The New York State Unified Court System

USING LGBTQ+ INCLUSIVE LANGUAGE AND PRONOUNS

UCS Benchcard and Best Practices for Judges

Judges have an obligation to foster a judicial environment free of bias, prejudice, and harassment.[1] It is "misconduct" to discriminate based on sexual orientation, gender identity, or gender expression.[2] Where a party or attorney has advised the court that their preferred *[chosen]* gender pronoun is "they," a judge may not require them to instead use "he" or "she."[3]

WHAT DOES "LGBTQ+" MEAN?

The term "LGBTQ+" refers to lesbian, gay, bisexual, transgender, and queer or questioning people. LGBTQ+ is a widely used and reasonably inclusive term, including those of non-heterosexual sexual orientations and transgender people. Other shorthand terms used with some frequency include the letters "I" for "intersex," "A" for "asexual" or "ally," "2S" for "two-spirit" (in Native American culture) and possibly others.

GENDER VARIANT/NEUTRAL PRONOUNS

Some persons may have a pronoun choice other than he/him/his/himself, she/her/hers/herself, or they/them/their/themself. The pronoun list that follows is not an exhaustive list:

- **sie** (or ze, or zie)/hir/hirs/hirself
- **e**/em/es/eself
- **hi**/hem/hes/himself
- **na**/nan/nas/naself
- **per**/per/pers/perself
- **ze**/zim/zee's/zeeself

"TRANSGENDER" AND PRONOUN USE

"Transgender" is a broad term that includes people who do not identify with their assigned birth sex and may not conform to traditional gender expression. The term "trans*"—with or without the asterisk—is commonly used shorthand. There are others who may choose another term such as non-binary, genderqueer, or queer. Judges and court personnel should keep in mind that being transgender, regardless of a person's gender expression, is entirely unrelated to sexual orientation, Transgender individuals, like others, may be attracted to partners of any gender.

A key point: there is no precise measure of when the process of changing one's gender or sex is complete. Surgery of any kind is not a prerequisite to being transgender, but for some it is a necessity. A transgender person may have some surgery, many surgeries, or no surgeries.

The process of confirming gender is sometimes referred to as transition, of which **Gender Confirmation Surgery ("GCS")** may be just a part. GCS, sometimes referred to as bottom surgery, was once called "sex change surgery" a term now disfavored. Transition often includes social and legal components as well.

If unsure of which pronoun to use to refer to a person, **ask the person** – it is not considered rude, indeed, asking is seen by most as a sign of respect. When referring to past events of a transgender person, maintain the individual's chosen pronouns presently in use for the historical narrative. For example, "Defendant lived with her wife until separation."

1 22 NYCRR 100.3(B)(3-5)
2 NY RULES OF PROF'L CONDUCT r. 8.4(g) (NYS BAR ASS'N 2021).
3 NY Advisory Committee on Judicial Ethics, Op. 21-09 (2021).

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INCLUSIVE LANGUAGE IN COURT

Inclusive language in the courtroom conveys the message that all people, regardless of orientation, gender identity or gender expression, will be treated with dignity and respect. Gender-inclusive language helps in avoiding misgendering people in the courtroom. When judges and lawyers share/volunteer their own pronouns, it reduces the perception that pronouns are only relevant for gender-diverse persons. If a judge becomes aware that a party is or may be transgender, the judge should consider asking questions such as:

- **What name do you usually go by?**
- **Is your birth/legal name different?**
- **Which name do you want me to use with you?**
- **How would you like to be addressed? For example, I use [the judge's pronouns].**

This shows compliance with the recent changes to the ethical and professional rules that govern the conduct of attorneys and judges.[4] Further,

- **Judges and attorneys can volunteer their chosen pronoun during appearances and jury introductions.**
- **Judge's pronouns can be included on courthouse/ room signage.**
- **Use the name of the person or gender-neutral words such as, "folks," "guests," "jurors" and "counsel."**
- **Avoid terms and phrases that are gender-specific such as "ladies and gentlemen of the jury," "sir" and "ma'am."**
- **Realize a person's chosen pronouns may change, and that some people may have pronouns that are fluid or interchangeable (such as "she/they").**
- **Honorifics: in addition to Mr./ Ms./ Miss/ Mrs., there are gender-neutral choices, such as M. or Mx.**

4 Hyer, Wallach and Browde *Examining Judicial Civility in New York Courts for Transgender Persons in the Wake of United States v. Varner* (NYSBA Latest News 8.18.2020)

IMPORTANT TERMS TO KNOW

AFAB/AMAB: Assigned female at birth/ Assigned male at birth. Acronyms indicating that the individual's assigned sex at birth was in error.

Gender Confirmation Surgery ("GCS"): sometimes referred to as "bottom surgery," was once called "sex change surgery" a term now disfavored.

Gender expression: the way a person demonstrates their gender through outward manifestations such as clothing, mannerisms, style, etc.; this may not match gender identity.

Gender identity: an individual's perception of their own gender.

Gender non-binary: Identifying as neither male nor female.

Gender nonconforming: Not identifying with a recognized gender.

Intersex: A term used to describe natural differences in sexual development/traits that affect approximately 1.7% of the population.

MBT/WBT: man born trans/ woman born trans

DISFAVORED TERMS

FTM (female to male) and MTF (male to female): acronyms indicating that a person has transitioned from one sex to the other.

Transsexual: A person that has transitioned medically from one sex or gender to another (disfavored due to the "change" implication).

TERMS TO AVOID

hermaphrodite, she-male, he-she, tranny, transvestite.

Within the LGBTQ+ community there has been a reclamation of some words historically used pejoratively against LGBTQ+ persons. Ex. Some folks use "queer" and "dyke" as positive, respectful terms. Although LGBTQ+ people may use these terms, they are often seen as derogatory when used by others. **Exercise extreme caution with respect to such words.**