

Giving Back: How Law Firms and Companies Can Serve the Holistic Needs of Our LGBTQ+ Community with Dedication and Respect

I. PRESENTERS

A. Samuel Light (he/him) - Moderator/Presenter

Samuel Light represents Fried Frank's clients in white collar criminal and regulatory matters, corporate investigations, and complex commercial litigation.

Samuel regularly defends clients in securities litigations and government investigations. Public companies, individuals, and investment banks seek Samuel's representation in connection with criminal and regulatory investigations conducted by the US Department of Justice, the Federal Bureau of Investigation, the SEC's Division of Enforcement, the Federal Trade Commission, and the New York County District Attorney's Office.

In line with our firm's commitment to social responsibility, Samuel maintains an active pro bono practice. He has represented clients in immigration matters and federal habeas actions. He is also a member of our Diversity and Inclusion Council.

Before joining our firm, Samuel was an associate at a national law firm.

B. Cat Kozlowski (they/she) – Presenter

Cat Kozlowski is an attorney at Polsinelli. She is committed to providing practical legal advice in the constantly evolving health care industry. With more than a decade of legal experience, both at firms and as an in-house legal consultant, and with clients ranging from small roller derby retail companies to billion-dollar health systems, Cat is a health care generalist with a knack for conjuring order out of chaos. She works to anticipate challenges and roadblocks faced by modern health systems, and develop innovative methods to navigate these hurdles before they become costly problems. Cat's practice focuses primarily on providing strategic counsel on issues related to operational and transactional matters, HIPAA and state privacy laws, and practical requirements for interfacing the medical staff with hospital operations. Additionally, Cat is the Co-Chair of the firm's LGBTQ+ Resource Group.

C. Milo Inglehart (he/they) – Presenter

Milo Inglehart is a Staff Attorney at the Transgender Law Center where he works to support trans and gender nonconforming (TGNC) communities through litigation and policy advocacy. Previously, Milo was a COVID-19 Litigation Fellow in the ACLU's Criminal Law Reform Project, where he litigated against jails and prisons for their responses to the pandemic. Milo, is also a former Redstone Legal Fellow at the Transgender Law Center, where he improved access to health care for trans and gender nonconforming people, in and outside of detention facilities, through a mix of legal services, policy advocacy, and litigation. Before law school, he worked for the New York City Council on participatory governance projects and policy work to improve access to city services. Milo holds a B.A. in Sociology from Columbia University and a J.D. from Harvard Law School.

D. Sean Chang (he/him) – Presenter

Sean Chang focuses his practice on complex litigation matters. He began his career at Wilmer Hale as a summer associate in 2019. Prior to joining the firm, he was a law clerk for Senator Amy Klobuchar in the US Senate Judiciary Committee and worked as a legal assistant for a national litigation law firm in New York City.

Prior to attending law school, Mr. Chang interned with Immigration Equality in New York City, an organization advocating for LGBTQ and HIV-positive immigrant rights, and High Jump in Chicago, Illinois, an organization working to equalize access to education for middle school students who have exhibited academic ambition and potential and who are of limited economic means. He also worked as a casework intern in the office of US Senator Richard Durbin in Chicago, Illinois.

E. Neva Wagner (they/them) – Presenter

Neva Wagner's practice at Perkins Coie focuses on real estate transactions affecting commercial property. They have experience with local, multistate, and portfolio transactions, including acquisitions, dispositions, development, leasing, financing, and joint ventures. Neva frequently assists partners with deals involving hotels, multifamily and senior housing facilities, shopping centers and other retail, mixed-use developments, performance venues, commercial properties, and office buildings.

In their practice, Neva regularly drafts and negotiates purchase and sale agreements, leases, financing documents, hotel management agreements, development agreements, and organizational documents. They also assist the firm's Trust & Estate Planning practice with real estate matters affecting high net worth individuals. Additionally, Neva is experienced with managing closing and conducting property-related due diligence such as title and survey review.

As part of their pro bono commitment, Neva represents asylum seekers referred to the firm by Heartland Alliance. Additionally, they assist incarcerated transgender individuals through the Transgender Law Center's programs that support transgender inmates in advocating for themselves and encourage correctional facilities to adopt more equitable policies and procedures. Neva is also part of the executive committee for the University of Iowa College of Law's Alumni DEI Council.

II. COURSE DESCRIPTION

In these times of systematic rollbacks of LGBTQ+ people's rights nationwide -- particularly those of our transgender and other LGBQ youth -- it has never been more important for those with more secure rights and positions of power to leverage that strength to benefit the broader LGBTQ+ community. Law firms - especially those in Big Law - and corporations have a responsibility to step up and give back to the equality movement. Join our panel of experienced practitioners to learn how you, your pro bono department, and your Employee Resource Group can use their power to help the people and organizations in the movement and ensure that the hard-won gains of the last forty-plus years are not lost. Our panelists will discuss how a strong pro bono practice is an

integral tool for firms large and small to nurture well-rounded skillsets in lawyers as well as doing critical movement work through both impact litigation assistance and work on individual LGBTQ+ people's legal needs; they will also discuss how lawyers who aren't litigators can help, whether through non-litigation legal assistance or other forms of essential volunteer work. Our speakers will discuss ways to start and enlarge pro bono practices, breathing new life into them and providing attorneys with learning opportunities and community engagement. They will also discuss barriers that LGBTQ+ pro bono clients face socially, economically, and in the procurement of legal services. Finally, the speakers will provide the audience with best practices regarding staffing matters appropriately -- including the incorporation of allies -- and attending to client needs with pragmatism, prudence, and respect.

This session is intended for all LGBTQ+ and allied lawyers alike - come learn how you can help, and how to apply the appropriate knowledge, sensitivity, and cultural awareness in dealing with some of the most vulnerable members of our community.

III. COURSE OVERVIEW

- A. Part One - Overview of a Pro Bono Practice (30 min)
- B. Part Two - How to Build Your Pro Bono Practice (45 min)
- C. Part Three - How to Best Serve Your LGBTQ+ Clients (45 min)

IV. COURSE MATERIALS

- A. Getting Down to Basics
- B. What I Wish I Had Known about Representing LGBT Clients
- C. Tips for Lawyers Working with Transgender Clients
- D. Top 7 Best Practices for Representing Transgender and Nonbinary Pro Bono Clients
- E. Understanding Nonbinary People How to Be Respectful and Supportive National Center for Transgender Equality
- F. Frequently Asked Questions About Transgender People
- G. Questionable Questions About Transgender Identity
- H. Gender-Inclusivity-in-the-Courts



Getting Down to Basics

Tools to Support LGBTQ Youth in Care

Attorneys, Guardians ad Litem & Advocates Representing LGBTQ Youth

Whether you are aware of it or not, if you advocate for young people in the child welfare and juvenile justice systems, you work with young people who are lesbian, gay, bisexual, transgender or questioning their sexual orientation or gender identity (LGBTQ). Lawyers and youth advocates should develop an understanding of the unique issues faced by these clients and cultivate advocacy strategies that are sensitive to their needs.

BE A VISIBLE ADVOCATE FOR LGBTQ YOUTH.

You don't have to be LGBTQ yourself to be an effective advocate for LGBTQ youth. By standing up for LGBTQ clients facing harassment and discrimination and publicly supporting their rights you act as a visible, much-needed advocate for LGBTQ youth in care. Let all of your clients know that you will not judge them and will work hard for them no matter what they tell you. Display LGBTQ-friendly signs and posters for your clients and others to see. Never use anti-LGBTQ slurs or rely on negative stereotypes of LGBTQ people.

BE AWARE THAT LGBTQ YOUTH ARE IN OUT-OF-HOME CARE IN DISPROPORTIONATE NUMBERS.

Research shows that young people facing family rejection, harassment and school failure are more likely to enter the child welfare and juvenile justice systems. At home, LGBTQ youth and those perceived to be LGBTQ are more likely to face disapproval, abuse and neglect—including being thrown out of their homes—than their non-LGBTQ peers. It may be harder to find supportive permanent placements for LGBTQ youth once they are in the foster care system, extending their length of time in care. On the streets, LGBTQ teens may be forced into illegal activities, including sex work, to support themselves. LGBTQ youth of color congregating in public places may face selective enforcement of “quality of life” offenses and “morals” regulations. Violations of age-of-consent laws among young people of the same sex are more likely to be criminally charged and punished more harshly

than violations among young people of the opposite sex. These factors contribute to the disproportionate numbers of LGBTQ youth in out-of-home care.

BE AWARE THAT LGBTQ YOUTH IN OUT-OF-HOME CARE ARE VULNERABLE TO MISTREATMENT AND DISCRIMINATION.

While of course parents have the right to inculcate their values in their children, this doesn't extend to a right to subject children to harm and abuse. You should be prepared to advocate on behalf of a child who is not safe at home because of parental intolerance. Often misunderstood within the child welfare and juvenile justice systems as well, many LGBTQ youth face abuse, harassment and isolation once in care. In foster family homes and group care facilities, LGBTQ youth are often mistreated and even harmed by staff, caregivers and other young people. Some are forced to convert to anti-LGBTQ religions and practices. In the delinquency system, LGBTQ youth may be placed in more restrictive and punitive settings than their offenses warrant, or isolated or segregated from the general population for their own protection or based on the misguided notion that others need to be protected from them. There currently is a serious dearth of LGBTQ-sensitive child welfare and juvenile justice services and placements. Your LGBTQ clients need your help to ensure they receive safe and appropriate treatment. Canvass the available resources in your community. Develop and maintain a network of LGBTQ-sensitive youth service providers to whom you can refer LGBTQ clients.

FOSTERING TRANSITIONS

A CWLA/Lambda Legal
Joint Initiative



AS A ZEALOUS ADVOCATE, CONFRONT ANTI-LGBTQ DISCRIMINATION AT ITS SOURCE.

Rather than simply advocating for the removal of an LGBTQ client from an unsafe placement, zealously advocate for an institutional response to the discrimination and mistreatment. Whether in a child welfare or juvenile justice facility, in a school or in the community, confront the bias or abuse at its source in order to ensure that it will not happen again to another child. Be prepared to file a grievance or complaint against an offending institution on behalf of an LGBTQ client. At the same time, advise your vulnerable clients of the realities of congregate care. Advocate for them in their decisions regarding dress and gender expression.

PROTECT THE PRIVACY OF YOUR CLIENTS.

Even if your client is open with you and others about his or her sexual orientation and gender identity, the client should always be treated as the gatekeeper of this information. Never “out” your client without his or her consent. Instead, be aware that just because a client is open with you about his or her identity does not necessarily mean that he or she is out to everyone. Object to this information being unnecessarily included in case management and service planning documentation.

BE AWARE OF THE LEGAL PROTECTIONS AVAILABLE TO YOUR LGBTQ CLIENTS.

The federally mandated State Plan for Foster Care and Adoption Assistance requires that there be a case plan for each child placed in the child welfare system.¹ While it is important to ensure that the service plan addresses the unique needs of your LGBTQ clients, there should be careful consideration as to whether the plan should include confidential information regarding your client’s sexual orientation or gender identity that could later be used against him or her by those harboring anti-LGBTQ bias. Under the Fourteenth Amendment to the U.S. Constitution, all young people in state custody have the affirmative right to protection from harm. This right—the substantive due process liberty interest in safety—includes the right to appropriate services, medical care and safe placements. LGBTQ young people harmed or discriminated against while in state custody have brought successful civil rights lawsuits against state officials, some resulting in sizeable monetary damage awards (e.g. *R.G. v. Koller*, 415 F. Supp.2d 1129 (D. Haw. 2006) and *Rodriguez v. Johnson*, No. 06CV00214 (S.D.N.Y. filed Jan. 11, 2006)).

Some transgender people have successfully argued that state nondiscrimination laws that require reasonable accommodation for people with disabilities apply to those diagnosed with gender dysphoria, and that denying transgender youth the right to dress in ways that are consistent with their gender identities in group homes is discrimination based on disability (e.g., *Doe v. Bell*, 754 N.Y.S.2d 846 (N.Y. Sup. Ct. 2003)). Be aware of state nondiscrimination

¹ The plan must be designed such that “the child’s health and safety shall be the paramount concern[.]” 42 U.S.C. § 671(a)(15)(A). The plan must include “a discussion of the safety and appropriateness of the placement” and “address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.” §§ 675(1)(A),(B). Additionally, a procedure must be in place for review of the case plan on a regular basis, to ensure that the plan remains “consistent with the best interest and special needs of the child[.]” § 675(5)(A).

laws, particularly those that are LGBTQ-inclusive, and seek their enforcement on behalf of your clients in out-of-home care.

PROTECT LGBTQ YOUTH FROM SEXUAL ABUSE.

LGBTQ youth are often vulnerable and at increased risk for sexual abuse in juvenile justice and congregate care settings. In 2012 the U.S. Department of Justice released national standards in accordance with the Prison Rape Elimination Act of 2003 (PREA), aimed at protecting inmates and detained juveniles from sexual abuse. For more information about how the PREA standards protect LGBTQ people, please read the National Center for Transgender Equality fact sheet found here: www.transequality.org/Resources/PREA_July2012.pdf.

CONNECT WITH ADDITIONAL RESOURCES.

The Equity Project is an initiative to ensure that LGBT youth in juvenile delinquency courts are treated with dignity, respect and fairness. The Equity Project examines issues that impact LGBT youth during the entire delinquency process, ranging from arrest through post-disposition. For more information, visit their website at www.equityproject.org. The Equity Project offers an excellent resource in a report examining the experiences of LGBT youth in juvenile courts across the country. The report, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009), is based on information collected from surveys and interviews with juvenile justice professionals, focus groups and interviews of youth who possess relevant firsthand experience and an extensive review of relevant social science and legal research findings. Download it free of charge at www.equityproject.org/pdfs/hidden_injustice.pdf.

The National Juvenile Defender Center (NJDC) provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers to ensure quality representation in urban, suburban, rural and tribal areas. NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination. For more information, visit their website at www.njdc.info.

The American Bar Association Center on Children and the Law: Opening Doors for LGBTQ Youth in Foster Care Project offers an excellent resource in their publication *Opening Doors for LGBTQ Youth in Foster Care: A Guide for Lawyers and Judges* by *Mimi Laver and Andrea Khoury* (2008). For more information, see www.americanbar.org/groups/child_law/projects_initiatives/openingdoors.html or www.thekidsarelistening.org.

For sample LGBTQ policies adopted by out-of-home care agencies, contact Lambda Legal at 212-809-8585 or toll-free at 1-866-LGBTEEN (1-866-542-8336).

Lambda Legal

120 Wall Street
19th Floor
New York, NY 10005
866-LGBTeen
212-809-8585
www.lambdalegal.org

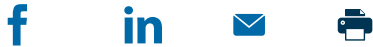
Child Welfare League of America

1726 M Street NW
Suite 500
Washington, DC 20036
202-688-4200
www.cwla.org

GP MENTOR: What I Wish I Had Known about Representing LGBT Clients

Angie Martell

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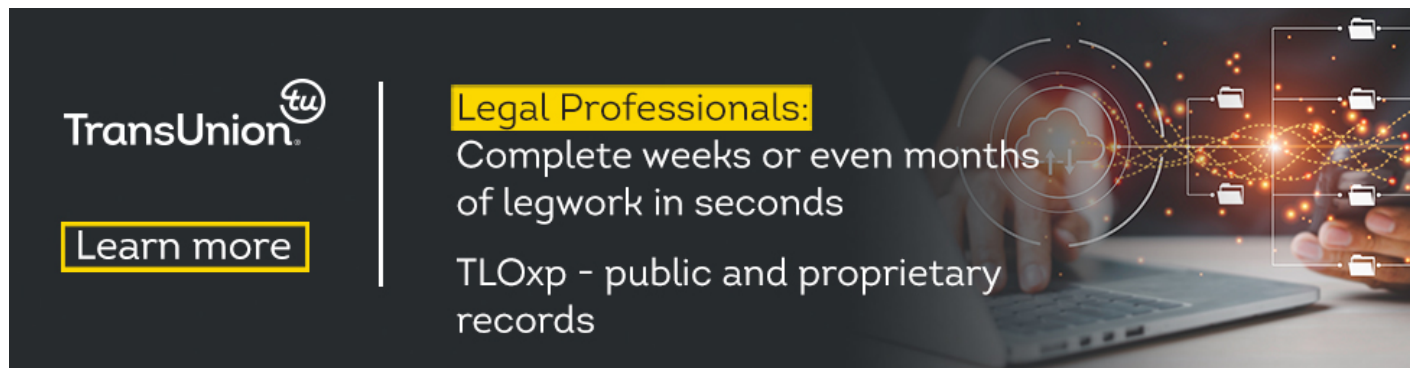


While our nation has experienced exponential growth in diversity and technology, our legal system continues to work in an archaic fashion. As more and more professions have integrated cultural competencies in their practices, the legal profession has lagged very far behind. An effective 21st-century lawyer must possess skills for cross-cultural engagement by developing cross-cultural competency so that he or she can advocate effectively and justly. Nowhere is this clearer than in the area of criminal justice, family law, reproductive technology, and lesbian, gay, bisexual, and transgender (LGBT) issues.



An effective lawyer must develop cross-cultural competency so that they can advocate effectively and justly.

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Cultural competency in LGBT legal issues means understanding not only basic LGBT terminology but also how gender, sex, and sexual orientation interplay within one's understanding of one's identity and inform the choices an individual may make. As practitioners, we are bound by a code of ethics and professional conduct to represent our clients competently, zealously, and professionally in an ever-changing terrain. The legal strategy of our cases must be based on a thorough understanding not only of the client and the legal issue being addressed but also the possibilities of emerging trends in the law and portability factors to the solutions or options we as practitioners recommend.

While the Supreme Court decisions in *Obergefell* and *Windsor* have offered married same-sex couples some protection, the absence of equal rights and the non-recognition for all LGBT individuals across the nation remains a serious concern for legal practitioners. To say that the legal issues LGBT people face are no more complex in divorce, estate planning, or other areas is missing the mark. To treat all LGBT people the same is also missing the mark.

Below are some practical tips for working with LGBT clients:

Language. Exercise client non-discrimination. A practitioner should never use outdated or offensive terminology (e.g., sexual preference, tranny, homosexual, or hermaphrodite).

Respect. Revise your forms. Practitioners should revise all internal forms and documents to ensure that they are culturally sensitive (e.g., "spouse and spouse" rather than "husband and wife"). Do not assume to know someone's sexual orientation or gender identity. If it is not clear, or your client uses terms you do not understand, ask for clarification.

Safety concerns. Do not "out" clients if they have not given you permission, either to people in your office or in pleadings or court proceedings.

Staff training. Make sure members of your staff are trained in cultural competency.

Interviewing skills. Practitioners must utilize the first meeting with the client to ask many questions. What is going on in the client's life? What informed the choices the client made?

Bias from the court. Plan the road map of your legal strategy—and make sure that education of the court is in that plan. Know your judge and know your forum. Be cognizant of disparity of treatment. Be cognizant of how discrimination has caused your client's legal position to be complicated. Humanize your client's situation.

Portability. Educate yourself regarding what is going on in the law as well as national trends in the law. Are the options and solutions you are recommending going to be portable should your client move to another state, and will they withstand a change in the future legal terrain?

Mediation. Speak to the client about exploring other alternatives, such as mediation.

Remember: The lawyer who wears blinders limits creative and innovative possibilities in his or her lawyering.

As lawyers representing LGBT clients, we need to erode the embedded ethnocentric ideals that affect impartiality within our system of justice. Until LGBT individuals have equal protection nationwide and until discrimination has been eradicated, practitioners must be mindful and vigilant to ensure that the justice system avoids the imposition of dominant cultural values and morals that often perpetuates injustice and prevents the full equality that all people deserve.

Authors



Angie Martell

[Angie Martell](#) is the founder and managing partner of Iglesia Martell Law Firm, PLLC. She has more than 26 years of legal experience in the areas of civil rights, family law, LGBT issues, employee rights, criminal defense, mediation, and arbitration.



 Transgender Law Center

**TIPS FOR LAWYERS WORKING
WITH TRANSGENDER CLIENTS
AND COWORKERS**

WORKING WITH TRANSGENDER CLIENTS

Transgender clients are not fundamentally different from cisgender clients. They have the same need for respect, effective representation, and returned phone calls. Most often, the unique challenges they face originate from discomfort on the part of others. For some transgender people, previous experience with discrimination may lead them to be wary about opening up to a lawyer. This barrier may be something you will need to overcome in order to provide effective representation. Here are some things to keep in mind when representing a transgender client.

IT ISN'T ALWAYS ABOUT A PERSON'S TRANSGENDER STATUS.

Sometimes the legal challenge facing a transgender person is unrelated to their gender identity. It is important not to focus so narrowly on the fact that a person is transgender that you end up making that characteristic more important than the actual reason the person is seeking your services. It is important that you use your legal expertise to help your client understand the core legal issues and not focus on their gender identity to the exclusion of other relevant facts.

2

BE AWARE OF ASSUMPTIONS YOU ARE MAKING ABOUT A PERSON'S GENDER.

It is very common to assume that you know a person's gender identity based on sex stereotypes. However, gender identity is not immediately evident, or is different from what you may assume or expect. Transgender people in particular may not conform to narrow gender stereotypes. If you are unsure what a person's gender identity is, ask them (privately, if possible) what name and pronouns they would like you to use, and how they would like to be addressed. Generally, it is a good practice to ask all new clients what name and pronouns they would like to be addressed by.

3

REACH OUT TO ATTORNEYS WHO HAVE EXPERIENCE WORKING ON TRANSGENDER ISSUES.

Because so many legal issues concerning transgender people are issues of first impression or are still being developed, it is important that you connect with knowledgeable attorneys as you begin to frame your legal arguments. In other cases, there may be an established approach to recurring issues, but one that is not well known outside of the community of advocates who specialize in transgender issues. Transgender Law Center may be able to offer assistance if you contact our Helpdesk at:

[www.transgenderlawcenter.org/legalinfo.](http://www.transgenderlawcenter.org/legalinfo)

4

USE THE CORRECT NAME AND PRONOUNS IN ALL CORRESPONDENCE, COURT PAPERS, AND SETTLEMENT AGREEMENTS.

Except in extremely rare circumstances, it is very important that you use the name and pronouns that your client has indicated they use. Your client may choose to use a name that is gender-neutral or associated with a gender that is different from the pronouns they have asked you to use. It is important to be aware of and respect this decision. It may be necessary to footnote the person's prior name in a document, or to clarify in an initial letter that the recipient of the letter may know your client by another name or gender but that you will be referring to the client by their current name and pronouns. It is also important that you respectfully urge opposing counsel, court staff, and judicial officers to do the same.

**DO NOT ASK
INAPPROPRIATE AND
IRRELEVANT QUESTIONS
ABOUT A CLIENT'S
MEDICAL TRANSITION.**

Transition is the process that many transgender people undergo to bring their outward gender expression into alignment with their gender identity. There are many different ways to transition. A person's desire to access medical care related to transition can be impeded for a number of valid reasons –cost, pre-existing medical conditions, fertility –or they simply may not want to. Unless it is an essential factor in a case, it is not necessary for an attorney to know the details of their client's transition. Where it is relevant, be sure to ask respectfully and tell the client why you need to know.

MAKE SURE YOUR OFFICE HAS TRANSGENDER-FRIENDLY POLICIES.

Your intake forms should account for a person using a name other than their legal name. Intake forms should encourage or allow people to identify their sex or gender based on their current gender identity and should allow for responses other than simple 'M or F.' Your restrooms should be accessible to people based on their gender identity (as opposed to their sex assigned at birth).

Where possible, it is always a good idea to have an all-gender restroom option available. However, all-gender restrooms should be an option for everyone and transgender employees or clients should not be forced to use all-gender restrooms. Finally, everyone in the office, not just the attorneys or legal staff, should be trained in basic transgender cultural competency including the importance of using correct names and pronouns.

WORKING WITH TRANSGENDER COWORKERS

Transgender people are employed in every industry and profession throughout the country. As a community, however, transgender people face frequent employment discrimination, which leads to high rates of unemployment and underemployment. Ensuring that your workplace is one in which all employees can fully participate is vital to combating discrimination and will also help to ensure that you can provide competent services to transgender clients. Here are some ways to ensure that transgender coworkers feel welcome

POLICIES

CREATE MEANINGFUL AND ENFORCEABLE NONDISCRIMINATION POLICIES.

It is important to have a general statement of non-discrimination that includes gender identity and gender expression as well as sex. It is even more helpful to provide specific guidelines explaining what nondiscrimination means in this context. Such guidelines would include information about the need to use a person's correct name and pronouns, restroom accessibility, and confidentiality. This is particularly important for employers since federal law (Title VII) as well as the laws of at least 22 states prohibit discrimination based on gender identity.



Transgender Law Center has created a model employer policy on these issues, click to download or visit www.transgenderlawcenter.org/resources/employment.

HAVE STAFF TRAININGS.

Whether you know that you have transgender employees on staff or not, it is important to have staff trainings on the issue. Some transgender employees may not be “out” about their transgender status, or may not feel it is necessary to disclose their transgender status to their employer or coworkers. While most staff want to be supportive of transgender coworkers, many will need guidance on how to do so. Trainings are a much more effective way of creating a respectful environment than simply relying on written policies. If you have an existing sexual harassment or other training, consider including examples specifically focusing on gender identity or gender expression discrimination.

3

OFFER INCLUSIVE HEALTH INSURANCE.

Many health insurance policies have specifically excluded coverage for transition-related care. These exclusions often prevent transgender employees from obtaining medically necessary care such as hormone replacement therapy. Exclusions may even jeopardize a transgender employee's ability to get care for a procedure that has nothing to do with their transition. Many employers are recognizing this inequality and entering into health insurance contracts that affirmatively cover transition-related care. A growing number of state and federal regulatory agencies are prohibiting insurance plans from having such exclusions and some courts have ruled that such exclusions constitute employment discrimination. Advocate for your workplace to offer inclusive health insurance policies to employees.



Transgender Law Center has created a guide to assist in negotiating for trans-inclusive health benefits, click to download or visit www.transgenderlawcenter.org/resources/health.

4

RESPECT CONFIDENTIALITY AND PRIVACY.

It is almost never necessary to disclose a person's transgender status to clients or other coworkers. It is never appropriate to do so without permission from your transgender coworker. It is generally inappropriate to ask a coworker questions about their private medical history or treatment. Such inquiries may violate HIPAA privacy rules. If you have information about the health care that someone has received as part of their transition, do not freely share it with anyone else unless your transgender coworker has given you permission to do so.

HELP COWORKERS WHO ARE HAVING TROUBLE WITH ANOTHER EMPLOYEE'S TRANSITION.

It is important that coworkers support one another in respecting each other; this includes respecting transgender coworkers. When a transgender person transitions on the job, it can sometimes be difficult for coworkers to remember to use the correct name or pronoun. If you hear a coworker using the wrong name or pronoun, talk to them about it. It is likely just an unintentional slip and they will appreciate the reminder. If you hear coworkers making inappropriate comments about a transgender coworker's appearance or medical history, it is important to intervene in a respectful way. In most cases, coworkers genuinely want to be accepting and supportive of transgender coworkers and may simply not be fully aware of how to do so.

DON'T ASSUME THAT YOUR TRANSGENDER COWORKERS KNOW ABOUT ALL TRANSGENDER ISSUES OR WANT TO WORK ON TRANSGENDER CASES.

While some transgender employees may have a special interest in working on or discussing transgender-related issues, others may not. If you have a coworker whom you know to be transgender, make sure that you aren't expecting them to have all of the answers or to do your research for you. Expecting a transgender person to be the company's expert on all things transgender is an unfair burden on that person and can inadvertently tokenize them.

Transgender Law Center changes law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression.

You can access Transgender Law Center's model employer policy at:
www.transgenderlawcenter.org/resources/employment

For support in working with transgender clients or transgender legal issues, please contact us at: www.transgenderlawcenter.org

Transgender Law Center

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PG 3. The Gender Spectrum Collection

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Proskauer For Good

The Proskauer corporate social responsibility and pro bono blog

The Proskauer corporate social responsibility and pro bono blog

Top 7 Best Practices for Representing Transgender and Nonbinary Pro Bono Clients

By Erin Meyer on September 21, 2021

Posted in **LGBT Civil Rights, Pro Bono**

Transgender and nonbinary individuals are often among the most marginalized communities we serve as pro bono lawyers. In the US and abroad, transgender and nonbinary people have faced a history of discrimination in employment and housing, unequal access to healthcare, and violence. Indeed, as the Human Rights Campaign has reported, 2020 was the deadliest year on record for transgender and gender non-conforming people – and especially for transgender women of color, dozens of whom were violently killed. The rates of suicide attempts, particularly among transgender and nonbinary youth, are similarly alarming.

To ensure our lawyers and staff are providing client-centered and trauma-informed representation to our transgender and nonbinary pro bono clients, Proskauer welcomed Dru Levasseur, the Director of Diversity, Equity, and Inclusion at the National LGBTQ+ Bar Association, to speak on a panel alongside Associate Ren Morris and Pro Bono Counsel Erin Meyer. This panel was the third in a series of trainings coordinated by Proskauer's Diversity & Inclusion team, at which Dru addressed the topic of LGBTQ+ cultural competency in the workplace.

The training program was interactive, with audience members responding to polling questions about how best to handle hypothetical scenarios based on real interactions with transgender and nonbinary pro bono clients seeking immigration relief and legal name changes. Together we identified several best practices that all lawyers and staff can use to provide the highest level of service to transgender and nonbinary pro bono clients:

1. Avoid deadnaming and assumptions about your client's sexual orientation, gender identity, or pronouns.

When introducing yourself to your client, share your name and pronouns. Ask your client what name they go by and what pronouns they use – avoid asking for “preferred” pronouns. Don't refer to your client by a name they no longer use – a practice called “deadnaming” – even if that name still appears on their legal documents. Deadnaming invalidates a transgender person's identity and can be very emotionally damaging.

Understand that “sexual orientation” is one's romantic, physical, and/or sexual attraction,

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client's case – for example, where the client's identity is relevant to their asylum claim – you should ask rather than assume how the client identifies, and you should explain to the client why this information is needed for their case.

2. Mirror your client's language in describing their sexual orientation and gender identity, and accept that your client's self-identification may evolve over time.

Taking a client-centered approach to your work with LGBTQ+ clients requires using the name and pronouns that the client uses to describe themselves and doing your best to mirror the client's terminology when referring to their sexual orientation and gender identity. There are a wide variety of ways that LGBTQ+ people describe their identities, and these terms can also vary across different countries and languages. The GLAAD Media Reference Guide is a helpful resource that defines key terms used to describe LGBTQ+ identities and also explains which terminology should be avoided as outdated or offensive.

An LGBTQ+ client's understanding of their sexual orientation or gender identity can evolve over time, as it can for anyone. It is not uncommon for LGBTQ+ clients to change the way they describe and present their identity to others, especially when the client comes from a country of origin or family situation in which they had to closet or repress their authentic selves out of fear that they would be harmed or ostracized. When a client tells you that they have changed their name, pronouns, or the terms they use to describe their identity, you should accept this new information and change how you refer to the client accordingly. A change in identification or gender expression is not an indicator that the client is dishonest, but rather that the client has come to a new understanding of their identity and/or is feeling safer in expressing their authentic self publicly.

3. Beware of coercive narratives when describing LGBTQ+ identities in asylum applications.

Particularly in the context of asylum cases, there are times when the way your client self-identifies their sexual orientation or gender identity may not fit neatly into the "particular social group" categories that have been recognized in US immigration case law. In these instances, you may feel tension between trying to label your client's identity in a way that ensures a legally cognizable claim based on existing case law while also trying to mirror your client's language and understanding of their identity.

It can be very challenging to help your client draft an affidavit that is true to the client's self-identification and lived experiences while also ensuring the asylum officer or immigration judge will be convinced that the client is a member of a particular social group meriting a grant of asylum. The best approach is to have a candid conversation with the client about the limitations of US immigration law when it comes to recognizing "particular social groups" and to strategize with the client about how they want to describe their identity in their asylum application and how the adjudicator is likely to perceive the client's narrative. One possible solution is to mirror the client's terminology while also endeavoring to educate the judge or asylum officer about what those terms mean through analogizing to terms with which the judge or officer likely has

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journal article, *The LGBTQ Asylum Seeker: Particular Social Groups and Authentic Queer Identities*.

4. Practice using the client’s pronouns, but if you make a mistake, acknowledge, correct it, and move on.

We all make mistakes, and if your client corrects you or asks you to refer to them differently, you can respond along the lines of, “Thank you for trusting me with that information. I’m sorry for my mistake. I will do my best to get it right going forward, and I always appreciate you telling me how I can better support you.” Don’t dwell on the mistake or try to explain or justify it – your client will appreciate that you’ve made a graceful apology and that you moved on quickly.

It can be challenging to use “they/them” pronouns when you aren’t used to doing so, but the fastest way to become better at it is to practice! Try talking to yourself in the mirror about your client, using they/them pronouns to describe them, and you’ll find that it becomes easier over time.

5. Ensure your client will be able to access your office building and the bathrooms in accordance with their gender identity.

For any low-income pro bono client, coming to a corporate law office can be an intimidating and unfamiliar experience. This can be all the more true for a transgender or nonbinary client whose government-issued identification document does not match their name in use and gender identity.

You can make the client feel welcomed and safe by ensuring in advance that the security guards and receptionists know the right name and pronouns to use when greeting the client. You should not out the client as transgender if the client has not consented to your disclosing their gender identity – your goal is just to ensure that the client is not turned away or referred to by the wrong name given a potential mismatch between their name in use and the legal name on their photo ID. As a best practice and to build trust with the client, you can meet the client in the lobby, especially on their first visit to your office building, to introduce them to the security guard and ensure the client will have no difficulty accessing the building.

Similarly, you or your office receptionists can make it a practice to inform all clients upon their arrival where the restrooms are located, including the all-gender option, and that the firm’s policy is that everyone can use the restroom consistent with one’s gender identity. Ideally, you would not single out transgender or nonbinary clients when providing bathroom information but rather share this general information with all guests as a standard practice.

6. Be cautious when working with translators to ensure your client is not being misgendered.

When using a translator to speak with your transgender or nonbinary client, have everyone in the room introduce their names and pronouns to ensure the translator is aware of how each per-

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service, ask the client whether they were satisfied with the translation service and whether the first translator did anything that made the client feel uncomfortable. Your client may not offer this feedback unless you directly solicit it, but this feedback is important because it enables you to intervene if the first translator was not using the correct pronouns or was translating terms such as “gay” or “transgender” into words that are offensive in the client’s language.

Be particularly cautious if your client is an immigrant from a country where persecution based on sexual orientation or gender identity is pervasive. If the translator is also from the same country or region, the translator may have internalized the same cultural stereotypes and prejudices that caused the client to flee to the United States. It is important to ensure that the translator is not using homophobic or transphobic slurs when referring to LGBTQ+ identities.

7. Interrupt bias and be an ally to your client in court.

In Lambda Legal’s 2012 “Protected and Served?” survey of 2,376 LGBTQ+ people, 19% of the survey respondents who had appeared in a court at any time in the past five years had heard a judge, attorney, or other court employee make negative comments about a person’s sexual orientation, gender identity, or gender expression. Some of the survey respondents also had their sexual orientation or gender identity disclosed improperly, such as for the purpose of embarrassing them or attacking their moral character.

Transgender people who appear in court – whether as attorneys, witnesses, jury members, or parties to a case – often must deal with judges, opposing counsel, and court employees who refuse to acknowledge or respect their gender identity. As but one example of this, the survey cited an instance in which a judge demanded that a transgender woman not come back into the courtroom unless she was dressed as a man.

As a pro bono attorney, confronting overt transphobia in court can be very challenging, especially when the inappropriate remarks have come from a judge. You should prepare your client in advance for the unfortunate reality that transphobic comments can occur in court, and you should strategize with your client about how they want you to handle the situation if it unfortunately arises, including discussing the potential pros and cons of different approaches you could take to interrupt the biased behavior.

If your client is comfortable with taking a direct approach, you should respond immediately to any jokes or disrespectful statements about your client’s gender identity that are made in court, and if the statements were made on the record, your response should also be on the record. You should also oppose the introduction of evidence about your client’s LGBTQ+ identity where it is irrelevant to the case.

If your client is not comfortable with directly confronting biased comments in court, you can try the indirect approach of taking the perpetrator aside privately to explain why their comment was harmful and inappropriate. If the client prefers that you say nothing to the perpetrator, you should respect your client’s wishes as your client knows what is best for their own safety. You

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can still be an ally to your client by showing empathy – let them know that you recognized the biased behavior for what it was and that you are there to support them.

These best practices are, of course, just the beginning when it comes to being an ally and developing a relationship of trust with your transgender or nonbinary pro bono client, but attorneys who adopt these practices from the outset of the attorney-client relationship will be on the path to a successful representation.

TAGS: ALLYSHIP, ASYLUM, DEI, GLAAD, HRC, HUMAN RIGHTS CAMPAIGN, LAMBDA LEGAL, LAVENDER LAW 365, LGBT, LGBTQ, LGBTQ+ RIGHTS, LGBTQIA, NATIONAL LGBTQ+ BAR ASSOCIATION, NONBINARY, PRONOUNS, TIPS, TLDEF, TRANSGENDER

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Issues | Resources

Understanding Nonbinary People: How to Be Respectful and Supportive

JANUARY 12, 2023

Nonbinary Defined

Most people – including most transgender people – are either male or female. But some people don't neatly fit into the categories of "man" or "woman," or "male" or "female." For example, some people have a gender that blends elements of being a man or a woman, or a gender that is different than either male or female. Some people don't identify with any gender. Some people's gender changes over time.

People whose gender is not male or female use many different terms to describe themselves, with **nonbinary** being one of the most common (sometimes spelled with a hyphen, as "non-binary"). Other terms include **genderqueer**, **agender**, **bigender**, **genderfluid**, and more. None of these terms mean exactly the same thing – but all speak to an experience of gender that is not simply male or female. If you're not sure what a word means, you can usually just ask politely.

Why "Nonbinary"?

Some societies – like ours – tend to recognize just two genders, male and female. The idea that there are only two genders is sometimes called a "gender binary," because binary means "having two parts" (male and female). Therefore, "nonbinary" is one term people use to describe genders that don't fall into one of these two categories, male or female.

Basic Facts about Nonbinary People

Nonbinary people are nothing new. Non-binary people aren't confused about their gender identity or following a new fad – nonbinary identities have been recognized for millennia by cultures and societies around the world.

Some, but not all, nonbinary people undergo medical procedures to make their bodies more congruent with their gender identity. While not all nonbinary people need medical care to live a fulfilling life, it's critical and even life-saving for many.

Most transgender people are not nonbinary. While some transgender people are nonbinary, most transgender people have a gender identity that is either male or female, and should be treated like any other man or woman.

Being nonbinary is not the same thing as being intersex. Intersex people have anatomy or genes that don't fit typical definitions of male and female. Most intersex people identify as either men or women, though some may be nonbinary. Non-binary people are usually not intersex: they're usually born with bodies that may fit typical definitions of male and female, but their innate gender identity is something other than male or female.

How to Be Respectful and Supportive of Nonbinary People

It isn't as hard as you might think to be supportive and respectful of nonbinary people, even if you have just started to learn about them.

You don't have to understand what it means for someone to be nonbinary to respect them. Some people haven't heard a lot about nonbinary genders or have trouble understanding them, and that's okay. Identities that some people don't understand still deserve respect.

Use the name a person asks you to use. This is one of the most critical aspects of being respectful of a nonbinary person, as the name you may have been using may not reflect their gender identity. Don't ask someone what their old name was.

Try not to make any assumptions about people's gender. You can't tell if someone is nonbinary simply by looking at them, just like how you can't tell if someone is transgender just by how they look. A nonbinary person might appear feminine, masculine, or genderless, or show a mix of gendered characteristics – and their appearance doesn't determine their pronouns.

If you're not sure what pronouns someone uses, ask. Different nonbinary people may use different pronouns. Many nonbinary people use "they" while others use "he" or "she," and still others use **other pronouns**. Asking whether someone should be referred to as "he," "she," "they," or another pronoun may feel awkward at first, but is one of the simplest and most important ways to show respect for someone's identity.

Advocate for non-binary friendly policies. It's important for nonbinary people to be able to live, dress and have their gender respected at work, at school, and in public spaces.

Understand that, for many nonbinary people, navigating gendered spaces - like bathrooms - can be challenging. For many nonbinary people, using either the women's or the men's restroom might feel unsafe, because others may verbally harass them or even physically attack them. Nonbinary people should be able to use the restroom that they believe they will be safest in. You can help support nonbinary people by accepting their judgment about where they feel most comfortable when dealing with spaces that are based on binary gender distinctions.

Talk to nonbinary people to learn more about who they are. There's no one way to be nonbinary. The best way to understand what it's like to be nonbinary is to talk with nonbinary people and listen to their stories.



Frequently Asked Questions About Transgender People

Transgender people come from every region of the United States and around the world, from every racial and ethnic background, and from every faith community. Transgender people are your classmates, your coworkers, your neighbors, and your friends. With approximately 1.4 million transgender adults in the United States—and millions more around the world—chances are that you've met a transgender person, even if you don't know it.

What does it mean to be transgender?

Transgender people are people whose gender identity is different from the gender they were thought to be at birth. “Trans” is often used as shorthand for transgender.

When we're born, a doctor usually says that we're male or female based on what our bodies look like. Most people who were labeled male at birth turn out to actually identify as men, and most people who were labeled female at birth grow up to be women. But some people's gender identity – their innate knowledge of who they are – is different from what was initially expected when they were born. Most of these people describe themselves as **transgender**.

Being transgender

means different things to different people. Like a lot of other aspects of who people are, like race or religion, there's no one way to be transgender, and no one way for transgender people to look or feel about themselves. The best way to understand what being transgender is like is to talk with transgender people and listen to their stories.

A **transgender woman** lives as a woman today, but was thought to be male when she was born. A **transgender man** lives as a man today, but was thought to be female when he was born. Some transgender people identify as neither male nor female, or as a combination of male and female. There are a variety of terms that people who aren't entirely male or entirely female use to describe their gender identity, like **non-binary** or **genderqueer**.

Everyone—transgender or not—has a gender identity. Most people never think about what their gender identity is because it matches their sex at birth.

How does someone know that they are transgender?

People can realize that they're transgender at any age. Some people can trace their awareness back to their earlier memories – they just knew. Others may need more time to realize that they are transgender. Some people may spend years feeling like they don't fit in without really understanding why, or may try to avoid thinking or talking about their gender out of fear, shame, or confusion. Trying to repress or change one's gender identity doesn't work; in fact, it can be very painful and damaging to one's emotional and mental health. As transgender people become more visible in the media and in community life across the country, more transgender people are able to name and understand their own experiences and may feel safer and more comfortable sharing it with others.

For many transgender people, recognizing who they are and deciding to start gender transition can take a lot of reflection. Transgender people risk social stigma, discrimination, and harassment when they tell other people who they really are. Parents, friends, coworkers, classmates, and neighbors may be

accepting—but they also might not be, and many transgender people fear that they will not be accepted by their loved ones and others in their life. Despite those risks, being open about one's gender identity, and living a life that feels truly authentic, can be a life-affirming and even life-saving decision.

What's the difference between sexual orientation and gender identity?

Gender identity and sexual orientation are two different things. Gender identity refers to your internal knowledge of your own gender—for example, your knowledge that you're a man, a woman, or another gender. Sexual orientation has to do with whom you're attracted to. Like non-transgender people, transgender people can have any sexual orientation. For example, a transgender man (someone who lives as a man today) may be primarily attracted to other men (and identify as a gay man), may be primarily attracted to women (and identify as a straight man), or have any other sexual orientation.

What's the difference between being transgender and being intersex?

People sometimes confuse being transgender and being intersex. Intersex people have reproductive anatomy or genes that don't fit typical definitions of male or female, which is often discovered at birth. Being transgender, meanwhile, has to do with your internal knowledge of your gender identity. A transgender person is usually born with a body and genes that match a typical male or female, but they know their gender identity to be different.

Some people think that determining who is male or female at birth is a simple matter of checking the baby's external anatomy, but there's actually a lot more to it. Every year, an estimated one in 2,000 babies are born with a set of characteristics that can't easily be classified as "male" or "female." People whose bodies fall in the vast continuum between "male" and "female" are often known as **intersex** people. There are many different types of intersex conditions. For example, some people are born with XY chromosomes but have female genitals and secondary sex characteristics. Others might have XX chromosomes but no uterus, or might have external anatomy that doesn't appear clearly male or female. To learn more about what it's like to be intersex, check out [this video](#) or [click here](#).

While it's possible to be both transgender and intersex, most transgender people aren't intersex, and most intersex people aren't transgender. For example, many intersex people with XY (typically male) chromosomes but typically female anatomy are declared female at birth, are raised as girls, and identify as girls; in fact, many of these girls and their families never even become aware that their chromosomes are different than expected until much later in life. However, some intersex people come to realize that the gender that they were raised as doesn't fit their internal sense of who they are, and may make changes to their appearance or social role similar to what many transgender people undergo to start living as the gender that better matches who they are.

Thought exercise: your own gender

It can be difficult for people who are not transgender to imagine what being transgender feels like. Imagine what it would be like if everyone told you that the gender that you've always known yourself to be was wrong. What would you feel like if you woke up one day with a body that's associated with a different gender? What would you do if everyone else—your doctors, your friends, your family—believed you're a man and expected you to act like a man when you're actually a woman, or believed you're a woman even though you've always known you're a man?

What is the difference between being transgender and being gender non-conforming?

Being gender non-conforming means not conforming to gender stereotypes. For example, someone's clothes, hairstyle, speech patterns, or hobbies might be considered more "feminine" or "masculine" than what's stereotypically associated with their gender.

Gender non-conforming people may or may not be transgender. For example, some women who were raised and identify as women present themselves in ways that might be considered masculine, like by having short hair or wearing stereotypically masculine clothes. The term "tomboy" refers to girls who are gender non-conforming, which often means they play rough sports, hang out with boys, and dress in more masculine clothing.

Similarly, transgender people may be gender non-conforming, or they might conform to gender stereotypes for the gender they live and identify as.

What does it mean to have a gender that's not male or female?

For more information

about what it's like to have a gender other than male or female or how you can support the non-binary people in your life, read NCTE's guide "[Understanding Non-Binary People](#)".

Most transgender people are men or women. But some people don't neatly fit into the categories of "man" or "woman" or "male" or "female." For example, some people have a gender that blends elements of being a man or a woman, or a gender that is different than either male or female. Some people don't identify with any gender. Some people's gender fluctuates over time.

People whose gender is not male or female may use many different terms to describe themselves. One term that some people use is **non-binary**, which is used because the gender binary refers to the two categories of male and female. Another term that people use is **genderqueer**. If you're not sure what term someone uses to describe their gender, you should ask them politely.

It's important to remember that if someone is transgender, it does not necessarily mean that they have a "third gender." Most transgender people do have a gender identity that is either male or female, and they should be treated like any other man or woman.

Why don't transgender people get counseling to accept the gender they were assigned at birth?

Counseling aimed at changing someone's gender identity, sometimes known as conversion therapy, doesn't work and can be extremely harmful. The belief that someone's gender identity can be changed through therapy runs counter to the overwhelming consensus in the medical community. Telling someone that a core part of who they are is wrong or delusional and forcing them to change it is dangerous, sometimes leading to lasting depression, substance abuse, self-hatred and even suicide. Because of this, a growing number of states have made it illegal for licensed therapists to try to change a young person's gender identity (laws apply to those under 18). However, many transgender people find it helpful to get counseling to help them decide when to tell the world they are transgender and deal with the repercussions of stigma and discrimination that comes afterward.

What does “gender transition” mean?

Transitioning is the time period during which a person begins to live according to their gender identity, rather than the gender they were thought to be at birth. While not all transgender people transition, a great many do at some point in their lives. Gender transition looks different for every person. Possible steps in a gender transition may or may not include changing your clothing, appearance, name, or the pronoun people use to refer to you (like “she,” “he,” or “they”). Some people are able to change their identification documents, like their driver’s license or passport, to reflect their gender. And some people undergo hormone therapy or other medical procedures to change their physical characteristics and make their body better reflect the gender they know themselves to be.

Transitioning can help

many transgender people lead healthy, fulfilling lives. No specific set of steps is necessary to “complete” a transition—it’s a matter of what is right for each person. All transgender people are entitled to the same dignity and respect, regardless of which legal or medical steps they have taken.

What are some of the official records transgender people may change when they're transitioning?

Some transgender people make or want to make legal changes as part of their transition, like by changing their name or updating the gender marker on their identity documents.

Not all transgender people need or want to change their identity documents, but for many, it's a critical step in their transition. For many transgender people, not having identity documents like driver's licenses or passports that match their gender means that they might not be able to do things that require an ID, like getting a job, enrolling in school, opening a bank account, or traveling. Some transgender people who use an ID that doesn't match their gender or their presentation face harassment, humiliation, and even violence.

Transgender people may need to change a number of documents in order to live according to their gender identity, such as their:

- Driver’s license
- Social Security card
- Passport
- Bank accounts and records
- Credit cards
- Paychecks and other job-related documents
- Leases
- Medical records
- Birth certificate
- Academic records

To find out

the requirements for updating a driver’s license or birth certificate in your state or territory, as well as get information on changing federal IDs and records, visit NCTE’s [ID Documents Center](#).

It's important to know that not all transgender people be able to make the changes they need to their IDs and other official documents. Unfortunately, these changes are often expensive, burdensome, and complicated, putting them out of reach for many people. For example, some states still require proof of surgery or a court order to change a gender marker. In many states, the process can be time-consuming and involve many steps, or cost hundreds of dollars. As a result, only one-fifth (21%) of transgender people who have transitioned have been able to update all of their IDs.

NCTE works to modernize all of these outdated requirements. States are increasingly adopting more accessible and straightforward policies for changing one's name and gender marker.

What medical treatments do some transgender people seek when transitioning?

Some, but not all, transgender people undergo medical treatments to make their bodies more congruent with their gender identity and help them live healthier lives.

While transition-related care is critical and even life-saving for many transgender people, not everyone needs medical care to transition or live a fulfilling life.

Different transgender people may need different types of transition-related care. People should make decisions about their care based on their individual needs. Medical procedures can include:

- hair growth or removal treatments
- hormone therapy
- various surgeries to make one's face, chest, and anatomy more in line with one's gender identity

While not everyone needs transition-related medical treatments, there is an overwhelming consensus in the medical community that they are medically necessary for many transgender people and should be covered by private and public insurance. Every major medical organization in the United States has affirmed that transition-related medical care is safe and effective, and that everyone who needs it should be able to access it. Unfortunately, this critical care is often denied by insurance companies, often in spite of state and federal laws.

What is gender dysphoria?

For some transgender people, the difference between the gender they are thought to be at birth and the gender they know themselves to be can lead to serious emotional distress that affects their health and everyday lives if not addressed. Gender dysphoria is the medical diagnosis for someone who experiences this distress.

Not all transgender people have gender dysphoria. On its own, being transgender is not considered a medical condition. Many transgender people do not experience serious anxiety or stress associated with the difference between their gender identity and their gender of birth, and so may not have gender dysphoria.

Gender dysphoria can often be relieved by expressing one's gender in a way that the person is comfortable with. That can include dressing and grooming in a way that reflects who one knows they are, using a different name or pronoun, and, for some, taking medical steps to physically change their body. All major medical organizations in the United States recognize that living according to one's gender identity is an effective, safe and medically necessary treatment for many people who have gender dysphoria.

It's important to remember that while being transgender is not in itself an illness, many transgender people need to deal with physical and mental health problems because of widespread discrimination and stigma. Many transgender people live in a society that tells them that their deeply held identity is wrong or deviant. Some transgender people have lost their families, their jobs, their homes, and their

support, and some experience harassment and even violence. Transgender children may experience rejection or even emotional or physical abuse at home, at school, or in their communities.

These kinds of experiences can be challenging for anyone, and for some people, it can lead to anxiety disorders, depression, and other mental health conditions. But these conditions are not *caused* by having a transgender identity: they're a result of the intolerance many transgender people have to deal with. Many transgender people – especially transgender people who are accepted and valued in their communities – are able to live healthy and fulfilling lives.

Why is transgender equality important?

Transgender people should be treated with the same dignity and respect as anyone else and be able to live, and be respected, according to their gender identity. But transgender people often face serious discrimination and mistreatment at work, school, and in their families and communities.

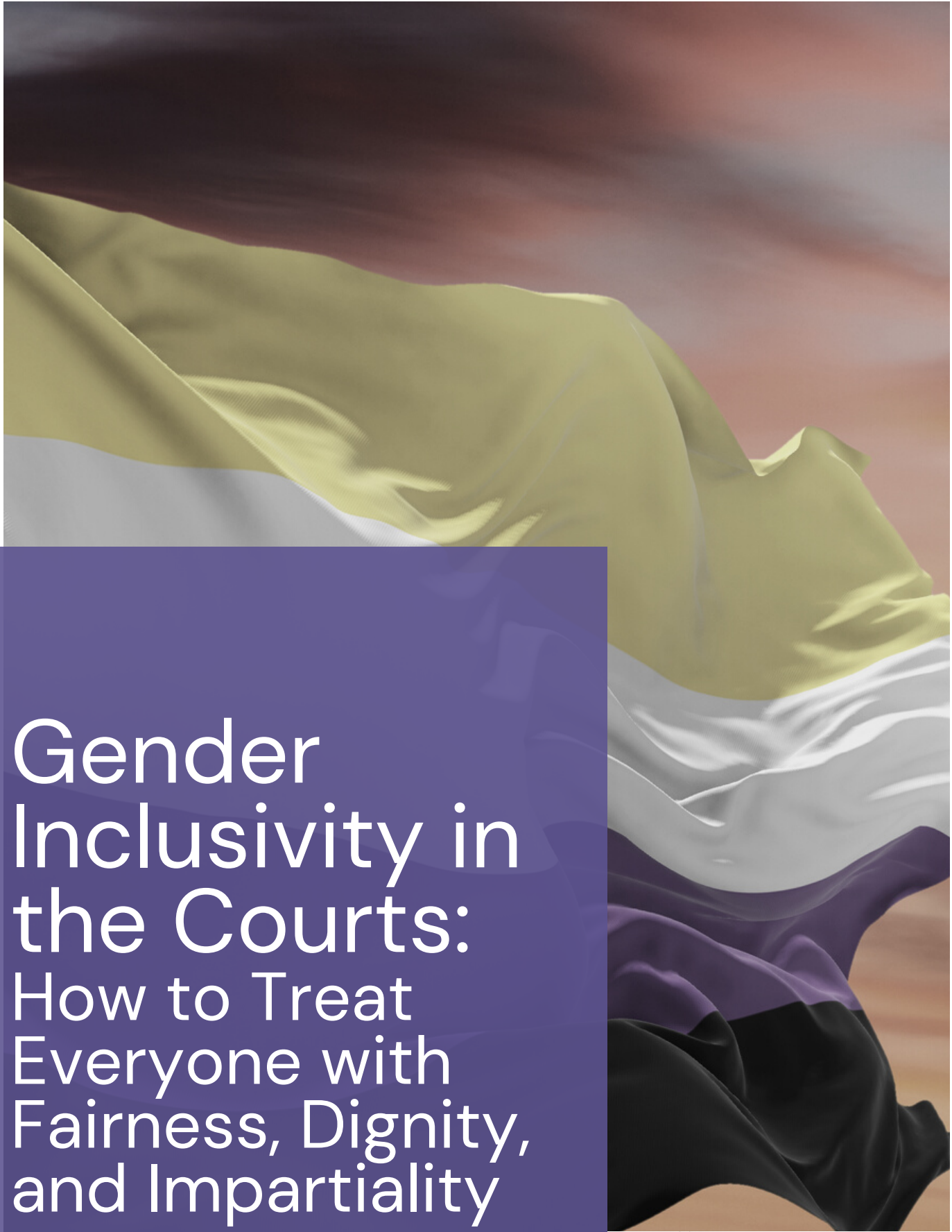
For example, transgender people are more likely to:

- Be fired or denied a job
- Face harassment and bullying at school
- Become homeless or live in extreme poverty
- Be evicted or denied housing or access to a shelter
- Be denied access to critical medical care
- Be incarcerated or targeted by law enforcement
- Face abuse and violence

For statistics about these types of discrimination, visit the [National Transgender Discrimination Survey](#) page.

Living without fear of discrimination and violence and being supported and affirmed in being who they are is critical for allowing transgender people to live healthy, safe, and fulfilling lives. In recent years, laws, policies and attitudes around the country have changed significantly, allowing more transgender people than ever to live fuller, safer, and healthier lives.

The transgender movement is part of a long tradition of social justice movements of people working together to claim their civil rights and better opportunities in this country. These challenges are connected. Discrimination that transgender people of color face is compounded by racism, and lower-income transgender people face economic challenges and classism. NCTE believes that progress towards transgender equality requires a social justice approach that fights all forms of discrimination.



Gender
Inclusivity in
the Courts:
How to Treat
Everyone with
Fairness, Dignity,
and Impartiality

Acknowledgments

This toolkit was made possible with the support of the Pew Charitable Trusts, and the input and collaboration of the National Center for State Courts' Access and Language Access teams.

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Readers' Guide

The **Mustard** roman numerals are endnotes.

Anything Underlined is a hyperlink.

Sentences in **Purple** are main themes/ideas/concepts.

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Introduction



The legal profession has long valued grammatical precision and celebrates the wordsmithing ability of its field. Anecdotally, it is common for first-year law students to be told in their legal writing courses that cases have been won or lost on a comma. Contract drafting, briefs, and memoranda require exactness to hold legal authority and persuade parties to your viewpoint. Why then, has the legal field not taken the lead on gender inclusivity in all its writings?

Gender inclusivity is not a new concept for the courts and is something that they are already doing.

Now is the time to expand the work that has already happened within the binary genders and include all genders. This is a necessary step for courts to be able to be impartial, accurate, and precise triers of the law.

"Instead of allowing language to construct how we view the world, we could push in the other direction, questioning how we can reflect our world through our choice of language."

[i] Using correct pronouns is a matter of accuracy and precision, two values that the legal community holds in high priority. Courts should consider this as they update materials for accuracy.

At a minimum, when judges, court and clerk staff, and other justice system partners communicate with court users, they should use gender-inclusive language as much as practicable. Courts should make it common practice in both oral and written communications.

*** Use they/them unless you are aware of one's specific gender preferences. (It is okay to ask someone for their pronouns).**

*** Consider adding a pronouns field in standardized forms.**

*** Make writings more accurate by being inclusive and be responsive to legal changes.**

*** Consult with native language speakers to reflect inclusivity in translated court communications.**



[1] This phenomenon is known as the English Metaphorical Gender, which you can read more about [here](#).

Gender is something that is all around us and engrained in our society, culture, and language. We name and gender everything from hurricanes to ships and nations. [1] For many Americans who question how to express their gender, or are not comfortable with how others gender them, gender is something they must confront regularly. Using someone’s correct pronouns has a measurable effect on how they interact with someone and their mental well-being. It also makes a difference in society’s perception of courts.

The history of misgendering does not exclusively apply to nonbinary and transgender communities. Concerted efforts have been made to ensure that the traditionally masculinized words in English become gender-neutral to reflect an evolving world where women are increasingly represented in every field. Historically, the masculinization of society has been the norm and is even reflected in the way we talked about humans, referring to them as man or mankind. The masculine bias was also prevalent in the positions and occupations that historically were only open to men such as policeman, chairman, fireman, etc. [ii]

Say	Not
Police Officer	Policeman
Chair	Chairman
Humankind	Mankind
Staffing	Manpower
Congressperson	Congressman
Artificial	Man-made
Representative	Spokesman

Gender identity is tied to an individual's sense of being. Names and pronouns are two ways that people express this. Words have power and using the right terms can "affirm identities and challenge discriminatory attitudes," while the wrong terms can "disempower, demean, and reinforce exclusion." [iii]

"Pronouns are words that take the place of a noun and tend to correlate to gender identity in the third person: he, she, they, ze..."

Misgendering is disrespectful, causes embarrassment and humiliation, expresses social subordination, deprives individuals of privacy, threatens their safety, is dehumanizing, deflates credibility, obscures understanding, and infringes and curtails the autonomy of gender minorities. [iv] Misgendering causes a host of psychological and physiological injuries and is a form of microaggression.

The anxiety that misgendering causes when it happens builds into extreme stigmatization and causes psychological and emotional distress over time. [iv] Misgendering causes lower self-esteem and increased negative views of self, including increased rates of hopelessness, apathy, depressive symptomology, and suicidal ideation. [iv] Not using the correct pronouns trivializes a person's experience and attempts to invalidate the internal experiences one may have. This constant invalidation by way of misgendering causes emotional distress, depression, and PTSD, and is considered a form of psychological abuse. [iv]

Microaggressions are defined as "subtle forms of discrimination that communicate hostile or derogatory messages particularly to and about members of marginalized groups." [iv]

Using the wrong pronoun for somebody is just as incorrect as using the wrong name to accurately identify an individual.

Linguists deem English a “natural gender” language, meaning that there are gendered pronouns, but our nouns are not gendered as in other languages. [v] The introduction of gendered language into the lexicon reflects gendered biases.

The gender bias leads to a favoring of the “masculine.” In a recent study, researchers found that Americans are significantly more likely to perceive an illusory face (like the outlet pictured here) as male. [vi]



These associations begin to form from a young age and are reflected in English literature. In a study about the gendering of inanimate characters in children’s books, researchers found that inanimate objects were frequently masculinized unless the object had perceived “feminine” qualities. [vii] **It is important that courts do not unnecessarily gender nouns, and that they use proper pronouns.**

Because English does not naturally have gendered nouns, usage of gender-neutral nouns decreases gender bias and sexism. [viii]

The issue is not that we should never use gender/gendered pronouns. The issue is when we assume the gender of a known or unknown person. In general, “they” is a great pronoun to start with. When speaking to someone who has clearly and expressly indicated they use certain gendered pronouns, use those gendered pronouns.

Courts, as finders of fact and appliers of law, must concern themselves with the proper way to address and serve all Americans, regardless of gender. **Attorneys and judges are bound by ethical rules requiring them to treat all participants with respect and dignity.** With the multitude of state laws and approaches to gender identity, it is increasingly important that courts have a unified way to address and discuss these issues. This toolkit will inform courts on what they can do now to make all court users feel safe, seen, and heard in court proceedings.

Definitions



Definitions

For the purposes of this toolkit, we use the following definitions. However, these definitions are not all-inclusive, and some people may use words not included here to define their gender identity.

Cisgender: An adjective used to describe a person whose gender identity is aligned with the sex they were assigned at birth. [ix] Sometimes shortened to cis, but only after the use of cisgender.

Gender: The social and cultural differences rather than biological ones that are also used more broadly to denote a range of identities that do not correspond to established ideas of male and female. [x]

Gender Binary: Gender distinctions divided into two categories, namely women and men or feminine and masculine. [xi] Also referred to in shorthand as “the binary.”

Genderqueer: Denoting or relating to a person who does not subscribe to conventional gender distinctions but identifies with neither, both, or a combination of male and female genders. [x]

Gender Expression: External manifestations of gender, often expressed through a name, pronouns, clothing, haircut, voice, and/or behavior. [ix]

Gender Identity: A deeply held knowledge of one’s own gender. Gender identity is not visible to others. [ix]

Gender-Nonconforming: Denoting or relating to a person who has a gender outside the binary. [i]

Man: An encompassing adjective to describe both cisgender and transgender men.

Nonbinary: An adjective used to describe a person who experiences their gender identity and/or gender expression as falling outside the binary gender categories of “man” and “woman.” Sometimes nonbinary is shortened to enby. [ix]

Sex: The main categories that humans and most living things are divided into on the basis of their reproductive functions. [x]

Definitions

Sex Assigned at Birth: The sex assigned to an infant at birth based on their external anatomy. [i]

TGNC: An umbrella term for transgender and gender-nonconforming people. [i]

Transgender: An adjective to describe people whose gender identity differs from the sex they were assigned at birth. [ix] Sometimes shortened to trans, but only after the use of transgender.

Transgender Man: Can be used to describe a man who was assigned female at birth. [ix]

Transgender Woman: Can be used to describe a woman who was assigned male at birth. [ix]

Woman: An encompassing adjective to describe both cisgender and transgender women

Part 1:

Using Inclusive Language with the Public & Internally

HELLO

MY PRONOUNS ARE

_____ / _____



HOW TO MAKE GENDER-AFFIRMING LANGUAGE PART OF YOUR COURT'S ETHOS

1. Make it common practice to ask everyone for their pronouns on the first encounter.
2. Never assume someone's gender.
3. When writing about or to an unknown individual or group of individuals, use gender-neutral pronouns and nouns.

1. ASKING FOR PRONOUNS

In English, pronouns can be a signifier of gender, and as such, are often a vehicle for misgendering, particularly during a first interaction. **It is always okay to ask someone what pronouns they use. It is a sign of respect and shows that you will honor their gender identity.** [xii] Do not only ask this question to people you assume do not use traditional binary pronouns. This may make a person uncomfortable, be offensive, or be discriminatory.

Whether on the phone, over zoom, or in person, ask “What are your pronouns?” or “What pronouns do you use?” Do not ask “What are your preferred pronouns?” Calling pronouns “preferred,” minimizes their validity and can erase people’s experience with gender. [xii]

Make it common practice to ask everyone for their pronouns on the first encounter, so you don't single anyone out.

One way you can make asking for someone’s pronouns less uncomfortable is by introducing yourself with your pronouns. You can also include your pronouns in your zoom display name and in your email signature. You should do this regardless of what pronouns you use. It signals safety for others to express their gender and eliminates the possibility of someone misgendering you. Note that some people may be exploring their gender identity and may not be ready to share their pronouns. That's okay too! Use they/them pronouns until they tell you what they are comfortable with.

HELLO
my name is

NAME
(Pronouns)

Introduce yourself by saying, for example, "Hi, my name is Andy and I use he/him pronouns. What's your name?"

Pronouns

Remember that there are many pronouns. Some people who do not identify along the gender binary use “they.” [2] For a great discussion on why this matters, check out [this tiny chat](#) featuring Chief Justice Gonzalez and Chief Justice Robinson on creating a shared language. Others may use neopronouns. Neopronouns include ze/hir (pronounced zee/heer) and xe/xem (pronounced zee/zem). Some people use multiple pronouns. For example, he/they, also known as rolling pronouns, which may be used interchangeably. [xii] Use these pronouns in the same way you would use “she/her” or “he/him” when speaking and in writing.

Remember: someone’s pronouns are never preferred, but rather just are. You should say someone “uses she/they pronouns” not that they “prefer she/they pronouns.” Want to learn more about pronouns? Check out, [Practice with Pronouns](#)

SHE	HER	HERS
HE	HIM	HIS
THEY	THEM	THEIR
ZIE	ZIM	ZIR
XE	XEM	XIR

As you get familiar with and make correct pronouns part of your normal practice, do not be ashamed if you mess up. **If you do make a mistake or notice that someone is being misgendered by your coworkers, politely correct the error and then move on.** Do not dwell on it or excessively apologize, as this can be uncomfortable for the misgendered individual. [xiii]

[2] Some grammarians have balked at the use of “they” as a singular pronoun, however, the [Merriam-Webster Dictionary](#) has included the use of they as a singular pronoun since 2019. Additionally, [writing experts](#) say “they” may be used to; “(1) replace he or she, (2) refer to collective nouns, and (3) respect gender identities.” These uses of they have also been recommended by the American Psychological Association, including in their writing and citation guide. [i]

2. NEVER ASSUME GENDER

Never assume someone's gender. Gender identity is not something you can see.

Some members of the TGNC community use gendered pronouns, and others prefer the gender-neutral they/them. The purpose of using gender-neutral pronouns is to accurately reflect the spectrum of gender identities that people have. **Remember, lawyers and courts need to be precise and accurate in their writing and communication, and making assumptions that lead to inaccuracy is an avoidable mistake. Don't assume gender based on the way a person's voice sounds or on their appearance.** Frontline staff, such as clerks, bailiffs, and attorneys are often the first point of contact a court user has. They set the precedent.

One reason it is important to do this early is that if you assume someone's gender and use gendered pronouns to refer to them to your colleagues, it will be even harder to break that habit. **Remember that gender-affirming language does not remove gender from everything, but honors everyone's gender.** This means once you know someone's pronouns, it is not inappropriate to use their identified pronouns.

Never make assumptions about someone's gender. When you meet someone, use they/them pronouns until you know which pronouns they use. [i]





3. USING GENDER-NEUTRAL LANGUAGE IN COMMUNICATIONS

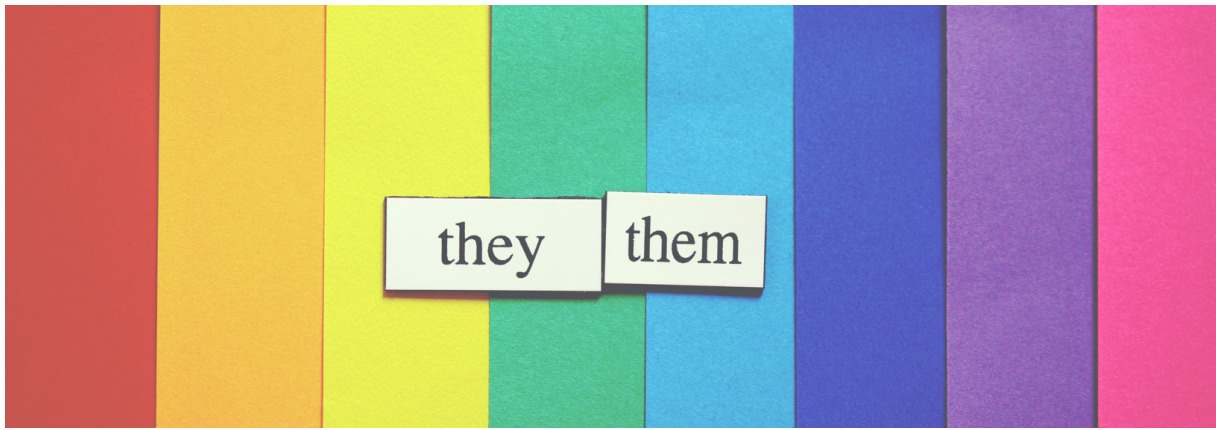
Whether the court is communicating with the public, or they are sending information internally, it is important that their communications are inclusive of all genders. When addressing a group of people, it is common to hear someone start by saying, “ladies and gentlemen.” While this has been considered a respectful way to address people, it is exclusionary of the TGNC community and reinforces the binary. Courts should be conscious of this as well as any other language that refers to the “opposite sex” or further emphasizes the binary.

When addressing someone whose gender is unknown, use the title Mx (pronounced mix) before their name. **[xiv] Changing habits of addressing someone with a new title should not be an unfamiliar practice as Ms. has widely replaced Mrs. over the past few decades.** In email salutations and at the start of calls there are many ways to make people feel welcome without using gendered language, such as “Hey All,” “Hey team,” or “Hello everyone”, which encompasses all the genders in the group email or phone call. Do not say “Hey Guys,” which is less inclusive.

Part 2:

Gender-Affirming Language in Court Practices & Proceedings



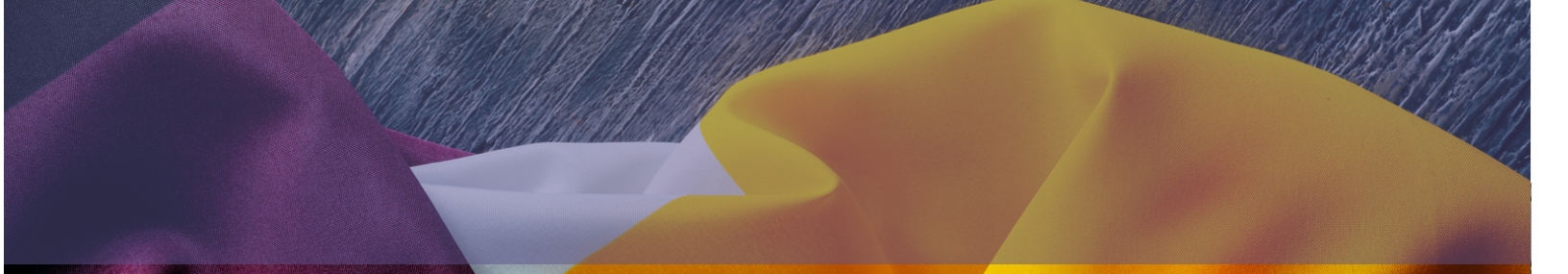


Gender-Affirming language should be used in all stages of the ethical practice of law.

1. *Drafting Inclusive Legal Documents*

When writing legal documents, consider the level of specificity that is needed when describing a person. Is gender relevant? If not, do not mention it. If it is necessary, use modifiers to be as specific as possible. [i] In legal drafting, there are three easy things that can be done.

1. First, simply repeat the noun (defendant on first and second reference),
 - a. "The defendant argues the bill was paid by the defendant on the last day of September."
 2. Second, pluralize the noun (saying defendant and then "they" on the second reference), or
 - a. The defendant argues that they paid the bill on the last day of September."
 3. Third, use paired pronouns (saying defendant first and then using that person's pronouns on the second reference). [xv]
 - a. The defendant argues that she paid the bill on the last day of September."
- NOTE: This version should only be used if the defendant's gender identity is known.**



To see how other countries are doing this click on them below



Canada



The UK



When drafting a form, communication, or written material that describes a group of people, consider the labels to use and the amount of specificity needed. **Do not use adjectives as nouns to label people (e.g. “the gays”).** [i] For a comprehensive style guide that addresses this and other issues, check out, [Language Please.](#)

In the fields of contract and form drafting, misgendering someone is a form of inaccuracy that could make the document void. [xvii] It is good business practice and is the future of legal drafting to use gender-affirming language, so simply ask individuals which pronouns they use in your first contact with them.

Say, “Gay men are at higher risk of eviction...”

Not: “The gays are at higher risk of eviction”

Say, “Transgender individuals face many challenges...”

Not: “The transgenders face many challenges...”

2. Respecting Gender in the Adversarial Practice of Law

According to ethical rules, which guide the practice of law, attorneys are instructed to treat their clients with respect and provide effective assistance of counsel. Attorneys do neither if they misgender their clients or other participants in the procedure. Judges should correct this behavior. [3]

Gloucester County v. G.G. is an excellent case study of how an attorney can respect a party's pronouns while not conceding any point of law. This 2016 case sought to address whether a transgender boy could use the boy's bathroom. The attorney for the school board used the pronoun "he" to refer to the boy in question in all his briefs and arguments. In a footnote, the attorney wrote that the use of male pronouns did not "concede anything on the legal question of sex for purposes of Title IX." [xvii] This attorney was able to reference the Defendant correctly and accurately while still providing the best arguments for their client.

[3] Three separate circuits have heard cases about pronoun issues, and all three have found that there is no constitutional obligation to use the correct pronoun. <https://www.virginialawreview.org/articles/some-notes-on-courts-and-courtesy/> (DEC 31, 202, 107 Va. L. Rev. Online 317) In the 5th circuit case, the issue is whether judges were required to compel lower courts to change a pronoun in a judgment and the court decided it was not necessary. <https://harvardlawreview.org/2021/04/united-states-v-varner/> However, two lawyers who submitted amicus briefs for the Supreme court case Gloucester County v. G.G., were rebuked by the court for using the wrong pronoun in the caption of the case. <https://www.edweek.org/education/a-supreme-court-rebuke-over-use-of-proper-pronouns-in-transgender-case/2017/03> They were told to refile with the correct pronoun as their briefs were inaccurate. Additionally, in the recent Bostock decision by the Supreme Court, the majority opinion authored by Justice Gorsuch used the correct pronouns for the party. This is the first time that the Supreme Court has used the correct gendered pronouns rather than gender-neutral pronouns in a decision about Transgender rights and signals to lower courts that respect and correctness should always come before personal bias. <https://www.virginialawreview.org/articles/some-notes-on-courts-and-courtesy/>

Part 3:

Gender-Affirming Language in Court Forms, Rules, and Orders

INCLUSIVITY




1. BACKGROUND

There are many steps that courts can take to make their forms, rules, and orders more inclusive. These steps are necessary to ensure the accuracy of court documents and further provide inclusion for the TGNC community. While much of the revision of statutes, codes, and constitutions will need to be done by the legislature, courts can do their part to ensure forms, documents, and orders are gender-affirming. Courts must also be prepared to reflect the changes that are being made to statutes and constitutions.

States and some federal agencies have taken steps to recognize the full spectrum of gender identity. On March 31, 2022, the federal government announced that it will issue gender-neutral passports and Social Security Cards with the "X" gender marker. [xviii] California, Colorado, Connecticut, Illinois, Maine, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, and Washington, the District of Columbia all issue US birth certificates with a "3rd gender" category, or X marker for those that don't identify on the binary.] [xix] There are currently 24 states that allow individuals to select an "X" gender marker on their driver's license or state ID. [xix]

For interactive maps and great information about the status of laws that affect the TGNC community check out, [lgbtmap](#) and the Transgender Law Center's "[Equality Map.](#)"

You can also check out the Human Rights Campaign's State Equality Index, found [here](#).



Currently, Oklahoma is the only state that forbids nonbinary gender markers on birth certificates [xix]



Many states have recognized the need to address these inaccuracies and are modifying their codes. According to the National Conference of State Legislatures, roughly half of the states have taken some steps already to ensure that their legal language is gender-neutral. These changes are happening at all levels of government and in all forms of legal documents.

New York and Rhode Island have amended their state constitutions to be gender-neutral, and states like Florida and Washington have done expansive revisions to remove gender-biased words from their laws. As of November 3, 2021, Oakland, Berkeley, Boston, Portland, Oregon, and San Diego have all passed city laws that require inclusive language in all laws and rules. The United States House of Representatives recently passed a resolution to make codes and rules gender-neutral. And, on January 20, 2021, President Biden issued an Executive Order mandating governmental agencies eliminate gender-biased language in their rules and prohibit sex discrimination.

For a closer look, in July 2021 Governor Newsom signed Senate Bill 272 (SB272) which will update parts of the California code to eliminate gender-specific references to various positions and titles within the legislature. The bill was prompted when CHP Commissioner Amanda Ray was the first woman to be appointed to the position, which was described with only masculine terms. To read more, click on California.



2. EXAMPLES OF NECESSARY REVISIONS

One area of law that has a particular need for revision is family law. When LGBTQ+ marriage was federally legalized in 2015, states that had not already legalized it had to revise marriage licenses, parenting plans, and other court materials to reflect the spectrum of couples getting married. Revising these legal documents was necessary because it was no longer accurate to only represent heterosexual cisgender couples.

The courts had to update and revise their materials to be responsive to this change in the law, as they would with any other change. This is not a new obligation for the judiciary, yet when it comes to gender inclusivity, this is an area where courts are lagging behind.

Similarly, many current court documents and forms include inaccuracies surrounding gender identity and traditional gender roles. **When describing a person's relationship with someone else, use the gender-neutral "partner," "sibling," "child," etc. instead of wife, brother, girl, etc. until you know the term the parties use. In general documents and laws, default to gender-neutral terms.**

In parenting plans and child custody matters rather than saying the "mother and father," you should default to "parents." If there is any reason to specify the role of the parent you should not assume the traditional roles of "wife," "husband," "father," "mother," etc. Instead, you can say "spouse," "partner," "parent," "parent giving birth," etc. **Once parties have self-identified, you should use the terms they have identified with.**

In July of 2021, Wisconsin passed a law that allows parents to identify simply as "parent" or "parent giving birth" on a child's birth certificate. [xix]

While family law is an obvious area of law in need of updating, all areas of the law should be revised to be inclusive and eliminate gender discrimination.

New York and California both have employment laws that mandate that employers must use an employee's pronouns and name that the employee uses. [xx]

3. PROACTIVE STEPS FOR COURTS

Courts should use plain language. All court communications, including forms and instructions, should be written in plain language. Plain language helps court users understand the purpose of the form and helps them fill out the forms more accurately. For resources on plain language, as well as a plain language glossary, visit this [NCSC site](#).

When writing about an unknown group of individuals, avoid the use of “he/she” and “he or she” because it implies a gender binary, and instead use the singular “they.” [i]

Courts should give participants an opportunity to identify their pronouns so that they are not inaccurately referred to by other participants or by the court. One approach Utah uses is to offer parties a chance to include a “Notice of Pronouns” in their court filing documents.

Say: “The defendant must bring their signed copy of the form...”
Not: “The defendant must bring his signed copy of the form...”
Say: “The defendant must bring their signed copy of the form...”
Not: “The defendant must bring his/her signed copy of the form...”

Courts should consider the right way to receive this notice in their jurisdiction, which could include providing a notice of pronouns on all court forms, not as a separate notice. Additionally, courts may wish to provide an opportunity for parties to circle their title and pronouns on forms.

Name _____
 Address _____
 City, State, Zip _____
 Phone _____
 Email _____

Check your email. You will receive information and documents at this email address.

I am Plaintiff/Petitioner Defendant/Respondent
 Plaintiff/Petitioner's Attorney Defendant/Respondent's Attorney (Utah Bar #: _____)
 Plaintiff/Petitioner's Licensed Paralegal Practitioner
 Defendant/Respondent's Licensed Paralegal Practitioner (Utah Bar #: _____)

In the District Justice Court of Utah
 _____ Judicial District _____ County

Court Address _____

Plaintiff/Petitioner _____ v. Defendant/Respondent _____	Notice of Pronouns <input type="checkbox"/> She / her / Ms. <input type="checkbox"/> She / her / Mrs. <input type="checkbox"/> He / him / Mr. <input type="checkbox"/> They / them / Mx. <input type="checkbox"/> _____
	Case Number _____
	Judge _____

Part 4:

A Note on Translation and Gender-Affirming Language



TOLERANCJA

Languages all have unique structures and formatting, some of which make gender-affirming language a challenge. Many of the challenges stem from languages not having a gender-neutral set of pronouns and corresponding nouns. However, because courts should be using gender-affirming language in their English content, there is an imperative to keep the language inclusive when it is translated into various languages.

There are three main language types,

- 1. Gendered languages, like Spanish with gendered nouns and pronouns.**
- 2. Genderless languages, like Mandarin with no marked gender for nouns and pronouns, and**
- 3. Natural gender languages, like English with gendered pronouns and genderless nouns. [v]**

All languages approach gender-affirming vocabulary differently and it is essential that courts consult with native language speakers to understand the best way to be inclusive in any given language. Additionally, courts should be cognizant of the colonization of language. Colonization of language occurs when cultural nuances around gender are either lost or intentionally destroyed in translation. This occurred with the erasure of identities like indigenous Two Spirits and Samoan Fa'afafine, to name only two. [v] **Courts should do their best to respect these gender identities and be mindful of them as they work on creating gender-affirming language, and as they translate documents into languages where these identities exist.**






For gendered languages, creating gender-affirming language is more difficult to achieve because their words are naturally gendered and have matching gendered pronouns. The four most spoken gendered languages are Hindi, Spanish, French, and Arabic. These languages all use the masculine form of nouns as the default grammatical gender. This means that when addressing a group, or if the gender of an individual is unknown, speakers will default to the masculine.

English is not the only language undergoing a change to be gender-inclusive and it is important that courts be aware of the proper forms of address in other languages. Sweden has created a gender-neutral pronoun of “hen.”

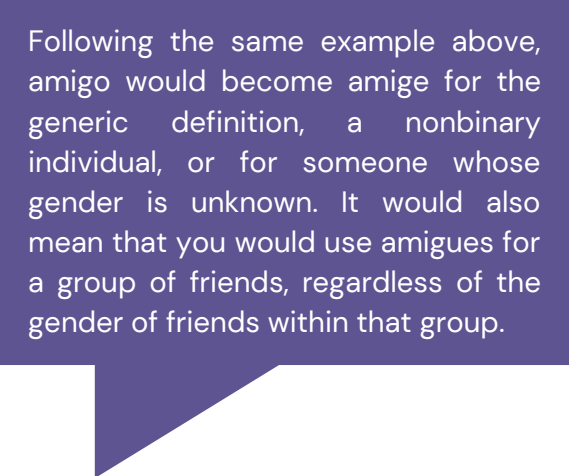
For example, in Spanish, the word for friend is “amigo.” If your friend is a man they are your “amigo.” If your friend is a woman, then you change the ending, and it becomes “amiga.” However, if you are addressing a group of friends with men and women in the group you use “amigos.” Only when you are addressing a group of all female friends can you say “amigas.”

The introduction and use of this pronoun have been shown to reduce gender bias according to a 2015 study. [xxi] They call this a “gender-fair language (könsmissigt spark)” and the neutral pronoun can be used instead of the “hon (feminine)” and “han (masculine)” pronouns. [xxii]

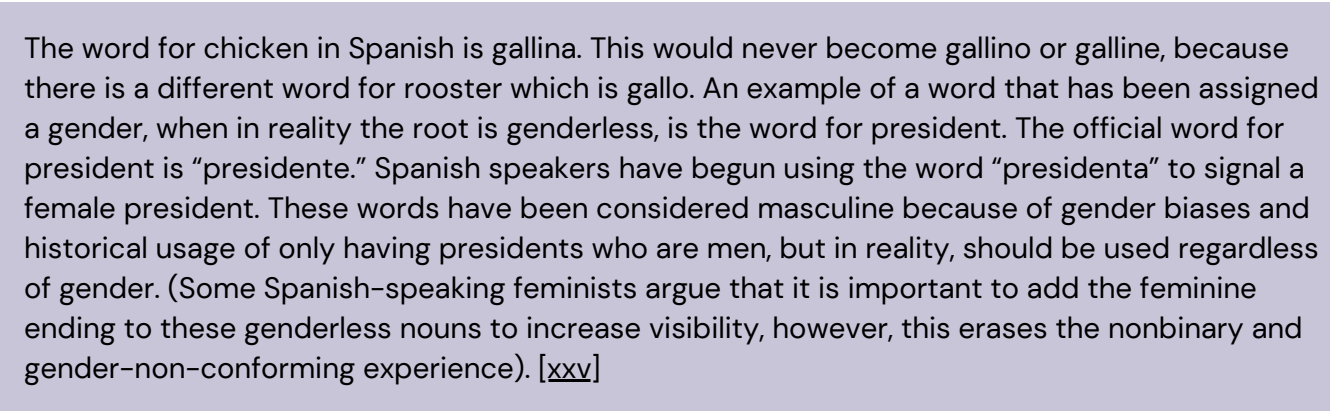


Spanish speakers have been trying to confront this issue as well, with different countries having different approaches. Young Spanish speakers in the United States have pushed for a genderless “x” ending to gendered nouns, activists in Spain are trying to get the constitution rewritten with an “@” ending to gendered nouns, and teens in Argentina are advocating for a genderless e ending for gendered nouns. [v] Issues arise with these solutions, however, because with both the x and @ endings, there is no clear or easy way for Spanish speakers to pronounce these words when speaking. **For this reason, the Real Academia Española, which is the official institution for the stability of the Spanish language, has added the genderless pronoun “elle” to its dictionary.** [xxiii] Youth in Argentina have enthusiastically adopted this change and used it for inclusion. [xxiv]

Courts should be careful, however, that they do not turn true gendered nouns genderless. Additionally, some words that are gender-neutral have colloquially been assigned a gender, so courts should be aware of that as they select the ending for the root word that is most correct. **It is always best to consult a native language speaker to know what is most appropriate.**

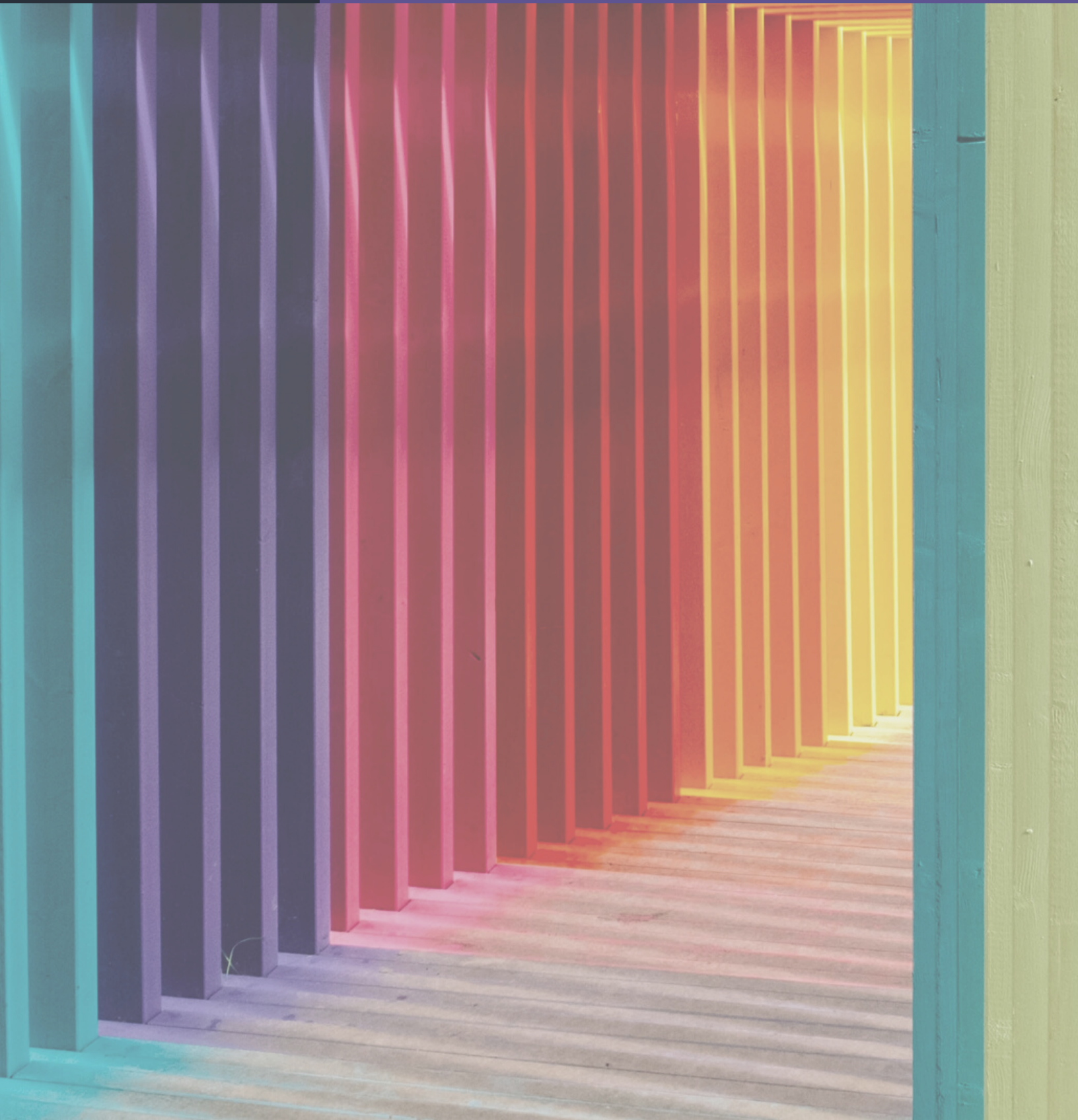


Following the same example above, amigo would become amige for the generic definition, a nonbinary individual, or for someone whose gender is unknown. It would also mean that you would use amigas for a group of friends, regardless of the gender of friends within that group.



The word for chicken in Spanish is gallina. This would never become gallino or galline, because there is a different word for rooster which is gallo. An example of a word that has been assigned a gender, when in reality the root is genderless, is the word for president. The official word for president is “presidente.” Spanish speakers have begun using the word “presidenta” to signal a female president. These words have been considered masculine because of gender biases and historical usage of only having presidents who are men, but in reality, should be used regardless of gender. (Some Spanish-speaking feminists argue that it is important to add the feminine ending to these genderless nouns to increase visibility, however, this erases the nonbinary and gender-non-conforming experience). [xxv]

Conclusion





CONCLUSION

Using gender-inclusive language is a matter of correctness, as much as it is a matter of respect, both of which the courts have a duty to concern themselves with.

Considering how to accurately and respectfully address court users must be incorporated into all court communication. Further, courts have an obligation to update forms, communications, and other writings to be in line with laws drafted by the legislature, which include the changing landscape of laws surrounding the TGNC community. In addition, courts should be mindful of the language they use and the perception that it gives. By continuing to make these simple changes to verbiage the courts will have the most precise language which is of paramount importance in the practice of law.



Endnotes

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