WHY THE LGBT RIGHTS SECTION OPPOSES

THE PROPOSED BYLAW CHANGE REGARDING RESIDENCY

The LGBT Rights Section of the New Jersey State Bar is sensitive to discrimination of all types, whether intended or unforeseen. Just last month we all witnessed arguments at SCOTUS concerning laws that create two standards for same-sex and opposite-sex married couples nationwide. While this is a historic time in our nation, the LGBT Rights Section has not lost sight of the historic NJSBA election that stands to affect approximately 17,000 NJSBA member attorneys in our State.

After review and discussion among the LGBT Rights Section Executive Committee, we are of the unanimous opinion that the proposed Bylaw change, requiring all officers and trustees to have a “primary practice” within this State, will have an adverse impact on many lawyers and will unnecessarily exclude a potentially wide swath of state bar members at a time when the NJSBA should more welcoming, open and diverse.

Notably, this proposed amendment was brought to the general membership based on the petition of a mere 2% of the membership, without first discussing it with the other 98% of the membership the amendments stands to impact the most. In the vein of transparency, it should be noted that, among the 2% signing the petition were at least three members of the current NJSBA nominating committee.

NJSBA members must also be made aware that despite representations by the NJSBA in its March 19, 2013, email entitled “NJSBA 2013 Election Update” that the proposed Bylaw amendment is “[c]onsistent with existing Bylaws that apply to trustees who represent geographical counties”, the proposed amendment is anything but consistent. In fact, a review of the Bylaws shows that for a member to qualify for a county trustee position, he or she must ***either*** live in that county, have an office in that county ***or*** have their primary practice in that county. By limiting officers and trustees to those members whose practice is “primarily in the State of New Jersey” the new amendment can be interpreted to prevent attorneys who practice in multiple jurisdictions, attorneys that practice primarily out-of-state, but have an office and/or a home in New Jersey, and working mothers either on or anticipating a maternity leave without a clear plan on when they might resume their practice. Amongst our own Committee there was debate whether the amendment could be applied to those of us that practice primarily in federal courts.

The fact is, the proposed amendment is ambiguous at best, with a complete lack of definition or rational basis tied to the wellbeing of our general membership. It seeks to create classes among New Jersey attorneys and leaves sufficient ambiguity so that existing leadership can use the phrase “primary practice” to prohibit other attorneys that are not “in their fold” to have any meaningful participation in the leadership of NJSBA. In the March 25, 2013 Bar Report, former NJSBA President and current Nominating Committee member Richard Badolato set forth an expansive interpretation that would require full-time employment for officers and trustees in New Jersey: “in order to be an effective leader of the association, and communicate effectively with all of its constituents -- its members, the Supreme Court, the Legislature, and the Governor’s Office – you have to be able to speak with authority. To have the necessary authority on the issues that matter to New Jersey’s lawyers, you should be one of them -- a lawyer who practices full-time in New Jersey.”

By this interpretation then, all NJSBA members who take temporary maternity or paternity leave to care for a newborn, stop working while undergoing chemotherapy or other treatments, practice in New Jersey and another jurisdiction, such as New York, Pennsylvania or Delaware, or simply choose to work part-time, will be excluded from service. Moreover, the newest members among us, law students and first-year attorneys who are not able to secure full-time employment due to the extremely high unemployment rate in this State, will be prohibited from participating in any leadership roles. Even a resident and law firm owner in Pennsylvania, who takes New Jersey cases ‘full-time’ would be permitted to participate to the exclusion of a lifetime resident, who just happens to also practice maritime law in Philadelphia.

Mr. Badolato’s own statement is affirmative proof of the amendment’s ambiguity. He interprets “primary practice” to mean that a lawyer must be “practicing full-time” in New Jersey. By this definition, several of the current NJSBA trustees will be excluded.

If enacted, the NJSBA will become insular and protectionist at a time when, as the elimination of the bona fide office rule last month demonstrates, the practice of law is becoming more open, diverse and mobile. In its Brief Amicus Curiae, submitted to the NJ Supreme Court in Stengart v. Loving Care, 201 N.J. 300 (2010), the NJSBA went to great lengths to detail the mobile nature of the modern business office, noting that, “over the last two decades, the U.S. workplace has undergone a ‘technological revolution’ and that, “the dynamic location of what [employers and] employees consider to be the “workplace.” In this regard, the NJSBA publicly argued against the bona fide office rule in New York, touting the important roles our, out of state New Jersey attorneys, have in New York, when filing an amicus brief in the matter of Schoenefeld v. State of New York. In that brief, NJSBA made clear that for “many years, the NJSBA strongly supported the requirement of a law office in New Jersey, and resisted any changes that would have permitted attorneys to avoid maintaining an ongoing presence in our state . . . but the NJSBA’s stance on the matter has evolved in light of developments in law firm practice technology, and clients’ needs and expectations.” That brief was filed a mere eleven (11) months ago.

It should also be noted that only five (5) years ago, that the NJSBA Nominating Committee actually welcomed and lauded the geographical diversity presented by Daniel Weiss, Esq., a federal court practitioner who resided in Manhattan and was reappointed to the NJSBA Board of Trustees. See <http://www.njsba.com/about/news-archives/archived-press-releases/507.html>.

Since a sizeable minority of the current Nominating Committee has endorsed the “primary practice” bylaw petition, it begs the question- what has changed in the short time that has passed since Mr. Weiss’ reappointment?

Today, our membership is being asked to support an amendment that contradicts the NJSBA’s own beliefs and mission statement, which provides that it is the NJSBA’s mission is to “serve, protect, foster and promote the personal and professional interests of its members.” This amendment serves only to exclude, prohibit and discriminate against the personal and professional interests of those members who choose not to work “full-time” in the State of New Jersey.

Lastly, there was an error in the Law Journal's reporting last week when it stated that the Bylaw amendment was brought forward by the NJSBA Board of Trustees. It was not. Rather it appears that a number of NJSBA trustees and officers, actually oppose the Bylaw amendment for the very reason that it can be used to target post-partum and working mothers, immigration lawyers, other federal practitioners and anyone with more than one law license.

Based on the above, we ask that you vote NO on the amendment. If you are still not convinced, and need more information regarding what this amendment actually means, then for that reason alone we ask that you vote NO, and demand that our leadership provide us with more information on what “primary practice” actually means. They are our leadership, we must require them to be accountable.

This entire article has been drafted and reviewed by the Executive Committee of the LGBT Section, and may contain personal opinions of our individual members, and any of the opinions contained in this memo do not represent or reflect the opinions of the NJSBA, nor do they purport to represent the opinions of all members of the LGBT Rights Section.