

Straining the Rainbow Ceiling

by Ed Fox

*This column began in 2023 when Shawntal Mallory of the Nebraska Legal Diversity Council, Stefanie Pearlman of the University of Nebraska College of Law, and Yvonna Summers of Creighton University School of Law responded to an NSBA invitation to highlight diversity in Nebraska's legal profession. Through these articles, we share practical, educational perspectives on building a more inclusive Bar and ensuring justice truly is **for all**.*

Trends in LGBTQIA+ Representation in the Legal Industry

On June 28, 2019, *The Atlantic* published an article titled, "The Struggle for Gay Rights Is Over."¹ Among other things, that article suggested, "[m]any young gay people today experience the coming-out process as a formality, and not the wrenching, fraught ordeal it was for gays [previously]." Though *The Atlantic* thought the war was won six years ago, the struggle for LGBTQIA+ representation in the legal industry continues to be an on-going battle.

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Even in 2026, overall representation from the LGBTQIA+ community² within the legal industry lags the general population. While there are clear suggestions this trend may change in the future, particularly as a matter of generational change within the industry, a lack of in-depth research into the LGBTQIA+ legal community persists and will continue to create challenges for ensuring legal spaces are inclusive and welcome individuals of all identities. This lack of research is particularly relevant in Nebraska, where the status of LGBTQIA+ representation is even less clear than it is on a national scale. In fact, no research currently exists identifying the percentage of Nebraska lawyers who identify as part of the LGBTQIA+ community.³ Given the likelihood that the presence of LGBTQIA+ lawyers will become more common in all types of legal spaces, the legal profession, particularly in Nebraska, will need to consider ways to accommodate this societal change.

The Current State of LGBTQIA+ Representation in the U.S. and the Legal Industry

Initially, the number of Americans who identify as part of the LGBTQIA+ community has continued to increase year-over-year, likely as a result of increased societal acceptance of individuals openly expressing their identities. The most recent Gallup survey found that 9.3% of U.S. adults identify as part of the LGBTQIA+ community.⁴ According to Gallup, the percentage of U.S. adults so identifying "has nearly doubled since 2020 and is up from 3.5% in 2012, when Gallup first measured it." Gallup attributes these changes, in part, to younger generations now being included in the polling as they reach adulthood. In fact, a substantial portion of the increase in overall identification comes from Gen Z (commonly identified



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as those born between 1996 and 2006), among whom approximately 20% identify as part of the LGBTQIA+ community.

These trends are largely mirrored in the legal industry, though the overall percentage of individuals identifying as part of the community continues to lag behind the general public. According to surveys conducted by the National Association for Law Placement (“NALP”), in 2024, for the first time, the percentage of attorneys surveyed who identify as LGBTQIA+ exceeded 5%.⁵ This is, of course, well below the 9% of people who identify as such in the general public. Notably, however, NALP further isolates representation based on experience/level of lawyer. For law firm partners, the percentage identifying as LGBTQIA+ is only 2.75%, which is compared to the 7.75% of law firm associates who so identify. The percentage of associates who identify has, in fact, more than doubled since 2018. Finally, for those summer associates at NALP surveyed law firms, 12.9% of summer associates identified themselves as LGBTQIA+ in 2024. These trends, where new generations of attorneys or law students are much more likely to identify as LGBTQIA+, mirrors the trend in the country at-large.

As discussed, no statistics exist about the number of LGBTQIA+ attorneys in Nebraska. It is relevant, however, that with respect to general representation by the LGBTQIA+ community, Nebraska trails the nation. As with the legal industry, little research exists regarding the LGBTQIA+

community in Nebraska. The most recent estimate, by the UCLA School of Law Williams Institute, reflects pre-2020 estimates that 3.8% of Nebraskans identify as LGBTQIA+.⁶ While that number has likely increased, as national trends have, it is unlikely it has increased significantly faster than the national rate. It is also highly relevant that in the NALP survey, more than half of the attorneys who identified as part of the LGBTQIA+ community came from just four cities (New York, Washington D.C., Los Angeles, and San Francisco). Given the general statistics addressing the number of publicly identifying Nebraskans, and the reality that fewer attorneys identify than the general public, it is almost certain that LGBTQIA+ representation in the Nebraska legal industry is behind the national average. That being said, with two law schools, and the sizable number of law students and younger attorneys who are openly identifying as LGBTQIA+, the Nebraska legal industry is likely to see a noticeable uptick in the number of self-identifying attorneys and it will be necessary for all Nebraska lawyers to understand what those changes may mean for the industry.

Creating an Inclusive Legal Community

While the research on LGBTQIA+ representation in the industry is not precise, it is apparent that the industry, in Nebraska and nationally, will have to reckon with more,



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particularly younger, attorneys who identify as LGBTQIA+. It is likely that non-LGBTQIA+ attorneys will, maybe for the first time, encounter, work with, oppose, or litigate against LGBTQIA+ attorneys. In the not distant future, it is likely that attorneys, in Nebraska and nationally, will appear in front of judges who publicly identify as LGBTQIA+. Likewise, attorneys who do identify as LGBTQIA+ will interact with members of the industry who may not be familiar with their identities. These challenges will require all attorneys to learn how to accommodate a more inclusive industry.

With respect to the LGBTQIA+ community, more openness will create the potential for both subtle and overt discrimination. This could include passive remarks that may express anti-LGBTQIA+ views, exclusion from networking opportunities, harassment from co-workers or other members of the industry, misgendering/dead naming, or denial of benefits available to non-LGBTQIA+ attorneys. For attorneys newly interacting with the LGBTQIA+ community, issues may include general discomfort with changes that inclusion may cause, including uncertainty regarding language usage. It will be incumbent on all attorneys, however they identify, to commit to civility, inclusion, and respect for all other members of the industry, as required by the Rules of Professional Conduct.⁷

Fortunately, resources are available for attorneys who may not have familiarity with the LGBTQIA+ community. For example, the Nebraska Bar Association offers the “NSBA Guide to Inclusive Language,” which provides guidance on how attorneys can “overcome discomfort surrounding efforts towards inclusivity.”⁸ The American Bar Association also provides resources through its Commission on Sexual Orientation and Gender,⁹ including its Ally Toolkit Page.¹⁰ Likewise, many law schools, law firms, and private employers provide affinity or employee resource groups for members of the community, and allies, to create community and provide a safe environment for attorneys or other individuals who want to publicly express their identity.

It is important to realize not only that there may be challenges associated with increased representation in the legal industry, but there are also opportunities for individuals to live their authentic lives while practicing law. One such individual, recently returning home to Nebraska, is Jessie McGrath. A Nebraska native and University of Nebraska College of Law graduate, Jessie began her practice in California, where she served as a Los Angeles County Deputy District Attorney for more than 35 years. During that tenure, around 2015, Jessie began her transition and publicly identified herself as a transgender woman. Her transition was “initially a shock to a few people, but by and large has been good.” Despite the potential risks, Jessie states that, “within the legal profession, I have had nothing but positive experiences.” Among these experiences is Jessie’s yearly trip to the U.S. Supreme Court where she,

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along with the National Trans Bar Association, participate in a group ceremony for transgender attorneys seeking admission to the Supreme Court Bar. As Jessie notes, she and the Bar have received “nothing but excellent comments and assistance from the Supreme Court staff, who have been fantastic.”

While Jessie acknowledged facing certain “head winds” professionally, she believes that, as a general matter, her gender identity has been well accepted within the legal community. Having had those largely positive experiences, Jessie decided that she wanted to return to Nebraska to help ensure that young Nebraskans have the same opportunities that she had to live authentically, particularly given some of the ongoing struggles related to transgender participation in society. The willingness of individuals like Jessie to come out, to live authentically, and to commit to mentor future generations will likely be an enormous component to helping create an inclusive legal community for LGBTQIA+ attorneys.

Ultimately, whatever one’s view about the nature of the law, it is clear that the legal profession is evolving and that approaches within the profession will likewise have to evolve to accommodate a greater diversity of identities and lived experiences. As recently as 2004, fewer than 1.1% of surveyed legal industry members identified as LGBTQIA+. ¹¹ That percentage has increased by a multiple of five in the subsequent years. And that growth does not yet near the percentage of the

general population who identify as LGBTQIA+. Adding in the explosive growth in the percentage of young attorneys and law students who identify, it is clear that the legal industry will have to account for these changes and will have to take steps to actively become more inclusive to fulfill the law’s promise and the ethical duties incumbent on all members of the legal profession. 

Endnotes

- ¹ “The Struggle for Gay Rights is Over,” James Kirckick, *The Atlantic* (June 28, 2019), available at <https://www.theatlantic.com/ideas/archive/2019/06/battle-gay-rights-over/592645/> (last accessed March 15, 2026).
- ² No single community is a monolith, of course, but for purposes of this article the phrase LGBTQIA+ community will be used in an attempt to be inclusive. For further discussion of what that term, and all of its constituent letters mean, please consider reviewing, “A Pride Month Primer on Cultural Competency for Attorneys Working with the LGBTQIA2S+ Community,” Edward Fox II, *The Nebraska Lawyer* (May/June 2024), available in *The Nebraska Lawyer* archive on the NSBA website.
- ³ The fact that no entity has attempted to isolate such demographics is itself problematic and is likely indicative of lack of acceptance of the community in the legal community.
- ⁴ “LGBTQ+ Identification in U.S. Rises to 9.3%,” Jeffrey M. Jones, Gallup (Feb. 20, 2025), available at <https://news.gallup.com/poll/656708/lgbtq-identification-rises.aspx>.
- ⁵ “2024 Report on Diversity in U.S. Law Firms”, National Association for Law Placement, available at https://www.nalp.org/uploads/Research/2024-25_NALPReportonDiversity.pdf. It is relevant that the NALP survey is somewhat limited in scope as it surveys only members of its Directory of Legal Employers, “including 107,000 lawyers in 719 offices, and for nearly 8,000 summer associates in 445 offices nationwide.” According to the American Bar Association, beyond the statistics offered by NALP, “no reliable statistics are available on the total number of lawyers who identify as LGBTQ in the legal profession overall.” See “Demographics”, Profile of the Legal Profession 2024, American Bar Association, available at <https://www.americanbar.org/news/profile-legal-profession/demographics/> (last accessed March 15, 2026). In other words, while we have statistics for law firms, there are areas of the industry that are not accounted for, such as the nonprofit or public service legal sectors.
- ⁶ See LGBT Demographic Data Interactive. (January 2019). Los Angeles, CA: The Williams Institute, UCLA School of Law, available at <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=31#about-the-data>. This percentage ranked Nebraska as having the 35th highest percentage out of the fifty states plus D.C.
- ⁷ See Neb. R. Prof. C. § 3-508.4 (“It is professional misconduct for a lawyer to . . . engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of . . . sexual orientation.”).
- ⁸ NSBA Guide to Inclusive Language, NSBA (2025), available at <https://nebarhub.com/resource/nebraska-state-bar-association-nsba-guide-to-inclusive-language>.
- ⁹ https://www.americanbar.org/groups/diversity/sexual_orientation/.
- ¹⁰ https://www.americanbar.org/groups/diversity/sexual_orientation/resources/how-to-be-an-ally-toolkit/.
- ¹¹ “2024 Report on Diversity in U.S. Law Firms”, National Association for Law Placement, at p. 41.

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