

TRANS-COMPETENCY: WHAT JUDGES NEED TO KNOW?

COURTROOM ETIQUETTE

- **IF someone's appearance does not match the legal name on court sheet**, then ask them how they want to be addressed and what pronouns they prefer regardless of whether there has been a legal name change.
 - For example, you may want to say "I want to make sure to address you correctly, how do you like to be addressed?" This may seem like a strange thing to do but a person who often experiences being addressed incorrectly may see it as a sign of respect that you are interested in getting it right. (Note: some clients may prefer no pronouns, or gender neutral pronouns such as "they/them/their" or "ze/hir").
 - **DON'T** make assumptions while using heteronormative language – meaning language that assumes everyone is heterosexual or that heterosexuality is preferable or superior to any other identity.
 - **DON'T** insist on that transgender people wear clothing that matches their gender identity or expression.
 - **DON'T** rely on stereotypes about race, gender or sexuality or individual appearances.
- **IF someone asks you to use pronouns that agree with their legal name but don't agree with the way they present**, then refer to the litigant by their preferred pronouns.
 - **DON'T** insist on referring to transgender people by pronouns/names associated with their sex assigned at birth. If litigant asks to be separated from general population due to harassment, be as accommodating as possible.
- **IF there are information sharing systems or files available to make notes for future court listings**, then make a note of correct pronouns in them so that all staff is aware the appropriate pronouns for the litigant.
- **IF you make a mistake**, then apologize and correct yourself as soon as you realize the mistake. Going on as if it did not happen is actually less respectful than making the correction.
- **IF someone else makes a mistake in the courtroom**, then correct them. It is important to provide a correction, because it helps to avoid future mistakes and prevents any mistaken assumption that might now have been planted in the minds of any other participants in the conversation who heard the mistake.
 - Guarantee that court staff and personnel treat and create a safe environment for transgender persons by treating them with dignity and respect.
 - **DON'T** treat transgender people as if they are different than other people because of their gender identity.
 - **DON'T** allow court staff, personnel, or anyone else who appears in court to treat transgender persons with less dignity and respect than would be given to cisgender persons.
- **IF disrespect happens in your courtroom**, then take steps to remedy the situation, the same way you would with any other misbehavior in your courtroom. Make clear that disrespectful treatment by anyone in your courtroom will not be tolerated. Disrespect includes refusing to use a person's preferred name and/or pronouns.
 - Immediately respond to jokes or disrespectful comments about an individual's actual or perceived gender identity or expression.
 - **DON'T** make jokes, disrespectful comments, hurtful, or stigmatizing statements or references to transgender persons or allow others to do so in the courtroom.
- **IF someone in your courtroom is asking invasive, unnecessary questions about surgery or genitalia that aren't relevant to the issue before the court**, take steps to protect the person's privacy
 - Unless you are a medical provider, it is unlikely that you have any reason to need information about a person's medical history. Medical and surgical treatments are part of some, but not all Trans people's gender expression. Trans people's medical history is not less confidential than anyone else's.
 - Protect and maintain the health information of transgender persons with confidentiality and sensitivity.
- **IF someone reveals that they are transgender**, treat knowledge of a person's transgender status as confidential. **Consider conducting limited individual, *ex parte* hearings consistent with due process.**
 - Treat information that a person is transgender as private, not to be disclosed to the general public or in court documents if it's irrelevant to the case.
 - **DON'T** announce or disclose that a person is transgender in open court or in public court documents.

TERMINOLOGY

Transgender - is an umbrella term that refers to people who have a gender identity different than the sex they were assigned at birth. It can also apply broadly to people who transgress gender norms. Transgender people may or may not undergo a medical transition.

Cisgender - refers to people who have a gender identity that is the same as the sex they were assigned at birth.

Gender identity - also called “brain sex,” it is one’s deeply felt internal sense of being male, female, both, or neither. It is the primary determinant of sex. Everyone has a gender identity. It can be the same or different than a person’s sex assigned at birth.

Sex assigned at birth - this is the sex designation that was given at birth usually by a medical professional and generally based on appearance of external genitalia.

SOGIE – an acronym for sexual orientation, gender identity, and gender expression.

Gender dysphoria - a clinical psychiatric diagnosis that describes an intense, continuous distress resulting from an individual’s sense of the inappropriateness of the sex they were assigned at birth.

Gender role - a societal expectation of how people should act, think, look, dress, sound and/or feel based upon the gender corresponding with their sex assigned at birth.

Non-binary- describes gender identities that do not fit within the binary of male or female. Refers to a spectrum of gender. Some non-binary identified people use the pronouns “they” and “them.”

Gender non-conforming person - a person who does not meet society’s expectations of gender roles.

T/GNC - transgender/ gender non-conforming.

TERMS TO AVOID

when talking or referring to transgender/gender non-conforming persons:

“crossdresser”—a term that refers to a person who wears clothing traditionally worn by members of a different sex. It is not offensive when used appropriately. It refers to a specific community. But, it is not appropriate for most transgender people.

“drag”/“drag queen”/“drag king”—These are terms that refer to entertainment involving individuals who act in styles typically associated with a different sex. Transgender people are not acting or entertaining.

“he-she”—an offensive term that is often used to humiliate transgender people and to challenge their assertions of who they are

“hermaphrodite”—People are not hermaphrodites. It should not be used to refer to a person. It is not a medically accurate term for intersex people, and it is stigmatizing.

“it”—an offensive way to refer to a transgender person. “It” should only be used to refer to objects, not persons.

“lifestyle” or “preference” – Avoid using these terms that demeans, ridicules or condemns.

“passing as” or “presenting as”—Transgender people are who they say they are. For instance, a transgender woman is not presenting as a woman, she is a woman.

“a transgender”—Do not use “transgender” as a noun. You should refer to a transgender person, or a transgender woman or man.

“transgendered”—This is a not a preferred term. It was used in the past, but is no longer favored. Some people may still use this term.

“tranny”—a slur, and an offensive term

“transvestite”—a term that does not refer to transgender people and is disfavored by most people