of advocates and healthcare providers.¹¹ Failing to collect data “robs policy makers of the ability to understand [LGBTQ people] and it makes evidence-based policy more difficult,” and so “puts [LGBTQ people] as a group back into the closet.”¹²

The UCS’s proposal is a step in the right direction that will help New York State gather important SOGI data in employment. Accordingly, the LGBTQ Rights Committee supports the proposed amendments to the optional demographic questionnaire on the attorney biennial registration statement (22 NYCRR § 118.1[e][12]).

Respectfully,



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Queer Rights

⁷ *Id.* (“The survey was not based on a scientific sample of the City’s population.”).

⁸ *Self-Identification of LGBTQ Employees*, HRC, <https://www.hrc.org/resources/self-identification-of-lgbt-employees> (last visited August 13, 2019).

⁹ See Shabab Ahmed Mirza et al., *The State of the LGBTQ Community in the Labor Market: Pre-June 2018 Jobs Day Release*, CTR. AM. PROGRESS (July 5, 2018), <https://www.americanprogress.org/issues/economy/news/2018/07/05/453094/state-lgbtq-community-labor-market-pre-june-2018-jobs-day-release>.

¹⁰ See Praveen Fernandes, *The Census Won’t Collect L.G.B.T. Data. That’s a Problem.*, N.Y. TIMES (May 10, 2017), <https://www.nytimes.com/2017/05/10/opinion/the-census-wont-collect-lgbt-data-thats-a-problem.html>.

¹¹ See Gary J. Gates, *LGBT Data Collection Amid Social and Demographic Shifts of the US LGBT Community*, 107(8) AM. J. PUB. HEALTH 1220–22 (Aug. 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5508189>.

¹² Fernandes, *supra* note 10.