

BAR BULLETIN



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The Dynamic of Representing Transgender Clients

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Transgender people have significant legal needs. Unfortunately, very few attorneys have been trained in how to work in a culturally competent and respectful manner with transgender clients.

Transgender clients operate against a backdrop of discrimination and hardship, or as one survey of transgender persons put it they face “injustice at every turn.”¹ Sixty-three percent of transgender persons have experienced a “serious act of discrimination” — that is, “events that would have a major impact on a person’s quality of life and ability to sustain themselves financially or emotionally.”²

Discrimination in employment is rampant, with 90 percent of transgender persons reporting discrimination.³ Unfortunately, discrimination and harassment against transgender persons extend to the legal industry as well.⁴

Against such a backdrop, it is all the more important for attorneys representing transgender clients to be able to build trust. This article explains a few of the basic concepts that will help attorneys understand and work with their transgender clients better.

First, it is helpful to define a few terms.

Gender identity: A person’s intrinsic sense of being male (a boy or man), female (a girl or woman), or an alternative gender (e.g., boygirl, girlboy, transgender, genderqueer, eunuch).⁵ A person’s gender identity may differ from biological characteristics associated with a particular sex, such as genitalia, secondary sex characteristics, hormones and chromosomes.

Gender role or expression: Characteristics in personality, appearance and behavior that in a given culture and historical period are designated as masculine or feminine (that is, more typical of the male or female social role). While most individuals present socially in clearly masculine or feminine gender roles, some people present in an alternative gender role such as genderqueer or specifically transgender. All people tend to incorporate both masculine and feminine characteristics in their gender expression in varying ways and to varying degrees.⁶

Sexual orientation: A completely distinct concept from gender identity. Sexual orientation refers not to one’s gender identity, but the gender of people with whom one wants to enter romantic and/or sexual relationships.

Sex assigned at birth: The sex designated on a transgender person’s birth certificate. Also often referred to as “birth sex.”

Gender non-conforming: Adjective to describe individuals whose gender identity, role or expression differs from what is normative for their assigned sex in a given culture and historical period.⁷

Transgender or trans: Adjective to describe a diverse group of individuals who cross or transcend culturally defined categories of gender. The gender identity of transgender people differs to varying degrees from the sex they were assigned at birth.⁸ The word “transgendered,” a verb, is never an appropriate term to use.

Cisgender or Cis (pronounced “sis”): A term defining anyone who isn’t transgender.

Female to Male, FtM, trans-masculine

or trans-man: Adjective to describe individuals assigned to the female sex at birth who are changing or who have changed their body and/or gender role from birth-assigned female to a more masculine body or role.⁹

Male to Female, MtF, transfeminine or trans-woman: An individual assigned to the male sex at birth who identifies as a woman.

Transition: Period of time when individuals change from the gender role associated with their sex assigned at birth to a different gender role. For many people, this involves learning how to live socially in another gender role; for others, this means finding a gender role and expression that is most comfortable for them. Transition may or may not include feminization or masculinization of the body through hormones or other medical procedures. The nature and duration of transition are variable and individualized.¹⁰

Genderqueer and other non-binary gender identities: Identity label that may be used by individuals whose gender identity and/or role do not conform to a binary understanding of gender as limited to the categories of man or woman, male or female.¹¹

Terms such as “she-male,” “he-she,” “it,” “tranny,” and “real” or “complete” woman or man are offensive to many members of the transgender community and should be avoided.

Because of widespread discrimination, it is common for many transgender people to choose not to disclose their transgender status to everyone. Forty-one percent of transgender persons report

being generally not out to the people in their lives.¹² For this reason, it is absolutely vital to follow a trans-client's directions regarding disclosure of their transgender status, and to warn them about any possible disclosures that might take place. This may include referring to a client as one gender in one context and another gender in others.

There are several considerations to keep in mind when addressing a transgender client. A client's gender presentation, due to the stigma of being gender non-conforming or other factors, may not match their gender identity. As a general rule, it is therefore a good idea to ask what a client's preferred pronouns are.

These may include masculine pronouns (him, his, he), feminine pronouns (her, hers, she) or a non-binary set of pronouns such as they and them, or ze (pronounced "zee" and a replacement for he/she) and hir (pronounced "here" and a replacement for his/her) or other pronouns not listed here.

In addition to respecting a client's preferred set of pronouns, it is also important, wherever possible, to refer to a client by their preferred name. This may differ from a client's "legal name" or the name reflected on their identity documents. Where a client's legal name is required, it is important to warn them that it is necessary and to explain why it must be used. Where mistakes around name or pronouns are made, it is best to apologize promptly for any accidental misuse.

Another key area for building rapport is to avoid making assumptions. Do not assume that a client identifies as a particular gender based on their gender presentation, as factors other than gender identity may limit a client's ability to express themselves the way they wish. Never criticize a client's gender presentation.

It is likewise important to avoid gender stereotypes around masculine and feminine traits. These include avoiding

traditional gender stereotypes about personality, but also referring to biological characteristics such as hormones, secondary sex characteristics or genitalia as "male" or "female."

In the transgender community, many men have high levels of estrogen, breasts and vaginas, and women may have high levels of testosterone and/or facial hair. Remember that it is gender identity, not physical characteristics, that often defines gender for the client. Similarly, just as with "cis" or gender-conforming clients, do not assume a client's sexual orientation based upon their gender identity or expression.

It also is important to avoid assumptions about what biological changes a client has or will make. Not all trans persons can afford, or will choose, to take hormones or have transition-related surgery.

When asking a client questions, it is important to remember that the client likely has extensive experience being asked intrusive questions about their gender, genitalia and other related features merely to satisfy others' curiosity. Not asking unnecessarily intrusive questions avoids putting the attorney in that position. When an attorney must ask a question related to a client's gender, especially biological characteristics related to it, it is best to explain to the client why it is necessary so they know their attorney is not asking out of mere curiosity.

Do not assume that a transgender client's legal problems are related to their gender identity. Transgender clients buy houses, enter contracts, get married, have children, and are involved in a variety of other day-to-day legal affairs that cis-clients are.

A similar consideration is that transgender persons may face discrimination along dimensions other than simply gender identity. Transgender people disproportionately suffer from poverty and disability. In addition, trans people (like anyone else) can experience discrimina-

tion based upon race, sex, sexual orientation or other dimensions.

Another unfortunately common issue among transgender people is that of trauma. According to some surveys, more than 50 percent of transgender persons can expect to experience sexual violence within their lifetimes.¹³ Physical assault or abuses of authority are similarly common.¹⁴ Distrust of professionals and the legal system is common.

One way some transgender people handle this is to bring along a support person to help them. Where possible, whatever boundaries or accommodations a transgender person needs along these dimensions should be permitted, while first explaining applicable rules regarding attorney-client privilege.

While transgender clients may present unique challenges, precisely because the trans population faces such obstacles, they can also be a rewarding population to work with. ■

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¹ World Professional Association for Transgender Health, "Standards of Care for the Health of Transgender, and Gender-Non-Conforming People": http://www.tbetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

² Grant, *et. al.*, "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey," [NTDS], 8: http://www.tbetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

³ NTDS at 3

⁴ *Id.*

⁵ "Standards of Care" at 96.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 97.

⁹ *Id.* at 96.

¹⁰ *Id.* at 97.

¹¹ *Id.* at 96.

¹² NTDS at 28.

¹³ G. Kenagy, "The health and social service needs of transgender people in Philadelphia," *International Journal of Transgenderism*, 8(2/3), 49-56 (2005).

¹⁴ NTDS at 9.