

To: NGLCC Corporate Advisory Council

From: NGLCC Legal Industry Council

Subject: LGBT Diversity Best Practice Memo for Adoption by Corporate Advisory Council

Adopted Date: Tuesday, August 2, 2011

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The NGLCC National Legal Partnership provides a unique opportunity to interact with LGBT and allied members, the LGBT business community, and NGLCC corporate partners who value inclusive diversity measures. These three audiences allow National Legal Partners to grow their firms through (1) recruitment and retention of LGBT talent, (2) purchases that support LGBT businesses, and (3) the cultivation of new clients. Partnering with the NGLCC is a logical next step for many law firms that seek to advance their diversity values, while also attracting and maintaining Fortune 1000 clients by mirroring their inclusion practices. Networking and information sharing events provide ample opportunities to develop relationships with multi-national corporations and their legal teams or general counsels.

#### Historical Commitment to Outside Counsel Diversity within the Legal Profession

In 1999, the chief legal officers (GCs) of nearly 500 major corporations signed a document written by Charles Morgans, the former BellSouth General Counsel, entitled *Diversity in the Workplace - A Statement of Principal* (“*Statement*”), which evidenced the commitment of the signatory corporations to diversity in the legal profession.<sup>i</sup> The GCs who signed the *Statement* pledged to make decisions about hiring outside counsel based in significant part on the diversity performance of such firms, sending a clear message that law firms who failed to demonstrate sustained improvement in this area potentially faced removal from the company’s approved outside counsel list.

In 2004, with objective factors showing that diversity initiatives at law firms had “reached a disappointing plateau”, Roderick A. Palmore, the then GC of Sara Lee, released a document entitled *A Call to Action: Diversity in the Legal Profession*.<sup>ii</sup> This *Call to Action* reaffirmed the earlier BellSouth *Statement* and urged GCs to take action in alignment with the theoretical principle in advancing diversity by actually making decisions about retaining law firms based in part on the diversity performance of those firms.<sup>iii</sup> At that time, more than 100 companies responded by signing the document, which committed them to making progress in their own legal departments, as well as demanding the same of their outside law firms.<sup>iv</sup>

In raising the issue of diversity in the legal profession, neither the 1999 nor the 2004 documents, included a discussion of LGBT diversity. The focus was on minorities and women. Today, the legal profession is still comprised of less than 1% openly LGBT lawyers and the 2009 NALP directory (Directory of Legal Employers) indicates that only about 47% of reporting law offices had even one openly LGBT lawyer.<sup>v</sup> In fact, it was not until 2007 that the American Bar Association created the Commission on Sexual Orientation and Gender Identity to secure equal treatment of LGBT lawyers.<sup>vi</sup>

In addressing this critical issue, NGLCC corporate partners, such as Accenture, have been recognized by legal publications and organizations that advocate diversity for holding provider law firms accountable for their diversity efforts, or lack thereof.<sup>vii</sup> NGLCC is proud to support all of our corporate partners, which have taken the lead on workplace diversity in general and on LGBT supplier diversity in particular. However, at least in terms of LGBT diversity in the legal profession, it is clear that we have a long way to go before achieving equality.

As the only national LGBT chamber of commerce, the NGLCC and its Legal Industry Council are committed to working with Corporate Partners and National Legal Partners to increase LGBT diversity, including supplier inclusion initiatives, in the workplace. For example, almost all of our corporate partners have instituted supplier diversity programs inclusive of LGBT Business Enterprises; however some business units, such as legal departments, unfortunately have been exempt from these practices. In other words, Certified LGBT-owned law firms still have limited opportunities to obtain legal services contracts from our corporate partners via corporate supplier diversity programs.

It further appears that when hiring outside counsel, most GCs do not specifically question a law firm's LGBT diversity in their request for proposals (RFPs), even when such GCs question a firm's general diversity record. In addition, GCs have not requested information regarding law firm supplier diversity initiatives. In fact, at present, most U.S. law firms do not have supplier diversity programs in place. Based on recent statistics<sup>viii</sup> about LGBT diversity in the legal profession, it would appear that law firm practices are not likely, in this regard, to make a significant commitment to fully inclusive diversity practices until GCs mandate that their outside counsel mirror their LGBT workplace and supplier diversity practices. In choosing outside counsel, in addition to considering expense and the caliber of a firm, NGLCC encourages our corporate partners to consider a law firm's dedication to LGBT diversity and inclusion in the workplace.

In consideration of these issues, the below NGLCC Legal Industry Council mission statement and recommendations are designed to offer strategic starting points and best practices for taking actions that will move corporate America in general, and the legal profession in particular, closer to being fully inclusive of the LGBT business community.

## NGLCC Legal Industry Council Mission Statement

The NGLCC Legal Industry Council is committed to developing a culture that supports and promotes LGBT diversity, including LGBT supplier diversity in the legal profession. In that regard, the NGLCC encourages its Corporate Partners to increase their LGBT diversity efforts by encouraging their chief legal officers and law departments to make decisions about retaining outside counsel based in part on the LGBT diversity performance of such firms exemplified by certain objective criteria as outlined below.

The NGLCC encourages its Corporate Partners to:

- Include Certified LGBT-owned law firms on their approved outside counsel list and strive to negotiate mutually beneficial legal services contracts with these firms;
- Hold all business units, including legal departments, accountable to internal diverse spend targets (amount of business awarded to certified diverse-owned companies)
- Build strong Tier II programs into the outside counsel approval process, taking into account NGLCC National Legal Partners and other large law firms that operate their own fully inclusive supplier diversity programs
- Educate business units, including legal departments, about supplier diversity goals and continue to take consistent action and implement initiatives to increase LGBT diversity within corporate legal departments;

The NGLCC encourages its National Legal Partners to:

- Continue to take consistent action and implement initiatives to increase LGBT diversity at their firm;
- Retain a perfect score of 100 on the Human Rights Campaign's Corporate Equality Index; and
- Institute supplier diversity procurement initiatives, which include Certified LGBT Business Enterprises.

<sup>i</sup> Melanie Lasoff Levs, *A Call to Action, Sara Lee's General Counsel: Making Diversity A Priority*, Diversity & the Bar, January/February 2005 at 20.

<sup>ii</sup> *Id.*

<sup>iii</sup> *Id.* (see sidebar in article for complete *Call to Action* text)

<sup>iv</sup> Kathryn Hayes Tucker, *Call to Action:Part Two*, Fulton County Daily Report, May 22, 2008.

<sup>v</sup> American Bar Association, *Diversity in the Legal Profession, the Next Steps*, ABA Presidential Initiative Commission on Diversity (2009-2010). ("ABA, *Diversity in the Legal Profession*").

<sup>vi</sup> *Id.*

<sup>vii</sup> Kenneth Davis, *Consulting Giant Demands Diversity among Outside Counsel*, General Counsel Consulting (In House News), Article ID 120135

<sup>viii</sup> ABA, *Diversity in the Legal Profession*