



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #7

REQUESTED ACTION: Approval of the request of the Committee on LGBTQ People and the Law for section status.

Attached is a memorandum from Christopher R. Riano, chair of the Committee on LGBTQ People and the Law, setting forth the committee's request that the House authorize the creation of a section on LGBTQ People and the Law. The memorandum outlines the committee's recent activities and its planned expansion of activities as a section. The committee notes that as a section it will be better able to accommodate members who, because of limits on the size of committees, have not been able to participate in committee activities. Finally, the committee notes that as a section, it will be better able to address diversity and inclusion in the legal community.

Mr. Riano will present the request at the November 7 meeting.



COMMITTEE ON LGBTQ PEOPLE AND THE LAW

CHRISTOPHER R. RIANO
Chair
Columbia University
200 W 54th St
New York, NY 10019-5567
crr2107@columbia.edu

September 15, 2020

To: House of Delegates, New York State Bar Association

From: Christopher R. Riano, Chair of the LGBTQ People and the Law Committee

RE: Section Status for the Committee

The Committee on LGBTQ People and the Law (“Committee”) respectfully requests that the House of Delegates authorize Committee to establish a Section on LGBTQ People and the Law, pursuant to Article X., Section 1, of the NYSBA’s Bylaws.

Established in 2008, the Committee has helped further NYSBA’s mission and serves as a critical voice for members of the LGBTQ legal community and allies across all of New York State. The Committee is the only NYSBA Committee committed to exclusively addressing professional, legal, policy, and legislative issues impacting the LGBTQ community, which continues to face significant and substantial legal challenges across the entire country that range from prohibited discrimination in the workplace and in public accommodations, issues with access to healthcare, and structural legal issues within family law such as recognition of marriage rights, recognition of parentage, and issues with adoption and assisted reproduction.

NYSBA has a proud tradition of standing up ahead of the curve when it comes to advocating for the legal rights and liberties of the LGBTQ community, but without further structure and resources, it is increasingly difficult for NYSBA to grow as the state-wide home for LGBTQ People and the Law. Currently, there is no other state-wide organization that can support this work, which is why it is critical that NYSBA take the lead. In particular, this will become even more relevant with the recent passage of the the CPSA (“surrogacy law”) which will have a major state-wide ongoing impact in the LGBTQ community.

Recent national and state developments regarding racial and social justice only make it even more important that the legal profession focus even more clearly on diversity and inclusion. Now is the exact time to convert this Committee from a trailblazing Committee to a much-needed and influential NYSBA Section.

The Committee drafts legal comments, amicus briefs, proposes legislation, pushes for the adoption and implementation of policy by the Executive Committee and House of Delegates, and acts in other ways to ensure the fair treatment of LGBTQ People and our allies under the law.

The Current Cap on the Committee's Membership

Due to the cap placed on the number of attorneys who can join the Committee each year, only 32 members are directly involved in our work. According to NYSBA, due to the cap on our Committee's size, we are one of a few committees that historically has considered turning down numerous prospective members and regularly rotates members off the Committee to make way for new members. While there is a "Friends of LGBTQ" group that was formed to attempt to accommodate those who have been unable to join the committee, that does not fully take advantage of those who would want to be involved in the work like a section would be able to do.

Given the extraordinary amount of work necessary in this area of the law, there are extraordinary opportunities, especially for younger lawyers, that are available that should be taken advantage of with increased numbers and resources that come from being a Section. Members should always feel invested in the Committee and its subcommittees as advocates for the LGBTQ community. These individuals are valuable NYSBA members and volunteers and feel a strong sense and passion on critical contemporary issues - we should be working harder to foster and support this community.

The Current Problem with Limited Resources

After achieving a major achievement this year, by drafting a key brief on behalf of NYSBA for the entire association, with more resources comes the ability to have more impact. This has been shown to a large degree by the incredible support the association has received following the brief we drafted in *Fulton v. City of Philadelphia*, and is a tradition the committee should be able to continue going forward as a section.

Currently the Committee's annual budget is approximately \$5,000. Of this amount, we already have spent money on the recent SCOTUS brief, and expect to be able to file more briefs going forward. This budget is not enough to cover our expenses, let alone allow us to take on more issues.

The Committee needs both the people power, and the fiscal power, to ensure that we are able to properly address the needs of the LGBTQ community both state-wide as well as nationally. There are significant challenges that remain to addressing these issues in our current format as a Committee, which could be far better addressed if instead we were a Section.

Because NYSBA's committees are not income generating, the Committee is unable to return revenue to a budget to offset expenses. Even if we have funds left over at the end of the year, we are not permitted to roll them over to the next year – we are in a "use it or lose it" situation.

This should not, this cannot, be how we best address the needs of our members, particularly at a time like today.

A LGBTQ Section Is Very Timely

As more LGBTQ persons attend law school, join NYSBA, seek leadership positions and career support, and demand greater equality in the law and parity in the workforce, the Committee's size and lack of resources make it clear that we must think about the impact we need to have going into the future.

There are 15 law schools in New York, all of which have LGBTQ student groups. It is critical to understand that younger attorney's want to identify at LGBTQ lawyers going into and during their time in the profession. It is critical to engage these potential younger and newer members when they are likely to be most engaged as a group.

Diversity, Equity, and Inclusion ("DEI") are in the forefront of our profession. New York now requires that all attorneys satisfy a DEI CLE requirement. Many General Counsels require outside counsel to have DEI policies. Additionally, companies and major law firms are seeking ways to improve inclusion and retain and promote diverse talent.

Just months ago, the American Bar Association came out with an important and groundbreaking study of 3,590 lawyers which showed:¹

Lawyers who either identify as having disabilities or who identify as LGBTQ+ report experiencing both subtle and overt forms of discrimination at their workplaces, with common reports of subtle but unintentional biases. . . Particularly noteworthy, the study examines individuals with multiple identities that intersect, such as people of differing sexual orientations and gender identities who also have disabilities. The study was conducted from 2018 to 2019.

The study confirmed significant numbers of respondents reporting subtle biases, the prevalence of mental health conditions, variations of bias among intersectional identities. Not surprisingly, "respondents reported relatively high rates of mental health conditions, especially pronounced for women, individuals identifying as LGBTQ+, racial and ethnic minorities, and early-career lawyers."

There are countless additional studies showing the importance of addressing all forms of diversity, equity, and inclusion within the legal community. In order to properly do so, organizations like NYSBA have a responsibility to support communities, such as the LGBTQ legal community, at the state-wide level and allow this Committee to grow into a Section so we can continue to future the goals of our entire association.

Conclusion

Considering all of the above, and particularly now when we are charged with ensuring the continued growth of the association as a whole, now is time to support areas of the association than can lead the way for all lawyers to be as involved as possible in our important professional work.

¹ <https://www.americanbar.org/news/abanews/aba-news-archives/2020/07/aba-study-finds-prevalent-reports-of-discrimination-faced-by-dis/>

The Committee respectfully requests that the House of Delegates authorize the establishment of a Section on LGBTQ People and the Law.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Christopher R. Riano", with a stylized flourish at the end.

Christopher R. Riano, Chair
Committee on LGBTQ People and the Law