Order

Michigan Supreme Court
Lansing, Michigan

January 18, 2023

Elizabeth T. Clement,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

ADM File No. 2022-16

Proposed Amendment of
Rule 7.211 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rule 7.211 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings webpage. Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining
and deleted text is shown by strikeover.]

Rule 7.211 Motions in Court of Appeals

(A)-(B) [Unchanged.]

(C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1)-(6) [Unchanged.]

(7) Confession of Error by Prosecutor. In a criminal case, if the prosecutor concurs in the relief requested by the defendant, the prosecutor shall file a confession of error so indicating, which must~~may~~ state reasons why concurrence in the relief requested is appropriate. The confession of error shall be submitted to the court~~one judge~~ pursuant to MCR

7.211(E)(1). If the courtjudge approves the confession of error, the courtjudge shall enter an order or opinion granting the relief and state the reason(s) for the approval. If the courtjudge rejects the confession of error, the court must state the reason(s) for the rejection, and the case shall be submitted for decision through the ordinary processes of the court, and the confession of error shall be submitted to the panel assigned to decide the case.

(8)-(9) [Unchanged.]

(D)-(E) [Unchanged.]

Staff Comment (ADM File No. 2022-16): The proposed amendment of MCR 7.211(C)(7) would modify the Court of Appeals process for handling confessions of error.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 7.211. Comments on the proposal may be submitted by May 1, 2023 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-16. Your comments and the comments of others will be posted under the chapter affected by this proposal.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 18, 2023

Clerk

Public Policy Position
ADM File No. 2022-16: Proposed Amendment of MCR 7.211

Neutral

Explanation

The Committee voted to take no position on the proposed amendment of MCR 7.211. While the Committee understands the importance of procedural clarity and the creation of a record, the Committee is also mindful that there is a risk that the additional proposed requirements may discourage confessions of error and intrude upon the role of the court and prosecutors.

Position Vote:

Voted For position: 17
Voted against position: 0
Abstained from vote: 1
Did not vote (absent): 9

Contact Persons:

Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
ADM File No. 2022-16: Proposed Amendment of MCR 7.211

Support

Explanation:
The Committee voted unanimously to support the proposed amendment to Rule 7.211, as it will promote procedural clarity and the ensure the creation of a record in matters involving confession of error.

Position Vote:
Voted For position: 17
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 9

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
Sofia V. Nelson snelson@sado.org

Public Policy Position
ADM File No. 2022-16: Proposed Amendment of MCR 7.211

Support

Explanation:
One practitioner shared that their office has tried to concede error three times. Twice, the Court of Appeals refused to let them concede. Another practitioner encountered a circumstance earlier this week where this rule would have made it easier for her to complete the task at hand. There was no further discussion beyond those two anecdotes.

Position Vote:
Voted for position: 12
Voted against position: 0
Abstained from vote: 0
Did not vote: 1

Contact Person: Takura N. Nyamfukudza
Email: takura@cndefenders.com

Order

Michigan Supreme Court
Lansing, Michigan

January 18, 2023

ADM File No. 2022-13

Proposed Amendment of
Rule 9.123 of the Michigan
Court Rules

Elizabeth T. Clement,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

On order of the Court, this is to advise that the Court is considering amendments of Rule 9.123 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings webpage. Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining
and deleted text is shown by strikeover.]

Rule 9.123 Eligibility for Reinstatement

(A)-(C) [Unchanged.]

(D) Petition for Reinstatement; Filing Limitations.

(1)-(2) [Unchanged.]

(3) An attorney whose license to practice law has been revoked or suspended because of conviction of a felony for which a term of incarceration was imposed may not file a petition for reinstatement until six months after completion of the sentence, including any period of parole.

(4) [Unchanged.]

(E) [Unchanged.]

Staff Comment (ADM File No. 2022-13): The proposed amendment of MCR 9.123(D)(3) would clarify that a disbarred attorney who was sentenced to incarceration following a felony conviction and who wants to be reinstated to the bar must wait until six months after completing the sentence.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 9.123. Comments on the proposal may be submitted by May 1, 2023 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-13. Your comments and the comments of others will be posted under the chapter affected by this proposal.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 18, 2023

Clerk

Public Policy Position
ADM File No. 2022-13: Proposed Amendment of MCR 9.123

Support

Explanation
The Committee voted to support the proposed amendment to Rule 9.123. The Committee believes that the amendment will remove any ambiguity surrounding the application of the existing rule to the circumstance where an attorney's license to practice law has been revoked (as distinguished from suspended) because of a felony conviction for which a term of incarceration was imposed.

Position Vote:
Voted For position: 12
Voted against position: 4
Abstained from vote: 2
Did not vote (absent): 9

Contact Persons:
Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
ADM File No. 2022-13: Proposed Amendment of MCR 9.123

Support

Explanation
The Committee voted to support the proposed amendment of Rule 9.123, as it would provide clarity around the treatment of requests for reinstatement by attorneys who were disbarred (as opposed to suspended) following a felony conviction.

Position Vote:
Voted For position: 19
Voted against position: 1
Abstained from vote: 0
Did not vote (absence): 13

Contact Person:
Lori J. Frank lori@markofflaw.com

Name: Eric Stordahl

Date: 03/29/2023

ADM File Number: 2022-13

Comment:
An attorney disbarred for a felony conviction should be permanently barred from practicing law in Michigan.

Order

Michigan Supreme Court
Lansing, Michigan

January 18, 2023

Elizabeth T. Clement,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
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Elizabeth M. Welch
Kyra H. Bolden,
Justices

ADM File No. 2021-30

Proposed Amendments of
Rules 9.220, 9.221, 9.223,
9.232, and 9.261 of the
Michigan Court Rules

_____

On order of the Court, this is to advise that the Court is considering amendments of Rules 9.220, 9.221, 9.223, 9.232, and 9.261 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings webpage. Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 9.220 Preliminary Investigation

(A) [Unchanged.]

(B) Confidentiality. A request for investigation shall be kept confidential as provided in MCR 9.261(B).

(C~~B~~) Investigation. Upon receiving a request for investigation that is not clearly unfounded or frivolous, subject to any limitation imposed by MCR 9.261, the commission shall direct that an investigation be conducted to determine whether a complaint should be filed and a hearing held.

(C)-(E) [Relettered (D)-(F) but otherwise unchanged.]

Rule 9.221 Evidence

(A)-(D) [Unchanged.]

(E) Cooperation With Investigation. A judge, clerk, court employee, member of the bar, or other officer of a court must comply with a reasonable request made by the commission in its investigation, including a request to keep the investigation, or any part of it, confidential. Failure to cooperate may be considered judicial misconduct or attorney misconduct. No court may charge the Judicial Tenure Commission for copying costs or certification costs, whether under MCL 600.2546 or otherwise, unless the Michigan Supreme Court specifically so authorizes.

Rule 9.223 Conclusion of Investigation; Notice

(A) [Unchanged.]

(B) Notice to Grievant and Respondent.

(1) On final disposition under subrule (A)(1), if the commission has not conducted any investigation other than interviewing the grievant, grievant's attorney, or the State Court Administrative Office, the commission shall provide written notice to the grievant that the matter has been resolved without the filing of a complaint. The commission may provide notice of the request for investigation and the dismissal to the respondent only if the commission has not determined that the identity of the grievant shall be kept confidential under MCR 9.261.

(2) Before taking action under subrule (A)(2)-(5), the commission must first have given written notice to the respondent of the nature of the allegations ~~in the request for investigation~~ and afforded the respondent a reasonable opportunity to respond in writing, pursuant to MCR 9.221(B), MCR 9.222(A), or both. Where the commission has determined that the grievant's identity should be kept confidential under MCR 9.261 and the grievant's identity has not already been revealed to the respondent, the commission shall continue to make reasonable efforts to keep the grievant's identity confidential to the extent consistent with taking the selected action.

(C) [Unchanged.]

Rule 9.232 Discovery

(A)-(C) [Unchanged.]

(D) Discovery shall not include the request for investigation or the identity of a grievant that the commission has determined to keep confidential

under MCR 9.261 and who has not been revealed during the investigation, unless the request for investigation contains exculpatory material or the grievant is a witness in the hearing.

Rule 9.261 Confidentiality; Disclosure

(A) [Unchanged.]

(B) Before Filing a Complaint.

(1) A grievant may request that his or her identity be kept confidential, including from the respondent, and the commission shall determine whether to grant the request. Confidentiality does not extend to communications under subrule (G).

(a) If the commission grants the grievant's request for confidentiality, the request for investigation shall not be disclosed to the respondent or other persons, either during or at the conclusion of the investigation except as necessary to conduct the investigation, unless either

(i) the grievant waives the confidentiality that the commission granted, or

(ii) the commission has filed a public complaint against the respondent, and

(A) disclosure of the grievance is necessary to comply with MCR 9.232(A)(1)(b);

(B) the grievant is a witness in the proceeding and the request for investigation is material to the grievant's testimony, or

(C) as otherwise necessary to protect the respondent's due process interests at the hearing.

(b) If the commission denies the grievant's request for confidentiality, the request for investigation will be kept confidential as required by this rule. The commission shall return the request for investigation to the grievant

without taking other action, unless the grievant withdraws the request for confidentiality.

(2~~1~~) [Renumbered but otherwise unchanged.]

(3~~2~~) The commission may at any time make public statements as to matters pending before it on its determination by a majority vote that it is in the public interest to do so, limited to statements

(a)-(c) [Unchanged.]

Any statements made under this subrule shall not identify a grievant who has been granted confidentiality under this rule.

(C)-(K) [Unchanged.]

Staff Comment (ADM File No. 2021-30): The proposed amendments of MCR 9.220, 9.221, 9.223, 9.232, and 9.261 would help protect the confidentiality of a grievant who submits a request for investigation to the Judicial Tenure Commission.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 9.220, 9.221, 9.223, 9.232, and 9.261. Comments on the proposal may be submitted by May 1, 2023 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2021-30. Your comments and the comments of others will be posted under the chapter affected by this proposal.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 18, 2023

Clerk

Public Policy Position
ADM File No. 2021-30: Proposed Amendments of MCR 9.220, 9.221, 9.223, 9.2332, and 9.261

Support

Explanation

The Committee voted to support the proposed amendments to Chapter 9 of the Michigan Court Rules, but expressed concern about due process considerations implicated by the proposed procedures for handling confidentiality of grievants submitting requests for investigation to the JTC. The Committee would urge to the Court to give consideration to such concerns, including by incorporating specific criteria to guide the determination of when a request for confidentiality should be granted by the Commission, before adopting the proposal.

Position Vote:

Voted For position: 16
Voted against position: 2
Abstained from vote: 3
Did not vote (absence): 12

Contact Person:

Lori J. Frank lori@markofflaw.com

Name: Carrie Fuca

Date: 01/26/2023

ADM File Number: 2021-30

Comment:
I would support protecting the confidentiality of a grievant so long as the judge's ability to defend against any allegations would not be hindered.
I also believe judges should receive more due process protections as mere allegations that are not timely dealt with by the JTC can have a catastrophic impact on the judge's career and reputation.

Washtenaw County Trial Court

101 E. Huron St., P.O. Box 8645 Ann Arbor, MI 48107-8645

Darlene A. O'Brien
Trial Court Judge

(734) 222-3006
Fax (734) 222-6952

March 30, 2023

Mr. Larry S. Royster
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing MI 48909

Re: Proposed MCR 9.220, 9.221, 9.223, 9.232 & 9.261
ADM File # 2021-30

Dear Mr. Royster:

The proposed amendments to the Judicial Tenure Commission (JTC) investigation process, in particular the use of secret grievants, are concerning. An apparent rationale for providing anonymity to grievants is to encourage individuals to seek redress without fearing retaliation. Presumably retaliation is rare and never acceptable. If it occurs, there should be serious consequences. However, less onerous means can be employed to address possible retaliation which also honor due process rights that apply to JTC proceedings. Those rights are intended to protect individuals from mistaken or unjustified deprivation of elected public office, livelihood and reputation.

Notice of specific allegations, grievant identity and a meaningful opportunity to respond are indispensable to a process that may have dire consequences for a member of the judiciary. Fair notice is a due process right that, standing alone, requires a reasonable degree of specificity about alleged improper conduct including identity of the grievant. Credibility may be a core issue in disciplinary proceedings and cannot be assessed without knowing who complained.

Judges make controversial decisions every day that are offensive to many participants in the court process. Judges terminate parental rights, change custody, curtail a parent's access to their children, impose criminal

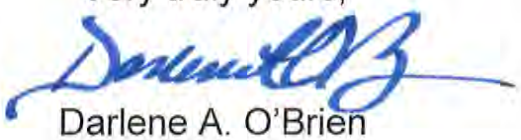
sentences that may keep families apart for decades and involuntarily commit people to mental health hospitalization and treatment. Litigants and their supporters may not understand the rationale for court decisions and become angry, volatile and, at times, vengeful for years. Some lash out verbally and make threats against judges. History with a grievant may be highly relevant to credibility, even events relating to a separate matter that occurred years earlier and was not disclosed to the JTC by the grievant. Bias, prejudice or interest of an accuser are always relevant.

Pertinent criminal history, serious mental health issues, prior litigation, political motivation and hidden agendas may also implicate credibility and go unrecognized under a veil of secrecy. Without knowing a grievant's identity, a judge will not be able to respond in a meaningful way by investigating, commenting on veracity and providing relevant context that bear on whether the JTC should file a complaint. A process that encourages anonymous complaints may well lead in various ways to unfair outcomes that reflect poorly on the judiciary as a whole, unnecessarily undermine public confidence in specific judges and can be used as fodder by opponents in judicial elections.

We live in a time when many allegations involving government officials including the judiciary are not grounded in reality but rather are supported by "alternative facts" and even conspiracy theories. Discourse has become less civilized and judges face increased threats to their safety and safety of their families. Nevertheless, members of the judiciary must remain fully accountable to the public for their actual conduct but, as a matter of basic fairness, should not be required to defend against anonymous complaints.

Consideration of these concerns will be sincerely appreciated.

Very truly yours,



Darlene A. O'Brien

MICHAEL S. LEIB
DISPUTE RESOLUTION SERVICES

6632 TELEGRAPH ROAD #293 BLOOMFIELD HILLS, MICHIGAN 48301 248.563.2500 MICHAEL@LEIBADR.COM

April 17, 2023

Michigan Supreme Court

P.O Box 30052

Lansing, Michigan 48909

ADMcomment@courts.mi.gov

Re: ADM File No.2021-30; Proposed Amendments of MCR 9.220, 9.221, 9.223, 9.232, 9.261

Dear Justices of the Michigan Supreme Court,

I write to comment on the proposed amendments to MCR 9.220, 9.221, 9.232, and 9.261. I write on my individual behalf and not on behalf of any entity or organization. I take no position on those proposed amendments. However, if adopted, I respectfully suggest a corresponding change should be made to existing 9.261(J).

I was part of the group that helped draft existing MCR 9.261(J). I served full terms on the State Bar of Michigan Judicial Qualifications Committee and was the chairperson of two recent Bankruptcy Judge merit selection panels.

It is critical to the proper functioning of judicial qualification committees that they receive information about a judicial applicant from the Judicial Tenure Commission. To properly fulfill their duty to the bench, bar, and public, these committees depend on full, accurate, and candid information. To that end, MCR 9.261(J) was proposed and adopted.

To be able to continue to fulfill their duty, the committees need to obtain the identity of a grievant who submitted a grievance against a judge now applying for a new judicial position. And, if the proposed rule amendments are adopted, and the

Judicial Tenure Commission grants a grievant confidentiality, the judicial qualification committees should honor and maintain that confidentiality during their background investigation and interview process.

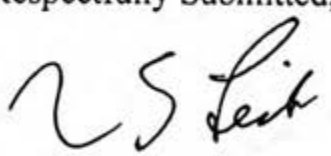
Accordingly, I submit the following proposed amendment to MCR 2.261(J) if the Court adopts the proposed amendments regarding confidentiality:

(J) Notwithstanding the prohibition against disclosure in this rule, OR ANY GRANT OF CONFIDENTIALITY PURSUANT TO SUBSECTION (B), upon request the commission may disclose some or all of the information in its possession concerning a judge's misconduct in office, mental or physical disability, or some other ground that warrants commission action under Const 1963, art 6, § 30, to the State Bar Judicial Qualifications Committee, or to any other officially authorized state or federal judicial qualifications committee that meets or exceeds the confidentiality requirements established by the State Bar of Michigan in Rule 19, sec. 2 of the Rules Concerning the State Bar. IF INFORMATION IS DISCLOSED PURSUANT TO THIS SUBRULE, THE IDENTITY OF THE GRIEVANT SHALL BE DISCLOSED TO THE COMMITTEE AND SHALL BE KEPT CONFIDENTIAL BY THE COMMITTEE CONSISTENT WITH ANY GRANT OF CONFIDENTIALITY BY THE COMMISSION.

(The proposed changes are in caps.)

I am happy to answer any questions the Court may have.

Respectfully Submitted,



Michael S. Leib

John T. Kulesz, Esq.

Attorney and Counselor

2336 Paris Dr., Troy, MI 48083-2367
248.990.1342
JTKulesz@gmail.com

April 15, 2023

Mr. Larry S. Royster
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Dear Mr. Royster:

I write today to voice an objection to the proposed amendment of MCR 9.221(E).

As prefatory matter, I would call the attention of the Rules Committee to the multiple legal advantages seated judges possess when it comes to revelations of misconduct:

- Upon an allegation of misconduct, only the Michigan Supreme Court is empowered to investigate the allegation via the creation of the JTC. *See the Constitution of Michigan of 1963, Art. VI, §30;*

- The Judicial Tenure Commission is comprised of nine (9) members, five (5) of which are seated judges. Essentially, the Michigan Constitution vests the power to police judicial conduct in judges. *See the Constitution of Michigan of 1963, Art. VI, §30;*

- The investigations conducted by the JTC are completely confidential, with with "all papers filed with the commission and all proceedings before it are confidential in nature and are absolutely privileged from disclosure by the commission or its staff, including former members and employees..." *See MCR 9.261(A);*

- If the conduct that led to the allegation of misconduct occur on the record, the recordings are not accessible by the public. The Supreme Court has made access to audio and video recordings subject to local administrative orders. Thus, majority of Michigan Courts have thus forbidden access. *See to MCR 8.119(D) and SCAO Model Local Administrative Order 8.*

- Public access to JTC investigations is forbidden by law because MCL 15.232(h)(iv) exempts the judiciary from the definition of "Public Body" making the JTC beyond the reach of the Michigan Freedom of Information Act.

- Even IF the public is aware of the allegations of misconduct and decides to take action to remove the judge from office, Judges are exempted from being recalled from office. *See the*

Constitution of Michigan of 1963, Art. 2 §8.

- While the Michigan Supreme Court may, at their discretion, remove a judge from office, so may the Michigan Governor. However, to remove a judge from office for "reasonable cause...not sufficient ground for impeachment," but can only be accomplished "on a concurrent resolution of two-thirds of the members elected to and serving in each house of the legislature." *See Constitution of Michigan of 1963, Art. VI, §25*

- As it relates to elections, the Secretary of State is required to "issue an office designation of incumbent position for any judgeship for which the incumbent judge is eligible to seek reelection," thereby giving seated judges an advantage among low-information voters. *See MCL 168.409b(5) et seq.*

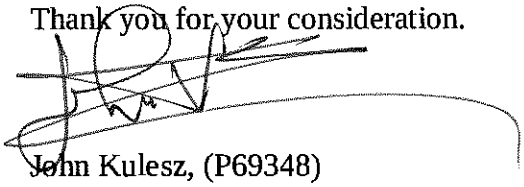
- Finally, on larger circuits, the ballot does not delineate each judicial seat as an individual office. The ballot presents judges as a "slate," of "pick not more than..." making it nearly impossible to challenge a seated judge via the ballot. Because of the structure of the ballot, challenging a seated judge accused of misconduct has the high potential of failing and removing a judge not accused of misconduct.

As you can see, the Michigan Constitution and related laws gives judges a compelling amount of deference, severely limits the public's ability to learn of judicial misconduct, and stunts any electoral recourse to remove them. Because of this significant deference, I object to the proposed amendment. Succinctly, this rule change would give serious power to the Judicial Tenure Commission to silence whistle-blowers. If the Judicial Tenure Commission can order a former employee (now complainant) to "comply with a reasonable request....including a request to keep the investigation, or any part of it, confidential," then the already non-transparent investigation into a judge becomes more opaque. Under this proposed rule change, an aggrieved former employee who has filed a complaint with the JTC could be barred from consulting with an outside attorney to determine if they have a cause of action for retaliation. This does not engender trust in the legal system; It is the opposite of transparency.

Recently, Lynn Helland, Executive Director and General Counsel of the JTC, appeared before the House Committee on Appropriations Subcommittee. He testified that **seventeen judges have resigned over the past four years rather than have the revelations of their misconduct be made public**.

It's bad enough that the public will never know the circumstances that led to these resignations. This proposed rule change would make a bad situation worse.

Thank you for your consideration.



John Kulesz, (P69348)

Order

Michigan Supreme Court
Lansing, Michigan

January 18, 2023

Elizabeth T. Clement,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

ADM File No. 2022-03

Proposed Amendment of
Rule 1.109 of the Michigan
Court Rules

_____

On order of the Court, this is to advise that the Court is considering an amendment of Rule 1.109 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings webpage. Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access

(A)-(C) [Unchanged.]

(D) Filing Standards.

(1) Form and Captions of Documents.

(a) [Unchanged.]

(b) The first part of every document must contain a caption stating:

(i)-(vi) [Unchanged.]

Parties and attorneys may also include any personal pronouns in the name section of the caption, and courts are required to use those personal pronouns when referring to or identifying the party or attorney, either verbally or in writing. Nothing in this subrule prohibits the court from using the individual's name or other respectful means of addressing the individual if doing so will help ensure a clear record.

(c)-(f) [Unchanged.]

(2)-(10) [Unchanged.]

(E)-(H) [Unchanged.]

Staff Comment (ADM File No. 2022-03): The proposed amendment of MCR 1.109(D)(1)(b) would allow attorneys to provide personal pronouns in document captions and require courts to use those personal pronouns when addressing the party or attorney, either verbally or in writing, unless doing so would result in an unclear record. The Court is interested in receiving comments addressing the constitutional implications of this proposal.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.109. Comments on the proposal may be submitted by May 1, 2023 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-03. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ZAHRA and VIVIANO, JJ., would decline to publish the proposed amendments for comment.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 18, 2023

Clerk

SBM STATE BAR OF MICHIGAN

To: Members of the Public Policy Committee
Board of Commissioners

From: Nathan A. Triplett, Director of Governmental Relations

Date: April 21, 2023

Re: ADM File No. 2022-03: Proposed Amendment to Rule 1.109 of the Michigan Court Rules

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ADM File No. 2022-03 was issued on January 18, 2023.

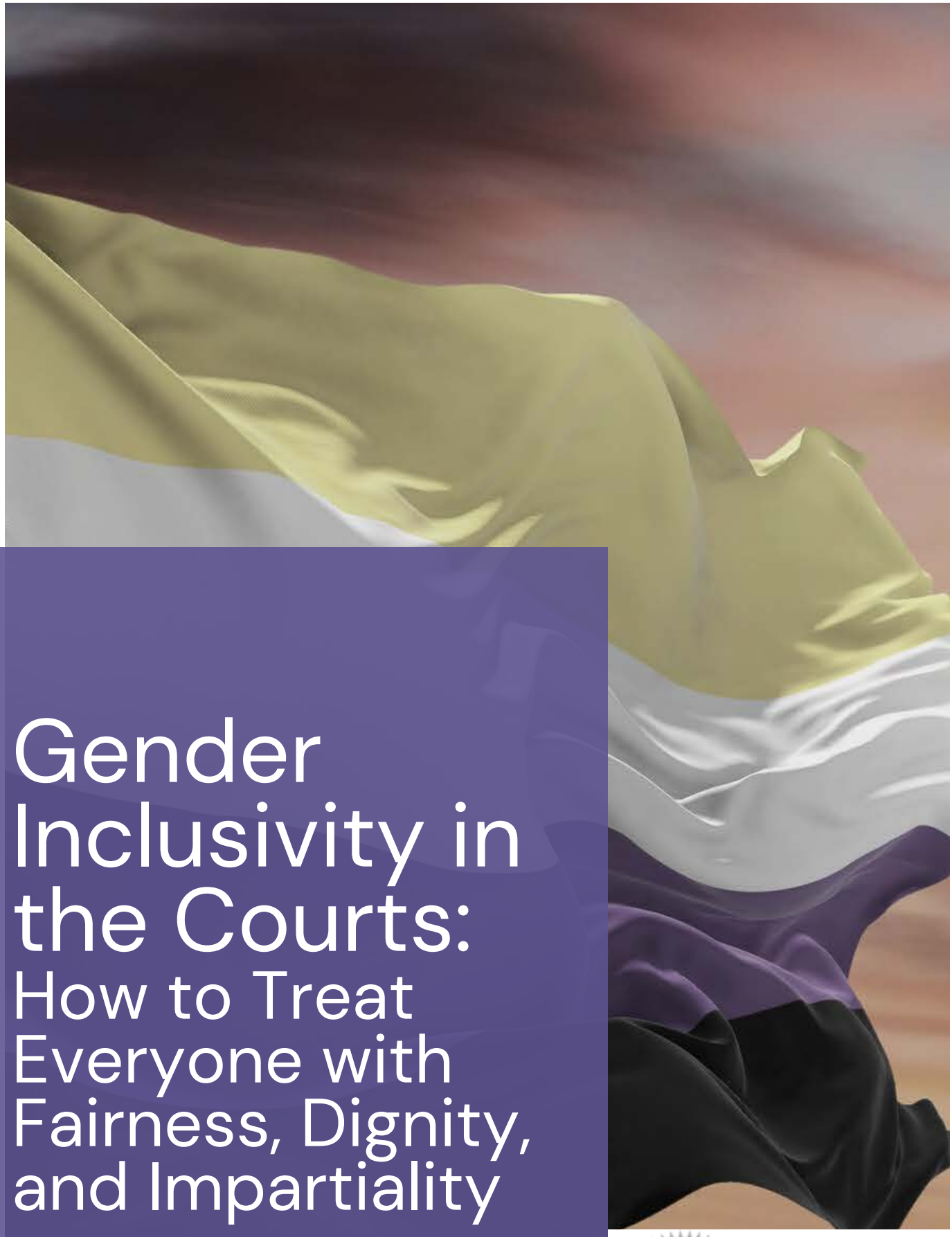
The following SBM committees and sections have submitted comments for the consideration of the Board of Commissioners:

Access to Justice Policy Committee – Support
Civil Procedure & Courts Committee – Support
Criminal Jurisprudence & Practice Committee – Support
Justice Initiatives Committee – Support
Appellate Practice Section – Support
Children's Law Section – Support
Criminal Law Section – Support
Family Law Section – Support
LGBTQA Law Section – Support
Prisons & Corrections Section – Support
Religious Liberty Law Section – Oppose

In addition, at this date, there are currently 310 posted on the Michigan Supreme Court website regarding this Administrative File No. These comments are accessible https://www.courts.michigan.gov/rules-administrative-orders-and-jury-instructions/proposed-adopted/michigan-court-rules/.

However, staff have been tracking these and of the 310 comments, 182 comments support the proposed amendment and 127 oppose the proposed amendment.

All comments posted on the Court's website are available in the PDF agenda book, along with additional comments from SBM entities and materials related to the *People v. Gobrick* case. Given the amount of information, there are a number of sub-bookmarks under the tab.



Gender Inclusivity in the Courts:

How to Treat Everyone with Fairness, Dignity, and Impartiality

NCSC
National Center for State Courts

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.

Lead Author: Andy Wirkus
Lead Editor: Zach Zarnow

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]

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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

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.

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]

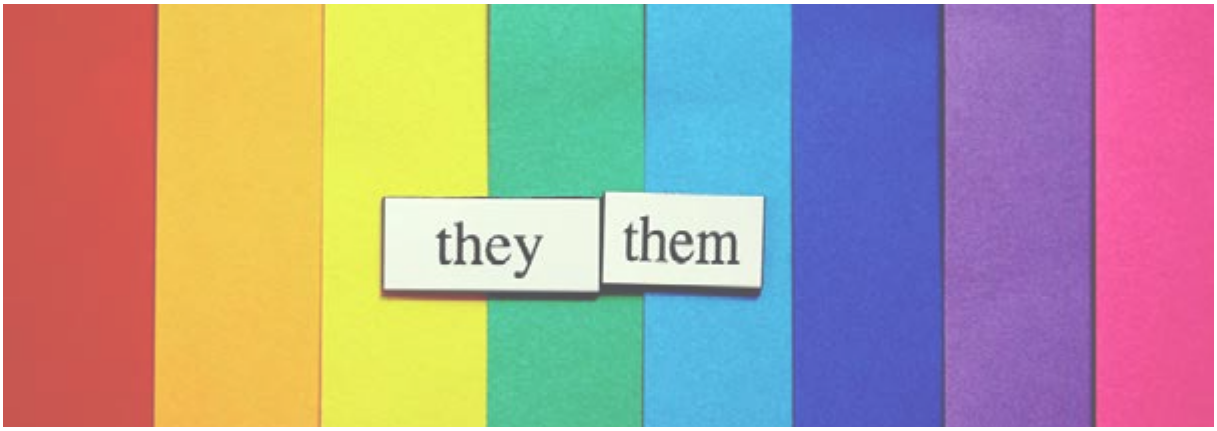
3. USING GENDER-NEUTRAL LANGUAGE IN COMMUNICATIONS

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. [xvi] 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

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**.

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

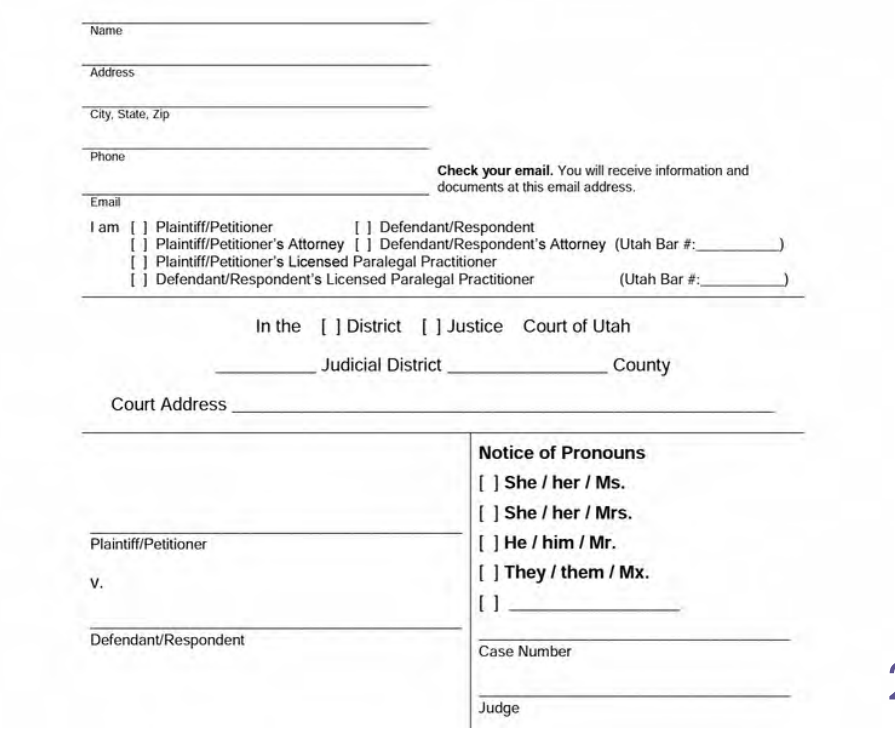
Courts should use plain language. All court communications, including forms and instructions, should be written in plain language. Plain language helps court users understand the purpose of the form and helps them fill out the forms more accurately. For resources on plain language, as well as a plain 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
[ ] She / her / Ms.
[ ] She / her / Mrs.
[ ] He / him / Mr.
[ ] They / them / Mx.
[ ] _____

Case Number

Judge

Part 4:

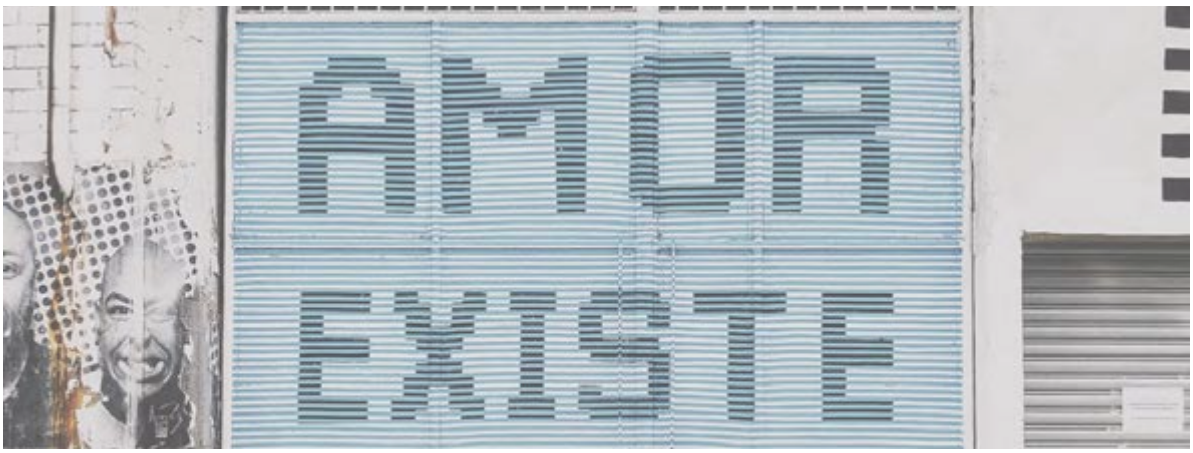
A Note on Translation and Gender-Affirming Language

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 (könsmässigt spark)" and the neutral pronoun can be used instead of the "hon (feminine)" and "han (masculine)" pronouns. [xxii]

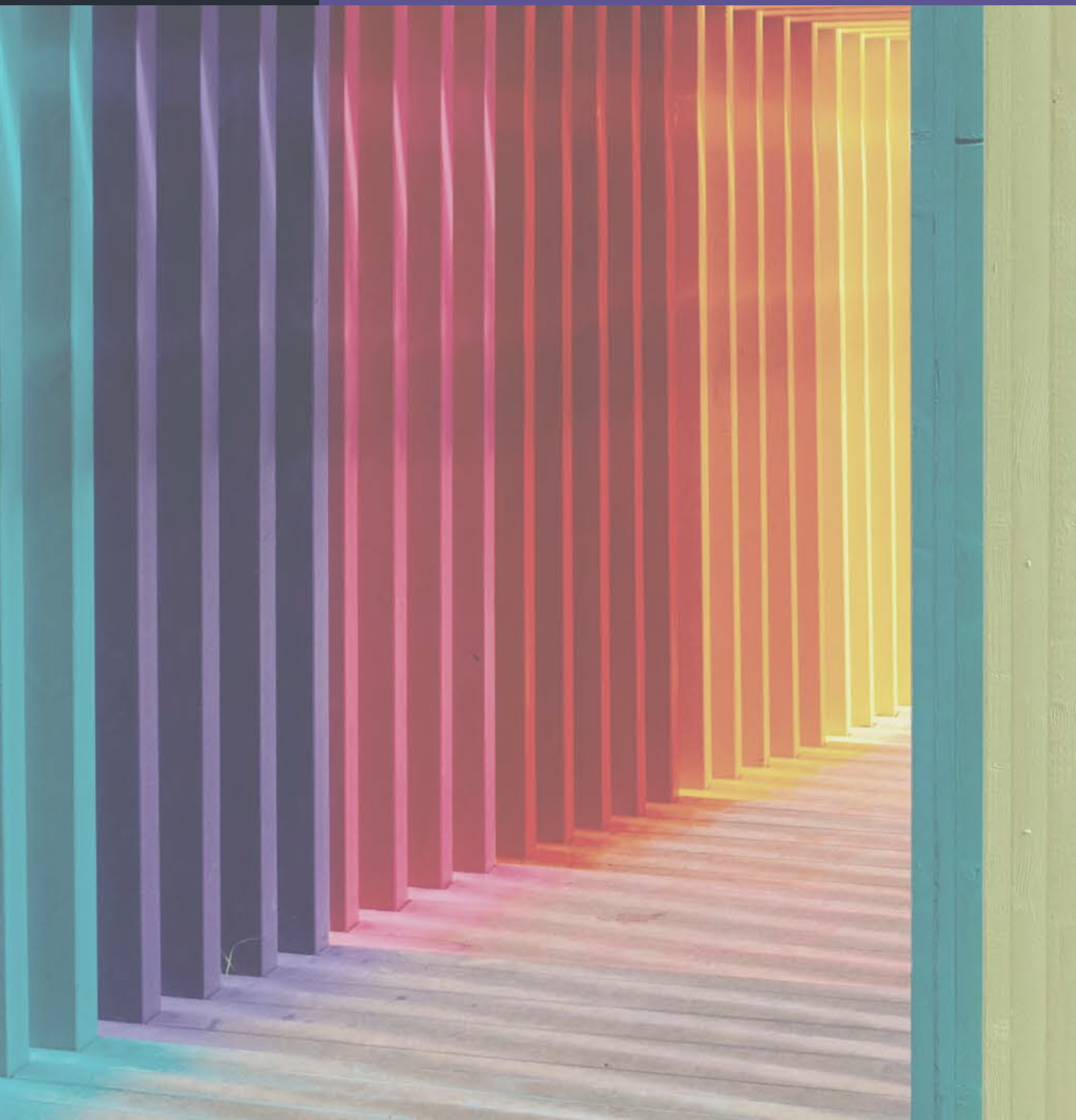
Spanish speakers have been trying to confront this issue as well, with different countries having different approaches. Young Spanish speakers in the United States have pushed for a genderless "x" ending to gendered nouns, activists in Spain are trying to get the constitution rewritten with an "@" ending 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 amigues 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.

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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH RYAN-EVERETT GOBRICK,

Defendant-Appellant.

UNPUBLISHED
December 21, 2021

No. 352180
Kent Circuit Court
LC No. 18-005805-FH

Before: RONAYNE KRAUSE, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Following a bench trial, defendant, Joseph Ryan-Everett Gobrick,[1] was convicted of three counts of child sexually abusive activity, MCL 750.145c(2), and one count of using a computer to

[1] Although the parties referred to defendant as "Mr. Gobrick" during the trial court proceedings, defendant's appellate brief indicates that defendant identifies as female and prefers to be referred to using the nonbinary pronouns they and them. The prosecution respectfully obliged defendant's request by using the they/them pronouns in its appellee brief and at oral argument. Although this Court does not yet have an official policy in regard to the use of preferred pronouns, the Merriam-Webster Dictionary accepts the use of "they" to refer to a single person whose gender identity is nonbinary. Merriam-Webster Dictionary, *they* <https://www.merriam-webster.com/dictionary/they> (accessed November 23, 2021). This usage is also now accepted by the APA style guide and other style manuals. American Physiological Association, *Singular "They"* <https://apastyle.apa.org/style-grammar-guidelines/grammar/singular-they> (accessed November 23, 2021); Charles & Myers, *Evolving They*, 98 Mich B J 38, 39 (June 2019), available at <http://www.michbar.org/file/barjournal/article/documents/pdf4article3680.pdf>. In the June 2019 issue of the Michigan Bar Journal, the authors of the "Plain Language" column *Evolving They* urge attorneys, as wordsmiths, to embrace the use of "they" as a singular pronoun to avoid clumsy instances of "he or she" and to respect those who prefer a gender-neutral pronoun. *Evolving They*, 98 Mich B J at 38. See also Heidi K. Brown, *We Can Honor Good Grammar and Societal Change Together*, ABA J (April 1, 2018), available at

commit a crime, MCL 752.796; MCL 752.797(3)(f). The trial court sentenced defendant to a prison term of 10 to 20 years for each offense, to be served concurrently. Defendant appeals of right, claiming the trial court erred by granting their request for self-representation and by allowing a witness to provide expert testimony without first qualifying that witness as an expert under MRE 702. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

In March 2018, two Grand Rapids Police officers went to a home on Pine Avenue to conduct a welfare check on DB, a 17-year old girl from Ohio who had been reported missing and endangered because of her youth. Defendant answered the door and allowed the officers to check on DB. Apparently satisfied that DB was willingly present,[2] one of the officers spoke with defendant, who was in the living room seated before a computer. The officer noticed that the screensaver had explicit "cartoons" of young "[m]ales and females having sex."

Based on the observations of the police officers during the welfare check, Detective Demetrios James Vakertzis, with the Family Services Unit of the Grand Rapids Police Department and the Internet Crimes Against Children Michigan State Police (ICAC) Task Force, visited defendant's home and explained why he was there. Defendant willingly let him in and informed the detective that there were images of child anime, child pornography cartoons or cartoons of children being raped on the computer screen, and that it is not against the law. While the detective agreed that such animations were not illegal, he expressed concern that there might be also be other content, such as child pornography or child sexually abusive material (CSAM), on the computer. Equipped with this and other information, Detective Vakertzis obtained a warrant to search defendant's home. Defendant confirmed their ownership of the subject desktop computer with multiple hard drives, and that no one else had access to or used it. Defendant advised the detective that they are transgender, and went by the name "Lynn Kilroy," which was the username for the computer. Defendant also assisted Detective Vakertzis in operating the computer, as it was running in the command prompt, which was "[t]he old black screen with the C, semi-colon." Defendant explained that they had worked with computers in the United States Navy. Upon a search of the computer, Detective Vakertzis found over 50 screenshots of "child pornography." Defendant was criminally charged.

Before trial, defendant's counsel requested an adjournment and a competency evaluation of his client. The Center of Forensic Psychology first evaluated defendant's competency to stand

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<https://www.abajournal.com/magazine/article/inclusive_legal_writing>. Like the prosecution, we choose to honor defendant's request as well. Thus, apart from references to the record that use the pronouns he/him, we use the they/them pronouns where applicable. All individuals deserve to be treated fairly, with courtesy and respect, without regard to their race, gender, or any other protected personal characteristic. Our use of nonbinary pronouns respects defendant's request and has no effect on the outcome of the proceedings.

[2] One officer testified to his understanding that DB returned to Ohio later on the same day of the wellness check.

trial, and the trial court later ordered a criminal responsibility evaluation. Defendant was determined to be competent to stand trial and not legally insane at the time of the alleged crimes.

The competency evaluation and criminal responsibility reports indicated that defendant self-reported a history of having multiple personalities, but that defendant "had control over both personalities, and was not bothered by his experiences, as the voices 'kept him company.' "[3] There is no indication that defendant's multiple personalities manifested themselves during the competency evaluation. However, in the criminal responsibility evaluation, defendant reported that although they had been a "young girl," they were "currently a feline" named " 'Kitten.' " Defendant reported that "Lynn" kept "Kitten" from " 'going crazy.' " The evaluator reported that defendant discussed an interest in viewing child pornography, which "resulted from his status as a young girl himself, adding that the only way he could visualize himself in pornographic sexual acts was to watch children engaged in sexual activities." The evaluator also noted that "[w]hen asked to provide his accounting of the currently-alleged offenses, despite redirection, the defendant repeatedly returned to arguing the legality versus illegality of cartoon versions of pornography—despite my repeated redirections to speak on the real-life images that were the crux of the current charges."

Before the bench trial began, defendant requested the right to self-representation. The trial court engaged in an extensive colloquy with defendant to make sure the decision was knowingly, intelligently, and voluntarily made, whereafter the court granted defendant's self-representation request.[4]

At trial, Detective Vakertzis testified about his search of defendant's computer through a forensic write blocker, which preserves as-is everything that is on the hard drive, and he found over 50 screenshotted images of child pornography. Defendant did not download the images; rather, defendant took a screenshot from a "Tor site." The screenshots showed the "Tor addresses" and other "website tabs" that defendant was browsing at the time the screenshot was taken. Detective Vakertzis testified that the "dark web," or the "Tor," was created by the United States Navy in the 1970s, and that it is not a "bad tool"; rather, it is just a "very encrypted internet service," meaning that "if someone gets on the dark web and goes to sites they don't want anyone to see, it's very hard for our forensic examiners and or any person to hack or . . . try and locate what you're looking at and where you're looking at." Detective Vakertzis testified that the "file path" indicated that the images he found were located under defendant's user profile on the computer, which as noted, was "Lynn."[5]

Four of the images found on defendant's computer were admitted as evidence at trial. Detective Vakertzis testified that the admitted screenshots were a fair and accurate representation

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[3] This information was gleaned from defendant's records at the Kent County Correctional Facility.

[4] Defendant's counsel up to that point stayed involved as standby counsel.

[5] Detective Vakertzis offered to read the full file path in which the images were found, but stated that it was "very long and it would probably take a while to do that." Defendant did not object or solicit the information.

or sample of the evidence found on defendant's computer. He described one image as depicting a naked adult male who is having sexual intercourse with a prepubescent female, and her vagina is clearly visible. Another image depicts a prepubescent female lying on her back, spreading her legs, and exposing her vagina as well as her anus to the person taking the picture. A third image depicts a close-up of prepubescent female performing oral sex on an adult male penis. Detective Vakertzis testified that the last image was of a "prepubescent female who is masturbating an adult male's erect penis" and was from an "actual series." He explained that the National Center for Missing and Exploited Children (NCMEC) was a global data storage facility for child pornography that officers across the world sent into to help identify the child victims, and that the child in the image "is actually an identified child." The detective opined, based on his experience, that the images had not been manipulated, faked, or photoshopped; instead, they showed real children engaged in various sexual acts, as was true for the other additional screenshotted photographs not admitted into evidence.

Two letters written by defendant were also admitted at trial, one dated May 9, 2019, and the other dated August 16, 2019.[6] Detective Vakertzis testified that the May letter described defendant's creation and production of child pornography. In the May letter, defendant described making explicit videos with " 'Kathy,' " defendant's wife at the time of the charged offenses, and child pornography with "Jim" and "Louis;" while the letter mentioned DB, it also indicated that Louis had "decided he did not need her after all." Detective Vakertzis testified that in the August letter, defendant again admitted to "creating child pornography," specifically the images discussed at trial, but claimed the images were created by using a computer program similar to Photoshop, in which defendant combined pictures of children with adult pornography.

Defendant cross-examined Detective Vakertzis on whether he could tell if the screenshots had been knowingly saved by the user by asking whether viruses can cause malicious downloads. Detective Vakertzis responded that the data here was not saved accidentally; it was manually screenshotted, which requires the user to purposefully take a picture, or create another image of what is displayed on the computer screen. Defendant questioned the detective on the motive for screenshotting by getting him to concede that one can right-click on Tor and save an image. But Detective Vakertzis countered that doing so changes the hash value, and that someone who is involved in child pornography knows that every video and picture has a hash value, so if they get caught, a forensic examiner would know a completely separate hash from the original was created. Defendant took another approach by questioning Detective Vakertzis whether he had heard of "Google image search," which is capable of searching images that have been resized or otherwise altered, again in an apparent effort to question the idea that anyone would purposefully screenshot an image knowing there are other ways of being detected. Detective Vakertzis admitted that he did not know why anyone would screenshot an image, but that the child pornography images here were screenshotted by the user and put on the hard drive. Defendant questioned whether someone on Skype could send over a screenshot to an unwitting recipient, but Detective Vakertzis responded

[6] The transcript misidentifies the date of the August 16, 2019 letter. Defendant addressed the letters to the prosecutor, and it appears letters were also sent to Detective Vakertzis and the trial court.

that it would have "a completely different path," and here it could be taken from Skype, but a screenshot would still have to have been taken in order for it to end up on the hard drive.

The trial court found defendant guilty beyond a reasonable doubt of all four of the charged offenses. At sentencing, defendant again engaged in self-representation with standby counsel. This appeal followed.

II. SELF-REPRESENTATION

Defendant first argues that the trial court should not have granted their request for self-representation at trial because they were not competent to waive the right to counsel. Defendant further argues that, even if the waiver at trial was valid, they did not unequivocally waive the right to counsel at sentencing. We conclude that defendant validly waived the right to counsel at trial, but the trial court erred by not asking defendant to affirm their desire to continue self-representation at sentencing. However, defendant is not entitled to relief because they cannot establish prejudice.

Defendant never challenged the validity of the waiver of counsel in the trial court, so we review this issue for plain error affecting defendant's substantial rights. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Under the plain error rule, defendant must establish that "1) error . . . occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id*. Under the third prong, defendant must show that the error was prejudicial, meaning "the error affected the outcome of the lower court proceedings." *Id*. Reversal on the basis of plain error is only warranted "when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. (quotation marks and citation omitted; alteration in original).

"The right of self-representation is secured by both the Michigan Constitution, Const 1963, art 1, § 13, and by statute, MCL 763.1. The right of self-representation is also implicitly guaranteed by the Sixth Amendment of the United States Constitution." *People v Dunigan*, 299 Mich App 579, 587; 831 NW2d 243 (2013). However, the right is not absolute. *Indiana v Edwards*, 554 US 164, 171; 128 S Ct 2379; 171 L Ed 2d 345 (2008). "[C]ourts *must* indulge every reasonable presumption against the waiver of the right to counsel." *People v Russell*, 471 Mich 182, 193; 684 NW2d 745 (2004).

To effectuate a valid waiver, the trial court must substantially comply with the three factors set forth in *People v Anderson*, 398 Mich 361; 247 NW2d 857 (1976), and MCR 6.005(D). See *People v Willing*, 267 Mich App 208, 219-220; 704 NW2d 472 (2005). Under *Anderson*, 398 Mich at 367, first, "the request must be unequivocal." Second, "the trial court must determine whether defendant is asserting his right knowingly, intelligently and voluntarily." *Id*. at 368. Finally, the trial court must determine that "the defendant's acting as his own counsel will not disrupt, unduly inconvenience and burden the court and the administration of the court's business." *Id*. MCR 6.005(D) provides, in relevant part:

> The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first

> (1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and
>
> (2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

MCR 6.005(E) requires that the trial court reaffirm a defendant's waiver of the right to counsel at each subsequent proceeding.

A. SELF-REPRESENTATION AT TRIAL

Defendant does not take issue with the fact that the trial court properly complied with the first and third *Anderson* factors, as well as MCR 6.005(D). Rather, defendant argues that they were not competent to waive the right to counsel at trial, and therefore, under the second *Anderson* prong, the wavier was not knowingly, intelligently, and voluntarily made. We disagree.

"A defendant may not waive his or her right to counsel if his or her mental incompetency renders him or her unable to understand the proceeding and make a knowing, intelligent, and voluntary decision." *People v Brooks*, 293 Mich App 525, 542; 809 NW2d 644 (2011), vacated in part on other grounds, 490 Mich 993 (2012). "In certain instances an individual may well be able to satisfy [the] mental competence standard [to stand trial], for he will be able to work with counsel at trial, yet at the same time he may be unable to carry out the basic tasks needed to present his own defense without the help of counsel." *Edwards*, 554 US at 175-176 (alterations in original). Technical knowledge of legal matters is irrelevant to the validity of a defendant's exercise of the right to self-representation. *Id*, 554 US at 172. However, "[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses can impair the defendant's ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant." *Id*. at 176 (quotation marks and citation omitted; alteration in original). Thus, "the Constitution permits a State to limit [a] defendant's self-representation right by insisting upon representation by counsel at trial—on the ground that the defendant lacks the mental capacity to conduct his trial defense unless represented." *Id*. at 174.

Here, defendant first argues that they did not have the competency to waive the right to counsel due to their belief that the prosecution concerned "producing cartoon child pornography, not for copying or reproducing photographs of real children." However, technical knowledge of legal matters is irrelevant to the question of whether defendant validly exercised the right to self-representation. See *id*. at 172.

Next, defendant claims a lack of mental capacity " 'to carry out the basic tasks needed to present [their] own defense without the help of counsel,' " *Brooks*, 293 Mich App at 542, quoting *Edwards*, 554 US at 175-176. The record belies defendant's contention. First, defendant was deemed competent to stand trial and capable of being held criminally responsible for the offenses at the time they were committed. Second, the record reveals that defendant ably carried out the basic tasks necessary to present a defense without the help of counsel. Although some of defendant's comments were extraneous or lacked legal merit, defendant exhibited attentiveness,

thought, and concentration throughout the trial. At the outset, defendant raised a reasonable but unsuccessful argument that the search warrant was invalid because the supporting affidavit listed an incorrect address on one of the pages.[7] During opening statements, defendant argued that the creation of pornographic drawings and computer animations is protected by the right to free speech and self-expression, and described it as "artwork."

When cross-examining Detective Vakertzis, defendant asked a series of good questions designed to challenge the detective's ability to prove that the over 50 screenshots of child pornography he found on defendant's computer were intentionally or knowingly saved, exploring whether they could be downloaded inadvertently, or placed there by others during a Skype call or due to malware.[8] Defendant also explored with the detective the various disincentives of someone who is technologically savvy, and who wishes to avoid detection, to want to take a screenshot. During closing argument, defendant claimed that the letters that had been admitted into evidence were purposefully written in such a way that they could easily be verified as false, that defendant only admitted in the letters to making photo-realistic images, that the images at issue at trial could have been downloaded unintentionally by software, not defendant, that there is no way to prove that defendant took the screenshots, that defendant did not screenshot images, and that to the extent defendant was being prosecuted for photo-realistic images, it was a violation of defendant's right to free speech.

Overall, defendant did not exhibit "[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, [or] other common symptoms of severe mental illnesses" to indicate that defendant was incapable of self-representation. *Edwards*, 554 US at 176 (quotation marks and citation omitted; first alteration in original). To the contrary, defendant was able " 'to carry out the basic tasks needed to present [their] own defense without the help of counsel.' " *Brooks*, 293 Mich App at 542, quoting *Edwards*, 554 US at 175-176. Therefore, defendant is not entitled to a new trial on the basis that the waiver was invalid.

B. SELF-REPRESENTATION AT SENTENCING

Defendant argues that even if the initial waiver at trial was valid, the trial court failed to comply with MCR 6.005(E)(1) at sentencing. MCR 6.005(E) provides, in relevant part:

> If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding (e.g., preliminary examination, arraignment, proceedings leading to possible revocation of youthful trainee status, hearings, trial or sentencing) need show only that the court advised the defendant of the continuing

[7] Defendant also had the presence of mind to object to the admission of the four photographs during Detective Vakertzis's testimony, again raising the issue as to the validity of the search warrant.

[8] As further evidence of defendant's mental capacity for self-representation, the record indicates that defendant was taking notes during the direct examination of Detective Vakertzis in preparation to cross-examine him.

> right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings
>
> (1) the defendant must reaffirm that a lawyer's assistance is not wanted . . . .

At the beginning of defendant's sentencing hearing, the attorney who had previously served as defendant's counsel and acted as standby counsel at trial commented, "I'm not sure if I'm the attorney of record or not." The court noted that defendant had waived the right to counsel at trial and asked the attorney to continue to play the role of standby counsel at sentencing. The trial court then remarked: "Clearly [defendant] wants to handle this on his own. And he has a right to do that." But there is no indication in the record as to why the trial court made that conclusion. And defendant did not reaffirm that a lawyer's assistance was not wanted at this subsequent proceeding. See MCR 6.005(E)(1). Therefore, we agree with defendant that the trial court plainly erred by failing to comply with MCR 6.005(E)(1). However, defendant is not entitled to resentencing because the error did not affect their substantial rights.

Although defendant contends that the lack of counsel was prejudicial because they did not have the opportunity to read the presentence investigation report (PSIR), defendant chose to waive this issue.[9] Specifically, defendant claimed that they had been unable to "thoroughly" review the PSIR and requested a postponement. The trial court found no basis for postponement, but offered to take a break in the proceedings and handle other cases in order to give defendant additional time to review the report. Defendant chose instead to proceed. In any event, defendant does not identify any errors in the PSIR that impacted the sentence.

Defendant also claims to be prejudiced by a lack of counsel because the court issued a sentence at the high end of the guidelines range, which defendant attributes to the failure to present mitigating evidence and defendant's making "inflammatory" comments at sentencing. After defendant's statement,[10] the following exchange transpired:

> *The Court*. All right. Well, thank you for that, [defendant]. The evidence at trial was very strong. The testimony clearly established that there were a number of images that constituted child sexually abusive material. And that they could be attributed, and we heard expert testimony, to [defendant].

---

[9] The Michigan Supreme Court has recognized the difference between waiver and forfeiture. Waiver is the "intentional relinquishment or abandonment of a known right," while forfeiture is the failure to timely assert a right. *Carines*, 460 Mich at 763 n 7 (quotation marks and citation omitted). "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error." *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (quotation marks and citations omitted).

[10] Defendant argued that the letters admitted into evidence at trial were written so as to be easily proven as false, that images may look real but can be forged, that defendant is not internet savvy as was implied at trial, and that defendant does not make child pornography because defendant is an eight-year old girl.

There was testimony about the dark web and [defendant's] ability based upon having worked in the Navy previously to potentially have an understanding of how to get to that. And there was also testimony that at least one of the images that was found that was placed there by [defendant] was a well-known girl whose image has been distributed throughout the world, I think, the testimony was.

So, in that sense there is also a very real victim who was a little girl who was, in fact, posed entirely inappropriately and whose image has been circulated. And [defendant] has also participated in continuing the circulation of that. So, this isn't just virtual stuff. This is also real people that are being harmed.

[Defendant] ma[d]e a number of . . . [F]irst [A]mendment arguments that he has the right to be able to obtain any information he wanted and disseminate any information that he wanted. And—and really did not specifically deny being responsible for the images but rather made arguments as to why he believed there is nothing wrong with the images. I'm not here to pass moral judgment but under the law, that is illegal.

Defendant. Under the law it was—

The Court. Excuse me, sir. I gave you a chance. Thank you very much. And—

Defendant. Just reopen Auschwitz.

The Court. So—so—excuse me.

Defendant. Under the law Auschwitz was illegal. What you're doing here is wrong. This is the way Auschwitz was.

The Court. Thank you, [defendant]. That's a rather bizarre and inappropriate metaphor but I'll go with it. And so, the reality is that [defendant] not just engaged in this conduct but based upon everything he said and done [sic], including bragging about what he was drawing in his cell,[11] that he, obviously, doesn't think that child sexually abusive material is wrong either to create it or disseminate it. And that is not what Michigan law says.

The trial court sentenced defendant to 10 to 20 years for each conviction, which was at the high end of the calculated minimum guidelines range of 78 to 130 months.

There is no indication in the above exchange that the trial court decided to sentence defendant at the high end of the guidelines range because they failed to produce mitigating

[11] At trial, during opening statements, defendant stated, "I have on my person right now a dozen of pieces of art. . . . One is made on [Kent County Correctional Facility] stationary and labeled raping babies in Kent County jail. At least 10 more share the same catchy slogan."

evidence or made a reference to the Auschwitz concentration camp. Rather, the trial court stated, "That's a rather bizarre and inappropriate metaphor but I'll go with it." The trial court concluded that based upon everything defendant had said and done, including bragging about drawing child sexually abusive images in jail, defendant does not think it is wrong to either create or disseminate child sexually abusive material. Reversal on the basis of plain error is only warranted "when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Carines*, 460 Mich at 763. Defendant has not established that the trial court's error was prejudicial, meaning that it affected the outcome of the lower court proceedings. *Id*. Thus, defendant is not entitled to resentencing.

III. LAY VERSUS EXPERT TESTIMONY

Finally, defendant argues that the trial court plainly erred by admitting Detective Vakertzis's testimony without first qualifying him as an expert under MRE 702. Because defendant did not object to Detective Vakertzis's testimony at trial, we review defendant's claim for plain error affecting substantial rights. *Carines*, 460 Mich at 763.

MRE 701, which governs the admission of lay opinion testimony, provides:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

MRE 702, which governs the admission of expert testimony, provides:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Opinion testimony from a lay witness "do[es] not involve highly specialized knowledge, and [is] largely based on common sense." *People v McLaughlin*, 258 Mich App 635, 658; 672 NW2d 860 (2003). "[T]he interplay between MRE 701 and MRE 702 is somewhat unclear when a police officer provides testimony based on his or her training and experience." *People v Dixon-Bey*, 321 Mich App 490, 497; 909 NW2d 458 (2017), citing *People v Dobek*, 274 Mich App 58, 77; 732 NW2d 546 (2007).

In this case, the prosecution did not list Detective Vakertzis as an expert or move to qualify him as an expert witness, and the trial court never made a finding that Detective Vakertzis was qualified as an expert. Therefore, the trial court presumably allowed Detective Vakertzis to testify

as a lay witness under MRE 701, and it was not necessary for his testimony to meet the requirements of MRE 702.

However, were we to agree that Detective Vakertzis's testimony ventured into what would be considered expert testimony, defendant cannot establish prejudice because his testimony would have been properly admitted under MRE 702. Even defendant admits that Detective Vakertzis had "extensive training and experience in computer forensics," and the record reflects that he had significant experience and training in investigating cases involving child sexually abusive material, including more specific training relevant to this case, such as the dark web.

Defendant contends that Detective Vakertzis's testimony would not have passed muster under MRE 702 because it was "wholly speculative" and circular in concluding that because screenshots were found on defendant's computer, defendant must have taken the screenshots. But defendant oversimplifies Detective Vakertzis's testimony. In response to defendant's question whether the images could have been automatically downloaded by the Tor or sent by a third-party through e-mail or Skype, Detective Vakertzis testified that if someone clicked on an image, "sometimes, yes, the AppData will download that." However, the detective emphasized that the images in this case were manually screenshotted and saved on the computer hard drive. Detective Vakertzis testified that even if the images had been sent over Skype, by screenshotting it, defendant "created another child pornography image of an existing one, and it was saved to their computer." Detective Vakertzis further testified that had the images been sent through e-mail or Skype, the file path would have been different. The file path here indicated that the images were located under defendant's user profile on the computer, which in this case was "Lynn." Defendant also told Detective Vakertzis that no one else accessed or used the computer.

Detective Vakertzis's testimony established that the images were not automatically downloaded, and that regardless of how the user obtained the images, the user took screenshots and intentionally saved them to the computer. In the screenshots, one can see the "Tor addresses" and the numerous different "website tabs" that the person taking the screenshot was browsing when the screenshot was taken. It is clear that no one else besides defendant took the screenshots. And defendant admits that if they "took a screenshot of the open page, as Mr. Vakertzis claimed he had determined, [defendant] arguably made, copied, or reproduced CSAM within the meaning of MCL 750.145c(2), and was guilty of a twenty year felony." Defendant has failed to show that Detective Vakertzis's opinion was not the product of reliable principles and methods. See MRE 702. Additionally, defendant does not contend that the testimony lacked "sufficient facts or data" or that Detective Vakertzis failed to "appl[y] the principles and methods reliably to the facts of the case." *Id*. Because Detective Vakertzis's testimony would have been properly admitted under MRE 702, defendant cannot establish any prejudice.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Jane M. Beckering

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH RYAN-EVERETT GOBRICK,

Defendant-Appellant.

UNPUBLISHED
December 21, 2021

No. 352180
Kent Circuit Court
LC No. 18-005805-FH

Before: RONAYNE KRAUSE, P.J., and BECKERING and BOONSTRA, JJ.

BOONSTRA, J. (*concurring*).

I fully concur in the majority's legal analysis and in its decision to affirm defendant's conviction and sentence. I write separately only because this Court should not be altering its lexicon whenever an individual prefers to be identified in a manner contrary to what society, throughout all of human history, has understood to be immutable truth. Abraham Lincoln perhaps said it best:

> *How many legs does a dog have*
> *if you call the tail a leg? Four.*
> *Calling a tail a leg doesn't make it a leg.*[1]

While I respect the right of every person to self-identify however he or she may wish, it frankly should not be of interest or concern to the Court unless it somehow impacts the resolution of the case before us. We as a Court should be writing for clarity and focusing on legal issues, not

[1] See, e.g., https://www.historynet.com/abraham-lincoln-quotes (last accessed October 22, 2021).

spending our time making our opinions less clear, all so that we may conform to a particular litigant's predilections.[2]

Defendant is a biological man who, as the majority notes and obliges, apparently wishes to be referred to as "they/them" (although even defendant's counsel frequently defaulted to "he/him" during oral argument, presumably to limit the confusion that otherwise would have infected his colloquy with the Court). The reason given is simply that defendant "identifies as female" (while nonetheless preferring "they/them" to "she/her"). Defendant also claims to have multiple personalities, although that fact is not given as a basis for the requested pronoun preference.

Once we start down the road of accommodating pronoun (or other) preferences in our opinions, the potential absurdities we will face are unbounded.[3] I decline to start down that road, and while respecting the right of dictionary- or style-guide-writers or other judges to disagree, do not believe that we should be spending our time crafting our opinions to conform to the "wokeness" of the day.

I decline to join in the insanity that has apparently now reached the courts.

/s/ Mark T. Boonstra

[2] I wholeheartedly agree with the majority that all persons deserve to be treated fairly and with courtesy and respect, but disagree with any intimation that my nonconformity somehow does otherwise.

[3] Commentators have described the "pronoun wars" as "the greatest nightmare grammarians have ever endured."

Order

Michigan Supreme Court
Lansing, Michigan

November 10, 2022

Bridget M. McCormack,
Chief Justice

164080

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 164080
COA: 352180
Kent CC: 18-005805-FH

JOSEPH RYAN-EVERETT GOBRICK,
Defendant-Appellant.

_____/

On order of the Court, the application for leave to appeal the December 21, 2021 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

WELCH, J. (*concurring*).

I agree with the Court's decision to deny leave to appeal. I write separately to address the Court of Appeals' use of gender-neutral pronouns in the majority opinion after defendant requested to be identified using the pronoun "they." Our vocabulary and the ways that we refer to each other has changed through the decades. While at one point a judge might have said "thou shalt respect all thy litigants," we now say "you shall respect all your litigants." And while the archaism "Hear ye, hear ye" persists for the court crier, we no longer use the term "ye"—rather than you—to refer to more than one person. Instead, whether "you" refers to one person or a group depends upon the context—something readers of the English language understand and are able to decipher.

Judge BOONSTRA's concurring opinion sets forth his belief that the majority was "altering its lexicon" in a manner contrary to what, in his view, society understands to be an "immutable truth." *People v Gobrick*, unpublished per curiam opinion of the Court of Appeals, issued December 1, 2021 (Docket No. 352180) (BOONSTRA, J., concurring), p 1. But lexicographers and the authors of English style guides have long changed practices to

reflect the evolution of the English lexicon. This is hardly controversial.[1] As society evolves so does its language. While there might be instances where adoption of a novel change in the English lexicon could cause confusion, this was not such a situation. The Court of Appeals majority provided a detailed explanation in a footnote as to how and why it was using a gender-neutral pronoun in its opinion. The Court of Appeals' simple use of a footnote and gender-neutral pronoun demonstrates that words matter and that a small change to an opinion, even if unrelated to the merits, can go a long way toward ensuring our courts are viewed as open and fair to all who appear before them.

MCCORMACK, C.J., joins the statement of WELCH, J.

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[1] While Judge BOONSTRA claims in his concurrence that the " 'wokeness' of the day" was the motivation for the court's use of a gender-neutral pronoun, it is interesting to note that in 1994 the United States Supreme Court easily avoided using gendered pronouns in a decision involving a transgender party. See *Farmer v Brennan*, 511 US 825 (1994) (a case concerning a transgender inmate who alleged discrimination based on petitioner's transgender status). In that opinion, Justice Souter avoided the use of gendered pronouns even in the absence of an explicit request for such an accommodation. Further, while not as prevalent in our lexicon as it is today, the use of "they" as a singular pronoun extends back to as early as the 1300s. See, e.g., Merriam-Webster.com Dictionary, *Singular 'They'* <https://www.merriam-webster.com/words-at-play/singular-nonbinary-they> (accessed November 3, 2022) [https://perma.cc/TU4G-44FA]; Professor Dennis Baron, Oxford English Dictionary Blog, *A Brief History of Singular 'They'* https://public.oed.com/blog/a-brief-history-of-singular-they/ (posted September 4, 2018) (accessed November 3, 2022) [https://perma.cc/8486-N8UP]; Curzan, *Opinion: 'They' Has Been a Singular Pronoun for Centuries. Don't Let Anyone Tell You It's Wrong*, Washington Post (October 21, 2021) <https://www.washingtonpost.com/opinions/2021/10/21/they-has-been-singular-pronoun-forever-dont-let-anyone-tell-you-its-wrong/> (accessed November 3, 2022) [https://perma.cc/Z52D-EQR9].

Public Policy Position
ADM File No. 2022-03: Proposed Amendment of MCR 1.109

Support

Explanation
The Committee voted to support the proposed amendment of Rule 1.109. The Committee believes that addressing parties and attorneys by their personal pronouns will promote access to justice by ensuring that parties and attorneys are treated with respect and dignity by the court.

Position Vote:
Voted For position: 15
Voted against position: 1
Abstained from vote: 0
Did not vote (absent): 11

Contact Persons:
Katherine L. Marcuz kmarcuz@sado.org
Lore A. Rogers rogersl4@michigan.gov

Public Policy Position
ADM File No. 2022-03: Proposed Amendment of MCR 1.109

Support

Explanation
The Committee voted to support the proposed amendment of MCR 1.109. The Committee recognizes that treating transgender parties and attorneys with dignity is an access to justice issue and that it would be preferable to address this issue across Michigan's court system, as opposed to leaving the matter to inconsistent, conflicting treatment by individual courts/judges.

Position Vote:
Voted For position: 11
Voted against position: 8
Abstained from vote: 2
Did not vote (absence): 12

Contact Person:
Lori J. Frank lori@markofflaw.com

Public Policy Position
ADM File No. 2022-03: Proposed Amendment of MCR 1.109

Support

Explanation:
The Committee voted to support ADM File No. 2022-03. The Committee believes that providing attorneys and parties with a standardized process for communicating their personal pronouns to the court, and requiring courts to use those personal pronouns when referring to attorneys/parties verbally or in writing, will help ensure that Michigan courts meet their obligations to treat the individuals that appear before them fairly, with courtesy and respect.

Position Vote:
Voted For position: 14
Voted against position: 3
Abstained from vote: 2
Did not vote (absent): 7

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
Sofia V. Nelson snelson@sado.org

Public Policy Position
ADM File No. 2022-03: Proposed Amendment of MCR 1.109

Support

Explanation

The State Bar of Michigan Justice Initiatives Committee (the "Committee") provides this comment in support of the proposed amendments to Michigan Court Rule 1.109.

The Committee's stated purpose is to support access to justice efforts by developing and recommending policies that support underserved populations including the poor, ethnic and racial minorities, and sexual or gender minorities. This Committee exists because the State Bar and this Court have historically recognized that certain, traditionally underrepresented groups have long-standing barriers to the court system that are based in their membership in these underrepresented groups. This Committee seeks to recommend rules, practices or policy changes so that all people, including those from underrepresented groups, can more meaningfully participate in our courts, and in our democracy.

The Committee members are comprised of legal aid managers and attorneys, pro bono counsel of the largest law firms in the State, law school faculty, and other members of the access to justice community. The majority of Committee's members bring suggestions to improve access to justice as a result of their decades of professional and first-hand experiences practicing law within this state. This is especially true in the context of this proposed rule: people who identify as gender minorities, specifically transgender or non-binary litigants, are often also low income and thus qualify for legal services provided directly or indirectly by many members of the Committee in Michigan courts. Despite assertions to the contrary by other commenters,[1] among the many issues these clients face as they publicly identify as transgender or nonbinary is that the courts do not universally respect an explicit request to use their preferred names and pronouns. Committee members have stood with their nonbinary and transgender clients when this has happened and witnessed first-hand the feelings of rejection and impertinence of that identity while interfacing with Michigan courts.

Committee members' professional experiences in Michigan are supported by national research. In a study conducted by Lambda Legal Defense and Education Fund, 33% of transgender litigants (the number increases to 53% for transgender litigants of color) report hearing judges, attorneys, or other court employees making negative comments about their gender identity and or sexual orientation. According to the report, transgender people often have contact with judges, attorneys and court employees who refuse to acknowledge or respect their gender identity, do not use their preferred names and pronouns, and in the case of judges, may even make rulings that force transgender people to deny their true identity.[2] The 2016 US Transgender Survey reports that 13% of transgender persons who visited a courtroom or courthouse in the past year were denied equal treatment or service and

[1] At least one commenter raised concerns about whether the proposed rule was necessary since they were "not aware of a Michigan court refusing a person's request that a court use a pronoun…". Comment dated March 1, of 12 Court of Appeals Judges. Sadly, members of this Committee can confirm requests such as these have been refused.

[2] Lambda Legal, Protected and Served?: Courts, p 7 (accessed March 2023).

verbally harassed, or physically attacked because of being transgender. Given the mistreatment of transgender people by the courts, it should not come as a surprise that Lambda's report shows that only 28% of transgender and gender-nonconforming people surveyed trust the courts to provide fair treatment.[3]

This Committee is concerned that refusal to use preferred pronouns or names may be based in a lack of understanding of why doing so is so critical to creating a uniformly welcoming court. As stated with clarity in the comment submitted on March 23rd from a "coalition of LGBTQ+ and allied organizations that work to promote fairness," the usage of one's preferred pronouns is grounded in an understanding of the concepts of gender identity and those who are diagnosed with gender dysphoria. Gender dysphoria is a now widely accepted medical diagnosis which involves a person whose gender identity is different than the one assigned at birth. People with this affliction suffer great social, psychological, and physical harm as a result of this dissonance.[4] Generally accepted treatment for gender dysphoria involves a variety of medical treatments, but usually involves some kind of social transition so that gender presentation is congruent with someone's gender identity. This includes using pronouns that are consistent with one's gender identity, and not the gender assigned at birth. The refusal of community members to use a nonbinary or transgendered person's preferred pronouns contributes to that person's feeling of disrespect, exclusion, and isolation.

Further, we trust that the amendment's additional language which grants permission to implement another "respectful means of addressing an individual" including "using the individual's name" will allow a court sufficient discretion to conduct the court's business where the request of a personal pronoun[5] would contribute to the confusion of the record or would otherwise be inappropriate.

A uniform policy regarding the use of preferred pronouns or other respectful means of addressing an individual will establish a consistent standard for pronoun usage and thus create a more inclusive, respectful and welcoming court by removing existing barriers for gender minorities. As such, this Committee strongly and unanimously supports the amendment to Michigan Court Rule 1.109.

Position Vote:
Voted For position: 15
Voted against position: 0
Abstained from vote: 1
Did not vote (absence): 2

Contact Person:
Ashley E. Lowe alowe@lakeshorelegalaid.org

[3] For additional information regarding the terms and definitions concerning gender identity and gender expression, see GLAAD's glossary of terms at: https://www.glaad.org/reference/terms.

[4] Jack Turban, "What is Gender Dysphoria?," American Psychiatric Association, accessed March 30, 2023, https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria.

[5] Of the more than 225 name changes matters for low-income transgender or nonbinary people overseen or personally handled by members of this Committee, not a single litigant used a pronoun in court other than he/him, she/her or they/them. This experience is consistent with stated pronoun preference of 40,000 recently surveyed LGBTQ youth: 96% of these youth report using common pronouns such as "he", "she" and "they". Marcus, *A Guide to Neopronouns: Are you a person, place or thing? We have good news,* The New York Times (updated September 18, 2022).

Public Policy Position
ADM File No. 2022-03: Proposed Amendment of MCR 1.109

Support

Position Vote:
Voted for position: 12
Voted against position: 5
Abstained from vote: 4
Did not vote: 3

Contact Person: Brad Hall
Email: bhall@sado.org

Public Policy Position
ADM File No. 2022-03: Proposed Amendment of MCR 1.109

Support

Explanation
Children's Law Section supports ADM File 2022-03 without further comment.

Position Vote:
Voted for position: 8
Voted against position: 3
Abstained from vote: 0
Did not vote: 8

Contact Person: Joshua Pease
Email: jpease@sado.org

Public Policy Position
ADM File No. 2022-03: Proposed Amendment to MCR 1.109

Support

Explanation:
We had a very lively debate about this topic! We spent more time on this file than any other this evening. Several members shared personal experiences that were meant to buttress their respective positions. Some feel that this is not necessary or they did not understand it. The member who moved to support the proposal thinks people who are going through the system should be treated with respect and dignity. Another member feels that this is far afield from where the section's mandate is. Use of pronouns with regard to correct grammar in legal writing generated even more heated discussion. One member is concerned that this could encroach on people's religious beliefs.

Position Vote:
Voted for position: 8
Voted against position: 4
Abstained from vote: 0
Did not vote: 2

Contact Person: Takura N. Nyamfukudza
Email: takura@cndefenders.com

Public Policy Position
ADM File No. 2022-03: Proposed Amendment of MCR 1.109

Support

Position Vote:
Voted for position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote: 2

Contact Person: Jennifer Johnsen
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Public Policy Position
ADM File No. 2022-03: Proposed Amendment of MCR 1.109

Support

Explanation
The LGBTAQ Law Section Council voted to support the amendment of MCR 1.109 proposed in ADM File No. 2022-03 for the reasons stated in the Section's March 24, 2023 letter (attached).

The proposed Court Rule/ Administrative Order 2022-03 was discussed in the March 1, 2023 and April 5, 2023 Council meetings at length. Council agreed to sign on to the ACLU letter as additional signatory with other LGBTQ+ groups and also Council agreed to proposed their own letter to the Michigan Supreme Court. The Section Court Rules committee chaired by Elizabeth Bransdorfer met during this period March & April and created the proposed the letter that was submitted by the Council and voted on. Number proposed letter to Michigan Supreme Court was submitted for an Electronic Discussion and Vote. The vote was unanimous.

Position Vote:
Voted for position: 11
Voted against position: 0
Abstained from vote: 0
Did not vote: 0

Contact Person: Angie Martell
Email: angie@iglesiamartell.com

SBM
STATE BAR OF MICHIGAN

LGBTQA LAW SECTION

Chief Justice Elizabeth T. Clement
Michigan Supreme Court
925 W. Ottawa Street
Lansing, MI 48915

March 24, 2023

Re: ADM File No. 2022-03
Proposed Amendment of MCR 1.109

Dear Chief Justice Clement,

On behalf of the State Bar of Michigan LGBTQA Section we are writing in support of ADM File No. 2022-03, which amends MCR 1.109(D)(1)(b) by adding language that allows, but does not require, parties and attorneys to include their preferred pronouns in a case caption and requires the court (not another party, attorney, or member of the public) to use the preferred pronoun if a pronoun is used to refer to that person. In those very narrow circumstances where the court believes that use of the designated pronoun would lead to an unclear record, the court may use the person's name or another respectful means of address.

THE INTEREST OF THE LGBTQA SECTION OF THE STATE BAR OF MICHIGAN[1]

The LGBTQA Section of the State Bar was established in 2016 and has grown to 262 dues-paying members whose Mission is to "review law, cases, regulations, and other legal matters that affect lesbian, gay, bi-sexual, transgender, questioning, and allies of this State and to promote the fair and just administration of those laws." Identifying individuals in a way that comports with their inherent identity is essential to the fair and just administration of all laws and vital to this Court's mandate and commitment of Access to Justice.

1. Respectful Treatment of Litigants and Attorneys by Courts is an Important Characteristic for a Judicial System

The proposed court rule amendment promotes the just and appropriate treatment of all individuals appearing before the court by prohibiting judges, referees, and court staff from using a pronoun that is inconsistent with the disclosed preference of the party or attorney. The proposed amendment is fully consistent with the Court of Appeals statement in *People v Gobrick*, unpublished per curiam opinion of the Court of Appeals, issued December 21, 2021 (Docket No. 352180), p 2 n 1, where the opinion states:

> All individuals deserve to be treated fairly, with courtesy and respect, without regard to their race, gender, or any other protected personal characteristic. [*Id*.]

It is also consistent with the Concurring statement by Justice Welch, joined by Chief Justice McCormick, in denying leave to appeal which states:

> The Court of Appeals majority provided a detailed explanation in a footnote as to how and why it was using a gender-neutral pronoun in its opinion. The Court of Appeals' simple use of a footnote and gender-neutral pronoun demonstrates that words matter and that a small change to an opinion, even if unrelated to the merits, can go a long way toward ensuring our courts are viewed as open and fair to all who appear before them. [*People v Gobrick*, ___Mich___; 981 NW2d 59 (2022) (Docket No. 164080) (WELCH, J., concurring); slip op at 2.]

The ethical rules that bind judges and attorneys require the respectful treatment of all participants in the justice system. MRPC 6.5; Code of Judicial Conduct, Canon 3 (A)(14). This obligation should be stated to include respectful treatment of nonbinary and transgender individuals.

2. Misgendering People is Harmful and Creates an Unsafe Environment

Discrimination against transgender people also extends to the courts. In a study conducted by Lambda Legal Defense and Education Fund, 33% of transgender litigants (the number increases to 53% for transgender litigants of color) report hearing judges, attorneys, or other court employees making negative comments about their gender identity and or sexual orientation. According to the report, transgender people often have contact with judges, attorneys and court employees who refuse to acknowledge or respect their gender identity, do not use their preferred names and pronouns, and in the case of judges, may even make rulings that force transgender people to deny their true identity.[2] The 2016 US Transgender Survey reports that 13% of transgender persons who visited a courtroom or courthouse in the past year were denied equal treatment or service and verbally harassed, or physically attacked because of being transgender.[3] Given the mistreatment of transgender people by the courts, it should not come as a surprise that Lambda's report shows that only 28% of transgender and gender non-conforming people surveyed trust the courts to provide fair treatment.[4] Notably, overall trust in the courts was found to be lower than trust in the police, where significant harassment and mistreatment also occurs.[5]

Misgendering people does not apply exclusively to nonbinary and transgender individuals. As noted in a report by the National Center for State Courts on Gender Inclusivity in the 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.[6]

Additionally,

> 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. Misgendering causes a host of psychological and physiological injuries and is a form of microaggression.[7]

Allowing judges, attorneys, and court employees to continue to misgender attorneys and litigants is not harmless, and should be discouraged by reasonable rules such as the proposed amendment to MCR 1.109.

3. Elliott-Larsen Civil Rights Act

The Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq*., prohibits discrimination based on sexual orientation and gender identity, both under Supreme Court precedent and more explicitly under the statute as recently amended. Misgendering a person is a discriminatory act and creates an unsafe and hostile situation and impedes Access to Justice. Accordingly, the court rule should be amended to reflect existing law.

4. Access to Justice

As this court has recognized, Access to Justice is a vital part of our judicial system for which the promises of fairness, equality, due process, and liberty are part of the fabric which our judicial system and our constitutions are based, yet for LGBTQ+ people that reality and promise has not been met.

The LGBTQ+ population is a statistically vulnerable population. For example, LGBTQ+[8] people are uniquely vulnerable to the negative economic impacts from the COVID-19 pandemic by disproportionately experiencing risk factors such as poverty, food insecurity, and employment in highly impacted industries.[9] Research has also shown that LGBTQ+ people are almost four times more likely than non-LGBTQ+ people to experience violent victimization, such as aggravated or simple assault, sexual assault, and rape.[10] Discrimination severely impacts a large part of the LGBTQ+ population, which also contributes to their "second-class" status as a statistically vulnerable population.[11]

There are a significant number of individuals within the LGBTQ+ community who are impacted by many barriers to full Access to Justice in Michigan. In our state, 5% of the workforce is LGBTQ+ and many of these individuals need access to relief from the courts. For example, among all transgender people who worked in 2015, 27% were fired, denied a promotion, or not hired for a job due to their gender identity or expression.[12] One study found 27% of same-sex tester couples were discriminated against, despite being provided with better credentials in terms of income, down payment, and credit than the different-sex tester couples.[13] In the education context, a study focusing on transgender students found that 79% of those who were "out" or perceived as transgender experienced some kind of harassment, including prohibitions on dressing according to their gender identity, harsher discipline, harassment, or

physical or sexual assault.[14] That study also found that 30% of transgender people in Michigan had experienced some kind of mistreatment in a place of public accommodation in the year prior to the study.[15]

Access to Justice in the criminal courts is also especially important to transgender individuals. In 2021, the Washtenaw County Prosecuting Attorney found that "[h]ate crimes perpetrated on the basis of sexual orientation and gender identity are at 'unacceptably high levels'—and rising."[16] The Federal Bureau of Investigation stated that hate crimes based on sexual orientation represent "16.7 percent of all hate crimes, the third largest category after race and religion."[17]

More than 50 years ago, Chief Justice Warren Burger noted that "[a] sense of confidence in the courts is essential to maintain the fabric of an ordered liberty for a free people[,]" and further that when "a free people who have long been exploited . . . come to believe that courts cannot vindicate their legal rights from fraud" an "incalculable damage [occurs] to society."[18] This truth endures.

The LGBTQ+ population, and transgender persons in particular, are in great need of Access to Justice. Accordingly, the proposed amendment to MCR 1.109 is very important to increase the likelihood this community can actually experience full Access to Justice.

5. Michigan Code of Judicial Conduct

Michigan's Code of Judicial Conduct requires both judges and court staff to treat litigants with both courtesy and respect. Canon 3(A)(14), which applies to the conduct of the judge and the judge's staff, states as follows:

> Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect. To the extent possible, a judge should require staff, court officials, and others who are subject to the judge's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the court. [*Id*.]

Canon 3(B)(2) further requires a judge to:

> direct staff and court officials subject to the judge's control to observe high standards of fidelity, diligence, and courtesy to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity. [*Id*.]

Unfortunately, these directives are insufficient to actually secure the courteous and respectful treatment of LGBTQ+ individuals. See section 2 of this letter.

The LGBTQA Section of the State Bar has worked with Michigan state courts and presented at the Michigan Judicial Institute in the hopes of ameliorating and removing these Access to Justice barriers. Moreover, our Section, in coordination with the State Bar and Court Administration, is working on a LGBTQ+ Bench Guide[19] which we hope will assist courts and court staff in removing past and current

Access to Justice barriers. However, mere aspirational guidance is not sufficient and a Court Rule to preclude knowing misgendering is warranted.

6. Arguments Raised in Comments Opposing the Rule are Not Meritorious

The LGBTQA Section and the Court Rules Committee of the Section have reviewed and considered many of the previously submitted comments opposed to ADM File No. 2022-03. In sum, the comments seem to fall into two categories–those that believe gender is purely biological or physical (whether based on science or religion) and those who find Free Speech issues with the rule.

a. Biology

Contrary to assertions of some that gender is based solely on sex and can be objectively determined by simply looking at an individual, recent scientific studies demonstrate that there is a genetic and biological component to a person's gender identity that goes beyond their physical characteristics.

"Transgender" is an umbrella term that refers to individuals whose gender identity is different from the sex assigned to them at birth.[20] Nonbinary, also referred to as "enby," refers to individuals experience their gender identity or gender expression as falling outside the binary gender categories of "man" and "woman."[21] One excellent article that summarizes the complex science in the field, with references to the actual scientific work, was published by Scientific American in 2019.[22]

Approximately 33,000 transgender people reside in the State of Michigan, throughout every county in the State.[23] In a 2021 nationwide study by the Williams Institute, it was estimated that 42% of transgender people (ages 18-60) identify as gender nonbinary and utilize they/them pronouns.[24] The lived experience of these thousands of people cannot be ignored because some individuals refuse want to acknowledge them, and no one has the right to insist that anyone must fall into a classification based solely on their sex organs.

This argument is really no different if the authority for their right to impose a gender label on people who reject that label for themselves comes from their religious beliefs. Our courts should never use religious tests to determine what people to treat with dignity and respect and which to punish for being different.

b. Free Speech

The drafters of the proposed amendment did a masterful job avoiding mandated speech while requiring respect for a litigant or attorney's gender identity. The rule allows a person who is offended by the pronoun chosen by a person for themselves to use the person's name or other respectful means of addressing the individual. A party can be called by their role, i.e., "plaintiff" or "respondent," and an attorney can be called "plaintiff's counsel" or "respondent's lawyer," if the court does not want to use the chosen pronoun. Simply said, the rule does not force the use of any particular pronoun, it merely prohibits the use of a pronoun not chosen by the party.

CONCLUSION

The LGBTQA Section strongly supports the proposed amendment to MCR 1.109. Adopting a rule on pronoun usage would align with consensus in the scientific and medical community regarding transgender identity and gender dysphoria, would expand access to our courts and public confidence in the fairness of our justice system, and would ensure that persons who come before a court can do so with an expectation that they will be treated with courtesy and respect.

Respectfully submitted,

Angie I. Martell

LGBTQA Section of the State Bar of Michigan
By: Angie Martell, Chair

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[1] For additional information regarding the terms and definitions concerning gender identity and gender expression, see GLAAD's glossary of terms at: https://www.glaad.org/reference/terms.

[2] Lambda Legal, *Protected and Served?: Courts*, p 7 <https://legacy.lambdalegal.org/sites/default/files/publications/downloads/ps_executive-summary.pdf> (accessed March 2023).

[3] James et al, *Executive Summary of the Report of the 2015 U.S. Transgender Survey* (Washington, DC: National Center for Transgender Equality, 2016) <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf> (accessed March 2023).

[4] See note 1.

[5] Lambda Legal, *Moving Beyond Bias: How to Ensure Access to Justice for LGBT People—A Training Curriculum Prepared by Lambda Legal's Fair Courts Project for Judges, Attorneys and Other Legal Professionals*, p 12 <https://www.lambdalegal.org/sites/default/files/publications/downloads/ll_moving-beyondbias_guide_final_singles.pdf> (accessed March 2023).

[6] National Center for State Courts, *Gender Inclusivity in the Courts: How to Treat Everyone with Fairness, Dignity, and Impartiality*, p 3 <https://www.ncsc.org/__data/assets/pdf_file/0028/84916/Gender-Inclusivity-in-the-Courts.pdf> (accessed March 2023).

[7] *Id*. at 4.

[8] Michigan's Equality Profile, *Movement Advancement Project* <https://www.lgbtmap.org/equality-maps/profile_state/MI> (accessed March 2023).

[9] Kasubhai, Judge, *Pronouns and Privilege*, 32 Or Women Law 3 (Summer 2021) <https://oregonwomenlawyers.org/wp-content/uploads/2021/07/OWLS-AdvanceSheet-Summer-2021.pdf> (accessed March 2023).

[10] UCLA School of Law Williams Institute, *LGBT People Nearly Four Times More Likely Than Non-LGBT People to be Victims of Violent Crime* (October 2020) < https://williamsinstitute.law.ucla.edu/press/ncvs-lgbt-violence-press-release/> (accessed March 2023).

[11] Among the study's conclusions–more than 1/3 of LGBTQ+ people faced discrimination in the past year, with over half of LGBTQ+ people who experienced discrimination saying that it has moderately or significantly negatively impacted their psychological well-being. Moreover, to attempt to avoid being discriminated against, over half of LGBTQ+ people hide a personal relationship and 20-33% have altered other aspects of their personal or work lives. Gruberg et al, *The State of the LGBTQ Community in 2020,* Center for American Progress (October 6, 2020)

<https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/10/06/491052/state-lgbtq-community-2020/#Ca=10> (accessed March 2023).
[12] National Center for Transgender Equality, *2015 US Transgender Survey: Michigan State Report* (Washington, DC: National Center for Transgender Equality, 2017) <https://transequality.org/sites/default/files/docs/usts/USTSMIStateReport(1017).pdf> (accessed March 2023).
[13] Michigan Fair Housing Centers, *Sexual Orientation and Housing Discrimination in Michigan*, pp 3, 9-10 <https://www.opportunityhome.org/wp-content/uploads/2020/02/INTRODUCTION.pdf> (accessed March 2023).
[14] See note 11.
[15] See note 11.
[16] Savit, *Legal Guidance 2021-01: Hate Crimes Based on Sexual Orientation/Gender Identity* (February 12, 2021), p 1 <https://www.washtenaw.org/DocumentCenter/View/19590/Legal-Guidance-Hate-Crimes-Based-on-Sexual-OrientationGender-Identity-> (accessed March 2023).
[17] Ronan, *New FBI Hate Crimes Report Shows Increases in Anti-LGBTQ Attacks* (November 17, 2020) <https://www.hrc.org/press-releases/new-fbi-hate-crimes-report-shows-increases-in-antilgbtq-attacks> (accessed March 2023).
[18] Burger, Chief Justice, *The State of the Judiciary–1970*, 56 ABA J 929, 934 (1970).
[19] The LGBTQ+ Bench Guide is anticipated to be released in 2023.
[20] *GLAAD's Media Reference Guide Glossary of Terms: LGBTQ* (11th ed) <https://www.glaad.org/reference/terms> (accessed March 2023).
[21] *Id*.
[22] Sun, *Stop Using Phony Science to Justify Transphobia*, (Scientific American, June 2019) <https://blogs.scientificamerican.com/voices/stop-using-phony-science-to-justify-transphobia/> (accessed March 2023).
[23] Flores et al., *How Many Adults Identify as Transgender in the United States?* (Los Angeles: Williams Institute, June 2016), p 3 <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Adults-US-Aug-2016.pdf>.
[24] *Id*.

Public Policy Position
ADM File No. 2022-03: Proposed Amendment of MCR 1.109

Support

Explanation

On behalf of the State Bar of Michigan Prisons and Corrections Section we are writing in support of ADM File No. 2022-03, which would amend Michigan Court Rule 1.109 by adding language which allows, but does not require, parties and attorneys to include their preferred pronouns in a case caption, and which requires the court (not another party, attorney, or member of the public) to use the preferred pronoun if a pronoun is used to refer to that person. The proposed amendment states further that if the court believes that use of the designated pronoun would lead to an unclear record, the court may simply use the person's name or other respectful means of address.

Respectful treatment of litigants and attorneys by courts is an essential characteristic for a just judicial system. The proposed court rule amendment promotes the just and appropriate treatment of all individuals appearing before the court by prohibiting courts from using a pronoun that is inconsistent with the disclosed preference of a party or attorney. Both the Michigan Court of Appeals and the Michigan Supreme Court previously recognized the importance of using one's preferred pronoun. In People v. Gobrick, 2021 WL 6062732 (12/21/21, unpublished, per curium), the Court of Appeals wrote:

All individuals deserve to be treated fairly, with courtesy and respect, without regard to their race, gender or any other protected personal characteristic.

In denying leave to appeal, Justice Welch wrote a concurrence, which was joined by Chief Justice McCormick. It stated:

The Court of Appeals majority provided a detailed explanation in a footnote as to how and why it was using a gender-neutral pronoun in its opinion. The Court of Appeals' simple use of a footnote and gender-neutral pronoun demonstrates that words matter and that a small change to an opinion, even if unrelated to the merits, can go a long way toward ensuring our courts are viewed as open and fair to all who appear before them. People v. Gobrick, Mich ; 981 NW 2d 59 (Mem) (2022) (Welch, J., concurring).

The ethical rules that bind judges and attorneys require the respectful treatment of all participants in the justice system. MRPC 6.5; Code of Judicial Conduct, Canon 3(A)(14). This obligation should explicitly include respectful treatment of nonbinary and transgender individuals.

The purpose of the Prisons and Corrections Section, as stated in its Bylaws, is to:
a) Study and debate

1) The operation of the criminal justice system as it affects incarcerated persons, their families, and

the public;
2) Alternatives to incarceration;
3) The functioning of jails, prisons and parole; and
4) Post-incarceration issues;

b) Educate its members and the general public; and

c) Make recommendations to the State Bar, public officials, the Legislature and the Judiciary regarding the adoption of rational, effective and fair policies in these areas.

Because of its emphasis on incarceration and the criminal justice system, the mission of our Section necessarily impacts some of the most vulnerable and marginalized members of society. Ethical rules require the respectful treatment of all participants in the justice system. Some of the most vulnerable participants in the justice system are those being charged and prosecuted for a crime, or those individuals who are accessing the court system while already incarcerated.

As the Supreme Court's concurrence in Gobrick stated, the simple use of a footnote and gender-neutral pronoun can go a long way toward ensuring that courts are viewed as open and fair to all who appear before them. This Section supports the proposed change to MCR 1.109 as an important measure of progress toward furtherance of this essential goal of our criminal justice system.

Position Vote:
Voted for position: 15
Voted against position: 0
Abstained from vote: 1
Did not vote: 0

Contact Person: Rachel N. Helton
Email: rachel@unionlaw.net

Public Policy Position
ADM File No. 2022-03: Proposed Amendment of MCR 1.109

Oppose

Position Vote:
Voted for position: 9
Voted against position: 0
Abstained from vote: 0
Did not vote: 3

Contact Person: Timothy W. Denney
Email: tdenney@twdpclaw.com

COMMENT OF THE RELIGIOUS LIBERTY LAW SECTION OF THE STATE BAR OF MICHIGAN ON PROPOSED AMENDMENT OF RULE 1.109 OF THE MICHIGAN COURT RULES

The Michigan Supreme Court provided notice of a proposed amendment to Rule 1.109 of the Michigan Court Rules, "to afford interested persons the opportunity to comment on the form or the merits of the proposal." The proposed amendment authorizes parties and attorneys to provide "personal pronouns" to a court. It further requires judges, with no attention to the factual circumstance of the case before the court, "to use those personal pronouns when referring to or identifying the party or attorney."

The Religious Liberty Law Section of the State Bar of Michigan ("RLLS") was formed to advance, educate, discuss, and disseminate information regarding the constitutional right of religious liberty protected by the U.S. Constitution, federal statutes, Michigan Constitution, and Michigan statutes and case law. The RLLS currently has approximately 251 members. This comment was approved by the governing council of the RLLS at its meeting on April 6, 2023 by a vote of 6 to 0 (with 3 members absent) and reflects only the opinion of the RLLS and not that of the State Bar as a whole. As of the date of this submission, the State Bar Board of Commissioners has not taken an official position for or against the proposed amendment to Rule 1.109.

The RLLS strongly opposes adoption of the proposed amendment. This Court has particularly requested comments on the constitutional implications of the proposed rule. There are many. This comment focuses on two that cut to the heart of why the proposed amendment must not be adopted. First, the proposed amendment unconstitutionally infringes upon fundamental liberties protected by the First Amendment of the United States Constitution, namely the right to freedom of speech and the right to the free exercise of religion. Second, the proposed amendment imposes unnecessary, impractical, and unconstitutional due process problems on the state court judiciary.

I. The Proposed Amendment Infringes Upon I First Amendment Right to Freedom of Expression, Especially Expression of One's Personal Conscience and Religious Identity

Ratified in 1791, the First Amendment to the United States Constitution provides that "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech[.]" US Const, Am I. Enacted as a response to the intolerant laws of seventeenth century England used to persecute individuals because of their religious views, the First Amendment balances the need for freedom of speech and religion with the need of a

well-ordered central government. *See, e.g.*, Knoll, *A History of Christianity in the United States and Canada* (Eerdmans, 1992), pp 25-65; Makower, *The Constitutional History and Constitution of the Church of England* (1895) 68-95. The First Amendment Speech Clause embodies an ideal that is uniquely American—that true liberty exists only where men and women are free to hold and express conflicting political and religious viewpoints. Under this aegis, the government must not interfere with its citizens living out and expressing their freedoms but embrace the security and liberty only a pluralistic society affords.

Indeed, the "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v Maynard*, 430 US 705, 714, 97 S Ct 1428 (1977). The State cannot force individuals to deliver messages that they do not wish to make or to which they disagree. *Id.* (holding that a state may not compel individuals to display a certain license plate motto on their vehicles); *W Va State Bd of Educ v Barnette*, 319 US 624, 63 S Ct 1178, 87 L Ed 1628 (1943) (holding that a state must not compel individuals to participate in a flag salute and the pledge of allegiance in public schools). As Justice Jackson famously penned in *Barnette*,

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

Id. at 643. The protection from compelled speech does not only apply to opinions but extends to statements of fact as well. *Rumsfeld v Forum for Acad & Institutional Rights, Inc.*, 547 US 47, 62, 126 S Ct 1297, 164 L Ed 2d 156 (2006). The Free Speech Clause protects the expression of viewpoints and ideas motivated by a person's religious beliefs and subjects a State's restriction or compulsion of this expression to the strictest of scrutiny. *Masterpiece Cakeshop, Ltd. v Colorado Civil Rights Commission,* 138 S Ct 1719, 1745-46; 201 L Ed 35 (2018) (Thomas, J., concurring) (noting the necessity of applying "the most exacting scrutiny" where state law penalized and compelled expression that violated the religious conscience of a cake designer) (citing *Texas v Johnson*, 491 US 397, 412; 109 S Ct 2533; 105 L Ed 2d 342 (1989); accord, *Holder v. Humanitarian Law Project*, 561 US 1, 28; 130 S Ct 2705; 117 L Ed 2d 355 (2010); see also, *Reed v Town of Gilbert*, Ariz., 576 US 155, 164; 135 S Ct 2218; 192 L Ed 2d 236 (2015). In *Shurtleff v. Boston*, 142 S. Ct. 1583, 1593; 212 L Ed 2d 621 (May 2, 2022) the U.S. Supreme Court unanimously reaffirmed that government "may not exclude speech based on 'religious viewpoint'; doing so 'constitutes impermissible viewpoint discrimination,'" (quoting *Good News Club v. Milford Central School*, 533 U. S. 98, 112; 121 S Ct 2093; 150 L Ed 2d 151 (2001)). See also, *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 828-830; 115 S Ct 2510; 132 L Ed 2d 700 (1995).

The proposed amendment changes the State Bar's rule from its current form, which is gender neutral, to one which spotlights gender by authorizing parties and attorneys to provide "personal pronouns" to a court and then compels judges "to use those personal pronouns when referring to or identifying the party or attorney." Forced acceptance of such policy preferences that directly implicate political, religious, and moral opinion as well as statements which depart from fact, by force of law and punishment, is especially wrong when the government action unconstitutionally interferes with constitutionally protected liberty. Here, the proposed amendment effectively censures judges in this state if they do not speak as the proposed amendment compels them to. The proposed amendment requires some judges to act contrary to their consciences or misstate the unique facts of the case before them. It requires some judges to act contrary to their personal religious or moral identity. The disturbing diminishment of the Free Speech and Religion Clauses of the First Amendment, as a practical matter, denudes any meaningful constitutional protection of liberty.

The United States Court of Appeals for the Sixth Circuit has already ruled that forcing a government official to comply with a mandatory preferred personal pronoun rule violates the First Amendment. *Meriwether v Hartop*, 992 F3d 492 (CA 6, 2021). In *Meriwether*, the Sixth Circuit ruled that a professor had stated a valid claim for a First Amendment violation where he was punished by his employer, a public college, for objecting to compliance with a rule forcing him to use students' preferred personal pronouns. The *Meriwether* court noted about Professor Meriwether that "like many people of faith, his religious convictions influence how he thinks about 'human nature, marriage, gender, sexuality, morality, politics, and social issues.'" *Id.* at 498 (cite omitted). Like many religious judges, Meriwether "believes that 'God created human beings as either male or female, that this sex is fixed in each person from the moment of conception, and that it cannot be changed, regardless of an individual's feelings or desires.'" *Id*. Furthermore, like many religious judges (and non-religious judges), Meriwether "believes that he cannot 'affirm as true ideas and concepts that are not true.'" *Id*. The court concluded that by refusing to use gender identity based pronouns, Professor Meriwether was communicating a message that he does not believe that one's sex change can be changed. *Id.* at 508.

The *Meriwether* court noted that in refusing to use gender identity based pronouns, Professor Meriwether engaged in speech:

> And the "*point* of his speech" (or his refusal to speak in a particular manner) was to convey a message. *Id. at 1187*. Taken in context, his speech "concerns a struggle over the social control of language in, a crucial debate about the nature and foundation, or indeed real existence, of the sexes." Professors' Amicus Br. At 1. That is, his mode of address *was* the message. It reflected his conviction that one's sex

> cannot be changed, a topic which has been in the news on many occasions an "has become an issue of contentious political … debate." See *Cockrel v. Shelby Cnty. Sch. Dist., 270 F.3d 1036, 1051 (6th Cir 2001).*
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> *Meriwether*, 992 F3d at 508 (emphasis added).

The *Meriwether* court outlined the important underlying constitutional principles:

> The First Amendment protects 'the right to speak freely and the right to refrain from speaking at all.' *Wooley v. Maynard*, 430 U.S. 705, 714, 97 S. Ct. 1428, 51 L.Ed.2d 752 (1977). Thus, the government 'may not compel affirmance of a belief with which the speaker disagrees.' *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.,* 515 U.S. 557, 573, 115 S.Ct. 2338, 132 L.Ed.2d 487 (1995). When the government tries to do so anyway, it violates this 'cardinal constitutional command.' *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, - U.S. -, 138 S. Ct. 2448, 2463, 201 L.Ed.2d 924 (2018).
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> It should come as little surprise, then, 'that prominent members of the founding generation condemned laws requiring public employees to affirm or support beliefs with which they disagreed.' *Id*. at 2471 *n.8 (citing examples including Thomas Jefferson, Oliver Ellsworth, and Noah Webster). Why? Because free speech is 'essential to our democratic form of government.' *Id*. at 2464. Without genuine freedom of speech, the search for truth is stymied, and the ideas and debates necessary for the continuous improvement of our republic cannot flourish. *See id.*
>
> Government officials violate the First Amendment whenever they try to 'prescribe what shall be orthodox in politics, nationalism, religious, or other matters of opinion,' and when they 'force citizens to confess by word or act their faith therein.' *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943).
>
> *Meriwether*, 992 F.3d at 508.

In weighing whether a public employee's right to speak on a matter (or refrain from speaking), the courts have engaged in a two-part inquiry. *Id.* at 507-508. The first inquiry is whether the speech concerns a matter of public concern. *Meriwether*, 992 F.3d at 507-508 (citing *Connick v Myers*, 461 US 138, 146; 103 S Ct 1684; 75 L Ed 2d 708 (1983) and *Pickering v Bd of Educ.*, 391 US 563, 568; 88 S Ct 1731; 20 L Ed 2d 811 (1968)). The *Meriwether* decision makes clear that forcing public officials to use a person's preferred personal pronoun concerns speech about a matter of public concern. *Meriwether*, 992 F.3d at 508. The *Meriwether* court concluded: "[p]ronouns

can and do convey a powerful message implicating a sensitive topic of public concern." This inquiry is equally applicable when a public official seeks to refrain from making statements. *Meriwether*, supra.

Since a mandatory personal pronoun rule involves a matter of public concern, the second test requires the court to arrive at a balance between the interests of the [public employee], as a citizen in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public service it performs through its employees." *Meriwether*, 992 F.3d. at 509 (citing *Pickering,* 391 US at 568). This public employee speech balancing test required by the federal courts is impacted by several important factors in this case. First, the judges troubled by this proposed amendment do not seek to make on-the-bench speeches about gender identity. They simply seek to refrain from stating things they believe are untrue. In this regard, the proposed amendment is inconsistent with the duty of candor required of judges under the Michigan Rules of Professional Conduct. Rule 3.3 of the Michigan Rules of Professional Conduct requires:

> (a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer

While the comment suggests the rule governs the conduct of a lawyer representing a client in a tribunal, it expressly also says that "[a]s officers of the court, lawyers have special duties to avoid conduct that undermines the integrity of the adjudicative process." The proposed amendment to the judicial rules inappropriately, and unconstitutionally, requires a lawyer/judge to do just that.

Second, in Michigan, both judges and juries are forbidden from making courtroom decisions based on gender identity. The Code of Judicial Conduct states that "Without regard to a person's race, or other personal protected characteristics, a judge should treat every person fairly, with courtesy and respect." Code of Judicial Conduct, Canon 2(B). Likewise, and even more explicit, this Court's standard civil jury instruction forbids juries from making their decisions based on "gender identity," placing it in the category of factors that are "irrelevant to the rights of the parties." M Civ JI 2.06 (jurors to keep open minds) (underlining added) ("Nor should your decision be influenced by prejudice or be as regarding disability, gender, or gender identity, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status, or any other factor irrelevant to the rights of the parties.") (Underlining added). This proposed rule would create an inexplicable procedural cross-current by repeatedly requiring judges (and prodding jurors) to remember and highlight a gender identity status they are both supposed to utterly ignore. The state has a minimal interest in forcing a religious judge to repeatedly highlight an attorney's gender identity status when the state also bars the judge (and the jury) from taking into account gender identity in making their decisions.

In contrast, a judge's religious liberty interest deserves to be weighted strongly. The Michigan Supreme Court has strongly emphasized in *People v. DeJonge*, 442 Mich. 266, 275-276 (1993) the significance of our religious liberty protections.

> The prominence of religious liberty's protection in the Bill of rights is no historical anomaly, but the consequence of America's religious clashes regarding religious freedom. The First Amendment's protection of religious liberty was born from the fires of persecution, forged by the minds of the Founding Fathers, and tempered in the struggle for freedom in America.
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> ***
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> The Founders understood that this zealous protection of religious liberty was essential to the "preservation of a free government.
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> ***
>
> The Founding Fathers then reserved special protection for religious liberty as a fundamental freedom in the First Amendment of the constitution. This fortification of the right to the free exercise of religious was heralded as one of the Bill of Rights' most important achievements.

As recognized in *Meriwether*, supra, a government employer that insists on its employees expressing the preferred personal pronouns of others wants "its employees to communicate a message: People can have a gender identity inconsistent with their sex at birth." Where the employee has religious convictions that prompt them to disagree with and not want to communicate that message, it can violate the First Amendment to force them to do so. *Meriwether*, supra. As the *Meriwether* court observed, mandatory personal pronouns rules require the government employee to express the message that "People can have a gender identity inconsistent with their sex at birth." *Meriwether*, 992 F.3d at 507. If the government employee disagrees with that message on religious grounds, forcing them to deliver it can violate the First Amendment. *Meriwether*, 992 F.3d at 507 and 14-17.

The proposed rule is also utterly devoid of any opportunity for accommodation of judge's religious convictions. In *Meriwether*, the Sixth Circuit made clear that a government's refusal to accommodate any religious accommodation can contribute to a conclusion that the government is hostile to religious beliefs.

The *Meriwether* court also rejected the idea that the existence of governmental gender identity anti-discrimination laws always justifies regulation of a public official's speech. *Meriwether*, 992 F.3d at 510. The *Meriwether* court rejected the

suggestion that the U.S. Supreme Court's prior case law held "that the government always has a compelling interest in regulating employee's speech or matters of public concern."

Other courts, on constitutional grounds, have also refused to allow government to force public officials to use the preferred personal pronouns of others, nor to allow officials to be punished for criticizing such policies. *Ricard v Geary County KS School Board*, 2022 WL 147137 (D. Kansas, 2023) (unpublished slip opinion) (finding that compelling public school teachers to use student's preferred personal pronouns violated her free exercise rights) (court addresses the school's selective and discriminatory exemption from compliance with the nondisclosure process) (unpublished, attached as Exhibit 1). (It is now public knowledge that the school settled with the teacher, paying her $95,000) (see 31, Tul J. L. and Sexuality 149); see also *Loudon School Board v Cross*, 2021 WL 9276274 (Va, 2021) (unpublished) (Virginia Supreme Court upheld preliminary injunction in favor of teacher when she expressed opposition to a school gender policy that included compelled use of preferred personal pronouns) (unpublished, attached as Exhibit 2)."

B. The Proposed Amendment Seeks to Impose a Governmental Policy Preference that Unconstitutionally Interferes with Fundamental First Amendment Liberty

Ubiquitous special preferences for gender identity too often conflict with and threaten fundamental First Amendment liberties. Broad, sweeping rules, like the proposed amendment, necessarily require people, here judges, to relinquish their right to truthful expression based on the individual facts of the case before them and require compelled speech contrary to constitutionally protected religious and moral conscience rights. The government-imposed speech conditions in the proposed amendment substantially interfere with a person's freedom of speech, and religion. Because the rule restricts and compels expression based on viewpoint, the amendment must satisfy strict scrutiny. The proposed amendment, however, fails such exacting scrutiny. No compelling interest exists in mandating that a judge act contrary to his/her best judgment pertaining to the individual facts of the case or act contrary to his/her religious or moral conscience. *Hurley v Irish American, Gay, Lesbian and Bisexual Group of Boston, Inc.,* 515 US 557, 572-73; 115 S Ct 2338; 132 L Ed 2d 487 (1995); *accord, Boy Scouts of America v. Dale*, 530 U.S. 640, 654, 657-659; 120 S Ct 2446; 147 L Ed 2d 554 (2000); *Masterpiece Cakeshop,* 138 S Ct at 1741 (Thomas, J., concurring).

The proposed rule cannot be reconciled with the U.S. Supreme Court's holding in *Hurley,* 515 U at 568-81. In *Hurley*, this Court held that the First Amendment gave the organizers of a private St. Patrick's Day parade the right to not communicate a message about homosexual conduct to which they objected. *Id*. The First

Amendment protected the parade organizers' right "not to propound a particular point of view," *id.* at 575, and the U.S. Supreme Court protected the "principle of speaker's autonomy" *id.* at 580. In doing so, the Court unanimously ruled that a State's action must not be applied to compel a speaker to communicate an unwanted message or express a contrary viewpoint. The Court condemned the notion that state action should force free individuals to express and convey messages to which they disagree because "*this use of the State's power violates the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message.*" *Id.* at 573 (emphasis added).

The *Hurley* Court noted that, "this general rule, that the speaker has the right to tailor the speech, applies not only to expression of value or endorsement, but equally to statements of fact the speaker would rather avoid," *id.* at 573, and the benefit of this rule is not limited to the press or just some people but is "enjoyed by business corporations generally." *Id.* at 574.

The U.S. Supreme Court, in later applying *Hurley*, noted that "the parade organizers did not wish to exclude the GLIB members because of their sexual orientations, but because they wanted to march behind a GLIB banner." *Dale*, 530 U.S. at 653–54. In *Hurley*, the parade organizers did not seek to discriminate, but wished to communicate their St. Patrick's Day message as they saw fit, without being compelled to adopt and promote other messages in their parade.

Like the parade organizers whose First Amendment rights the U.S. Supreme Court protected in *Hurley*, Christian people serving as judges do not, and have never, wished to discriminate against anyone based on their sexual orientation or who they are. Given that these judges always address everyone in their courtrooms without regard to their sexual orientation lifestyle, it is not the lawyer's or their client's sexual orientation that creates problems here. Rather, it is solely the State's action compelling and censuring the judge's expression.

Judges in Michigan are required to treat all people equally. They reserve, though, the right to abstain from affirming that all conduct is equal—especially when compelling judges to express such a message violates their religious faith. The First and Fourteenth Amendments afford the liberty to not be forced or compelled by the State to do so. As the U.S. Supreme Court previously declared, "[w]hile the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Hurley*, 515 US at 579. And the proposed amendment that seeks to punish one opinion by promoting another is unconstitutional; "[t]olerance is a two-way street. Otherwise, the rule mandates orthodoxy, not anti-discrimination." *Ward v Polite*, 667 F3d 727, 735 (CA 6, 2012).

Gender identity preferences, enforced via censures and punishments, as here are unconstitutional compelled speech which forcibly collides with the protections of the First Amendment. Enforcement of speech directives advancing such preferences frequently weaponize State action to subjugate the Free Speech Clause as an important constitutional constraint on the exercise of State authority. At present, religious people in our nation and State face a far more onerous predicament than the drafters and ratifiers of the Constitution and Bill of Rights could ever have imagined. The promise of liberty amounts to nothing more than empty words when the State punishes its citizens for expressing their thoughts and views inhering in their personal identity. Persecution of religious identity via censorship and compelled speech, imposed by the State upon its citizens, must not stand in the United States, nor as a rule required to practice law or serve as a member of the judiciary in the State of Michigan. The First Amendment, promulgated to protect free expression and religious tolerance, requires rejection of the proposed amendment.

C. The Proposed Amendment Runs Contrary to the Protection of Liberty Interests Recognized in *Obergefell v Hodges*, Which Reinforced the Importance of Freedom of Speech

In *Obergefell v. Hodges*, the United States Supreme Court recognized the constitutional right of personal identity for all citizens. 576 US 644; 135 S Ct 2584; 192 L Ed 2d 609 (2015).[1] Justice Kennedy, writing for the majority held that: "[t]he Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity." *Id.* at 2593; *see also Masterpiece Cakeshop,* 138 S Ct. at 1727. *Obergefell* affirmed, therefore, not just the freedom to define one's belief system, but freedom to express it. *Obergefell* defined a fundamental liberty right as including "most of the rights enumerated in the Bill of Rights," and "liberties [that] extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs." *Id.* This understanding of personal identity broadly comprehends factual contexts well beyond the same-sex marriage facts of that case. 135 S Ct at 2589. Understanding then that the Court meant for the rules established in *Obergefell* to protect all individuals equally without preference, the right of personal identity applies not just to those who find their identity in their sexuality and sexual preferences—but also to citizens who define their personal identity through their religious conscience communicated in their thoughts and expression.

[1] While we question the cogency of the substantive due process jurisprudence that birthed the court-created liberty articulated in *Obergefell,* we expect government to follow the now-established constitutional Rule of Law, including when it protects the personal identity and viewpoints of religious people.

In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S Ct 2012; 198 L Ed 2d 551 (2017), the Supreme Court held that "denying a generally available benefit solely on account of *religious identity* imposes a penalty on [First Amendment liberty]." *Id.* at 2019 (emphasis added). The concept of "religious identity" was recognized twice in the majority opinion, as well as in the concurrences of Justice Gorsuch, Justice Thomas, and Justice Breyer. *Id.* at 2019, 2024, n 3, 2025, 2026. And *Obergefell* specifically recognized that adherence to divine precepts and religious principles (*i.e.*, religious identity) is "central" to the "lives and faiths" of religious individuals. *Obergefell*, 135 S Ct at 2607.

Many religious people, including many judges in this State, find their identity in their God and in the sacred scriptures. For many religious people, including religious judges, adhering to divine commands is the most personal choice central to their individual dignity and autonomy. Truthful expression of thoughts, conscience, and viewpoints inherent in such personal religious identity, is entitled to at least as much constitutional protection as those who find their identity in their sexuality.

There can be no doubt that *Obergefell's* personal identity jurisprudence informs against government authorities who use public policy to discriminate against religious people by compelling and censuring expression. Indeed, government must not use its power in ways hostile to religion or religious viewpoints under this new "autonomy" paradigm. *Masterpiece Cakeshop,* 138 S. Ct. at 1731. Certainly, government ought to protect and not impede the free expression of conscience. *Cf. Trinity Lutheran,* 137 S. Ct. at 2022 (holding the government violates the Free Exercise Clause if it conditions a generally available public benefit on an entity giving up its religious character); *cf. Burwell v. Hobby Lobby Stores, Inc.,* 573 US 682; 134 S. Ct. 2751, 2775; 189 L Ed 2d 675 (2014) (holding the RFRA applies to federal regulation of activities of closely held for profit companies); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 196; 132 S Ct 694; 181 L Ed 2d 650 (2012) (barring an employment discrimination suit brought against a religious school). State actions must uphold constitutionally protected freedoms, not grant special protections for some, while coercing others to engage in expression adverse to their personal identity and conscience.

Contrary to *Obergefell's* holding, the proposed rule eviscerates the constitutional right to free speech and identity, enabling the Michigan Supreme Court to claim a compelling interest in subjectively deeming infringement on expression and conscience lawful. The Michigan Supreme Court should reject the proposed rule's diminishment of the liberty protected by the Free Speech and Religion Clauses, especially considering *Obergefell's* recognition of constitutional protection afforded to personal identity in this area.

For judges and lawyers, who view the world through their personal religious identity, their God and his sacred texts are real, and therefore really matter. It is

part of who they are. Judges should not have to choose between fidelity to their religious identity or participation in judicial service. Yet, here, the proposed amendment prohibits expression inherent to a person's religious identity, while compelling speech wholly incompatible with it. By making faith or conscience-informed expression illegal, without regard to the facts presented before the judge, via suppressed and compelled speech, the proposed amendment deprives people of faith of their dignity.

Prohibiting an idea or viewpoint, informed by ageless sacred tenets, because it is not presently politically preferred, prevents thousands of years of wisdom from informing the public ethic. The perilous challenges society faces today ought to begin with the preservation of the First Amendment and its protection of freedom of expression, thought, conscience, and religion. Preserving unalienable First Amendment freedoms promotes good governance, peace, stability, prosperity, charity, and pluralism. Conversely, when government suppresses expression of religious identity and the free expression of ideas, it often results in tragic consequences. The extent to which unbridled State power governing speech prevails over the plain meaning of the First Amendment will determine: 1) whether unalienable liberty for free speech will continue to be relevant as an objective limit on government action; and 2) whether the State replaces the Framers' intent with its own personal social policy views.

Many judges in this State are keenly aware of the stakes. Despite the holdings in *Meriwether* and *Masterpiece Cakeshop*, the proposed amendment expands an agenda which places compelled speech pertaining to gender identity above First Amendment liberty, without restraint and without any regard for the facts of the cases before the court. The Constitution does not support such totalitarian action.

II. <u>The Proposed Amendment Creates Overwhelming Practical and Due Process Concerns</u>

The United States Court of Appeals for the Fifth Circuit has rejected the notion that judges are required to use "'pronouns' matching [litigant's] subjective gender identity." *United States v Varner*, 948 F3d 250, 255 (CA 5, 2020) (noting that, as to other courts, so far, "[n]one has adopted the practice as a matter of binding procedure, and none has purported to obligate litigants or other to follow the practice."). *Varner* identified "no federal statute or rule requiring counsel in other practices to judicial proceeding to use pronouns according to a litigant's gender identity." *Varner*; 948 F3d at 255. In *Varner*, the Fifth Circuit points out that if a court were to compel the use of preferred pronouns at the initiation of the litigant, it could raise delicate questions about judicial impartiality. *Id.* at 256 (stating "the court may unintentionally convey its tacit approval of the litigant's underlying legal position."). The *Varner* court also noted that "use of a litigant's preferred pronouns may well turn out to be more complex than it may first appear." *Id.*

The *Varner* court stated:

> It oversimplifies matters to say that gender dysphoric people merely prefer pronouns opposite from their birth sex "her" instead of "his," or "his" instead of "her." In reality a dysphoric person's "[ex]perienced gender may include alternative gender identities beyond binary stereotypes." DSM-5, at 453; *see also, e.g.,* Dylan Vade, *257 *Expanding Gender and Expanding the Law: Toward a Social and Legal Conceptualization of Gender that Is More Inclusive of Transgender People,* 11 Mich. J. Gender & L. 253 261 (2005) (positing that gender is not binary but rather a three-dimensional "galaxy"). Given that, one university has created this widely circulated pronoun usage guide for gender-dysphoric persons:

1	2	3	4	5
(f)ae	(f)aer	(f)aer	(f)aers	(f)aerself
e/ey	em	eir	eirs	eirself
he	him	his	his	himself
per	per	pers	pers	perself
she	her	her	hers	herself
they	them	their	theirs	themself
ve	ver	vis	vis	verself
xe	xem	xyr	xyrs	xemself
ze/zie	hir	hir	hirs	hirself

> *Pronouns – A How to Guide,* LGBTQ+ Resource Center, University of Wisconsin-Milwaukee, https://uwm.edu/lgbtrc/support/gender-pronouns/; *see also* Jessica A. Clark, *They, Them and Theirs,* 132 Harv. L. Rev. 894, 957 (2019) (explaining "[s]ome transgender people may request … more unfamiliar pronouns, such as ze (pronounced 'zee') and hir (pronounced 'hear'))." If a court orders one litigant referred to as "her" (instead of "him"), then the court can hardly refuse when the next litigant moves to be referred to as "xemself" (instead of "himself"). Deploying such neologisms could hinder communication among the parties and the court. And presumably the court's order, if disobeyed, would be enforceable through its contempt power. *** When local governments have sought to enforce pronoun usage, they have had to make refined distinction based on matters such as the types of allowable pronouns and the intent of the "misgendering" offender. *See* Clark, 132 Harv. L. Rev. at 958-59 (discussing New York City regulation prohibiting "intentional or repeated refusal" to use pronouns including "them/them/theirs or ze/hir" after person has "made clear" his preferred pronouns). Courts would have to do the same. We decline to enlist the federal judiciary in this quixotic undertaking."

Varner, 948 F3d at 256-257 (footnote omitted).

The comments submitted to this Court by 12 Michigan Court of Appeals Judges in a joint letter to this Court highlight that litigants' preferred pronouns can also be used to promote malicious purposes, even including the promotion of white supremacy and Nazi ideology.

Some on the bench have expressed to us that parties have actually tried to insist that they be referred to as Dracula, Jesus or other similar names. This proposed amendment would encourage absurd behavior and negatively affect a judge's ability to control his/her own courtroom. When we start forcing judges to make ideological declarations insisted upon by the attorneys or litigants, we have overstepped and diminished the role of the judiciary.

Conclusion

For the reasons provided in this comment, we urge this Court to preserve the right of judges to truthfully exercise fundamental freedoms under the First Amendment and reject the proposed amendment. This Court should not force judges to violate their religious and moral consciences or compel judges to use certain gender identity expressions, especially when this Court has previously declared in its jury instructions to be amongst a long list "protected characteristics" that are, in its own words, "irrelevant to the rights of the parties."

Religious Liberty Law Section
of the State Bar of Michigan

EXHIBIT 1

2022 WL 1471372
Only the Westlaw citation is currently available.
United States District Court, D. Kansas.

Pamela RICARD, Plaintiff,
v.
USD 475 GEARY COUNTY, KS SCHOOL BOARD, et al., Defendants.

Case No. 5:22-cv-04015-HLT-GEB
|
Signed 05/09/2022

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MEMORANDUM AND ORDER

HOLLY L. TEETER, UNITED STATES DISTRICT JUDGE

***1** Plaintiff Pamela Ricard brings constitutional claims against Defendants USD 475 Geary County, KS School Board; school board members Ron Johnson, Kristy Haden, Anwar Khoury, Jim Schmidt, Beth Hudson, Mark Hatcher, Jason Butler; Geary County Superintendent Reginald Eggleston; and Fort Riley Middle School Principal Kathleen Brennan ("the District"). [1] Doc. 1. These claims stem from Plaintiff's opposition to the District's policies that (1) require her to refer to students by preferred first name and pronouns ("Preferred Names and Pronouns Policy") and (2) prohibit her from referring to a student by the student's preferred names and pronouns in her communications with the student's parents unless the student requests the administration or counselor to do so ("Communication with Parents Policy").

[1] The Court recognizes that Plaintiff has sued some defendants in a personal and official capacity. The parties make no effort to analyze this nuance in briefing and in arguing the preliminary-injunction motion. And given the very tight timelines in this case, the Court does not either. The Court refers generally to the District.

Plaintiff moves for a preliminary injunction on her free speech, free exercise, and due process claims. Doc. 5. The Court received evidence and heard arguments at the May 6, 2022 hearing. Because the District affirmatively stated that Plaintiff's current practice would not be deemed a violation of the Preferred Names and Pronouns Policy, the Court finds that Plaintiff is unlikely to experience irreparable harm from enforcement of that policy before the Court rules on the merits in this case and denies a preliminary injunction on the Preferred Names and Pronouns Policy on that basis. But the Court finds that Plaintiff has made a sufficient showing that her free exercise claim merits a preliminary injunction of the Communication with Parents Policy, so the Court enjoins Defendants in the manner set forth below.

I. BACKGROUND

The Court makes the following factual findings based on the record. The Court includes additional facts throughout the order as needed. Plaintiff has taught in the District since 2005. Doc. 1 ¶ 1. Plaintiff is a Christian who believes that God immutably creates each person as male or female; these two distinct, complementary sexes reflect the image of God; and rejection of one's biological sex is a rejection of the image of God within that person. *Id.* ¶¶ 84, 86. Additionally, she believes that there are only two anatomical sexes except in very rare scientifically demonstrable medical circumstances. *Id.* ¶ 79. Plaintiff also believes that the Bible prohibits dishonesty and lying. *See id.* ¶ 88. Plaintiff further believes that referring to children with pronouns inconsistent with biological sex is harmful because it is untrue. *Id.* ¶ 89. And Plaintiff believes that parents have a fundamental right to control the upbringing and education of their children. *Id.* ¶ 74.

Plaintiff taught Math Strategies for sixth, seventh, and eighth grade students at Fort Riley Middle School during the 2020-21 school year. *Id.* ¶ 95. There were two students in her class that school year who were biological females and enrolled in the District's record system (e.g., Skyward) under their legal first and last names and their biological sexes. *Id.* ¶¶ 96-97. Both students requested to go by names that were different than their legal names and by pronouns inconsistent with their biological sex.

***2** Plaintiff was suspended and disciplined for not using one student's preferred name and because both students felt discriminated against based on Plaintiff not using the preferred name. Plaintiff returned from her suspension on April 15, 2021. *Id.* ¶ 134. Then-Principal Shannon Molt gave Plaintiff a formal written reprimand for violating three board policies. *Id.* These policies did not have any specific guidance for handling a social transition for transgender students. *See* Doc. 1-4. But Plaintiff was nevertheless found to have violated those policies because her behavior was "against the guidance provided by building leadership via email on March 31, 2021 and the building's weekly newsletter on April 4, 2021." *Id.* at 4.

Six days later, Molt emailed Fort Riley Middle School staff diversity training on gender identity, gender expression, and guidance on "Use of Preferred Names and Pronouns." *See* Doc. 1 ¶ 139; *see also* Doc. 1-6; Doc. 1-7. Several months later, in September 2021, the board formally amended its policies such that "[s]tudents will be called by their preferred name and pronouns" (i.e., the Preferred Names and Pronouns Policy). Doc. 1-18 at 5. On October 8, 2021, Defendant Brennan informed teachers that Defendant Eggleston had emailed parents and guardians the previous day to tell them that students would be referred to by their preferred name and pronouns, but the District would "not communicate this information to parents unless the student requests the administration or counselor to do so, per Federal FERPA Guidance" (i.e., the Communication with Parents Policy). Doc. 1-16 at 2. [2] , [3]

2 Plaintiff unsuccessfully appealed the disciplinary action to the superintendent and the Board. *See* Doc. 1 ¶¶ 138-149, 154-174, 183-87. The Board also rejected Plaintiff's religious accommodation request. *Id.* ¶¶ 150, 184.

3 The parties have heavily litigated whether certain district directives are a "policy," "guidance," or "implementation" material. Form does not matter. *See Ashaheed v. Currington*, 7 F.4th 1236, 1243 (10th Cir. 2021) ("[T]he First Amendment applies to exercises of executive authority no less than it does to the passage of legislation." (citation omitted)). What matters is what the governmental rule is, and whether Plaintiff is entitled to preliminarily enjoin that rule pending judgment on the merits.

Plaintiff currently has two new transgender students in her class. One student told Plaintiff of a preferred name and preferred pronouns in fall 2021 and the other informed Plaintiff in March 2022. Plaintiff refers to both students by their preferred first names, but she avoids using their preferred pronouns to be consistent with her religious beliefs. Plaintiff does not generally use pronouns in class for any student and avoids the use of pronouns. But she does occasionally use pronouns when referring to students in class. Plaintiff has had to email one of the transgender student's parents regarding that student's performance in school. Because the student has not authorized the district to disclose the student's transgender status to the student's parents, Plaintiff used the student's legal name and biological pronouns in the email. Plaintiff believes that addressing students one way at school and a different way when speaking to their parents is dishonest. Being dishonest violates her sincere religious beliefs.

II. STANDARD

To obtain a preliminary injunction, the movant must show that she is (1) substantially likely to succeed on the merits, (2) will suffer irreparable injury if the injunction is denied, (3) her threatened injury outweighs the injury the opposing party will suffer under the injunction, and (4) the injunction would not be adverse to the public interest. *State v. U.S. Env't Prot. Agency*, 989 F.3d 874, 883 (10th Cir. 2021) (citations omitted). If a movant is seeking a disfavored injunction, she faces a higher standard. *Id.* Preliminary injunctions are disfavored when the injunction alters the status quo, constitutes a mandatory injunction, or gives the movant all the relief that she would recover at trial. *Id.* at 883-84. Disfavored injunctions require a strong showing on the likelihood of success and balance of harms elements. *Id.* at 884.

III. ANALYSIS

***3** Plaintiff contends the Preferred Names and Pronouns Policy and the Communication with Parents Policy violate her free speech, free exercise of religion, and due process rights. The Court analyzes each below.

A. Preferred Names and Pronouns Policy

As noted above, the District's Preferred Names and Pronouns Policy states: "Students will be called by their preferred name and pronouns." Doc. 1-18 at 5. Plaintiff argues this directive violates both her freedom of speech and free exercise rights under the First Amendment and her due process rights under the Fourteenth Amendment.

While the directive appears mandatory and without exception, the District represented at the hearing that: (1) an employee is not required to use preferred pronouns and may refer to students only by their preferred first name, provided the employee elects not to use pronouns for any student; and (2) inadvertent or unintentional use of pronouns to refer to some students, where an employee's standard practice is to refer to all students only by preferred first name, will not transform the employee's standard practice into a policy violation. [4]

[4] There appear to be numerous other exceptions and caveats to this policy. For example, the District itself refers to a student by the student's legal name, even when the student has requested to be referred to by a preferred name, in official records; as a login credential for Skyward; for the student's email address; and in yearbooks. Further, coaches and gym teachers are apparently allowed to use last names to refer to students in lieu of preferred names and pronouns because the use of last names is more convenient in a sports setting. And District employees are not required to use preferred names and pronouns when employees are speaking about a student outside the student's presence.

Plaintiff testified at the hearing that she has been and is willing to continue referring to all students by their preferred first names (albeit, not their preferred pronouns). The District's counsel indicated that this practice would not violate the District's policy provided any occasional use of pronouns by Plaintiff, despite her default practice of referring to students by their preferred first name, was inadvertent or unintentional. Given the parties' apparent agreement that Plaintiff's present practice is acceptable to both, the Court finds Plaintiff is unlikely to experience any irreparable harm from this policy before the Court rules on the merits in the ordinary course of this case. *See State*, 989 F.3d at 884. Therefore, the Court will deny injunctive relief at this time and without prejudice to Plaintiff's ability to seek preliminary injunctive relief should circumstances change.

In denying preliminary injunctive relief regarding the Preferred Names and Pronouns Policy, the Court specifically relies on statements made by the District that Plaintiff's current practice is not subject to discipline. The Court is not making any ruling on the merits of Plaintiff's free speech, free exercise, and due process claims as it pertains to the Preferred Names and Pronouns Policy. These claims remain live given Plaintiff's requests for a permanent injunction, declaratory judgment, damages, and attorney fees. The Court will resolve these merits questions in the ordinary course of the litigation.

B. Communication with Parents Policy

***4** While the parties may have reached détente regarding the Preferred Names and Pronouns Policy, the parties remain very much at odds over the Communication with Parents Policy and the potential for disciplinary action should Plaintiff violate it. This policy prohibits employees from revealing to parents that a student has requested use of a preferred name or different set of pronouns at school "unless the student requests the administration or a counselor to do so, per Federal FERPA guidance." Doc. 1-16 at 2. In application, the policy prohibits teachers not only from initiating communication with parents for the express purpose of disclosing preferred names and pronouns, but it also prohibits teachers from revealing preferred names and pronouns as part of a communication with parents about an unrelated matter, such as grades or attendance. It is this latter application of the policy from which Plaintiff seeks relief. [5]

[5] In other words, Plaintiff disclaims any plan to affirmatively reach out to parents for the purpose of telling them that their child is using preferred names or pronouns.

Like her challenge to the Preferred Names and Pronouns Policy, Plaintiff contends the Communication with Parents Policy violates her free speech and free exercise rights under the First Amendment, and her due process rights under the Fourteenth Amendment. The Court finds that Plaintiff is entitled to a preliminary injunction based on her free exercise rights. Therefore, the Court declines to address Plaintiff's free speech and due process arguments at this time; it will instead address those matters in the ordinary course of the litigation.

1. Likelihood of Success

The free exercise clause of the First Amendment states, in pertinent part, that "Congress shall make no law ... prohibiting the free exercise [of religion]." U.S. Const. amend. I. While the First Amendment by its terms applies only to Congress, it was incorporated by the Fourteenth Amendment and now applies to state and local governments, including public school districts. *See* *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

The fundamental principle of the free exercise clause is that "government commit 'itself to religious tolerance.' " *Meriwether v. Hartop*, 992 F.3d 494, 512 (6th Cir. 2021) (citing *Masterpiece Cakeshop Ltd. v. Colo. Civ. Rts. Comm'n*, 138 S. Ct. 1719, 1731 (2018)). Under this principle, government laws and rules that burden religious exercise are "presumptively unconstitutional unless they are both neutral and generally applicable." *Id.* (citing *Emp't Div., Dept' of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877-78 (1990)). A law "is not generally applicable if it 'invite[s]' the government to consider the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions.' " *Fulton v. City of Phila., Penn.*, 141 S. Ct. 1868, 1877 (2021) (alteration in original) (citations omitted). "A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.* (citation omitted).

In considering whether a law is neutral and generally applicable, this Court must "look beyond the text and scrutinize the history, context, and application of a challenged law." *See* *Hartop*, 992 F.3d at 512 (citing *Masterpiece*, 138 S. Ct. at 1731; *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) (discussing the neutrality prong)). If a rule that burdens religious exercise is not neutral and generally applicable, it will survive constitutional challenge only if the government can demonstrate "interests of the highest order" and that the rule in question is "narrowly tailored" to achieve those interests. *Fulton*, 141 S. Ct. at 1881 (citation omitted).

Here, Plaintiff demonstrates that the Communication with Parents Policy burdens her exercise of religion. Plaintiff has testified that she is a Christian and believes the Bible prohibits dishonesty and lying. She believes it is a form of dishonesty to converse with parents of a child using one name and set of pronouns when the child is using and being referred to at school by a different name and pronouns, unbeknownst to the parents. The Court finds Plaintiff's testimony concerning her religious beliefs to be credible and subjectively sincere. *See* *City of Hialeah*, 508 U.S. at 531 ("[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment Protection." (internal quotations and citation omitted)).

***5** Plaintiff has also demonstrated that, as part of her job, she regularly communicates with parents, whether by email or in person. In fact, she has had to communicate in writing with the parents of a transgender student earlier this year, and it is highly likely she will further communicate with transgender students' parents before the end of the academic year. Neither of Plaintiff's transgender students have authorized the District to disclose their preferred names and pronouns to their parents. Plaintiff would face the Hobbesian choice of complying with the District's policy and violating her religious beliefs, or abiding by her religious beliefs and facing discipline.

The District counters that its policy does not require Plaintiff to use any student's name or pronouns in conversations with parents—it merely prohibits Plaintiff from revealing to a student's parents a preferred name or pronouns the student is using at school if the student has not authorized the parents to know. Thus, argues the District, Plaintiff can simply refer to students in conversation with parents as "your child" or "your student," never referring to the child by name or pronoun. But Plaintiff has testified to her belief that having a conversation with parents about a child, and not disclosing the name and pronouns used at school, is itself a form of "conceal[ment]" [6] —a material omission if you will—given Plaintiff's belief that parents have a fundamental right to control the upbringing of their children. Moreover, it is simply unrealistic to suppose that a teacher can communicate with parents about their child and never refer to the child by name or pronoun. Such a system would be "impossible to comply with," and when Plaintiff "slipped up," she could face discipline. *See* *Hartop*, 992 F.3d at 517. This Court agrees that Plaintiff's religious rights "do not hinge on such a precarious balance." *Id.* Therefore, the Court finds Plaintiff has demonstrated continued application of the Communication with Parents Policy to her burdens her religious exercise.

6 Plaintiff's subjective perception that this is "conceal[ment]" is not fanciful. The District grants parents access to its Skyward system. When a parent logs in, Skyward displays certain information about their child, including the child's legal name as reflected on District records and any preferred name the parent has disclosed to the District. The Skyward database also contains

> preferred names and pronouns that students are using at school but that parents may be unaware of. Although the District's administrators and teachers can see these preferred names and pronouns when they login into Skyward, this data is not populated and visible in the version of Skyward that parents are granted access to.

Because the Communication with Parents Policy burdens Plaintiff's religious rights, the Court must determine whether the Communication with Parents Policy is neutral and generally applicable. The Court concludes the policy is not generally applicable because the District has created multiple exceptions that either necessitate consideration of the putative violator's intent or the District has exempted conduct for secular reasons but is unwilling to exempt Plaintiff for religious reasons. *See* *Fulton*, 141 S. Ct. at 1877.

First, testimony at the hearing established that at least a "couple" of other District employees had inadvertently disclosed to parents the preferred name or pronouns of children who had not authorized the District to disclose this information to parents. The District stated that such persons were not disciplined for violating the policy despite the policy's language drawing no distinction between unintentional or purposeful violations. Thus, in the District's practice, to determine whether the policy has been violated by a particular disclosure, the District must determine whether the putative violator intended to violate the policy or not.

***6** Second, while the policy by its terms would prohibit any disclosure of a child's preferred name and pronouns to parents absent a child's permission, the District admitted at the hearing that if parents requested copies of education records that included information concerning preferred names and preferred pronouns, the District would disclose the information to parents without a child's permission because the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99, requires it. Thus, the District is willing to make an exception for the secular purpose of complying with federal law, but not religious reasons.

Third, at the hearing, the Court asked what the District would expect a teacher to do if, during a conversation with parents, parents specifically asked the teacher if their child was being addressed at school by a preferred name or pronouns. The District's counsel indicated that such a teacher should refer the parents to an administrator and the administrator would then answer the question and disclose the requested information in a subsequent conversation or meeting. [7] But the policy does not facially carve out administrators from its scope. Thus, the District has created another exemption in practice for administrators to disclose information when necessary for the secular purpose of responding to a parent's direct [8] question, but again is unwilling to grant an exemption for religious purposes.

7 As explained by *Fulton*, the Court must consider whether the secular exemption undermines the District's asserted interests in a similar way. As discussed below, the District told parents the policy was adopted for the purpose of complying with FERPA. But, as also discussed below, FERPA does not restrict parental access to student records; to the contrary, it requires a school district to provide education records to parents whether a child wants the records disclosed or not. Thus, allowing an administrator to disclose to parents because they asked is no less a violation of the District's flawed understanding of FERPA than if the District allowed a teacher to disclose for religious reasons. The District later articulated it did not want preferred name and pronoun information disclosed because it is not the District's "place" to "out" students to parents who might disagree with the child's desire to go by a preferred name or pronoun. This stated interest is undermined just as much by an administrator disclosing the information to parents who ask, as it is by a teacher doing so when necessary to avoid a religious conflict.

8 Of course, some parents may be totally ignorant of the fact that their minor child is being called by a different name and pronouns at school, in which case they would never know to ask for education records. Under the District's practice, it is only those parents who affirmatively ask the right question who would receive this information. This seems rather inconsistent with the District's stated position that parents are "full partners in their child's education."

Because the Communication with Parents Policy is not generally applicable, the District has the burden to demonstrate the policy is justified by "interests of the highest order"—a so-called, "compelling" interest—and that the policy in question is "narrowly tailored" to achieve those

interests. *Fulton*, 141 S. Ct. at 1881; *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429-30 (2006) (government bears the burden to satisfy strict scrutiny even at the preliminary injunction phase).

When operating under a strict scrutiny standard, the Court must consider the genuine interest that the District believed supported the policy when it adopted the policy. *See Yellowbear v. Lampert*, 741 F.3d 48, 58-59 (10th Cir. 2014); *see also Fox v. Washington*, 949 F.3d 270, 283 (6th Cir. 2020) ("[B]ecause the government's asserted interest must be genuine, not hypothesized or invented *post hoc* in response to litigation, [the government] will be limited to raising justifications it cited at the time it made the decision" (internal citations and quotations omitted)).

***7** To that point, the policy was announced by the District's Superintendent, Dr. Reginald Eggleston in an email dated October 7, 2021, and sent to all parents and guardians. That email stated, in pertinent part, "USD 475 will not communicate [preferred names and pronouns] to parents unless the student requests the administration or counselor to do so, per FERPA guidelines." (emphasis added). Thus, the District told parents that the reason for its policy was to comply with FERPA. There is no reason to believe the District told parents one thing, while having a hidden, subjective motivation it did not disclose. Therefore, the Court accepts the October 7, 2021 email as an accurate explanation of the District's contemporaneous justification for adopting the policy.

The problem for the District is that FERPA does not prohibit the District from communicating with parents about their minor child's preferred name and pronouns. To the contrary, FERPA is a law that specifically empowers parents to receive information about their minor students; it mandates the District to make education records [9] available to parents upon request—whether the child wants their parents to have the records or not. *See* 34 C.F.R. § 99.10(a) ("Except as limited under § 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records" (emphasis added)). [10] And FERPA does not exempt from its disclosure obligation education records that deal with preferred names and pronouns. Thus, the District's contemporaneous justification for adopting the policy is predicated on an erroneous understanding of the law. And the District's statement to parents that "FERPA guidelines" prevented the District from disclosing preferred name and pronoun information without a child's permission, was misleading. The District could not have a legitimate, compelling interest in withholding information based on FERPA when FERPA in fact required the District to disclose the very information at issue—at least to the extent the information was contained in an education record.

9 Under FERPA, an education record is a record that is "directly related" to a student and that is "maintained" by a school or party "acting for" the school. 34 C.F.R. § 99.3. Evidence at the hearing established that the District maintains information about a student's preferred name and pronouns in Skyward and, for some students, in a binder stored in the registrar's office. It also maintains such information in emails sent and retained by the counselor and completed forms that the District previously required students to fill out. All these documents seem to be education records under FERPA.

10 *See generally* U.S. Dep't of Educ. Student Priv. Pol'y Off., *A Parent's Guide to the Family Educational Rights and Privacy Act* (2021), https://studentprivacy.ed.gov/resources/ferpa-general-guidance-parents.

Even if the Court were to consider the post hoc explanation the District has given in the context of this litigation, the Court still concludes that the District has failed to establish the Communication with Parents Policy is supported by a compelling interest. Specifically, at the hearing, the District's administrator took the position it was not the District's place to "out" a student to their "parents." And the District's counsel argued that "if the home life is such that the —the student doesn't want to be out to their parents, it's not our job to do it."

But as noted above, federal policy as evidenced by FERPA is that parents do have a right of access to information held by the school about their minor children. Moreover, even if FERPA did not mandate that schools make education records available to parents who ask for them, the fact that it is not the school's duty to disclose information to parents does not mean the school has a compelling interest in directing teachers to withhold or conceal such information and punishing teachers if they violate the policy.

***8** Moreover, as the District conceded at the hearing, parents in the United States have a constitutional right to control the

upbringing of their children. *See, e.g.*, *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). This is not a trivial right—it is a fundamental one that is "perhaps the oldest of the fundamental liberty interests" recognized by the Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). It rests on a fundamental premise that a child is "not the mere creature of the State," *id.* (emphasis added) (citation omitted), and that parents—"those who nurture him and direct his destiny"—"have the right, coupled with the high duty, to recognize and prepare him for additional obligations," *id.* (citation omitted). It is difficult to envision why a school would even claim—much less how a school could establish—a generalized interest in withholding or concealing from the parents of minor children, information fundamental to a child's identity, personhood, and mental and emotional well-being such as their preferred name and pronouns. [11]

11 Of course, Plaintiff does not have standing to assert constitutional claims on behalf of parents, nor does she attempt to. But the fundamental rights that parents have are a valid consideration in determining whether the District has established a legitimate, compelling interest in prohibiting Plaintiff from disclosing to parents the preferred name and pronouns the child is using, while threatening Plaintiff with disciplinary sanctions if she violates the policy.

Presumably, the District may be concerned that some parents are unsupportive of their child's desire to be referred to by a name other than their legal name. Or the District may be concerned that some parents will be unsupportive, if not contest, the use of pronouns for their child that the parent views as discordant with a child's biological sex. But this merely proves the point that the District's claimed interest is an impermissible one because it is intended to interfere with the parents' exercise of a constitutional right to raise their children as they see fit. [12] And whether the District likes it or not, that constitutional right includes the right of a parent to have an opinion and to have a say in what a minor child is called and by what pronouns they are referred.

12 Because it is illegitimate to conceal information from parents for the purpose of frustrating their ability to exercise a fundamental right, there are real questions whether the District's claimed interests in the Communication with Parents Policy—broadly written as it is—would satisfy even the rational basis standard that would govern if the rule were neutral and generally applicable.

The Court can envision that a school would have a compelling interest in refusing to disclose information about preferred names or pronouns where there is a particularized and substantiated concern that disclosure to a parent could lead to child abuse, neglect, or some other illegal conduct. Indeed, at least in Kansas, were such a case to arise, a school would likely have to report the matter to the Department for Children and Families. *See generally* K.S.A. § 38-2223. But the District has not articulated such an interest here—either abstractly or in the case of the specific students in Plaintiff's class. [13]

13 To be clear, there is no evidence in the record that the transgender students in Plaintiff's class are at risk of harm from their parents.

Even if the District had articulated an interest in preventing abuse by a parent (that is, abuse as the law defines it, and not simply as an administrator might subjectively perceive it), the Communication with Parents Policy would not be narrowly tailored to achieve such an interest. The policy is overinclusive because it prohibits the disclosure of preferred name and pronoun information to parents without any assessment of whether disclosure would actually pose a risk. Moreover, the policy would also be underinclusive insofar as it permits administrators to disclose preferred name and pronoun information to parents simply if parents ask, and without any determination whether such disclosure poses a risk to the child. *See* *City of Hialeah*, 508 U.S. at 546 (finding laws not narrowly tailored where they were "overbroad or underinclusive in substantial respects"). An appropriately tailored policy would, instead, make an individualized assessment whether there is a particularized and substantiated concern of real harm—as opposed to generalized concern of parental disagreement—and prohibit disclosure only in those limited instances.

***9** Because the Communication with Parents Policy substantially burden's Plaintiff's exercise of religious rights, is not generally applicable, and fails both prongs of the strict scrutiny analysis, the Court finds that Plaintiff has demonstrated a substantial likelihood of success on her free exercise claim as it concerns this policy.

2. Irreparable Harm

The District argues that Plaintiff is not at serious risk for future irreparable injury. Any employment discipline she could receive would be compensable with money damages and her chances of being disciplined are low because she has not been disciplined this school year and Plaintiff is not returning to work at Fort Riley Middle School next year. Plaintiff counters by arguing that the District's past practice shows that she can be disciplined within a few days. [14] Additionally, Plaintiff has already not been able to follow her conscience with regards to parental communications.

14 Plaintiff was issued a notice of suspension one day after the April 2021 incidents.

Any deprivation of any constitutional right is an irreparable injury. *Free the Nipple-Fort Collins v. City of Fort Collins, Colo.*, 916 F.3d 792, 806 (10th Cir. 2019). Here, the Court has already determined that Plaintiff is likely to succeed on her free exercise claim on the Communication with Parents Policy. And the Court also finds it reasonable that she would communicate with the parent of one of the transgender students before the end of the academic year. Although the short timeline and change in work next year does not obviate irreparable harm, it is a reason for limiting the timeframe of the preliminary injunction. Thus, Plaintiff has established irreparable injury.

3. Balance of Harms

The District argues that a preliminary injunction would significantly hinder the District's "obligations to protect young persons entrusted to its care." Doc. 11 at 36. But "[w]hen a constitutional right hangs in the balance, though, 'even a temporary loss' usually trumps any harm to the defendant." *Free the Nipple*, 916 F.3d at 806 (citation omitted). The Court recognizes that the District is trying to create a stable learning environment for children. But the District fails to articulate any specific, concrete harms sufficient to outweigh Plaintiff's weighty interest in preliminary relief. Therefore, the balance of harms favors Plaintiff.

4. Public Interest

It is "always in the public interest to prevent the violation of a party's constitutional rights." *Id.* at 807. Because the Court finds that Plaintiff is likely to succeed on her free exercise claim for the Communication with Parent Policy, this factor also favors Plaintiff. Thus, Plaintiff has made a sufficient showing as to all four elements for a preliminary injunction against enforcement of this policy. [15] Because the Court holds for Plaintiff on her free exercise basis for a preliminary injunction, it does not address Plaintiff's other arguments for her other claims on this policy.

15 The District argues that Plaintiff seeks a disfavored injunction. Plaintiff is not seeking a disfavored injunction. Plaintiff is seeking a prohibitory injunction rather than a disfavored mandatory injunction because she seeks to prohibit the District from taking adverse action against her for a violation of her constitutional rights. Plaintiff is not seeking a disfavored injunction that grants her all the relief she'd receive after a trial on the merits either because she could receive other relief (such as damages and attorneys' fees). Finally, this injunction simply seeks to preserve "the last peaceable uncontested status existing between the parties before the dispute developed." *Free the Nipple*, 916 F.3d at 798 n.3 (citation omitted). That peaceable status with regards to the Communication with Parents Policy was prior to the policy's implementation. So Plaintiff does not seek a disfavored preliminary injunction that alters the status quo.

IV. CONCLUSION

***10** The Court has carefully analyzed the record and the law in the limited time afforded by this case. And the Court realizes that this is a difficult and complex area of the law that continues to develop. But based on the record before the Court, the Court denies a preliminary injunction as it relates to the Preferred Names and Pronouns Policy but grants a limited preliminary injunction on the Communication with Parents Policy because Plaintiff has shown the four necessary factors for her free exercise rights.

THE COURT THEREFORE ORDERS that Plaintiff's motion for a preliminary injunction (Doc. 4) is GRANTED IN PART

and DENIED IN PART. The Court denies a preliminary injunction on the Preferred Names and Pronouns Policy based on statements made by the District that Plaintiff's current practice would not be deemed a policy violation.

THE COURT FURTHER ORDERS that Defendants are ENJOINED from disciplining Plaintiff for referring to a student by the student's preferred name and pronouns in her communications with the student's parents within the regular course of her duties. The Court relies on Plaintiff's statements that she does not intend to communicate with a parent for the sole purpose of disclosing a student's preferred name and pronouns. This injunction terminates on May 18, 2022, or at the conclusion of Plaintiff's contractual responsibilities to the District, whichever is later.

IT IS SO ORDERED.

All Citations

Slip Copy, 2022 WL 1471372

EXHIBIT 2

2021 WL 9276274
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Supreme Court of Virginia.

LOUDOUN COUNTY SCHOOL BOARD, et al., Petitioners,

v.

Byron Tanner CROSS, Respondent.

Record No. 210584

|

August 30, 2021

Synopsis

Background: Public-school teacher, who was placed on administrative leave following comments he offered in opposition to county's proposed transgender-student policy during public comment period of school board meeting, brought action against county school board and superintendent, seeking declaration that defendants unlawfully retaliated against teacher for exercising right to free speech under state constitution and violated constitutional provision on viewpoint discrimination, and teacher also sought permanent injunction directing his reinstatement and precluding future punishment for such speech. The Circuit Court, No. CL21003254-00, granted teacher's request for preliminary injunction. Board and superintendent petitioned for review, which was granted.

Holdings: The Supreme Court held that:

[1] teacher's comments constituted pure speech subject to constitutional protection rather than fighting words or obscenity, and

[2] trial court acted within discretion in finding that teacher was likely to succeed on merits of claim.

Affirmed.

Procedural Posture(s): Petition for Discretionary Review; Motion for Preliminary Injunction.

West Headnotes (8)

[1] **Courts** Abuse of discretion in general

A court abuses its discretion when it (1) does not consider a relevant factor that should have been given significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) considers proper factors but commits a clear error of judgment while weighing those factors.

[2] **Injunction** Extraordinary or unusual nature of remedy

Injunction Discretionary Nature of Remedy

Injunction Prohibitory nature; preservation of status quo

An injunction is an extraordinary remedy and rests on sound judicial discretion to be exercised upon consideration of the nature and circumstances of a particular case and is meant to preserve the status quo between the parties while the litigation is ongoing.

[3] **Injunction** Factors Considered in General

Injunction Injury, Hardship, Harm, or Effect

Whether to grant a temporary injunction requires consideration of the requesting party's allegations and the veracity and magnitude of the asserted harm.

[4] **Injunction** Weight and Sufficiency

On a motion for a preliminary injunction, a court may contemplate the substance and adequacy of factual support for a plaintiff's allegations.

[5] **Constitutional Law** Public or private concern; speaking as "citizen"

Under the First Amendment, government may not take adverse employment actions against its employees in reprisal for their exercising their

right to speak on matters of public concern. U.S. Const. Amend. 1.

[6] **Constitutional Law** Efficiency of public services

Determining whether the government transgressed First Amendment prohibition on adverse employment actions against its employees in reprisal for their exercising their right to speak on matters of public concern involves a two-step inquiry, where the first step asks whether employee spoke on an issue of social, political, or other interest to a community, and second step requires weighing employee's interest in making his public comments against the government's interest in providing effective and efficient services to the public. U.S. Const. Amend. 1.

[7] **Constitutional Law** Statements at board meetings

Education Protected activities in general

Public-school teacher's comments at public comment period of school board meeting objecting to county's proposed policy on transgender students, stating that he believed policy would damage students through improper lack of pushback and that policy was "sinning against our God," constituted pure speech subject to First Amendment protection, rather than fighting words or obscenity, for purposes of teacher's claim that he was placed on administrative leave in retaliation for those comments. U.S. Const. Amend. 1.

[8] **Civil Rights** Employment practices

Trial court acted within discretion in finding, at preliminary-injunction stage, that public-school teacher's interest in making his public comments outweighed any government interest in providing effective and efficient services to public, as would support finding that teacher was likely to succeed on merits of his claim that his suspension, based on comments he made during public comment period of school board meeting criticizing county's proposed policy on transgender students, violated state constitution's right to free speech; both teacher and public were centrally interested in open discussion of agenda items at public meetings, teacher was opposing a policy that might burden his freedoms of expression and religion, and there was no evidence of actual disruption of school operations. Va. Const. art. 1, § 12.

Upon a Petition for Review Under Code § 8.01-626, Justices Kelsey, McCullough, and Chafin, Circuit Court No. CL21003254-00

Opinion

***1** The defendants/petitioners, Loudoun County School Board, Superintendent Scott A. Ziegler, and Interim Assistant Superintendent Lucia V. Sebastian, petition under Code § 8.01-626 for review of the circuit court's order granting a temporary injunction to Byron Tanner Cross, a Loudoun County Public Schools teacher. Cross was placed on administrative leave following comments he offered in a public forum. We grant the petition for review for purposes of reviewing the lower court's decision on the merits. Having done so, we affirm the court's preliminary injunction and offer the following explanation.

BACKGROUND

Cross has worked in Loudoun County Public Schools as an elementary school physical education teacher for eight years. Pursuant to Code § 22.1-23.3,[*] the School Board is considering whether to adopt Policy 8040, "Rights of Transgender Students and Gender-Expansive Students" ("transgender policy"). If adopted, the transgender policy will: (1) allow students to use a name different than their legal name; (2) allow students to use gender pronouns different from those corresponding to their biological sex; (3) require school staff to use students' chosen name and gender pronouns; and (4) allow students to use school facilities and participate in extra-curricular activities consistent with their chosen gender identity. Cross' complaint asserted that, based on scientific evidence regarding gender and child development, his philosophical views on the rights of parents

and educators, and his Christian religious beliefs, he objects to (1) the idea that someone can be transgender, (2) treating children as transgender, and, accordingly, (3) numerous aspects of the transgender policy.

*

> Code § 22.1-23.3(A) provides that "[t]he Department of Education shall develop and make available to each school board model policies concerning the treatment of transgender students in public elementary and secondary schools." Further, "[e]ach school board shall adopt policies that are consistent with but may be more comprehensive than the model policies developed by the Department of Education." Code § 22.1-23.3(B).

Cross learned the Board would be considering whether to adopt the transgender policy during its May 25, 2021 meeting. He registered to speak during the meeting's public comment period and delivered the following statement:

> My name is Tanner Cross. And I am speaking out of love for those who suffer with gender dysphoria. *60 Minutes,* this past Sunday, interviewed over 30 young people who transitioned. But they felt led astray because lack of pushback, or how easy it was to make physical changes to their bodies in just 3 months. They are now de-transitioning. It is not my intention to hurt anyone. But there are certain truths that we must face when ready. We condemn school policies like 8040 and 8035 because it will damage children, defile the holy image of God. I love all of my students, but I will never lie to them regardless of the consequences. I'm a teacher but I serve God first. And I will not affirm that a biological boy can be a girl and vice versa because it is against my religion. It's lying to a child. It's abuse to a child. And it's sinning against our God.

***2** The next day, Cross alleged, he fulfilled his teaching duties as usual. That evening, however, a supervisor asked to speak with Cross the next morning. When they met, the supervisor informed Cross he was being placed on administrative leave with pay. As an explanation for this decision, Cross received a letter from Assistant Superintendent Sebastian stating Cross was under investigation for allegations he engaged in conduct that had a disruptive impact on the operations of Leesburg Elementary. The letter also informed Cross that, absent permission from Leesburg Elementary principal, Shawn Lacey, he was banned from Loudoun County Public Schools property and events. Later that day, an email was sent to "all Leesburg Elementary parents and staff" informing them of Cross' suspension.

On May 28, 2021, Cross, through counsel, contacted Assistant Superintendent Sebastian demanding that Cross be reinstated. The Board's counsel responded, refused Cross' demand, and stated his suspension was due to his public comments and the "significant disruption" they caused at Leesburg Elementary, including "multiple complaints and parents requesting that ... Cross have no contact with their children."

Cross alleged he would like to offer further public comments at future Board meetings but he fears doing so will draw additional sanctions. Cross also alleged that other Loudoun County Public Schools employees wish to voice their opinions about the transgender policy but have refrained for fear of retaliation like Cross has experienced. Cross provided supporting affidavits from five such employees. Finally, Cross alleged that "[o]ther [public school] employees have made public comments at ... Board meetings on a variety of proposed policies, including in support of [the transgender policy] and other gender-identity related policies but [the Board] ha[s] not punished those employees because of their viewpoints."

Based on these allegations, Cross' "First" and "Second Cause[s] of Action" (collectively, "free speech claims") claimed the Defendants were retaliating against him for exercising his right under the Virginia Constitution to express his views regarding "gender-identity education policy." Further, Cross asserted the Defendants erected a prior restraint by effectively banning him from Board meetings and that his suspension and the threat of further sanction was chilling his right to speak publicly as a private citizen. Relatedly, Cross claimed the Defendants violated the Virginia Constitution's prohibition on viewpoint discrimination by punishing and

threatening to punish him in the future for expressing his opinion of the transgender policy but not disciplining other Loudoun County Public Schools employees who "expressed different views on proposed gender-identity education policy."

Cross' "Third" and "Fourth Cause[s] of Action" (collectively, "free exercise claims") claimed the Defendants violated his right to freely exercise his religion under the Virginia Constitution and the Act for Religious Freedom, Code § 57-2.02, when they sanctioned and threatened to sanction him for his public comments. Cross asserted his "views and expression related to gender-identity education policy are motivated by his sincerely held religious beliefs, are avenues through which he exercises his religious faith, and constitute[ ] a central component of his sincerely held religious beliefs." Therefore, Cross contended, his suspension substantially burdened his free exercise of religion by diminishing his ability to profess and maintain his opinions on religious matters.

As relief, Cross sought a declaration that the Defendants had unlawfully retaliated against him for his public comments. Further, Cross requested "a temporary restraining order" and a permanent injunction directing the Defendants to, among other things, reinstate him and refrain from punishing him for speaking about the transgender policy.

***3** At a June 4, 2021 hearing on Cross' request for a temporary injunction pending the resolution of his complaint, the Board argued Cross is unlikely to succeed on his free speech claims because his public comments created a significant and continuing disruption at Leesburg Elementary and his suspension was an appropriate response. The Board also suggested the reasonable anticipation that Cross would not comply with Loudoun County Public Schools' existing non-discrimination policy or the proposed transgender policy justified the actions taken against him.

To support these contentions, the Defendants provided an affidavit from Principal Lacey. Lacey recounted that, a little over one week before Cross' public comments, Cross sent a lengthy email to Superintendent Ziegler and the Board members professing his disagreement with the transgender policy. The email discussed how the concept of being transgender is contrary to Cross' Christian beliefs and how he believes supporting or facilitating children's desire to transition to another gender could harm them physically and psychologically. Cross also stated that his religious beliefs would prevent him from treating a child as other than their biological gender. Although a Board member interpreted Cross' email to indicate he would not follow Loudoun County Public Schools' "pronoun usage policy," no immediate disciplinary action was taken against Cross because, according to Principal Lacey, the email "did not cause any disruption to the operation of Leesburg Elementary."

Lacey further recalled that he witnessed Cross' public comments and, the next morning, learned from school staff that students' parents were discussing the comments on social media. Shortly before 6:30 a.m., Lacey received an email from a student's parent expressing concern over Cross' public comments and requesting that her daughter not attend any of Cross' classes. As a result, Lacey relieved Cross of his responsibility to greet children as they arrived at school that morning and for the rest of the week, so as to avoid possible confrontations between Cross and parents. Another employee was assigned to take Cross' place. Over the course of that day, Lacey received emails from the parents of four more students voicing concern over Cross' statements and requesting that their children not interact with him. One of those parents, who identifies as transgender, stated that, although her children had "looked up to" Cross, they were "absolutely hurt" to learn of his public comments.

Lacey has "continued to receive communications from parents regarding ... Cross," including an email on June 2, 2021, from a parent asking that Cross not teach or supervise her child. That parent stated her child has "loved" being taught by Cross but that he has an older sibling who is transgender and who has struggled with serious mental health issues. Considering Cross' public comments and this lawsuit, the parent asked that Cross not teach or supervise her child out of concern for the mental health and safety of both of her children.

The Defendants also provided an affidavit from Superintendent Ziegler, in which he averred (1) he was apprised of the circumstances of Cross' situation as they developed, (2) the "disruption to Leesburg Elementary ... and to [Loudoun County Public Schools] has continued since ... Cross was placed on administrative leave," and (3) he has received "many emails in response to ... Cross' comments from community members and parents, including parents of transgender students, who expressed the harm that transgender students suffer when their gender identity is not affirmed or their choice of preferred pronoun or name is not

respected." Ziegler provided one such email, sent on June 3, 2021, from a concerned former Board member and "youth suicide prevention advocate." Superintendent Ziegler also claims that Loudoun County Public Schools has a generally applicable practice of suspending with pay any employee whose speech or conduct disrupts Loudoun County Public Schools' operations and has so suspended at least seven other employees in the past two years.

***4** Further, the Defendants offered a June 3, 2021 letter Assistant Superintendent Sebastian provided Cross. The letter explains in greater detail why Cross was suspended, including that his public comments "significantly interfered" with the operations of Leesburg Elementary and Loudoun County Public Schools, "impair the maintenance of discipline, impede the performance of [Cross'] duties, ... undermine the mission of Leesburg Elementary as well as Loudoun County Public Schools, and are in conflict with [Cross'] responsibilities as an employee of Loudoun County Public Schools." While acknowledging that Loudoun County Public Schools had yet to adopt the transgender policy, the letter claimed Cross' public comments conflicted with existing Loudoun County Public Schools policies and state and federal law. Specifically, the letter pointed to Loudoun County Public Schools' policy of providing an equitable and safe learning environment to all persons regardless of "gender identity" and of prohibiting demeaning or harmful actions, particularly if those actions are directed at personal characteristics such as sexual orientation, perceived sexual orientation, gender identity, or gender expression. Similarly, the letter cited Title IX of the Education Amendments Act of 1972 and the Virginia Human Rights Act, Va. Code § 2.2-3900, et seq., as prohibiting discrimination based on gender identity. The letter added that Cross could attend Board meetings with Principal Lacey's permission. Finally, the Defendants drew the circuit court's attention to *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), and *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018), and their citation to research indicating that treating transgender students differently or singling them out is significantly detrimental to their mental wellbeing.

In granting Cross a temporary injunction, the circuit court explained the parties agreed that the four factors defined in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008), should guide the court's decision. Those factors include (1) Cross' likelihood of success on his claims, (2) whether Cross would suffer irreparable harm absent an injunction, (3) the balance of the equities, and (4) the public interest. The court then found Cross was likely to succeed on his claim that "his suspension was an act of retaliation" for his public comments. Looking to *Pickering v. Bd. of Educ.*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968), to guide its analysis, the court determined Cross made his comments as a private citizen speaking on a matter of public concern. Turning to whether Cross' interest in making his public comments outweighed the Defendants' interest in restricting his speech, the court relied on the nine factors outlined in *Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292 (4th Cir. 2006), to gauge the strength of the Defendants' interest. Those factors question whether Cross' comments (1) impaired the maintenance of discipline by supervisors, (2) impaired harmony among coworkers, (3) damaged close personal relationships, (4) impeded the performance of Cross' duties, (5) interfered with the operation of Loudoun County Public Schools, (6) undermined the mission of Loudoun County Public Schools, (7) were communicated to the public or to coworkers in private, (8) conflicted with Cross' responsibilities within Loudoun County Public Schools, and (9) abused the authority and public accountability Cross' role entailed.

The court explained that, with respect to "many" of the *Ridpath* factors, there was simply an "absence of evidence," and, "[f]or others, the evidence lacked the persuasiveness that would weigh in support of [the Board's] actions." The court further explained that, when Cross was reassigned from greeting children, the school had only received one parent email expressing concern about Cross. Thus, no actual disruption of school operations had occurred at that time. Moreover, the court declined to give any weight to the disruption caused by communications Loudoun County Public Schools received regarding Cross following the decision to suspend him on May 26, 2021.

Because Leesburg Elementary serves at least 391 students, the court determined the relatively limited number of parental complaints lodged before Cross' suspension caused a "de minimis" disruption to the school's operations that could not justify "the actions taken by [the Board]." The court concluded its analysis of the *Ridpath* factors by stating that

> [t]hese facts are not exclusive to the Court's consideration but are reflective

> of some that were given greater weight than others not specifically mentioned herein. The Court finds that in balancing all of the factors and weighing the facts presented, [Cross'] interest in expressing his First Amendment speech outweigh[s] the [Defendants'] interest in restricting the same and the level of disruption that [Defendants] assert[ ] did not serve to meaningfully disrupt the operation or services of Leesburg Elementary School.

***5** Finally, the court determined the Defendants' suspending Cross was in response to and adversely impacted his constitutionally protected speech. The court explained that Cross was quickly suspended after his public comments and noted the affidavits of other Loudoun County Public Schools employees who feared speaking publicly due to Cross' suspension. Of particular concern to the court was that the Defendants did not merely suspend Cross, they "took the added, and seemingly unnecessary" step of drastically limiting his ability to offer further public comments at Board meetings. In turn, the court rejected the Defendants' contention that their actions were not retaliatory because they had not disciplined Cross for his email that expressed views similar to his public comments. Accordingly, the court concluded, Cross' suspension and the "additional restrictions placed on him" adversely affected his constitutionally protected speech.

The court found Cross' likelihood of success on his free exercise claims was less clear because, although "intertwined" with his free speech claims, the "direct facts in support of th[e] claim[s] are more vague." However, the court determined, the Defendants had a premature and misplaced expectation that Cross would violate the transgender policy if it was adopted because, as the court noted during the hearing, Cross could conceivably avoid using gender pronouns for any students. After commenting that establishing a likelihood of success on the merits "is a relatively low threshold when compared to other legal standards that fix a much higher bar," the court found Cross made the requisite showing.

Considering whether Cross may suffer irreparable harm absent a temporary injunction, the court determined he was suspended due to his speech and barred from further speech and that others were dissuaded from speaking as a result. The court concluded it need look no further than federal authority holding that "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitute[s] irreparable injury."

The court found the balance of the equities and the public interest also favored granting Cross a temporary injunction because stopping a retaliatory suspension would not harm the Defendants, restoring Cross to his position could ameliorate the potential damage to his reputation, and upholding individual constitutional rights against government repression serves the public good. The court noted the Defendants suspended Cross only three weeks before the end of the school year and then emailed the entire Leesburg Elementary "community" to announce the suspension. To the court, these actions appeared unnecessarily extreme and vindictive.

The court ordered the Defendants to reinstate Cross to his position and remove the ban prohibiting him from Loudoun County Public Schools property and events. The injunction will remain in force until December 31, 2021, unless otherwise dissolved or enlarged.

The Defendants raise the following assignments of error:

1. The trial court erred in finding that Respondent is likely to succeed on the merits of his claims.

2. The trial court erred in finding that Respondent was likely to suffer irreparable harm in the absence of temporary injunctive relief.

3. The trial court erred in failing to consider the totality of the circumstances and placing undue emphasis on the single factor of likelihood of success on the merits.

ANALYSIS

[1] [2] [3] [4] We conclude that the Defendants have not established the circuit court abused its discretion in granting Cross a temporary injunction. *See Commonwealth ex. Rel. Bowyer v. Sweet Briar Institute*, 2015 WL 3646914 (2015) (considering a petition for review under Code § 8.01-626 and reviewing the denial of a temporary injunction for an abuse of discretion). A court abuses its discretion when it (1) does not consider a relevant factor that should have

been given significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) considers proper factors but commits a clear error of judgment while weighing those factors. *Lawlor v. Commonwealth*, 285 Va. 187, 263, 738 S.E.2d 847 (2013). Although this Court has not definitively delineated the factors that guide granting the equitable relief of a temporary injunction, an "injunction is an extraordinary remedy and rests on sound judicial discretion to be exercised upon consideration of the nature and circumstances of a particular case" and is meant to preserve the status quo between the parties while the litigation is ongoing. *Bowyer*, 2015 WL 3646914 at *2; *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 60, 662 S.E.2d 44 (2008). Further, "[n]o temporary injunction shall be awarded unless the court shall be satisfied of the plaintiff's equity," Code § 8.01-628, and whether to grant a "temporary injunction requires consideration of the requesting party's allegations and the veracity and magnitude of the asserted harm." *Bowyer*, 2015 WL 3646914 at *2. Similarly, a court may contemplate the substance and adequacy of factual support for a plaintiff's allegations. *See* *Deeds v. Gilmer*, 162 Va. 157, 269-70, 174 S.E. 37 (1934).

***6** **[5]** **[6]** **[7]** Cross relies on Art. I, § 12 of Virginia's Constitution. Although we have not had occasion to map the precise contours of the rights protected by this Clause, we have generally described Art. I, § 12 of Virginia's Constitution as "coextensive with the free speech provisions of the federal First Amendment." *See Elliott v. Commonwealth*, 267 Va. 464, 473-74, 593 S.E.2d 263 (2004). Looking to federal precedent as persuasive, it is settled law that the government may not take adverse employment actions against its employees in reprisal for their exercising their right to speak on matters of public concern. *See* *Love-Lane v. Martin*, 355 F.3d 766, 776 (4th Cir. 2004) (citing *Pickering*, 391 U.S. at 573, 88 S.Ct. 1731). Determining whether the Defendants transgressed that prohibition involves a "two-step inquiry," where the first step asks whether Cross spoke on an "issue of social, political, or other interest to a community." *Urofsky v. Gilmore*, 216 F.3d 401, 406-07 (4th Cir. 2000) (citing *Connick v. Myers*, 461 U.S. 138, 146, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983)). The Defendants do not dispute that Cross did. The targeted speech in our case 'did not amount to fighting words' and were 'not obscene' but rather were 'the kind of pure speech to which ... the First Amendment would provide strong protection.' " *Mahanoy Area School District v. B.L.*, —— U.S. ——, 141 S. Ct. 2038, 2047, 210 L.Ed.2d 403 (2021) (citations omitted).

[8] The second step requires weighing Cross' interest in making his public comments against the Defendants' "interest in providing effective and efficient services to the public." *Billioni v. Bryant*, 998 F.3d 572, 576 (4th Cir. 2021) (internal quotation marks omitted). Performing this "difficult" balancing of interests required the circuit court to examine the unique circumstances of this case, including the context in which Cross made his public comments and the extent to which they disrupted Loudoun County Public Schools' "operation and mission." *Connick*, 461 U.S. at 150, 103 S.Ct. 1684; *Ridpath*, 447 F.3d at 319 (internal quotation marks omitted). As the parties and the circuit court recognized, the Fourth Circuit has developed nine factors to consider when gauging the magnitude of the disruption a public employee's speech causes his employer. *See* *Ridpath*, 447 F.3d at 317.

The Defendants incorrectly minimize Cross' interest in making his public comments. *See* *Hall v. Marion Sch. Dist. No. 2*, 31 F.3d 183, 195 (4th Cir. 1994) ("When an employee's speech substantially involves matters of public concern ... the state must make a stronger showing of disruption in order to prevail."). Cross made those comments at a public Board meeting where one of the issues under consideration was whether to adopt the transgender policy. As the Fourth Circuit has recognized, "[b]oth the [teacher] and the public are centrally interested in frank and open discussion of agenda items at public meetings." *Piver v. Pender Cnty. Bd. of Educ.*, 835 F.2d 1076, 1081 (4th Cir. 1987) (examining claim that teacher was retaliated against, in part, for comments made at a public hearing); *see also* *Pickering*, 391 U.S. at 573, 88 S.Ct. 1731 ("free and unhindered" debate on matters of public importance is the "core value" of the First Amendment). Further, in addition to expressing his religious views, Cross' comments also addressed his belief that allowing children to transition genders can harm their physical or mental wellbeing. This is a matter of obvious and significant interest to Cross as a teacher and to the general public. *See* *Janus v. American Fed. of State, Cnty., and Mun. Employees, Council 31*, —— U.S. ——, 138 S. Ct. 2448, 2476, 201 L.Ed.2d 924 (2018) (commenting that speech on sensitive and controversial political subjects that are of "profound value and concern to the public," like "sexual orientation and gender identity," "occupies the

highest rung of the hierarchy of First Amendment values and merits special protection.") (internal quotation marks and citation omitted). Moreover, Cross was opposing a policy that might burden his freedoms of expression and religion by requiring him to speak and interact with students in a way that affirms gender transition, a concept he rejects for secular and spiritual reasons. Under such circumstances, Cross' interest in making his public comments was compelling. *See* *Meriwether v. Hartop*, 992 F.3d 492, 509-10 (6th Cir. 2021) (explaining that a Christian university professor's First Amendment interest in not using students' preferred gender pronouns was "especially strong ... because [his] speech also relates to his core religious and philosophical beliefs" and because requiring the professor to use students' preferred gender pronouns "potentially compelled speech on a matter of public concern"); *see also* *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660, 120 S.Ct. 2446, 147 L.Ed.2d 554 (2000) ("[T]he fact that an idea may be embraced and advocated by increasing numbers of people is all the more reason to protect the First Amendment rights of those who wish to voice a different view."). Although the Board may have considered Cross' speech to be "a trifling and annoying instance of individual distasteful abuse of a privilege," we believe Cross has a strong claim to the view that his public dissent implicates "fundamental societal values" deeply embedded in our Constitutional Republic. *Mahanoy*, 141 S. Ct. at 2048. (citation omitted).

***7** Further, the Defendants have not identified an abuse of discretion in the circuit court's conclusion that its interest in disciplining Cross was comparatively weak. First, the Defendants fault the court for acknowledging the *Ridpath* factors but then failing to "discuss or consider any of them" before concluding there "was an absence of evidence" and that the "evidence lacked the persuasiveness that would weigh in support of [the Board's] actions." However, and setting aside that *Ridpath* is merely persuasive precedent, following the comments the Board regards as too cursory, the court supplied discussion of the evidence it found particularly germane to its analysis. The court further stated that such evidence was not "exclusive to the [c]ourt's consideration but [was] reflective of some that [was] given greater weight than others not specifically mentioned." The record thus reflects that the circuit court did not engage in an inappropriately myopic or summary application of the law to the facts before it. *See* *Bottoms v. Bottoms*, 249 Va. 410, 414, 457 S.E.2d 102 (1995) ("Absent clear evidence to the contrary ... the judgment of a trial court comes ... with a presumption that the law was correctly applied to the facts.").

We also find unpersuasive the Defendants' suggestion that the circuit court did not give sufficient weight to their heightened interest in regulating Cross' speech because, as a teacher, he occupies a position of significant public contact and trust. Although the Board is correct that public employers have a greater interest in controlling the speech of employees who interact with the public and rely on the public's trust to perform their duties, such as police officers and teachers, there is no indication the court disregarded or did not appropriately consider the unique position Cross occupies. *See* *McEvoy v. Spencer*, 124 F.3d 92, 103 (2d Cir. 1997) ("The more the employee's job requires confidentiality, policymaking, or public contact, the greater the state's interest in firing her for expression that offends her employer.") (internal brackets and quotation marks omitted); *see also, e.g.*, *Melzer v. Bd. of Educ.*, 336 F.3d 185, 198 (2d Cir. 2003) (a teacher's position "by its very nature requires a degree of public trust not found in many other positions of public employment").

Next, the Defendants argue the circuit court erred in refusing to consider that Cross' suspension was justified by the disruption school officials reasonably anticipated once parents quickly expressed their concern over his public comments. As evidence of this purported refusal, the Defendants point to the court's comment that no actual disruption to school operations had occurred when Principal Lacey reassigned Cross from meeting children because, at that time, Lacey had received only one parental complaint regarding Cross. The Board also cites that the court's order does not otherwise mention the subject of anticipated disruption.

Although the Defendants are correct that the negative consequences a public employer reasonably anticipates will result from an employee's speech may under some circumstances justify anticipatory adverse action against the employee to mitigate those consequences, the operative adverse action in this case is not Cross' reassignment from greeting children but the subsequent decision to suspend him and limit his access to public school events. Accordingly, the circuit court could sensibly discount the fact that Cross was removed from morning greeting duty.

Further, no evidence corroborates the Defendants' assertion that Cross was suspended because, after several parents

complained, there was a reasonable expectation that parents and students would avoid interacting with Cross to the point he could not fulfill his duties. Principal Lacey's and Superintendent Ziegler's affidavits do not aver they took their terminal adverse employment actions against Cross because they thought doing so would quell further disruption at Leesburg Elementary. To the contrary, Superintendent Ziegler's affidavit suggests Cross was suspended due to "a neutral and generally applicable practice of utilizing suspension or paid administrative leave when an employee engages in speech or conduct that causes a disruption in the operations of the school or school division." Of course, any such practice would be unconstitutional to the extent the Defendants deploy it overzealously to thwart protected employee speech. Consequently, the Defendants have not demonstrated the circuit court committed an error of law or otherwise abused its discretion. *See Bowyer*, 2015 WL 3646914 at *2 (concluding a circuit court abused its discretion in granting a temporary injunction based on an error of law).

***8** Likewise, the circuit court did not improperly discount the Defendants' interests in ensuring student wellbeing and that its employees support and comply with existing and proposed gender identity policies and corollary anti-discrimination laws. Those concerns appear pretextual because, first, they were not mentioned in either Principal Lacey's or Superintendent Ziegler's affidavits explaining Cross' suspension. Instead, they were raised for the first time in the second letter Cross received from Loudoun County Public Schools several days after he was suspended. More importantly, Cross' email to the Board and Superintendent Ziegler expressed, in even stronger terms than his public comments, his opposition to and unwillingness to comply with the transgender policy. However, the Defendants took no action based on that email because, as Superintendent Ziegler states, it "did not cause any disruption with the operation of Leesburg Elementary." Considering also that the Defendants have never attempted to specify how Cross' continuing to teach at Leesburg Elementary might pose a real and present threat that he or the Loudoun County Public Schools will contravene any anti-discrimination policy or law, neither that concern nor the Defendants' attendant concern that Cross might harm children can justify his swift suspension. *See* *Craig v. Rich Tp. High School Dist. 227*, 736 F.3d 1110, 1119 (7th Cir. 2013) ("[A]n employer's assessment of the possible interference caused by the speech must be reasonable - the predictions must be supported with an evidentiary foundation and be more than mere speculation.") (internal quotation marks omitted); *see also* *Meriwether*, 992 F.3d at 510-11 (rejecting university's assertion that its purported interests in preventing discrimination against transgender students and complying with anti-discrimination laws outweighed a professor's interest in refusing to use students' preferred pronouns).

Further, although the Defendants assert the circuit court should have considered that Cross' public comments necessitated that students' schedules be changed or that they miss required physical education instruction, they presented no evidence of that to the circuit court. There was also no evidence that it would have been problematic or administratively taxing to accommodate the parents who requested Cross not teach their children, nor was there any clear evidence Principal Lacey has diverted material time from his other obligations to manage the fallout from Cross' public comment.

The only disruption the Defendants can point to is that a tiny minority of parents requested that Cross not interact with their children. However, the Defendants identify no case in which such a nominal actual or expected disturbance justified restricting speech as constitutionally valued as Cross' nor have they attempted to explain why immediate suspension and restricted access to further Board meetings was the proportional or rational response to addressing the concerns of so few parents. *See* *Nat'l Gay Task Force v. Bd. of Educ. of City of Oklahoma City*, 729 F.2d 1270, 1274 (10th Cir. 1984) ("[A] state's interests outweigh a teacher's only when the expression results in a material or substantial interference or disruption in the normal activities of the school," and "a teacher's First Amendment rights may be restricted only if the employer shows that some restriction is necessary to prevent the disruption of official functions or to ensure effective performance by the employee"); *see also* *Dougherty v. School Dist. of Philadelphia*, 772 F.3d 979, 991 (3d Cir. 2014) (where speech occupies the "highest rung of First Amendment protection," an employer "bear[s] a truly heavy burden" to demonstrate that speech was too disruptive to warrant protection) (internal quotation marks omitted).

Indeed, it appears only two cases have considered similar situations, and those cases support the conclusion that Cross has a potentially successful claim. In *Meriwether v. Hartop*, the Sixth Circuit emphatically held that a university professor stated viable free speech and free exercise claims based on his university's disciplining him for refusing, based

on his Christian faith, to use a student's preferred pronouns. *Meriwether*, 992 F.3d at 509-17. Further, although a federal district court determined a teacher did not have a constitutionally protected right to disobey a policy requiring that he refer to students by their preferred pronouns and names, the court cautioned that, "[i]mportantly, [the teacher] is not asserting that he was disciplined for criticizing or opposing the [p]olicy." *Kluge v. Brownsburg Cmty. School Corp.*, 432 F. Supp. 3d 823 (S.D. Ind. 2020); *see also Garcia v. Kankakee Cnty. Housing Auth.*, 279 F.3d 532, 534 (7th Cir. 2002) ("Although the [F]irst [A]mendment protects rank-and-file employees from discharge for taking a public stand on how the agency should be managed, it does not protect those who *act* on their views, to the detriment of the agency's operations."). Persuasive authority thus supports the circuit court's determination that at least some of Cross' claims have merit.

***9** Finally, the Defendants are also mistaken in their assertion that the circuit court erred in weighing the other factors it considered when granting Cross a temporary injunction. The Defendants do not contest the court's determination that Cross would be irreparably harmed absent an injunction other than to say it was incorrect because Cross is unlikely to succeed on his claims. However, as explained above, the Defendants have not shown as much. Further, although the Defendants fault the court for not taking adequate account of the need to protect the wellbeing of students and prevent what they term unlawful discrimination, no evidence in the record suggests there is any present threat Cross might be in a position to interact with a transgender student. Because the remaining interests the Defendants raise do not override Cross' and other teachers' interests in exercising their constitutionally protected right to speak on the proposed transgender policy, the circuit court did not abuse its discretion.

This order shall be certified to the Circuit Court of Loudoun County.

Justice Powell took no part in the resolution of the petition.

All Citations

Not Reported in S.E. Rptr., 2021 WL 9276274

January 20, 2023

ADMcomment@courts.mi.gov
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

RE: ADM 2022-03, MCR 1.109 amendment
Order issued January 18, 2023

This proposal is a healthy start and I encourage the Court to require more in this area. Below are four observations/suggestions when considering this file. These are my own.

1. **Constitutionality**. As for the Court's interest in the proposed rule's constitutional implications ("The Court is interested in receiving comments addressing the constitutional implications of this proposal."), the proposal falls within this Court's exclusive Article VI, section 5 authority under the Michigan Constitution:

> The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. . . .

2. **Crime victims deserve similar consideration**. The current proposal focuses on counsel and litigants. I encourage the Court to adopt a measure that similarly operationalizes Michigan Constitution Article I, section 24(1)'s right for crime victims to be treated with "respect for their dignity" throughout the criminal justice process. This could include, for example, when a victim testifies or submits an impact statement.

3. **Witnesses, jurors, and other court users deserve similar consideration in our court processes**. Since AO 2020-23 more expansively includes respect owed to others who engage with the courts, like witnesses and jurors, I also hope that the Court adopts a similar measure that ensures (rather than unenforceably encourages) equal respect for their dignity throughout the court process. [https://perma.cc/WLA9-RXKB].

You are probably already aware of the related work advanced in other jurisdictions.

British Columbia's provincial [https://perma.cc/R3RN-A6F5] and supreme court [https://perma.cc/9ZUK-SPY6] systems each adopted new practices in late 2020 to ensure that each participant's pronoun preference is respected.

Under the inclusive practices, all lawyers and anyone else in a courtroom (like witnesses or an accused person) should provide their full name together with their

gender pronouns and their title, whether it be Ms., Mr., or the gender neutral Mx., or simply "Counsel" during their introduction to the court. If someone doesn't provide their pronouns, the court clerks ask them to specify.

Lisa Nevens (they/them) provided guidance for the new rules and explained, "We take all of the questions out of the equation, and people who are non-binary and participating in the system, can just focus on their participation, instead of being distracted by whether or not their identity will even be recognized, respected."

U.S. federal magistrate Mustafa Kasubhai (he/him) has also written about his courtroom's pronoun practices in the Oregon Women Lawyers [https://perma.cc/D5FQ-BLWA] and this linked court guide [https://perma.cc/AP5B-REC8]. His court guide clarifies the need: "Respectfully acknowledging an attorney's, litigant's, witness', or juror's gender identity with the appropriate pronoun and honorific in court affirms everyone's dignity, cultivates fairness and equal treatment, the appearance of the same, and earns the public's trust and confidence." The guide includes helpful language use examples in case management, trial management, mediation, and other scheduling orders, the court website, email signatures, and the judicial signature byline.

Justice Welch's recent concurring statement in *People v Gobrick* (164080) about courts using gender-neutral pronouns acknowledges similar decency:

> The Court of Appeals' simple use of a footnote and gender-neutral pronoun demonstrates that words matter and that a small change to an opinion, even if unrelated to the merits, can go a long way toward ensuring our courts are viewed as open and fair to all who appear before them.

4. **Case management data fields**. Looking ahead and no matter what action the Court takes on this ADM file, can JIS please consider adding companion pronoun fields to its case management system modules particularly as Michigan moves toward a unified CMS?

Advance thanks to the Court for starting this conversation in Michigan and for considering these observations and suggestions.

Sincerely,
/s/
Lori Shemka
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Lansing, Michigan 48901
shemka@gmail.com

Name: Lana Panagoulia

Date: 01/23/2023

ADM File Number: 2022-03

Comment:
Pursuant to MCR 1.109(D)(1) “Filing Standards,” only the “names of the parties” must be included in captions. There is no compelling governmental interest to force the use of pronouns. In short, the proposed court rule seeks to compel speech in violation of the First Amendment.

Here, undisputed is the fact there has been a recent waive in pop culture on the focus of the choice of pronouns. Both the marginalized and those not marginalized are participating in this waive. This is a choice that one should be entitled to participate in if they so desire and not be penalized for participating. However, there are varying levels of scrutiny and by requiring pronoun designations upon the courts, which is the very decisional framework that determines equality and justice for all races, creeds, religions, sexual identities, and genders we would be asking the tail to wag the dog.

If an individual’s gender identity is relevant to the subject matter of the litigation, it is expected to be included as a basis of the litigation itself. Amending the court rules to force the use of pronouns, therefore, appears, at best a surreptitious attempt to compel speech in violation of the First Amendment. Practically, it is an invitation to invite additional and unnecessary dialogue that may be misinterpreted and bring adversity into the mix because of one’s perceived issues that are non-issues. If they are issues include them in your litigation.

That is, enforcement of sanctions of violations of the standards provides little guidance:
(5) Effect of Signature. The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:

(a) he or she has read the document;

(b) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(c) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(6) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

(7) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

MCR 1.109(E)(5).

Applied here, an aggrieved litigant might accuse the Court of not appropriately using a preferred pronoun. The aggrieved litigant might be a member of a protected class, and the litigation could then take on wholly different course than originally intended with the court confronted with a motion for recusal, in for example, a slip and fall case having no bearing on the designated pronoun issue.

Coupled with this, it is not clear whether under this court rule any aggrieved individual would have to first prove under 5(c) “the document was not interposed for any improper purpose, such as to harass or to cause unnecessary delay or [to] needless[ly] increase in the cost of litigation.”

Finally, if an individual later files a document changing their pronoun designation to a different one that initially appeared in that individual’s first public filing, it is not clear whether the Court must, under MCR 1.109(E)(6) order sanctions for violations for inconsistent filings. Alternatively, it is not clear whether a party making an honest mistake using an incorrect pronoun, could also be sanctioned.

From: Richard Ross
To: ADMcomment
Subject: Use of preferred pronouns by attorneys and judges ADM File No. 2022-03
Date: Tuesday, January 24, 2023 11:34:47 AM

Reference: ADM File No. 2022-03

The Michigan Supreme Court is considering a court rule that would require judges to use the preferred pronouns of parties and attorneys appearing before them.

For justice to be impartially and accurately applied it is crucial that the language used is as clear and concise as possible. Adding a rule or rules that would require judges to use the preferred pronouns of parties and attorneys appearing before them will unnecessarily complicate and confuse the legal proceedings.

Gender identity is said to be fluid with no law to establish the longevity of said preferred pronouns. What is to prevent the plaintiff, defendant or attorney from altering their pronouns numerous times during the legal proceedings simply to cause distruptions and distractions? How will this complicate and confuse cases with juries?

Also, there is nothing in Michigan law that defines gender identity nor makes it a legally recognized category further complicating matters. Will that prompt lawsuits if preferred pronouns are used in court claiming that it confused the attorney or the jurors creating a mistrial?

Gender identity or expression is currently being promoted as being fluid being left entirely up to the person's feelings at the moment. How is this work in the legal system?

Please don't make this mistake by further introducing confusion and complications into the already complicated legal process. Gender identity or expression needs to be the perview of the Legislature where this can be openly debated and decided by the citizens it will affect.

Richard Ross

February 6, 2023

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P.O. Box 30052
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RE: ADM 2022-03, MCR 1.109 amendment
Order issued January 18, 2023

Today's comment is a supplement to my January 20, 2023 comment and is offered in response to the proposal's to-date written objections. This Court can easily dispense with the biology and God/religion objections. And this Court can chart a judicial-operation framework where practices that invite and acknowledge self-identified pronouns do not offend the Constitution. These opinions remain my own.

1. The proposed court rule change cannot be about personal assumptions (bias) about one's biology. If we each take a moment, we can recall personal experiences of knowing people of different genders who have gender-ambiguous first names. Six sitting Michigan judges are included in this example list:

- **Alex** (Alex Palombo, Alex Trebek, or Alex Leavitt, Ph.D.)
- **Avery** (Avery Earehart, Avery Rose, or Avery Van De Water)
- **Blair** (Blair Warner, Blair Underwood, or Dr. Blair Apgar)
- **Casey** (Casey Wright, Casey Kasem, or Casey Brown)
- **Daryl** (Daryl Hannah or Daryl Vizina)
- **Frankie** (Frankie Bergstein, Frankie Davis, or Frankie de la Cretaz)
- **Jamie** (Jamie Ziegert, Jamie Thompson, or Jamie Clarke)
- **Jessie** (Jessie Scott Wood, Jessie Windel Eversole, or Jessie Rodger)
- **Kelly** (Kelly Morton, Kelly Hanson, or Dr. Kelly Coburn)
- **Leslie** (Leslie Jones, Leslie Nielsen, or Leslie E. Owen)
- **Lynn** (Lynn Sweet, Lynn Abke, or Lynn Nguyen)
- **Morgan** (Morgan Fairchild, Morgan Freeman, or Morgan Dante)
- **Noel** (Noel Adams, Noel Gonzalez, or Noel Rose)
- **Payton** (Payton Gore, MD, Payton Manning, or Payton Krammerer)
- **Perry** (Perry Buck, Perry Lund, or Perry French)
- **Shannon** (Shannon Schlegel, Shannon Cole, or Shannon Finnegan)
- **Stacey** (Stacey Grunwell, Stacey D. Lawson, or Stacey Gotsulias)
- **Terry** (Terry Gross, Terry Bradsaw, or Terry Wohlgenant)
- **Tracey** (Tracey Ledbetter, Tracey Irving, or Dr. Tracey Jensen)

The Social Security Administration posts different baby-name data and trends on its website and they are categorized by female and male births [https://perma.cc/YER5-48XX]. I sorted the female and male baby names that increased in popularity from 2020 to 2021. The first names *shared by both genders* were:

Ari	August	Azariah	Baylor	Bellamy
Briar	Denver	Drew	Ellis	Jamie
Kai	Layne	Legacy	Lennon	Oakley
Ocean	Palmer	Quinn	Reign	River
Rory	Rowan	Sage	Salem	Shiloh
Sutton	Tatum			

No good is served by judicial officers and court staff—often managing hundreds or thousands of active case files—having to guess about gender or pronouns. The proposed court rule change simply eliminates confusion and biased assumptions in the judiciary's day-to-day work and, indeed, can make the work more efficient.

2. The proposed court rule change cannot be about God or any religion. The expectation of treating others with courtesy and respect does not violate any known bona fide religion. And for those who are suggesting religious objectors are in play, we must remember that our "one court of justice" foundational rule of law and separation of church and state principles simply forbid an individual judge or court staff member's personal religious beliefs from influencing how our courts treat people. Const 1963, arts 6 § 1 and 1 § 4.

A judicial position is not a religious position. Litigants and the public are entitled to neutral jurists. Judge John G. Roberts explained this during his confirmation hearing for Chief Justice of the United States:

> I do know this, that my faith and my religious beliefs do not play a role in judging. When it comes to judging, I look to the law books and always have. I don't look to the Bible or any other religious source.
> S Hrg 109-158, Serial No. J-109-37 (September 13, 2005), p 227.

If, however, there is a matter where a judge cannot overcome a bias because of their personal religious beliefs, then the remedy is for the judge to self-recuse from the case and enter an MC 264 Order of Disqualification.

3. The proposed court rule change does not offend the Constitution. If the staff report expects resistance from some judges (and possibly court staff?) who may (erroneously) feel that proposed language that "courts are required to use those personal pronouns when referring to or identifying the party or attorney" is a form of

compelled speech that somehow violates their personal First Amendment rights, I believe that notion must fail for at least three reasons.

a. Michigan's Constitution: ADM 2022-03 falls within the Supreme Court's exclusive Article 6, § 5 authority under Michigan's Constitution "The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. . . ."

b. Michigan's judicial canons: Michigan judicial officers forfeit their personal First Amendment rights when they put on the robe. Consider:

- **Canon 1** of Michigan's Code of Judicial Conduct establishes that "the judicial system is for the benefit of the litigant and the public, not the judiciary."
- **Canon 2(A)** explains that "A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly." **Canon 2(B)** clarifies that "[w]ithout regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect."
- **Canon 3(A)(3)** requires a judge at all times to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in an official capacity. **Canon 3(A)(14)** similarly requires a judge to treat every person fairly, with courtesy and respect. See also, Michigan Judicial Tenure Commission letter to District Court Judge Alexis G. Krot (July 5, 2022).
- **Michigan's Model Code of Conduct for Trial Court Employees Canon 3** likewise requires "I will provide impartial treatment to all persons interacting with the court." **Canon 7** expects "I will not discriminate on the basis of race, color, religion, national origin, gender, or other protected group." And **Canon 9** requires courtesy: "I will carry out my responsibilities to litigants, co-workers, and all others interacting with the court in a timely, diligent, and courteous manner."

It should not have to be said that intentional misgendering is disrespectful, discourteous, and contrary to the judicial canons. In this space, in other words, judges do not enjoy a First Amendment right that can be violated. A judge's obligation to promote courtesy, respect, and civility takes priority. In fact, scores of Michigan judicial officers have been privately admonished by the Judicial Tenure Commission over the decades for directing demeaning or discourteous comments to litigants, attorneys, witnesses, jurors, or others.

It is also important to recall how a First Amendment challenge to Michigan's attorney discipline rules already failed.

Seventeen years ago, this Court considered the intersection of the similar Michigan Rules of Professional Conduct 6.5(a)'s courtesy and respect expectations with an attorney's First Amendment rights in *Grievance Administrator v Fieger*, 476 Mich 231 (2006). In a post-opinion order, this Court summarized:

> This Court previously determined in this case that the First Amendment of the United States Constitution does not bar the application of the Michigan Rules of Professional Conduct to statements made by respondent-attorney Geoffrey Fieger in the course of a pending lawsuit in the Court of Appeals. Specifically, Mr. Fieger stated that *he "declared war upon" the judges* hearing his lawsuit, that *such judges could "kiss his ass,"* that *his client should "shove [his finger] up their asses,"* that they were *"three jackass Court of Appeals judges,"* that *"the only thing that's in their 'endo' should be a large plunger about the size of my fist,"* and that *the judges had "changed their name from Adolf Hitler and Goebbels, and*—what was Hitler's [mistress]—*Eva Braun." Grievance Adm'r v Fieger*, order of the Supreme Court, entered December 21, 2006 (Docket No. 127547) (emphasis added).

In other words, notwithstanding the First Amendment, this Court long-ago decided that counsel remains accountable for violating MRPC 6.5(a)'s professional conduct expectations:

> (a) A lawyer shall treat with courtesy and respect all persons involved in the legal process. A lawyer shall take particular care to avoid treating such a person discourteously or disrespectfully because of the person's race, gender, or other protected personal characteristic. To the extent possible, a lawyer shall require subordinate lawyers and nonlawyer assistants to provide such courteous and respectful treatment.

In his 2006 majority opinion in *Fieger*, Chief Justice Taylor explained why this priority (where an attorney's First Amendment claims take a backseat) is necessary to ensure public confidence in the judiciary's work:

> In establishing rules designed to deter and sanction uncivil and discourteous conduct on the part of lawyers, we believe that this Court is doing far more than protecting the sensitivities of judges; rather, we

> believe that we are upholding the integrity of that which is being carried out by the judicial branch of government.
>
> *The performance of these responsibilities requires a process in which the public can have the highest sense of confidence, one in which the fairness and integrity of the process is not routinely called into question,* one in which the ability of judges to mete out evenhanded decisions is not undermined by the fear of vulgar characterizations of their actions, one in which the public is not misled by name-calling and vulgarities from lawyers who are held to have special knowledge of the courts, *one in which discourse is grounded in the traditional tools of the law—language, precedents, logic, and rational analysis and debate. To disregard such interests in the pursuit of a conception of the First Amendment that has never been a part of our actual Constitution would in a real and practical sense adversely affect our rule of law*, a no less indispensable foundation of our constitutional system than the First Amendment. *Grievance Adm'r*, 476 Mich at 242 (emphasis added).

The current ADM 2022-03 proposal seems to be in perfect harmony with the Michigan Code of Judicial Conduct's existing expectations, how the Michigan Judicial Tenure Commission has enforced the underlying principles, and how this Court has already considered similar expectations of attorneys.

c. ADM 2022-03 does not "compel" any speech by a judge/court employee. The proposed rule alternatively allows:

> Nothing in this subrule prohibits the court from using the individual's name or other respectful means of addressing the individual if doing so will help ensure a clear record.

The alternative means that—even if a judge/court employee doesn't want to use the pronoun listed on a court filing—the proposal allows the court to instead use "the individual's name or other respectful means of addressing the individual." A court cannot, however, intentionally and disrespectfully misgender a litigant or attorney.

Continued thanks to the Court for considering these comments.

Sincerely,
/s/
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Name: Janet S.

Date: 02/05/2023

ADM File Number: 2022-03

Comment:
I notice that many comments are mostly personal complaints and grievances, which are political or religion based. No problem.

I hope to address the Court's constitutional concerns, broadly. First, I see no basis in the U.S. or Michigan constitutions that guarantee a person the "right" to be called a particular name. One might broadly construe the 5th and 14th Amendments' due process clauses to guarantee such a right, but I think that is not a logical conclusion. I see nothing in the text, history, or application of the Amendments that suggest such a right exists. One is entitled not to be discriminated against based on personal pronouns; certainly, that is protected, but the right to be called a particular name does not seem to be encompassed.

But assuming such a right is found in either constitution, what would be the constitutional remedy for a violation? I can certainly see some judges (or opposing parties) in Michigan pushing back against calling someone a particular name, based either on political, religious, or moral beliefs. Does that create a right of action against a judge? What about a judge in a case who has determined only two genders exist, which is a likely court case at some point? Would a judge be considered in violation of ethical rules of conduct, opening them up to a judicial grievance? These questions further suggest that a constitutional right does not exist. I can foresee no particular remedy that would be applicable short of removal from the bench.

This Court may certainly create a court rule to allow the identification of a personal pronoun(s). But I think the Court is hard-pressed to require a party or a court to refer to the person with a particular pronoun, unless doing so would be deemed discrimination subject to civil suit or ethical grievance. One thing to consider is that this may be a solution in search of a problem. Thus far, I am unaware of a court or party not respecting a particular gender identification, simply out of respect for the person. Is a court rule necessary?

In short, I see not constitutional protection of such a right. The Court may create a court rule respecting identification of a person's chosen pronoun (assuming it is done with an honest and founded belief, not as a joke). But the Court should not mandate a court or party refer to a person with a particular pronoun. Instead, it should encourage a court or party to respect a person's chosen pronoun(s), as long as the request is made in good faith and not for litigious reasons, out of animosity, out of disrespect, or some other manner meant to degrade, embarrass, or cause incivility.

From: Kyler McGillicuddy
To: ADMcomment
Subject: ADM File No. 2022-03
Date: Friday, February 10, 2023 8:18:44 PM

The court, in considering adopting proposed rule changes to MCR 1.109, does no less than deprive the court and the citizens of the most fundamental constitutional rights upon which this country is founded. Freedom of speech, fair trial, and the free exercise of religion are all at stake. These statements may be cliché. However, overuse of an expression or idea does not diminish the truth of the assertion.

Free speech does not always mean a person can speak whatever they wish without consequence. As relevant here, the Supreme Court has denoted the test for free speech as applied to government employees as a balance between the interests of the employee as a citizen, and that of the government employer. *Pickering v. Board of Ed. Of Tp. High School Dist. 205, Will County Illinois*. 391 U.S. 563 (1968). There is no guarantee that prohibiting speech made by a government employee is *per se* constitutional. Far from it. The balancing test established in *Pickering* is further clarified to two questions. First, did the employee speak as a citizen on "a matter of public concern". *Connick v. Myers,* 461 U.S. 138 (1983). If so, is that interest greater than the government's interest in "promoting the efficiency of the public services it performs through" him? *Pickering v. Bd. Of Educ.,* 391 U.S. 563, 568 (1968).

Public concern absolutely involves issues affecting the judicial branch of government. The judiciary, as the deciding factor on criminality and punishment impacts the lives of every citizen. Adoption of this rule would effectively silence dissent in one of the very places it is most necessary. Truth, logic, language, and rhetoric form the foundation of effective representation in a court. The rule proposes to neuter all such matters. For example, while witnesses pledge an oath to tell the truth the court is free to disregard it. The schizophrenic logic behind such inevitable sentences the court would be forced to use in describing how "she" received medical treatments reserved for men. The restriction on opposing rhetoric would unduly bias a court toward a particular ideology. A court unable to articulate a dissenting opinion in jury instruction, closing statements, or even questions is the essence of the denial to fair trial.

There is also a religious liberty issue at hand. Laws that appear "neutral and generally applicable" can still be unconstitutional. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520 (1993). Compelling speech against the religious truth of God's word, that He created man and woman, is directly opposed to the notion of free exercise of religion. When we examine the context, and application of the law in punishing offenders it becomes clear that it is intended to stifle religious expression. *Masterpiece Cakeshop, ltd. V. Colo. Rights Comm'n,* 138 S. Ct. 1719 (2018). The proposed carve out does not alleviate the issue, as "such a system would be impossible to comply with…. No "Mr." or "Ms." No "yes sir" or "no ma'am." No "he said" or "she said."… Our rights do not hinge on such a precarious balance." *Meriwhether v. Hartop*, 992 F.3d 492 (2021). Such a carve out is no more than a strawman.

On the opposite side of the balance weighs the government's interest in efficiency of public services. To what end would requiring the court to conform to false gender ideologies advance the efficiency of judiciary services? Far from improving efficiency of judiciary services, the rule would undermine them. Employees carefully crafting sentences to avoid words that might offend will do no less than make the process less efficient. The logistics of unravelling these false statements to make cogent sentences, and whether true statements for clarity were mistakes would convert transcripts to crossword puzzles, and court opinions to madlibs.

Two final points should be noted. First, any position in favor of the rule can cut both ways. If the court can affirmatively require the use of false pronouns, then it could likewise prohibit the use of preferred gender pronouns, and deny the "ability to explain… why they were doing so. But that's simply not the case. Without sufficient justification, the state cannot wield its authority to categorically silence dissenting viewpoints." *Id* at 507. Second, this proposal is the denial of truth. Truth is objective, not subjective. Truth is the lifeblood of law, as it is to everything. Without it exists only cardiac arrest. All court proceedings seek to know it through the very evidence submitted. Evidence ceases to be relevant without it. The court can no more make a "him" into a "her", as it can a cat to a dog. Claiming otherwise is nothing more than a lie.

From:	William R. Bloomfield, General Counsel, Diocese of Lansing
To:	ADMcomment@courts.mi.gov
Re:	ADM File No. 2022-03
Date:	February 23, 2023

Diocese of Lansing Comment to proposed amendment to Rule 1.109

The Diocese of Lansing, overseen by Bishop Earl Boyea, has supervisory responsibility for all Catholic persons and entities within its geographic boundaries in ten mid-Michigan counties. This includes seventy-two Catholic parishes, over thirty Catholic grade schools and high schools, six Catholic charities agencies, and 170,000 Catholics.

The Diocese submits this comment to proposed amendment to Rule 1.109 out of concern for Michigan's judicial system—a system which above all must be rooted in truth—and concern for freedom of religion, conscience, and speech for Catholics, Christians, other religious believers, and all who object to gender ideology. In particular, and given the nature of the proposed amendment, the Diocese writes out of concern for judges who would be compelled to use a party's designated personal pronouns in court.

The proposed amendment to Rule 1.109 would permit parties and attorneys to include their personal pronouns in court documents and would ***require*** courts "to use those personal pronouns when referring to or identifying the party or attorney, either verbally or in writing."

There are many reasons for objecting.

1. **The proposed rule contradicts the truth of human sexuality.**

First, and most importantly, the judicial system must be rooted in truth. The judicial system exists to dispense justice, and at the heart of justice is the pursuit of truth. The adversarial process has itself been described as a truth-finding process. See Comments, Rule 3.3., Michigan Rules of Professional Conduct. Not surprisingly, the Michigan Rules of Professional Conduct require lawyers to speak truthfully, prohibiting lawyers from "knowingly mak[ing] a false statement of material fact or law to a third person." Rule 4.1.

In accord with the dictates of gender ideology—an ideology that has crept its way into this state and which the people of Michigan have never legislatively or otherwise adopted—the proposed rule would discard the standard of truthfulness and compel judges to adhere to a person's subjective sense of gender identity. While we should certainly sympathize with anyone who is confused about his or her identity or feels uncomfortable regarding his or her biological sex, and while we

should treat all persons with respect in accord with their dignity as a person created in the image and likeness of God, disregarding the truth of biological sex is no kindness.

Moreover, regardless of any sense of compassion the court may feel for someone's confusion regarding his or her sexual identity, the Court's primary duty is to justice and truth. Were the Court to adopt this proposed amendment, it would be forsaking its duty to truth, and undermining the very purpose of its existence: the dispensing of justice, which can only occur in accordance with truth.

And what is the truth regarding the human person and human sexuality? That man exists as a unity of body and soul; that each human person, from the moment of conception, is created either male or female; and that man and woman are complementary, with the sexual union of a man and woman having the unique capacity to generate human life. The present cultural movement to demand that others adhere to new categories of pronouns expressing a subjective gender identity is an attack on these truths. Applying this false ideology either in law or court rule would be a fundamental injustice.

2. **Michigan's Constitution and laws recognize man and woman.**

Michigan's constitution and laws do not acknowledge or adopt the tenets of gender ideology. Preferred personal pronouns are not required by any law, nor has gender ideology been adopted by any Michigan law. To the contrary, Michigan's Constitution, to this day, continues to recognize the unique import of biological sex. Section 25 of the Constitution's declaration of rights states: "To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose." Even though the U.S. Supreme Court in *Obergefell v. Hodges* now requires the state to recognize marriages between those of the same sex, this 2004 amendment to Michigan's Constitution remains a part of Michigan's Constitution. Michigan's courts should not be elevating the concept of gender identity above the biological reality of man and woman recognized in Michigan's Constitution.

Additionally, myriad Michigan laws reference man or woman or male and female persons. The Court should not be elevating the new (and subjective) concept of gender identity above the objective biological reality of male and female that has long been recognized in Michigan law.

3. **The U.S. Constitution and Michigan Constitution protect free speech.**

In publishing the proposed amendment to MCR 1.109, the Court specifically expressed interest in receiving comments addressing the constitutional implications of this proposal. In brief, requiring courts, i.e., judges, to use a person's own

designated personal pronouns is an unconstitutional violation of free speech and free exercise of religion. The idea of compelling speech has long been odious to constitutional government in America. As just one example of this, in 1995, a unanimous U.S. Supreme Court held that Massachusetts could not require private citizen parade organizers to include marchers expressing a message the organizers did not wish to convey. *Hurley v. Irish American, Gay, Lesbian and Bisexual Group of Boston, Inc.,* 515 U.S. 557. The Court stated that the government "may not compel affirmance of a belief with which the speaker disagrees." *Id*. at 573. And as vital as the interest in free speech is for ordinary citizens, or groups of citizens, it is perhaps even more important for judges to be free of any compulsory speech.

More recently, the Sixth Circuit Court of Appeals directly addressed the issue at hand—the compulsory use of preferred pronouns—in its 2021 case of *Meriwether v. Hartop*, 992 F.3d 492. In this case, the court considered whether a public college could punish one of its professors for refusing to abide by the school's new policy of requiring faculty to refer to students by their preferred pronouns. The court noted: "Pronouns can and do convey a powerful message implicating a sensitive topic of public concern." *Id*. at 508. Not surprisingly, the court determined that compelling speech in this area raised plausible claims that the college was violating the plaintiff's rights to free speech and free exercise of religion. Ultimately, the Sixth Circuit's remand to the district court led to a $400,000 settlement with the professor.

4. **The U.S. Constitution and Michigan Constitution protect free exercise of religion.**

As the Sixth Circuit found in *Meriwether v. Hartop*, in addition to violating free speech, compulsory pronoun use can also result in violations of the free exercise of religion. Compelling preferred pronoun use imposes a significant burden on many religious people. Christianity, Judaism, and Islam all recognize that God created man as male and female. Genesis 1:27 states: "So God created man in his own image, in the image of God he created him; male and female he created them." Likewise, Genesis 2 tells of the creation of the first man and the first woman, Adam and Eve, and how they were created ***for*** one another. "God created man and woman *together* and willed each *for* the other." Catechism of the Catholic Church, ¶371. In the Gospels, Jesus Christ affirmed this when, citing Genesis, he stated: "Have you not read that he who made them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one'? So they are no longer two but one." Matthew 19:4-6.

These are fundamental truths at the heart of Christian anthropology and the Christian faith. Denying these truths compromises the Christian faith. In

particular, Catholics understand God's law regarding marriage and the nature of man and woman not as arbitrary commands meant to limit human freedom. To the contrary, they are part of the Good News of the Gospels that are fundamental truths about the human person and lead to human flourishing. "I came that they may have life and have it abundantly." John 10:10. Followers of Christ are instructed by Christ to love one another and, as St. Thomas Aquinas stated, to love is to will the good of the other. Compelling a Catholic to use another person's preferred personal pronouns when those pronouns contradict that person's biological sex is to force a Catholic to ignore the good of the other and to participate in and affirm that person's confusion regarding his or her sexuality. This is the opposite of love. Real love often means challenging a loved one in a mistaken belief or persuading them to give up a destructive behavior. In this area, it means assisting a person who is confused about his or her identity to reconcile that self-perception with the objective reality of his or her body.

Here in the Diocese of Lansing, Catholics and Catholic institutions are expected to adhere to the Church's teaching regarding the biological reality of sex and male-female complementarity. The Diocese of Lansing has a policy requiring this in all our Catholic entities. As part of this, and in accord with Catholic teaching, we expect those working for the Diocese to use pronouns in accord with a person's God-given biological sex. Additionally, the Diocese has published a Theological Guide addressing Catholic teaching regarding the human person and gender dysphoria. See https://www.flipsnack.com/dolmi/theological-guide-the-human-person-and-gender-dysphoria.html.

All this is to say that a court rule that compels a Catholic judge to use pronouns that do not accord with biological reality creates a significant conflict with the Catholic faith and would force such a judge to choose between the court rule or his faith. The Court should avoid creating such a conflict.

5. **The present conflict is unnecessary.**

The conflict presented by the proposed court rule is unnecessary and avoidable. Everyone should be treated with dignity and respect. In this, the Catholic faith agrees wholly with Michigan's existing Rules of Professional Conduct, which state: "A lawyer shall treat with courtesy and respect all persons involved in the legal process. A lawyer shall take particular care to avoid treating such a person discourteously or disrespectfully because of the person's race, gender, or other protected personal characteristic." Rule 6.5. The State Bar's Lawyers Oath and the Michigan Code of Judicial Conduct (in particular, Canons 1 and 3) include similar expectations.

This expectation of professional conduct, civility, and courtesy is all that is required. There are other ways to treat people courteously that do not require the compulsory

use of a person's preferred pronouns. In *Meriwether v. Hartop*, Professor Meriwether proposed calling on the student demanding use of certain pronouns by that student's last name. The court described this compromise as a win-win: "Meriwether would not have to violate his religious beliefs, and Doe would not be referred to using pronouns Doe finds offensive." *Meriwether*, 992 F.3d at 510-511. Unfortunately, the school, which at first supported this proposal, backed away from it, leading to litigation.

Here, the Court can avoid the present conflict by abandoning the proposed amendment to Rule 1.109 and adhering to the existing rules in place for lawyers and judges. These rules expect civility and respect but avoid compulsory speech. And as the presently proposed rule addresses solely the conduct of courts, it is certainly unnecessary: surely we can trust Michigan's judges to treat everyone with civility and respect.

6. **The role of custom and etiquette.**

The use of pronouns has never been something that has been regulated by the courts and properly belongs to the realm of custom and etiquette. It is true that sometimes customs evolve, but they do so organically and over time and without coercion. The use of pronouns has certainly evolved greatly in the last fifty-plus years as inclusive language has gradually brought about the use of "he or she," "his or her," and "him or her" to replace the exclusive use of masculine pronouns that were meant to refer to both genders. This evolution occurred gradually and without coercion.

Another excellent example of a custom widely followed that requires no coercion is the practice of calling judges by the pronoun, "Your Honor." There is no court rule that requires this term of respect, yet the practice is universal in the courts as a matter of custom and etiquette. Not everything needs a rule. This is especially so with the proposed amendment which creates a conflict with free speech and free exercise of religion.

7. **Challenge of adhering to the rule.**

The proposed rule would require courts to use a person's personal pronouns when referring to the party either verbally or in writing. This is far more difficult than it sounds. A quick internet search reveals a variety of recently introduced pronouns that go far beyond male and female. Here is one such chart:

Sub.	Obj.	Poss. Determiner	Possessive Pronoun	Reflexive
ce	cir	cir	cirs	cirself
co	co	cos	cos	coself
cy	cyr	cyr	cyrs	cyrself

ey	em	eir	eirs	emself
he	him	his	his	himself
hey	hem	heir	heirs	hemself
ne	nem	nir	nirs	nemself
qui	quem	quis	quis	quemself
she	her	her	hers	herself
sie	hir	hir	hirs	hirself
tey	tem	teir	teirs	temself
they	them	their	theirs	themself
xe	xem	xyr	xyrs	xemself
xie	hir	hir	hirs	hirself
yo	yo	yos	yos	yoself
ze	zir	zir	zirs	zirself
ve	vis	ver	ver	verself

See https://www.lgbtqnation.com/2022/08/incomplete-list-gender-pronouns/. And as the site is careful to preface, "we can't provide an exhaustive list of all pronouns, ***as people come up with new pronouns all the time***." (Emphasis added.)

It should be obvious that adhering to these many, newly coined pronouns is no easy task and would require great mental energy for any legal speaker or writer. And while it's true that languages naturally evolve, enforcing such newly coined pronouns via court rule, especially when such pronouns are not commonly used in daily speech, is no natural evolution of the language. In fact, it is a corruption of language that confuses rather than clarifies.

Further, the idea of a court rule mandating a person's preferred pronouns—the number of which have no limit and can be invented capriciously and changed upon a whim—is antithetical to justice. This returns us to the initial objection. Courts of justice are vehicles for pursuing truth—not "my truth," or "your truth," or "his or her truth," but ***the*** truth. ("Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?") Exalting subjectively chosen pronouns by which a party intends to deny or minimize the importance of the objective reality of biological sex does violence to the concept of justice and the pursuit of truth.

8. **Gender ideology is an attack on human sexuality.**

As gender ideology has advanced in our society its aims have become clearer. What at first may have appeared as an appeal to treat people confused about their sexuality with courtesy and respect has more clearly become an attack on the nature of sexuality itself. Gone are the days when transgenderism was limited to a man dressing as a woman (although not asserting that he ***was*** a woman) or a woman dressing as a man. Today, transgenderism and gender ideology have become

an all-out attack on the nature of human sexuality as male and female. An unlimited number of genders have been proposed, and it has become fashionable among the young to assert that one is "non-binary." More and more, those embracing this ideology are not experiencing dysphoria but are instead claiming a protected status and using that status to attack traditional sexual norms. The court rules should not be siding with this attack on human sexuality nor should they coerce judges to embrace such an ideology.

9. **The proposed rule could result in the mockery of crime victims.**

A final reason, and one not to be ignored, is that the proposed court rule could, and likely would, result in a mockery of crime victims, and particularly of victims of rape and other sexual assaults. Just such a mockery recently occurred in Scotland where biological male Adam Graham was recently convicted of two violent rapes of two women. See https://www.cbsnews.com/news/transgender-woman-rape-scotland-mens-prison-nicola-sturgeon-uk/.

Prior to trial, Graham claimed that he was transgender, had begun transitioning and wished to be considered as a woman under the new name of Isla Bryson. Upon conviction, he was sent to an all-female prison while awaiting sentence. A public outcry followed. The chief executive of Rape Crisis Scotland said: "It cannot be right for a rapist to be in a women's prison." Meanwhile, Bryson's estranged wife asserted that her husband's claim to be transgender was "a sham" to seek attention and easier jail time. The Scottish Government relented and Bryson was sent to an all-male prison.

Under the proposed court rule, Michigan's courts would be required to go along with such a criminal defendant's charade, requiring judges to reference the defendant by preferred personal pronouns. Imagine the mockery that a female rape victim would endure who, throughout trial and sentencing, would hear the court refer to her male rapist by feminine or other pronouns. And it would not only mock the crime victims; such a situation would also mock the court.

10. **Conclusion**

Gender ideology, which is the ideological source of the presently proposed pronoun rule, is a cancer that attacks the very concept of truth. In attacking the sexual binary of male and female, a truth revealed by the natural order and in biology, it also denies that the nature of a thing—***any*** thing—can be truly known. This is radical and dangerous. In attacking truth, this cancer ultimately attacks the justice system, which is a system that seeks the truth and expects its practitioners to do so vigorously yet professionally.

Gender ideology deceives many under the false guise of compassion. But a compassion that is not rooted in truth does not lead to the true good of the other.

Affirming someone in their confusion—or in other instances, their intentional attacks on biological reality—is false compassion. Even worse is the use of governmental coercion to force those who truly seek to love their neighbor to comply with a false and destructive ideology.

Fortunately, in our system of constitutional government, the rights of free speech and free exercise protect against such coercion and would be violated by the imposition of the proposed amendment to the court rule. The Court should not adopt a rule that conflicts with these constitutional rights or that would enshrine a falsehood.

It has become the fashion for many leaders in our society to acclaim the fad that is gender ideology lest they be accused of not seeing what others apparently see. "Oh, how fine are the Emperor's new clothes! Don't they fit him to perfection? And see his long train!"

The Court should not lend its credibility to this project. As the little child in Hans Christian Anderson's story rightly said as the emperor passed by: "But he hasn't got anything on." Indeed.

How much worse if the Court adopts a rule ***compelling*** judges to affirm the beauty of the emperor's new clothes?

/s/
William R. Bloomfield (P68515)
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March 1, 2023

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ADMcomment@courts.mi.gov

RE: Administrative File 2022-03, MCR 1.109 amendment

To the Chief Justice and the Justices of the Michigan Supreme Court:

I write to express my support for the proposed amendment to Michigan Court Rule 1.109, which requires judges to address others with the pronouns those people designate. The proposed amendment reflects duties that judges already bear under the Code of Judicial Conduct and the Michigan Rules of Professional Conduct. It is consistent with this Court's precedent on the First Amendment. The Court should adopt it.

*

We are in the midst of a national shouting match about gender. If the judiciary has any role in this fevered climate, it is ensuring that the shouting becomes a civil conversation when it enters Michigan's courtrooms.

That is the chief virtue of the proposed amendment to MCR 1.109. It does not take sides. For example, it does not require everyone to declare their pronouns whether they like it or not. Instead, it provides that, when a litigant or attorney informs a judge how they would like to be addressed, a judge should respect that request.

Of course one can come up with extreme examples of requests that a court should not honor. But lawyers are in the business of drawing and enforcing reasonable lines. Courts can allow parties to tell them whether they use *he, she*, or *they* without inviting parties to request "Your Majesty." Moreover, rejecting the proposed amendment on First Amendment

grounds would create dangerous precedent. If the First Amendment exempts a judge from honoring an attorney or litigant's choice of *he*, *she,* or *they*, then the First Amendment also exempts attorneys and litigants from honoring a judge's choice of "Your Honor." It would protect litigants who deliberately misgender *judges.* The Court should not invite a race to the rhetorical bottom by rejecting the proposed amendment.

In a way, the proposed amendment is redundant. Canon 2 of the Code of Judicial Conduct already requires judges to treat every person with "courtesy and respect," regardless of "gender, or other protected personal characteristic."[1] The United States Supreme Court has recognized that being transgender is a protected personal characteristic.[2] So if a person tells a judge which pronouns they use, Canon 2 requires that judge to use that person's pronouns—even if the judge harbors different views about gender.

Michigan Rule of Professional Conduct 6.5(b) applies here, too: "A lawyer serving as an adjudicative officer shall, without regard to a person's race, *gender, or other protected personal characteristic*, treat every person fairly, *with courtesy and respect*."[3]

Many judges have recognized these basic rules of civility over the years, even before gender became the subject of vociferous debate.[4] But it is apparent that the judiciary needs guidance on how rules of civility apply to gender. Exhibit A is the concurring opinion in *People v Gobrick* (2022).[5] Rather than use a litigant's pronouns (they/them), the concurrence denigrated that litigant, even labelling that litigant's views as "insanity."

[1] Code of Judicial Conduct, Canon 2(B).
[2] *Bostock v Clayton County, Georgia,* 140 S Ct 1731, 1737 (2020).
[3] MRPC 8.5(b).
[4] Materials from a program called *Pride & Pronouns: Understanding & Addressing Gender Identity in the Courtroom and Beyond* list opinions in which judges have respected litigants' views about their proper pronouns: https://www.nawj.org/uploads/files/events/webinars/pridepronounsprogrammaterials.pdf)
[5] *People v Gobrick* (2022), unpublished per curiam opinion of the Court of Appeals, issued December 21, 2021 (Doc. No. 352180) (Boonstra, J, concurring).

Thankfully, Justice Welch's concurrence in an order denying leave from *Gobrick* addressed one of the gaps in the *Gobrick* concurrence's analysis.[6] As Justice Welch wrote, language changes and courts evolve. Her final observation is critical: "The Court of Appeals' simple explanation in a footnote as to how and why it was using a gender-neutral pronoun demonstrates that words matter and that a small change to an opinion, even if unrelated to the merits, can go a long way toward ensuring our courts are viewed as open and fair to all who appear before them."[7]

One might add that the singular *they* is hardly a new creation. Many of the greatest writers in the English language—Austen, Dickens, Woolf, to name a few—have used the singular *they*. And if literature is unpersuasive, one might listen to their own speech for a while to see how often the singular *they* appears. (A person who says, "I ordered a pizza and I thought they would be here an hour ago," is using *they* to refer to the delivery person, not the delivery person and the pizza.)

There is a need and a sound rationale for the proposed amendment. Allowing people to declare their pronouns—without forcing everyone to declare their pronouns—is reasonable and civil. Including the singular *they* is consistent with centuries of English usage. The Court should adopt the amendment to Rule 1.109.

*

None of the counterarguments to the proposed amendment holds water.

Some have protested that requiring judges to use others' pronouns violates judges' right to freedom of speech under the United States Constitution. Not so. There are many rules regulating expression from lawyers and judges. Courts—including this one—have upheld those rules

[6] *People v Gobrick,* 981 NW2d 59 (2022) (Welch, J, concurring).
[7] *Id.*

against First Amendment challenges. As Lori Shemka's comment on the proposed amendment explains, this Court's opinion in *Grievance Administrator v Fieger* (2006) is the controlling precedent on this point.[8] And it defeats a First Amendment argument.

In fact, Canon 2 warns that "[a] judge must … accept restrictions on conduct that might be viewed as burdensome by the ordinary citizens and should do so freely and willingly."[9] Picking up a gavel means accepting the obligation to treat people with civility, even when those people belong to groups that a judge dislikes. Judges willingly forego the right to vent their political spleen in public, and they certainly have no right to do so from the bench. Again, Michigan Rule of Professional Conduct 6.5 applies here. Rule 6.5(a) states that "[a] lawyer shall take particular care to avoid treating [persons involved in the legal process] discourteously or disrespectfully because of the person's race, *gender, or other protected personal characteristic*."[10] Rule 6.5(b) extends these obligations to judges. (Again, Lori Shemka also provides helpful commentary on the proposal and the Canons.)

Some have argued that gender is objective and judges have a duty to speak and write accurately. Let us assume for argument's sake that gender is truly objective. (It is not. People who make this claim are referring to sex, not gender.) Even so, this objection has no merit. As several commentators have observed, objectivity in gendered words has hardly troubled the judiciary before.[11] Courts have long used words like *mankind* and phrases like "all men are created equally" without wringing their hands about including women in expressions that refer only to men.[12] Opinions using *he, him,* and *his* to refer to all genders are legion.

[8] *Grievance Administrator v Fieger,* 476 Mich 231, 261 (2006).
[9] Code of Judicial Conduct, Canon, 2(A).
[10] MRPC 6.5(a) (emphasis added).
[11] Chan Tov McNamarah, *Misgendering as Misconduct,* 68 UCLA L. Rev. Discourse 40, 51 (2020).
[12] *Id.*

An appeal to "objectivity" in gendered language ignores centuries of English usage. To paraphrase the late Rev. Peter Gomes of Harvard Divinity School, this claim about objectivity is a fig leaf covering naked prejudice.

Some may also claim that requiring judges to use the designated pronouns of attorneys and litigants violates judges' rights to the free exercise of religion. This argument lacks merit, too. If the Free Exercise Clause allows judges to make the bench a throne from which their religious views reign, then judges can, say, administer the Eucharist in the courtroom. But judicial displays of religiosity are unconstitutional.[13] Religion cannot justify a judge's decision to misgender an attorney or litigant.

The proposed amendment is constitutional and appropriate. It ensures that Michigan's courtrooms foster civility and respect. The Court should adopt it.

*

The views expressed here are my own—although I can say, with pride and gratitude, that my partners and colleagues have offered their support.

I have a host of reasons, both personal and professional, to write in support of the proposed amendment. I will highlight three.

The first is my belief that courtrooms must foster respectful conversations rather than shouting matches. By making the designation of pronouns optional and directing judges to simply respect those who choose to disclose pronouns, the proposed rule does exactly that. Courts

[13] See, e.g., *American Civil Liberties Union of Ohio Foundation, Inc. v DeWeese,* 633 F3d 424 (CA 6, 2011) (holding that hanging poster of Ten Commandments in courtroom violated the Establishment Clause); *North Carolina Civil Liberties Union Legal Foundation v Constangy,* 947 F2d 1145 (CA 4, 1991).

can become a shelter from the rhetorical storm on this issue and go about the business of adjudicating disputes with civility.

The second is my belief in law's promise: that every person has equal worth and every person is entitled to equal dignity before the law. The proposed amendment to Rule 1.109 is faithful to that promise. It will contribute to a wiser and more civil Michigan.

The third reason is more personal. The Court has heard and will continue to hear from people who cite their faith as a reason to oppose the amendment. They do not speak for all people of faith. Not at all.

In my religious tradition, there are two laws more important than any other rule. The second of these laws is that we must treat each other as we want to be treated. Everyone—every justice on this Court, every judge on the Court of Appeals, our loved ones, our friends, our colleagues, our neighbors, *everyone*—wants to be addressed with the pronouns and names they think appropriate. The amendment reflects this core principle. In my view, no other rationale is needed.

I urge the Court to adopt the proposed amendment, and I am grateful to the Court for considering it.

Very truly yours,

Trent B. Collier
(he/him)

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State of Michigan

Court of Appeals

March 1, 2023

Dear Clerk of the Court Larry S. Royster:

On January 18, 2023, our Supreme Court advised the bench and bar that it is considering an amendment to MCR 1.109 with respect to "personal pronouns." The proposed amendment states in full:

> Parties and attorneys may also include *any personal pronouns* in the name section of the caption, and *courts are required* to use those personal pronouns when referring to or identifying the party or attorney, either verbally[1] or in writing. Nothing in this subrule prohibits the court from using the individual's name or other respectful means of addressing the individual if doing so will help ensure a clear record. [ADM File No. 2022-03, Proposed Amendment to MCR 1.109(D)(1)(b) (emphasis added).]

Under its plain language, the proposed amendment would place a mandate on judges and court staff with respect to a person's selected personal pronoun, absent a clear-record issue.

As the U.S. Court of Appeals for the Sixth Circuit has recognized, "the use of gender-specific titles and pronouns has produced a passionate political and social debate."[2] Under Canon 2.B of our Code of Judicial Conduct, a judge must "promote public confidence in the integrity and impartiality of the judiciary." Therefore, the undersigned judges of the Michigan Court of Appeals will offer no position on the underlying political and social debate about gender markers or preferred pronouns. Instead, the following observations are offered strictly with respect to potential unintended consequences and unanswered questions involving ADM File No. 2022-03:

> ***Ambiguous Need of the Proposed Amendment.*** The state of Michigan and the federal government provide convenient methods for a person to change a gender marker on a state ID, state driver's license, birth certificate, or U.S. passport.[3] A

[1] Although a relatively minor point, the undersigned note that "verbally" means "by means of words," which logically includes "in writing," making the gerund redundant. It is understood that the Supreme Court likely intended to mean "orally" here.

[2] *Meriwether v Hartop*, 992 F3d 492, 508 (CA 6, 2021); see also *United States v Varner*, 948 F3d 250 (CA 5, 2020) (choosing not to use a preferred pronoun for sake of clarity and judicial impartiality); *Farmer v Perrill*, 275 F3d 958 (CA 10, 2001) (choosing to use a preferred pronoun as a courtesy in deference to the plaintiff's wishes).

[3] *Elizabeth Hertel*, 2021 Mich OAG No 7313; birth certificate: https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Folder1/Folder3/DCH-0847-CHGBX.pdf (visited on Jan. 25, 2023); state ID or driver's license: https://www.michigan.gov/-/media/Project/Websites/sos/34lawens/MDOS_Sex_designation_form.pdf?rev=0aeb2a2653e74ff8858d7a0e591957

person can select "M" for male, "F" for female, or "X" for nonbinary by submitting a form with a simple declaration, without any showing of medical intervention. Given the convenience of selecting a preferred gender marker, it is unclear whether the proposed amendment to MCR 1.109 is needed, as the undersigned are not aware of a Michigan court refusing a person's request that a court use a pronoun aligned with that person's gender marker as identified in an official government record.[4]

Ambiguous Scope of the Proposed Amendment. Unlike the options offered by the federal and state governments, the proposed amendment published by the Supreme Court is not limited under its plain language to pronouns that align with the gender markers of "M", "F", or "X", nor does the proposed amendment identify a concrete class of permissible pronouns from which a person can select. It is unclear, for example, whether a party or lawyer could select (A) a pronoun only from a traditional set (i.e., "he/him/his", "she/her/hers", or "they/them/theirs") or, rather, (B) a pronoun linked to what proponents refer to as a "three-dimensional galaxy" of gender.[5] The expanding list of personal pronouns includes what are called "neopronouns," and these in turn can include, for example, pronouns that refer to animals, fantasy characters, "or even just common slang."[6] Some examples that proponents give are "bun/bunself", "kitten/kittenself", "vamp/vampself", "prin/cess/princesself", "fae/faer/faeself", and "Innit/Innits/Innitself";[7] "qui/quem/quis", "sie/hir/hir", and "ve/vis/ver";[8] and "co/cos/coself", "xie/hir/hir", and "ey/em/eir".[9]

Nor is there anything in the proposed amendment that precludes a person from creating a set of pronouns unique to that person—and this is especially concerning with respect to the next issue.

Ambiguous Judicial Discretion with respect to the Proposed Amendment. The proposed amendment does not include language that would provide a court with discretion to deal with bad-faith actors. While the overwhelming majority of parties and lawyers in Michigan's courts act in good faith even when they strongly disagree with each other, courts do, on occasion, see some parties and lawyers who

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51 (visited on Jan. 25, 2023); U.S. passport: https://travel.state.gov/content/travel/en/passports/need-passport/selecting-your-gender-marker.html (visited on Jan. 25, 2023).

[4] The fact that our political branches have seen fit to act in this space also raises the question whether the proposed amendment might violate our Constitution, specifically the distinction between substantive law and policy versus the mere practice and procedure of the courts. See Const 1963, art 4, § 1 (legislative authority); art 5, § 1 (executive authority); and art 6, §§ 1, 5 (judicial authority to promulgate rules governing "the practice and procedure" of courts); see also *People v Watkins*, 491 Mich 450, 472-477; 818 NW2d 296 (2012). If adopted, the proposed amendment could be open to constitutional challenge on this or other grounds. We merely raise the question and go no further so as not to prejudge a potential future lawsuit.

[5] *Varner*, 948 F3d at 257 (cleaned up).

[6] Marcus, *A Guide to Neopronouns: Are you a person, place or thing? We have good news.*, New York Times (updated Sept 18, 2022).

[7] *Id.*

[8] LGBTQ Nation, https://www.lgbtqnation.com/2022/08/incomplete-list-gender-pronouns/ (visited on Jan. 25, 2023).

[9] UC Davis LGBTQIA Resource Center, https://lgbtqia.ucdavis.edu/educated/pronouns-inclusive-language (visited on Jan. 25, 2023).

act in bad faith or for strategic reasons unrelated to the merits of a case. As one example, faced with the plain language of the proposed amendment, what is a court supposed to use as a pronoun for someone who subscribes to the "sovereign citizen" movement and demands that the court refer to the person using the person's unique neopronoun of ":crp/:crpatn/:non-prsn"? Or, what about a party who is an avowed white supremacist and anti-Semitic and demands that the judge and court staff refer to the person as "htlr/nzi/fhr" or some other offensive set of "uniquely personal" neopronouns? These concerns are not overblown, as evidenced by what trial courts across the country have had to deal with in the past.[10]

In fact, the only circumstance that the proposed amendment recognizes for using something other than the selected personal pronoun is when doing so will "help ensure a clear record." Under the canon of construction that the expression of one thing implies the exclusion of others,[11] the current form of the proposed amendment implies that a court will be required to use a person's selected personal pronoun even when the record is clear that the person is acting in bad faith or for strategic reasons separate from the merits of the case. Even if MCR 1.109(E)(5) is interpreted to apply to the selection of a personal pronoun, the remedy listed in MCR 1.109(E)(6) is to sanction the signer, rather than simply not to use the selected personal pronoun.

Ambiguous Consequences of the Proposed Amendment. It is unclear whether the proposed amendment's required use of a selected personal pronoun is intended to be solely a matter of respect and courtesy consistent with Canon 2.B. As courts have made clear in the past, the judicial use of a selected personal pronoun has always been a matter of respect and courtesy and "bears no legal significance" to the case at hand.[12] This is an evolving area of law, however, and the use of a personal pronoun by dint of a procedural court rule should be carefully distinguished from a substantive factual finding or legal holding with respect to matters of sex, gender, etc. Relatedly, the proposed amendment does not anticipate the circumstance where a pronoun or gender marker might be at the center of the lawsuit (e.g., claim of misgendering, trans-athletes in sports, or violation of free speech) and how the court should, in that circumstance, act to remain scrupulously unbiased.

The proposed amendment is also silent about the repercussions, if any, of a willful, negligent, or innocent/mistaken violation of the court rule. Will a courtroom deputy, law clerk, or bailiff who breaches the rule be subject to discipline or other liability, including termination of employment? Will a judge who breaches the rule be subject to discipline before the Judicial Tenure Commission?

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[10] See, e.g., *Interest of CG*, 403 Wis2d 229, 268-269; 976 NW2d 318 (2022) (discussing cases where a party has sought to force courts to use a new name consisting of an obscenity or racial epithet); *:Giron v :Chase Home Mortgage Finamce, LLC*, Dkt. No. 12-cv-033, 2012 WL 13001851, at nn 1-2 (D NM, June 13, 2012) (discussing the grammatical gymnastics that "sovereign citizens" force courts to play with respect to names).

[11] *Bronner v City of Detroit*, 507 Mich 158, 173 n 11; 968 NW2d 310 (2021).

[12] *Interest of CG*, 403 Wis2d at 239 n 9; see also *Lynch v Lewis*, Dkt. No. 7:14-cv-24, 2014 WL 1813725, at n 2 (MD Ga, May 7, 2014).

> And, most critically for the cause of justice, will a breach of the court rule be grounds for reversing a judgment or other legal remedy on reconsideration or appeal? For example, in *United States v Thomason*, 991 F3d 910 (CA 8, 2021), the U.S. Court of Appeals for the Eighth Circuit rejected a criminal defendant's claim of prosecutorial misconduct based on misgendering—but crucially, the court did so because the defendant "cite[d] no authority for the proposition that litigants and courts *must* refer to defendants by their preferred pronouns." *Id.* at 915 (emphasis added). If the Michigan Supreme Court adopts the proposed amendment in its current form, then courts in this state *must* use a selected personal pronoun (absent a clear-record issue), and this distinguishing factor in *Thomason* will no longer hold in our courts.
>
> Ambiguities with respect to the intended legal consequences of a court rule, especially with respect to criminal law, are inconsistent with due process of law.

Finally, the undersigned judges observe that only a few states have entered this space, but those that have entered it have done so in narrow, prudent ways. In Utah, for example, a party may complete a nonbinding "Notice of Pronouns" form to inform the court and parties how they should refer to that party;[13] Massachusetts has a similar procedure.[14] In New York, the Advisory Committee on Judicial Ethics released Op 21-09, which provides: "Where a party or attorney has advised the court that their preferred gender pronoun is 'they,' a judge may not require them to instead use 'he' or 'she.' " The adoption of something similar to what other states have done could ameliorate several of the unintended consequences and unanswered questions identified with respect to the proposed amendment.

In sum, the Judicial Branch's sole objective is justice, and in pursuing this justice, a judge must remain "unswayed by partisan interests, public clamor, or fear of criticism." Canon 3.A(1). It is in the spirit of furthering justice—unswayed by partisanship or clamor—that the undersigned have offered these observations about ambiguities in the proposed amendment published by the Michigan Supreme Court in ADM File No. 2022-03.

Hon. Brock A. Swartzle
Chair, Rules Committee
Michigan Court of Appeals

Hon. Michael F. Gadola
Chief Judge Pro Tem
Michigan Court of Appeals

Hon. Mark T. Boonstra
Michigan Court of Appeals

Hon. Thomas C. Cameron
Michigan Court of Appeals

[13] Utah form: https://www.utcourts.gov/en/legal-help/legal-help/procedures/pro-se/pronouns.html (visited on Feb. 8, 2023).
[14] Mass Sup Judicial CR 1:08(H).

Hon. Mark J. Cavanagh
Michigan Court of Appeals

Hon. Michael J. Kelly
Michigan Court of Appeals

Hon. Anica Letica
Michigan Court of Appeals

Hon. Jane E. Markey
Michigan Court of Appeals

Hon. Christopher M. Murray
Michigan Court of Appeals

Hon. Colleen A. O'Brien
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Hon. James Robert Redford
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March 3, 2023

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Re: ADM 2022-03, MCR 1.109 amendment

To the Chief Justice and the Justices of the Supreme Court,

You received a letter from attorney Trent Collier supporting the proposed amendments to MCR 1.109. I wholeheartedly agree with the entirety of Mr. Collier's letter. So, for the reasons best stated in that letter, I support the proposed amendment and encourage this Court to adopt it.

Very truly yours,

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THIRD JUDICIAL CIRCUIT
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February 22, 2023

Office of Administrative Counsel
Ms. Sarah Roth
PO Box 30052
Lansing, MI 48909

Dear Ms. Roth:

The Third Circuit Court supports the proposed amendment to MCR 1.109. The proposed changes to MCR 1.109 recognize the diversity of our state and will allow attorneys and parties to include their pronouns in the documents and require Courts to use those personal pronouns. The proposed changes therefore ensure that Michigan's courts are more accessible to all users, by recognizing who people are.

A critical component of access is acknowledging people's pronouns. Access ensures that our judges and staff practice inclusion and show respect to all who come before them. Some Third Circuit Court personnel include their pronouns in the signature line of their emails and with their name when on Zoom. These early adopters strive to build better workplace inclusion. With the court rule change, perhaps sharing personal pronouns will become the norm in our court and our legal community.

Access takes many forms. Our court recognizes the need for increasing diversity in judgeships and other court professions. If we wish to serve our community, we need to understand LBGTQIA+ and other diverse representation in our courthouses and must establish needed external relationships as well. We are grateful for Ruth Ellis who helped our LGBTQIA+ youth with services and Affirmations which is just on the other side of the county line but accessible with training and services as well. The changes in MCR 1.109 lays a foundation upon which we can pursue these goals.

As our courts become more culturally inclusive, the public's access to and confidence that the Courts serve all citizens will increase.

Often diversity is presented as an aside to justice, something that is nice to have. The proposed changes to MCR 1.109, however, make it clear that diversity and justice are integral, intertwined concepts and that our Courts recognize that diversity must be acknowledged and appreciated if we seriously endeavor to ensure it is accessible to everyone.

Very truly yours,

Hon. Patricia Perez Fresard
Chief Judge
Third Circuit Court of Michigan

PPF/dcl

DEPARTMENT OF HEALTH

Using a Person's Correct Pronouns Saves Lives

PRONOUNS ARE A KEY TO SUICIDE PREVENTION

An important part of creating a supportive environment for transgender and nonbinary youth is understanding – and using appropriately – the terms they use to describe themselves.

Why do pronouns matter?

Pronouns are any word that replaces a noun, such as I, you, and they. Some pronouns are tied to a specific gender, such as she or he. Pronouns allow us to refer to someone without using a name. We use pronouns all the time. People often use a pronoun that relates to their gender identity. Pronouns are common parts of speech that can seem unimportant to some but mean the world to others. Using a person's correct pronouns can even save lives. Using the correct pronouns shows that we respect and support that person and that we care about their identity.

You can't always know someone's preferred pronouns just by looking at the person and making assumptions can make people feel unsafe and unwelcome. Feeling a sense of belonging is a key protective factor for strong mental health and suicide prevention. By asking about pronouns you can show people in the LGBTQIA+/2S that you care and that they belong.

Did you know that using correct pronouns creates a safer environment?

According to the 2019 Minnesota Student Survey, there are LGBTQIA+/2S youth living in every county in Minnesota. You most likely encounter or know people who are part of the LGBTQIA+/2S community without realizing it. LGBTQIA+/2S youth in Minnesota are much more likely to experience depression and anxiety and consider suicide than their peers.

- 42% of LGBTQIA+/2S youth seriously considered attempting suicide in the past year, including more than half of transgender and nonbinary youth.
- Transgender and nonbinary youth who reported having pronouns respected by all the people they lived with attempted suicide at half the rate of those who did not have their pronouns respected by anyone with whom they lived.
- Transgender and nonbinary youth who were able to change their name and/or gender marker on legal documents, such as driver's licenses and birth certificates, reported lower rates of attempting suicide.
- LGBTQIA+/2S youth who had access to spaces that affirmed their sexual orientation and gender identity reported lower of attempting suicide. (Trevor Project's 2021 National Survey on LGBTQ Youth Mental Health)

Respecting a person's pronouns is one way to provide a protective, inclusive space, promote well-being and reduce their risk of suicide by helping them feel like they belong.

How do I ask about pronouns?

Asking someone what pronouns they use is a simple way to learn the most respectful and correct way to refer to them. You can help make any space feel more inclusive by leading with your own pronouns.

You can ask someone what pronouns they use. Some examples:

> *"What pronouns do you use?" or "What pronouns can I use to refer to you?"*

You can also propose that people share their pronouns while introducing themselves in a group setting and then model for the group how to respond. Include pronouns as part of introductions. Consider something like the script below:

> *"As we introduce ourselves, if you would like, please share how you would prefer others in the room to refer to you. This could include your pronouns, such as he, she, or they, or it could be that you prefer people in the room to refer to you by your last name, Ms. or Dr. so-and-so. This is important because we want to create a respectful space for everyone and we don't want to make assumptions about each other. I'll go first. My name is Katie, I work at…., you can refer to me as she/her or just Katie is fine."*

Let's highlight a few important parts of this example. Notice that we said, **"if you like."** While it's important to give people the option to share pronouns and introduce the idea, it's equally important that sharing pronouns is optional. Making pronoun sharing mandatory may inadvertently force someone to out themselves as being transgender or nonbinary when they were not ready to do so. Notice also that we gave the examples of **"he, she, or they."** While there are other pronouns as well that people might prefer, explicitly including "they" as an example of how to refer to a single person helps normalize its use. Lastly, broadening an introduction to include other ways that people want to be referred to, such as their last name, makes the space welcoming and inclusive in ways beyond pronouns.

How should I respond when people ask me and people around me about pronouns?

Pronouns can be deeply personal and important, regardless of which pronouns people use or why they use those pronouns. When someone asks you, they are telling you that they care and that they want to treat you with respect. Simply answer their question by sharing your pronouns.

Remember, you cannot "tell" what pronouns people use just by looking at a person. We can help keep LGBTQIA+/2S people safer by not making assumptions. Asking and answering questions about pronouns provides everyone with the knowledge and skills to treat each other with respect.

What if I make a mistake?

Humans make mistakes. What matters is to show that you're trying. If you mess up, simply repeat what you just said using the correct pronoun. Whoever you're talking to will most likely appreciate the effort. Mistakes can be a part of the learning process. Here are some tips for when those mistakes happen:

- **Don't make the mistake a big deal.** If you misgender someone, simply apologize, thank them for correcting you, and move on.
- **Use your mistakes as learning opportunities.** Mistakes are a great opportunity to educate others who may not be informed.
- **Hold yourself accountable.** Continue to educate yourself on this topic and commit to making a more conscious effort in the future. If you find yourself making the same mistakes with someone's pronouns, try giving that person three compliments in your head for each mistake you make using their correct pronoun. Over time, you might find yourself making fewer and fewer mistakes.

What if I don't understand someone else's pronouns?

You do not need to understand someone else's pronouns or make judgments about them in order to respect them as a person. No one owes anyone else an explanation about their pronouns and why they've chosen them. Be patient and demonstrate support in trying, and eventually you'll get it right consistently.

When you use someone's correct pronouns, it creates an inclusive environment where you demonstrate that you care for and respect them. Just as we wouldn't want to make up a nickname for someone and use it against their will, it can be just as upsetting or disrespectful to refer to someone using incorrect pronouns. Actively choosing to not use the pronouns someone has shared that they go by is harassment and implies that intersex, transgender, nonbinary, and gender nonconforming people do not or should not exist.

To learn more about why pronouns matter and find additional resources, visit Pronouns.org (http:/www.pronouns.org).

Other ways to create affirming spaces for transgender and nonbinary people

Asking about pronouns is a great way to start. Consider the following ideas as well for creating safer spaces for transgender and nonbinary people:

- **Review intake forms**. Add questions to included "preferred name" and "pronoun."
- **Review single stall, non-gendered bathroom availability**. Are single bathrooms that are not gender specific available?
- **Review organizational policies** or forms to see where they can be more inclusive and expansive with pronouns in written messaging.

- **Use images, signs, or marketing materials** that demonstrate all genders are welcome.

For additional resources about creating safe community spaces and parenting transgender or nonbinary youth, see OutFront Minnesota (www.outfront.org/educationalequity) or GLAAD (www.glaad.org/transgender/resources).

The difference between sex and gender

Gender describes our internal understanding and experience of our own gender identity. Each person's experience of their gender identity is unique and personal and cannot be known simply by looking at a person. Gender is different from 'sex'.

Sex: Sex is a label — male, female, or intersex — that you're assigned by a doctor at birth based on the external genitals you're born with. It does not necessarily match someone's gender.

Gender: Gender is complex. It is an internal and psychological sense of who you are as a gendered being. It's a social and legal status, and set of expectations from society, about behaviors, characteristics, and thoughts centering around notions of "masculinity," "femininity," and "androgyny," including aspects of identity and expression.

Common genders include:

Cisgender: Cis is an adjective that means "identifies as their sex assigned at birth" derived from the Latin word meaning "on the same side."

Transgender: Trans is an adjective for people whose gender identity differs from the sex they were assigned at birth. Many transgender people will transition to align their gender expression with their gender identity; however, you do not have to transition to be transgender.

Nonbinary: Nonbinary people experience their gender identity as outside of the male-female gender binary. Not all nonbinary people identify as transgender and not all transgender people identify as nonbinary. Sometimes (and increasingly), nonbinary can be used to describe the aesthetic, presentation or expression of a cis gender or transgender person.

Two-Spirit: Two-Spirit (2S) is an umbrella term created by First Nations/Native American/Indigenous peoples to describe people who have both a male and female spirit within them and are blessed by their Creator to see life through the eyes of both genders. This term should not be appropriated to describe people who are not First Nations/Native American/Indigenous members. Different tribes may have their own unique language or set of identity labels.

Genderqueer: Genderqueer is a term used by some who choose to create their own "gender box" rather than fit into the specifications of another gender label. While some people regard "queer" as offensive, others embrace it.

Words are powerful expressions of identity. LGBTQIA+/2S youth may use a variety of terms to represent themselves and their experiences. These terms may be confusing for parents and relatives. To help clarify, see the glossary at LGBTQ Terminology (https://outandequal.org/wp-content/uploads/2019/11/LGBTQ-Terminology-2019.pdf).

Minnesota Department of Health
Mental Health and Well-being Committee of the Minnesota Suicide Prevention Taskforce
https://www.health.state.mn.us/communities/suicide/index.html

To obtain this information in a different format, call: 651-201-5400.

06/02/22

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH GLEICHER
CHIEF JUDGE

3020 W GRAND BOULEVARD
SUITE 14-300
DETROIT, MI 48202-6020
TELEPHONE 313-972-5646
E-MAIL EGLEICHER@COURTS MI GOV

March 7, 2023

Larry Royster
Chief of Staff/Clerk of the Court
Michigan Supreme Court
Lansing, MI 48909

RE: MCR 1.109 amendment

Dear Mr. Royster:

As the Chief Judge of the Michigan Court of Appeals, I write with regard to a letter sent to you on March 1, 2023, addressing the proposed amendment to MCR 1.109 and signed by 12 judges of the Court. The letter does not represent an official position or statement of the Court of Appeals. It reflects only the opinions of the signers.

The letter also does not represent an official position or statement of the Rules Committee of the Court of Appeals. The Rules Committee of the Court of Appeals met last month and considered whether to take an official position regarding the proposed amendment to MCR 1.109. No consensus was achieved. The Court of Appeals as a whole has never taken a vote on the proposed amendment. The March 1, 2023 letter was shared with all of the judges on the Court of Appeals, and as the letter reflects, most did not sign it.

Many judges of this Court support the proposed amendment, and I anticipate that some will send letters to the Supreme Court expressing their thoughts. The Court of Appeals, however, takes no position regarding the proposed amendment, as this letter is intended to clarify.

Respectfully,

Elizabeth L. Gleicher, Chief Judge
Michigan Court of Appeals

ELG/cmf

ATTORNEYS AT LAW

COLLINS EINHORN

Collins Einhorn Farrell PC

Kari L. Melkonian

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Direct Dial: 248-351-5436

March 8, 2023

Via Electronic Submission
ADMcomments.mi.gov
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

Re: ADM 2022-03, MCR 1.109 amendment

To the Chief Justice and the Justices of the Supreme Court,

You received a letter from attorney Trent Collier supporting the proposed amendments to MCR 1.109. I wholeheartedly agree with the entirety of Mr. Collier's letter. So, for the reasons best stated in that letter, I support the proposed amendment and encourage this Court to adopt it.

Very truly yours,

COLLINS EINHORN FARRELL PC

Kari L. Melkonian

KLM: baw

Kari L. Melkonian

RE: Proposed Amendment of MCR 1.109

May it please the Court.

My name is Ben Schroff. I use both he/him and they/them pronouns. I am a demiboy, meaning that I primarily use male pronouns (my assigned gender at birth) but also have traits that are generally categorized by society as "non-male" or "feminine." I have been misidentified by people all my life as a girl or woman, despite being born a man and generally identifying as such. I am also an attorney, which would give the general perception among society that I am a fairly rational human being.

For example, I went to a restaurant with some friends for Bar Review in law school. These friends were men and women around my age. The waiter took the men's orders and then turned to me and the women and asked what the ladies wanted. At that moment, I was wearing a full suit. Due to my identity, I primarily present as masculine, though sometimes I will wear nail polish. Despite this, I have been called a woman or a lady ever since 2008, when I started high school. It typically does not bother me in the moment, but in the aggregate the misidentification goes against who I am. It denies me the dignity that others have based off of genetic happenstance. I have plenty of advantages in society as someone born and primarily identifying as a man. I do not think that can be doubted. But being identified as something else, outside of my own gender, is invasive, offensive, and causes dissociative harm to those misidentified.

The proposed amendment of MCR 1.109 would allow judges, attorneys, and possibly the public to understand more about a person. Many names are classically used by both male and female individuals. By extension, non-binary individuals also use these names due to their neutrality. Allowing someone to put their pronouns on court filings would alleviate confusion among legal professionals who are unsure what pronouns to use, even upon looking at the individual involved.

Gender hysteria in this country has reached a peak in recent years. It has ended in the death of many lovely individuals, some who I've known personally.[1] There are plenty of articles and think pieces that expound upon the effects of misgendering on individuals in society, and I do not need to repeat their work here. Many hysterics claim that rules like these would allow bad actors to attempt to confuse or muddy the issues in legal proceedings. However, a clear declaration of pronouns takes that issue away. A clear declaration makes it apparent up front how a person is to be identified. Whether this is because they are trans or because they appear androgynous. Other gender hysterics cling to old notions of the pronouns "they" and "them" being used in the plural, which has been disproven by linguists for decades.[2] But this omits the conversations that we all have with others, where we wish for the third party to remain anonymous. We often use they/them pronouns to shield the identity of a singular person.

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[1] *See* https://www.nytimes.com/2022/12/23/us/henry-berg-brousseau-transgender-activist-dead.html; https://time.com/3655718/leelah-alcorn-suicide-transgender-therapy/; https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2022

[2] https://public.oed.com/blog/a-brief-history-of-singular-they/

Basically: language is constantly evolving. Gender hysterics cry that they will never use pronouns or "personal pronouns" or "preferred pronouns." I would point out that pronouns are a fundamental part of speech that we use every day, all pronouns are personal, and when an individual is who they are, they are not "preferred."

Many commenters opine that the proposed amendment would ruin the exercise of religion or confuse judges and litigants. I would suggest that this would remove confusion. Many people appear androgynous at first glance and listing that person's pronouns saves face for judges, attorneys, and court staffers (such as court reporters) who otherwise would spend moments of the courts' time clarifying the matter.

Many religious commenters, such as the Diocese of Lansing, opine that they are commanded by the Bible to obey the norms of "biological sex" and the pronouns thereof. Surely they also believe in Biblical commandments against murder and theft, and yet it provides no conflict for a Catholic lawyer to represent a convicted murderer or thief at sentencing. Or for a Catholic judge to impose the sentence. Lawyers, apart from court appointed attorneys, are perfectly capable of selecting their own clients.

Further, any actual "harm" to the free exercise of religion is mitigated by the proposed amendment itself. The proposed amendment allows the courts to merely use the individual's name or "other respectful means" of addressing the individual. Many lawyers and judges refer to "the defense" or "my client" or "defendants" which is no burden whatsoever. People of many religions hold to their views of "biological sex." They may continue to hold them even under the proposed amendment.

I take this last part to generally describe the text of the proposed amendment as written. The proposed amendment use of "may" is permissive. Pronouns are not required to be placed on any court filing. Courts are required to respect those pronouns, no one else. As a final backstop, the courts are allowed to refer to parties through other respectful means that avoid pronouns.

No one reading the plain text of the proposed amendment can claim that it in any way "compels" speech. Nor does it hamstring the courts. It is clear that the proposed amendment is not only for respect and dignity, but to ease the relationships between the courts, court staff, and attorneys in future.

I am fully in support of the proposed amendment. I believe that it will relieve confusion in the legal system and provide dignity and ease of access to all those touched by its jurisdiction.

Respectfully submitted,

Benjamin P. Schroff, Esq.
P85574
all comments are mine alone

Date: 11 March 2023

To: The Chief Justice and Justices of the Michigan Supreme Court

Subject: Administrative File 2022-03 – Proposed Amendment of MCR 1.109 (link)

We are writing in response to the proposed amendment to Rule 1.109.

We both strongly oppose this amendment. Existing opposing arguments cite the violation of the First Amendment of the U.S. Constitution (as argued, for example, in the Statement from Diocese of Lansing dated 23 February 2023) and the danger of adverse judicial consequences arising from ambiguities in a number of aspects of the proposal (specifically, the Statement from 12 judges of the Michigan Court of Appeals dated 01 March 2023). We consider the points made in their arguments very valid.

In addition to the concerns expressed in the aforementioned statements, we would like to provide yet another reason that this amendment should be rejected. English is the de-facto international language of commerce, culture, and society. English-speaking countries thus have an obligation to keep the language consistent for international usage. Individuals have no right to compel alterations of this established language, the norms of which non-native speakers of English work hard to follow in order to participate in the international community.

We are aghast that a proposal such as this one has even come up, in the judicial arena of all the places. Many non-native English speakers look up to the court as a model of an impeccable command of the language. The integrity of a language that carries such importance should not be subjected to individual whim.

We agree with one Concerned Citizen that "A much clearer and straightforward approach would be to use […] 'He/She' [or] avoid the use of pronouns altogether for individuals [who are] requesting this special attention by using [the term] 'defendant/ plaintiff' or the individual's first and/or last name." (In fact, we do know that some Asian languages work precisely in this manner. Perhaps, a cleaner solution is to switch the language altogether to something like Japanese that does not use pronouns with gender reference as do many Western languages – if those taking serious issues about traditional English pronouns are willing to exert the required effort to master it.) In summary, we find this proposed amendment to provide no value while potentially overburdening and degrading the administration of justice – perhaps by intent.

Sincerely,

Rachel and R. Stephen Campbell
Concerned Citizens of Michigan

Name: Rachel Zaback

Date: 03/16/2023

ADM File Number: 2022-03

Comment:
When I was very early in my transition and hadn't yet legally changed my name or sex marker, one of my greatest fears was ending up in a legal situation where I wasn't seen as me, and referred to in court by pronouns that were not my own. If that had happened to me, the experience would have no doubt been painful, humiliating, and dehumanizing.

Thankfully, I was lucky. I didn't realize I was trans until I was already a legal adult, and by that time I had both the financial means and autonomy to get my legal documents updated quickly by the state. I was also fortunate in that I could afford medical transition and get to the point where I looked like myself and didn't have to fear being mislabeled by the legal system if that day came. However, many transgender and genderqueer residents of Michigan are not so fortunate.

There are many situations in which a trans minor, even a kid whose parents and/or guardians are very affirming of their gender identity, might end up before an indifferent court in Michigan where they are repeatedly misgendered during their hearing or trial.

There are also trans adults in this state who, for reasons including financial need and disability, might still be living in their childhood home or in a group home. In either setting, it might not be safe for them to live full-time as their authentic self or to transition socially and/or medically. They could easily end up in the same situation, as could one of our many nonbinary state residents who are repeatedly misgendered with the pronouns that align with their birth sex even if they're fully out and transitioned. It's also important to note that many trans people make the decision not to medically transition, and they have a right to their pronouns being respected as well.

It is hard to overstate how disempowering it would be to already be in a fraught legal situation, only to find that when you try to defend yourself, multiple parties in the courtroom face no repercussions for repeatedly attacking who you are at your core. If someone in the courtroom is repeatedly misgendered through incorrect pronouns, this could introduce prejudice against them. It could be done to goad them into an emotional reaction, or even to out them as trans if the court would not have known otherwise. If you aren't even allowed to assert your sense of self, then what are the odds that you'll be taken seriously when you plead your case before the court? This is not equal treatment under the law.

People deserve to have their pronouns respected and their sense of self honored, period. This amendment is extremely important for making sure that nobody is discriminated against in the courtroom for their gender identity or their ability to access the means for gender transition. Michigan has made a lot of significant advances for trans rights recently, and I know that we will make the just and equitable choice again by passing this amendment.

Women Lawyers Association of Michigan

March 22, 2023

Via Email and First-Class Mail

P.O. Box 30052
Lansing, MI 48909
ADMcomment@courts.mi.gov

RE: ADM File No. 2022-03

To whom it may concern,

The Women Lawyers Association of Michigan supports the proposed amendment to MCR 1.109. The proposed changes to MCR 1.109 acknowledge the diversity of our society and legal community by promoting respectful treatment to all who come before the court.

As our society has evolved from the traditional uses of "he" and "she" to refer to individuals, judges and court personnel must also evolve to ensure the judiciary is inclusive of all gender identities. Pronoun usage is a common part of everyday conversation and interactions. Therefore, we have an obligation to respect everyone's identity by using their chosen pronouns.

The canons and codes of conduct for judges, lawyers, and court personnel all espouse dignity and civility and the proposed changes to MCR 1.109 ensure that our behaviors align with these ideals to ensure that everyone is respected in our courthouses.

Sincerely,
Erin Klug
Erin Klug
President

ACLU Michigan

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March 23, 2023

Submitted through online portal

Chief Justice Elizabeth T. Clement
Michigan Supreme Court
Lansing, Michigan

Re: ADM File 2022-03
Proposed Amendment of MCR 1.109

Dear Chief Justice Clement:

On behalf of a coalition of LGBTQ+ and allied organizations that work to promote fairness and equality for members of the LGBTQ+ community, we write in support of the proposed amendment to Rule 1.109 of the Michigan Court Rules that would permit parties and attorneys to use personal pronouns in document captions and would require courts to use those personal pronouns when referring to or identifying the party or attorney, either verbally or in writing, but would not prohibit the court from using the individual's name when addressing the individual.

Adoption of the proposed amendment will send an important message to Michigan's transgender and gender non-binary community (be they attorneys or parties to litigation): You will be accorded the same dignity, courtesy and fairness given to cisgender persons, and you can expect equal access to justice in Michigan courts. As discussed below, the appropriate use of transgender persons' pronouns in our courts acknowledges the existence of transgender people, aligns with medical and scientific consensus, and promotes the respectful treatment of all persons before the court. At this critical time when the Michigan judiciary is investing in a renewed commitment to equity and inclusion,[1] the proposed amendment should be adopted.

Transgender Identity, Gender Dysphoria, and Pronoun Usage

To understand the significance of addressing parties and attorneys in accordance with their chosen pronouns and names, it is important to have an understanding of gender identity and the transgender community. "Transgender" is an umbrella term that refers to individuals whose

[1] See Michigan Judicial Council, *Planning for the Future of the Michigan Judicial System: 2022-2025 Strategic Agenda*, p 30 <https://www.courts.michigan.gov/administration/special-initiatives/mjc/> ("The Council is committed to addressing long-standing disparities throughout the judicial system and taking actions that will eliminate disparate treatment and ensure equity and fairness for all people.").

gender identity is different from the sex assigned to them at birth.[2] According to a 2016 Williams Institute study, approximately 33,000 transgender people reside in the State of Michigan.[3] Recent scientific studies demonstrate that there is a genetic and biological component to a person's gender identity.[4]

Many people who identify as transgender have been diagnosed with gender dysphoria. Gender dysphoria refers to the distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth. Gender dysphoria is a serious medical condition codified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) and International Classification of Diseases (ICD-10).[5] Symptoms include the belief that an individual was improperly assigned the wrong sex at birth and the desire to be, and to be treated as, the other gender. Persons diagnosed with gender dysphoria often experience psychological and physical stress as a result of this incongruency. Left untreated, some persons living with gender dysphoria can experience severe depression and suicidal ideation.[6]

The World Professional Association for Transgender Health (WPATH) is an international, multidisciplinary, professional association whose mission is to promote evidence-based care,

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[2] Most people, including most transgender people, identify as being either male or female. However, some people have a gender identity that does not fit within this binary, and use the umbrella term "non-binary." Someone who is non-binary does not identify as exclusively male or female. According to the Williams Institute, an estimated 11% of LGBTQ adults in the United States (approximately 1.2 million people) identify as non-binary. See Williams Institute, *1.2 Million LGBTQ Adults in the US Identify as Nonbinary* (June 22, 2021) <https://williamsinstitute.law.ucla.edu/press/lgbtq-nonbinary-press-release/>.

[3] Flores et al., *How Many Adults Identify as Transgender in the United States?* (Williams Institute, June 2016) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Adults-US-Aug-2016.pdf>.

[4] Polderman et al., *The Biological Contributions to Gender Identity and Gender Diversity: Bringing Data to the Table*, Behav Genet (March 2018); Roselli, *Neurobiology of Gender Identity and Sexual Orientation*, J Neuroendocrinol (July 2018).

[5] See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed, 2013), § 302.85; World Health Organization, *International Statistical Classification of Diseases and Related Health Problems* (10th rev ed, 2007), § F64.9 <http://apps.who.int/classifications/icd10/browse/2010/en#/F64 >.

[6] The 2015 U.S. Transgender Survey reports that 40% of all participants have attempted suicide at some part of their life. James et al., *Executive Summary of the Report of the 2015 U.S. Transgender Survey* (Nat'l Ctr for Transgender Equality, 2016) <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf>. See also UCLA School of Law Williams Institute, *Suicide Thoughts and Attempts Among Transgender Adults* (September 2019) <https://williamsinstitute.law.ucla.edu/publications/suicidality-transgender-adults/>.

education, research, advocacy, public policy, and respect in transgender health. WPATH publishes standards of care for treatment of gender dysphoria which are recognized as authoritative by leading medical organizations,[7] the U.S. Department of Health and Human Services,[8] and federal courts.[9]

It is the recognized standard of care to treat gender dysphoria with gender confirmation. Gender confirmation is not the same for every transgender person but usually consists of one or more of the following components: (1) social transition; (2) hormone therapy; and (3) gender confirmation surgery. Some transgender persons undergo all three components. Others do not. Social transition involves adopting a gender role and gender presentation that is congruent with a person's gender identity. This includes using pronouns that are congruent with the person's gender identity.

No one would question the propriety of referring to cisgender litigants with appropriate male or female pronouns. A pronoun is not merely a preference but a statement of fact for all people, regardless of gender. Thus, the proposed amendment to MCR 1.109 would confirm that, for all litigants and their counsel, pronouns should be used that align with gender identity, scientific consensus, and recognized standards of care.

Discrimination Against Transgender People

Due to the lack of understanding of gender identity and gender dysphoria, discrimination against transgender people is pervasive in every facet of life. A national survey found that 63% of transgender survey participants have "experienced a serious act of discrimination—one that would have a major impact on a person's quality of life and ability to sustain themselves financially or emotionally."[10] This includes discrimination in employment, housing, education, and public accommodations, including access to health care.[11] Transgender people are more likely to experience homelessness and are more likely to be victims of sexual assault and

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[7] See Lambda Legal, *Professional Organization Statements Supporting Transgender People in Health Care* (2018) <https://www.lambdalegal.org/sites/default/files/publications/downloads/resource_trans-professional-statements_09-18-2018.pdf>.

[8] Dep't of Health & Human Services, *Nondiscrimination in Health Programs and Activities*, 81 Fed Reg 31375, 31435 n 263 (May 18, 2016).

[9] See, e.g., *Cruz v Zucker*, No. 14-CV-4456 (JSR), 2016 WL 3660763, at *4 n 4 (SDNY July 5, 2016) ("The Court puts significant weight on the WPATH Standards of Care."); see also *De'Lonta v Angelone*, 330 F3d 630, 636 (CA 4, 2003); *Fields v Smith*, 653 F3d 550, 557 (CA 7, 2011) (WPATH standards are the accepted standards of care).

[10] Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Nat'l Ctr for Transgender Equality & Nat'l Gay & Lesbian Task Force, 2011), p 8 <https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf>.

[11] *Id*.

physical violence due to their gender identity.[12] The most recent FBI hate crimes report shows that hate crimes against transgender people (particularly transgender women of color) have increased over the past several years.[13] In 2019 alone at least 27 transgender or gender non-conforming people were fatally shot or killed by other violent means.[14]

According to the Human Rights Campaign, 2022 surpassed 2021 as the worst year yet for anti-LGBTQ legislation in recent history. Lawmakers in state legislatures launched an unprecedented war on the transgender community with bills that included criminalizing providing lifesaving medical care to transgender youth, prohibiting transgender girls from being able to participate in school sports in accordance with their gender identity, and denying trans people the ability to obtain accurate birth certificates.[15] The beginning of 2023 already has seen twice as many anti-trans bills introduced, including legislation that prohibits transgender people from being able to use public restrooms in accordance with gender identity.[16] The current state legislation session has seen more than 350 bills introduced in 36 states, according to new data released by the Freedom for All Americans campaign's open-source site that tracks proposed anti-transgender legislation.[17]

Unfortunately, discrimination against transgender people also extends to the courts. In a survey conducted by Lambda Legal, 33% of transgender respondents reported hearing negative

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[12] James et al., *The Report of the 2015 U.S. Transgender Survey* (Nat'l Ctr for Transgender Equality, 2016), pp 13, 15 <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

[13] Ronan, *New FBI Hate Crimes Report Shows Increases in Anti-LGBTQ Attacks* (November 17, 2020) <https://www.hrc.org/press-releases/new-fbi-hate-crimes-report-shows-increases-in-anti-lgbtq-attacks>.

[14] See Human Rights Campaign, *Violence Against the Transgender Community in 2019* <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2019>.

[15] Ronan, *2021 Officially Becomes Worst Year in Recent History for LGBTQ State Legislative Attacks as Unprecedented Number of States Enact Record-Shattering Number of Anti-LGBTQ Measures Into Law* (May 7, 2021) <https://www.hrc.org/press-releases/2021-officially-becomes-worst-year-in-recent-history-for-lgbtq-state-legislative-attacks-as-unprecedented-number-of-states-enact-record-shattering-number-of-anti-lgbtq-measures-into-law>.

[16] Freedom for All Americans, *Legislative Tracker: Anti-Transgender Legislation* <https://freedomforallamericans.org/legislative-tracker/anti-transgender-legislation/>.

[17] *2023 Anti-Trans Legislation* <https://www.tracktranslegislation.com/>.

comments about gender identity or sexual orientation in court (the number increases to 53% for transgender litigants of color).[18] Lambda Legal reports that they

> often hear from trans and nonbinary people who have been treated disrespectfully by judicial officers—including experiences of being misgendered, turned away, mocked, denied appropriate legal representation or criminalized disproportionately. We know of judges . . . who have laughed out loud in open court because a transgender person asked for the respect of being addressed with their correct pronouns.[19]

Given the mistreatment of transgender people by the courts, it should not come as a surprise that Lambda Legal's survey also showed that only 28% of transgender and gender non-conforming respondents trust the courts to provide fair treatment.[20] Overall trust in the courts was found to be lower than trust in the police, where significant harassment and mistreatment also occurs.[21]

Michigan's Code of Judicial Conduct

Michigan's Code of Judicial Conduct requires both judges and court staff to treat litigants with both courtesy and respect. Canon 3(A)(14), which applies to the conduct of the judge and the judge's staff, states as follows:

> Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect. To the extent possible, a judge should require staff, court officials, and others who are subject to the judge's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the court.

Canon 3B(2) requires a judge to "direct staff and court officials subject to the judge's control to observe high standards of fidelity, diligence, and courtesy to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity."

These canons reflect that it is the responsibility of Michigan judges to ensure access to our courts and equal treatment under the law for all people, including transgender people. Where people

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[18] See Lambda Legal, *Moving Beyond Bias: How to Ensure Access to Justice for LGBT People—A Training Curriculum Prepared by Lambda Legal's Fair Courts Project for Judges, Attorneys and Other Legal Professionals* (2018), p 12 <https://www.lambdalegal.org/sites/default/files/publications/downloads/ll_moving-beyond-bias_guide_final_singles.pdf>.

[19] Rice, *Raising the Bar: Names, Pronouns, and Judicial Respect for Trans People* (Lambda Legal, November 18, 2019) <https://legacy.lambdalegal.org/blog/20191118_raising-the-bar>.

[20] See *Moving Beyond Bias*, *supra*, p 12.

[21] *Id*.

feel unsafe or uncomfortable in court or participating in our legal system because of their gender identity, access to justice and full participation in our democracy are undermined. A person's identity, including their name and pronouns, is a powerful, central element of someone's dignity and humanity. When a judicial officer refuses to acknowledge someone's pronouns, they are asserting a power to deny their identity and effectively erase them from our society. Using the articulated pronouns of litigants and their attorneys, by contrast, is a positive step towards equity and inclusion in Michigan's courts.

While all judicial officers are entitled to their personal or religious beliefs with regards to being transgender and/or identifying as gender non-binary (as well as personal or religious beliefs regarding other litigants who come before the court), these officers are also required to administer impartial justice in accordance with the law, judicial canons, and professional norms of civility and respect. Matters of fairness, and according courtesy to persons appearing in court, should not depend on whether or not they conform to the personal or religious beliefs or interpretations of court employees. It is both appropriate and necessary for the judiciary as a whole to regulate judicial conduct to ensure public confidence in the fairness of the justice system.

The need for judicial standards of this nature is being increasingly recognized elsewhere. Recently, the American Bar Association's House of Delegates passed a resolution supporting the adoption of bench cards or court rules regarding judges' use of LGBTQ-inclusive language and pronouns in compliance with judicial rules of conduct.[22] The ABA resolution followed and supported the adoption of a bench card and best practices for judges in the State of New York,[23] where it had been advocated that courts are duty-bound to acknowledge the requested pronouns of all litigants and parties before them, in both pleadings as well as inside the courtroom, as a vital component of equal access to justice.[24] A number of organizations have developed educational materials for the purpose of training both judges and court staff regarding cultural competency, which include the importance of the use of pronouns as a form of access to justice.[25] To set the right example, a United States magistrate judge has described his practice of identifying his own pronouns during judicial proceedings and inviting others to do the same, describing this effort as part of his "commit[ment] to findings ways to increase access to the

[22] See American Bar Association, House of Delegates Resolution 401 (adopted 2023) <https://www.americanbar.org/news/reporter_resources/midyear-meeting-2023/house-of-delegates-resolutions/401/>.

[23] See *id*., *Report to the House of Delegates* (attachment A).

[24] See Hyer, Wallach & Browde, *Examining Judicial Civility in New York Courts for Transgender Persons in the Wake of United States v. Varner*, New York State Bar Association (August 18, 2020) <https://nysba.org/examining-judicial-civility-in-new-york-courts-for-transgender-persons-in-the-wake-of-united-states-v-varner-2/>.

[25] See *Moving Beyond Bias*, *supra.*

courts."[26] The proposed amendment to MCR 1.109 would appropriately adopt a similar standard of conduct regarding pronoun usage for courts in our state.

Conclusion

In sum, we strongly support the proposed amendment to MCR 1.109. Adopting a rule on pronoun usage would align with consensus in the scientific and medical community regarding transgender identity and gender dysphoria, would expand access to our courts and public confidence in the fairness of our justice system, and would ensure that persons who come before a court can do so with an expectation that they will be treated with courtesy and respect.

Sincerely,

Jay Kaplan
Dan Korobkin
ACLU of Michigan

Roz Keith
Stand With Trans

Erin Knott
Equality Michigan

David Garcia
Affirmations LGBTQ Community Center

Rachel Crandall
Transgender Michigan

Michelle Fox-Phillips
Gender Identity Network Alliance

Anthony Williams
Corktown Health Center

Rev. Dr. Roland Stringfellow
Metropolitan Community Church of Detroit
Inclusive Justice of Michigan

Mary Jo Schnell
Out Center of Southwest Michigan

[26] Kasubhai, *Pronouns and Privilege*, Oregon Women Lawyers Advance Sheet (Summer 2021) <https://oregonwomenlawyers.org/wp-content/uploads/2021/07/OWLS-AdvanceSheet-Summer-2021.pdf>.

Jazz McKinney
Grand Rapids Pride Center

Jennifer Norber
Red Wine and Blue

Sharon Pedersen
Jackson Pride Center

Jey'nce Poindexter
Trans Sistas of Color

Angie Martel
LGBTQ Section of Michigan State Bar

** Please note that every pronoun in my statement below is in **bold**.

Whether **you** realize **it** or not, **we all** use pronouns every single day when speaking about **each other**. A pronoun is simply the word **that** refers to a person (“**I**” or “**you**”) or **someone** or **something that** is being talked about ("**she**", "**he**", "**them**", "**it**", "**this**", etc.)

We all have names. To respect **one another**'s names is common courtesy, and common sense. **It** is offensive and harassment to call **someone** the incorrect name intentionally. Similarly, **it** is offensive and harassment to intentionally call **someone** by **their** incorrect pronouns and refer to **them** using **those** pronouns, especially if **their** personal pronouns were provided to **you**. To refer to **someone** by how **they** do not want to be known...**it**'s just rude. **We all** make mistakes, but if **you** are provided the details of **someone**'s identity, **you** should not be making the effort to be disrespectful.

I am fully in support of **this** amendment and truly hope **it** is added. **This** is a step in the right direction. **We** will continue to fight against hate and discrimination against the LGBTQIA+ community. **We** are strong and **our** voices will not be silenced.

From: Hallie Konarske

Date: April 4, 2023

RE: Proposed Amendment to MCR 1.109(D)(1)(b)

Justices of the Michigan Supreme Court:

I write in SUPPORT of the proposed amendment to MCR 1.109(D)(1)(b) in hopes that my perspective may add some insight.[1] This Court's consideration of the proposed rule, even in light of the recent controversies regarding transgender individuals, is a large step in ensuring equal access to justice for all litigants. It speaks volumes regarding the Court's commitment to that principle. Litigants should not fear the judiciary due to their gender identity or presentation. In this sense, Judge Boonstra has a point: A court should "respect the right of every person to self-identify however [they] may wish, it frankly should not be of interest or concern to the Court unless it somehow impacts the resolution of the case before [it]." *People v Gobrick*, unpublished opinion of the Court of Appeals, issued December 21, 2021 (Docket No. 352180), 2021 WL 6062732, *9 (Boonstra J., concurring). A judicial position is a public service—and our government should respect us for who we really are. One need not "agree with it" personally.

How a court treats the parties sets the tone for the parties' relationship to it. This is true in general as well as regarding a litigant's gender identity. The court need not celebrate it or provide special treatment. Rather, transgender litigants ask only for human decency and respect. Where the court inflicts unnecessary pain or humiliation based on one's gender identity—intentionally or

[1] As an attorney, transgender woman, and lifelong Michigander, I consider this issue of the utmost importance in ensuring equal access to and fair administration of justice in Michigan's judiciary.

not— a transgender litigant is likely to lose trust in the judiciary and question the validity of the proceedings. The judgment may be forever in doubt.

People providing their unsolicited opinion on another's gender identity can be hurtful—intentionally or not. See, e.g., *id.* It is not a trivial matter. See Chan Tov McNamarah, *Misgendering*, 109 CAL. L. REV. 2227, 2265 (2021) (noting that even cisgender people who are misgendered become greatly offended). It is dismissive. *Id.* at 2266–67. It is humiliating and degrading. *Id.* at 2269–71. Depending on the person, it may even be an invasive disclosure of otherwise personal information. *Id.* at 2271–73. For all these reasons and more, deadnaming or misgendering a transgender or nonbinary person can significantly impact on the person's mental health.[2] It serves as a stressor that stigmatizes the person,[3] sometimes even causing suicide attempts and eating disorders.[4]

Current events also give transgender and nonbinary people reason to be wary of those who deadname or misgender them. Transgender people are assaulted using the restroom.[5] They can be

[2] Sabra L. Katz-Wise, *Misgendering: What it is and why it matters*, HARVARD HEALTH PUBLISHING (July 23, 2021), https://www.health.harvard.edu/blog/misgendering-what-it-is-and-why-it-matters-202107232553; *Why deadnaming is harmful*, CLEVELAND CLINIC (Nov. 18, 2021), https://health.clevelandclinic.org/deadnaming/amp/.

[3] See K.A. McLemore, *A minority stress perspective on transgender individuals' experiences with misgendering*, STIGMA & HEALTH 3:1, at 53 (2018).

[4] See, e.g., Linas Mitchell, Heather J. MacArthur & Kerstin K. Blomquist, *The effect of misgendering on body dissatisfaction and dietary restraint in transgender individuals: Testing a Misgendering-Congruence Process*, INT'L J. EATING DISORDERS 54:7, at 1295 (2021). Williams Institute, *Suicide Thoughts & Attempts Among Transgender Adults*, UCLA SCHOOL OF LAW (Sept. 2019), https://williamsinstitute.law.ucla.edu/publications/suicidality-transgender-adults/.

[5] See, e.g., Amber Jayanth, *Transgender Butler County man says group beat him up over restroom use*, FOX 19 NOW (July 8, 2022), https://www.fox19.com/2022/07/08/transgender-butler-county-man-says-group-beat-him-up-using-wrong-restroom/ (transgender man told to use women's restroom, mistaken for a transgender woman, and beaten up for using the "wrong" restroom).

persecuted by law enforcement.[6] And many fear persecution by their own state governments.[7] Though my illustration illuminates the issues only in-part,[8] it certainly demonstrates the need to consciously address these issues so Michigan can be a "pleasant peninsula" for all its residents.[9]

It should be alarming that the judges of this state could have such impacts on a population. Judges must "personally observe[] high standards of conduct so that the integrity and independence of the judiciary may be preserved." Code of Judicial Conduct, Canon 1. This Court's Code of Judicial Conduct explains:

> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.
>
> A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected personal

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[6] See, e.g., Emily Chudy, *Trans woman arrested & misgendered by police officer she called to help her*, PINKNEWS (Dec. 22, 2022) ("Joan Simoncelli, an intersex, two-spirit transgender woman, was arrested at her home near San Antonio, Texas, in October after officers claimed she had made a 'false police report' about a transphobic harassment incident . . . . The police officer who arrested her also allegedly called her a 'man in a dress,' before placing her with the male population at Bexar County Jail, Texas, despite her driving license identifying her as a woman."), https://www.thepinknews.com/2022/12/22/trans-woman-texas-arrest/.

[7] See, e.g., Matt Lavietes, *Arkansas lawmaker, at a hearing, asks transgender woman if she has a penis*, NBC NEWS (Feb. 15, 2023), https://www.nbcnews.com/nbc-out/out-politics-and-policy/arkansas-lawmaker-hearing-asks-transgender-woman-penis-rcna70787; Molly Hennessy-Fiske, *Texas attorney general's office sought state data on transgender Texans*, TEXAS TRIBUNE (Dec. 14, 2022) ("[Texas AG Ken]Paxton's office bypassed the normal channels — DPS' government relations and general counsel's offices — and went straight to the driver license division staff in making the request, according to a state employee familiar with it, who said the staff was told that Paxton's office wanted "numbers" and later would want 'a list' of names, as well as 'the number of people who had had a legal sex change.'"), https://www.texastribune.org/2022/12/14/ken-paxton-transgender-texas-data/; Chudy, *supra*.

[8] Though I roughly sketch these issues from my own perspective, the LGBTQA Section of the State Bar of Michigaqn and ACLU of Michigan have addressed them comprehensively.

[9] State Seal, Michigan Manual (2009–2010) (describing Michigan's state motto).

> characteristic, a judge should treat every person fairly, with courtesy and respect. [Code of Judicial Conduct, Canon 2(A) & 2(B).[10]]

Where pronoun discussion is present, the First Amendment is often not far behind. To be sure, freedom of speech is one of our most important civil rights. This is particularly true in holding elected judges accountable. See generally *Winter v Wolnitzek*, 834 F.3d 681 (CA 6, 2016). In providing for an elected judiciary, "a state 'cannot have it both ways. If it wants to elect its judges, it cannot deprive its citizens of a full and robust election debate.'" *Id.* at 690, quoting *Geary v Renne*, 911 F.2d 280, 294 (CA 9, 1990) (en banc) (Reinhardt, J., concurring). This proposal presents no such concerns. It regulates only a judge's official speech from the bench, allowing plenty of freedom for judges and judicial candidates to say their piece in other public fora.

The applicable law in this area is unclear. See generally, e.g., Genelle I. Belmas & Jason M. Shepard, *Speaking From the Bench: Judicial Campaigns, Judges' Speech, & the First Amendment*, 58 DRAKE L. REV. 709 (2010); Rodney A. Smolla, *Regulating the Speech of Judges & Lawyers: The First Amendment & the Soul of the Profession*, 66 FLA. L. REV. 961 (2014); Lynne H. Rambo, *When Should the First Amendment Protect Judges From Their Unethical Speech*, 79

[10] Justice Viviano has explained further:

> As judges, we have the ethical duty to "respect and observe the law" without partiality. Code of Judicial Conduct, Canon 2(B). And we must, "[w]ithout regard to a person's race, gender, or other protected personal characteristic, . . . treat every person fairly, with courtesy and respect." *Id.* We must "be particularly cautious with regard to membership activities that discriminate, or appear to discriminate, on the basis of race, gender, or other protected personal characteristic." Code of Judicial Conduct, Canon 2(F). Moreover, we hear cases involving allegations of discrimination. If th[is Court] sets about to encourage the judiciary to consider these characteristics in any area under our purview, I fear that our ethics, fidelity to law, and impartiality will justly be called into question. [Administrative Order 2022-1 (ADM 2021-38), at 11-12 (Viviano, J., dissenting).]

OHIO ST. L.J. 279 (2018). The appropriate standard could be strict scrutiny,[11] or it could be governed by the Supreme Court's decisions in *Gentile v State Bar of Nevada*[12] or *Garcetti v Ceballos*.[13]

Regardless of which test one applies, the conclusion is inescapable: There is a " 'vital state interest' in safeguarding 'public confidence in the fairness and integrity of the nation's elected judges.' " *Williams-Yulee*, 575 US at 445. To wit:

> The importance of public confidence in the integrity of judges stems from the place of the judiciary in the government. Unlike the executive or the legislature, the judiciary "has no influence over either the sword or the purse; ... neither force nor will but merely judgment." The judiciary's authority therefore depends in large measure on the public's willingness to respect and follow its decisions. As Justice Frankfurter once put it for the Court, "justice must satisfy the appearance of justice." It follows that public perception of judicial integrity is "a state interest of the highest order." [*Id.* at 445-46 (internal citations omitted).]

"It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" *Caperton v A.T. Massey Coal Co.*, 556 US 868, 876 (2009), quoting *In re Murchison*, 349 US 133,

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[11] Rambo, *supra*, at 298-301 (describing the Supreme Court's application of strict scrutiny to judicial speech outside of court); See generally *Williams-Yulee v Florida Bar*, 575 US 433 (2015) (upholding Florida rule prohibiting judges from soliciting contributions for campaigns and other non-profit or charitable causes).

[12] Rambo, *supra*, at 302-03; See *Gentile v State Bar of Nevada*, 501 US 1030, 1075-76 (1991) (upholding state bar rule prohibiting public comments on a judicial proceeding presenting a "substantial likelihood of material prejudice" as a proper balance between First Amendment protections and the state's "substantial interest" in a fair, efficient judicial system).

[13] Rambo, *supra*, at 303-11 (describing the *Garcetti*/*Pickering* analysis and why it applies best to judges); Compare, e.g., *Garcetti v Ceballos*, 547 US 410, 419-22 (2006) ("So long as employees are speaking as citizens about matters of public concern, they must face only those speech restrictions that are necessary for their employers to operate efficiently and effectively."), with *id.* at 421-22 ("The significant point [in this case] is that the memo was written pursuant to Ceballos' official duties. Restricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen. It simply reflects the exercise of employer control over what the employer itself has commissioned or created.").

136 (1955). It is the most important factor. Even where issues of bias do not reach constitutional dimension, the judiciary and those regulating it may act against them. *Id.*

This proposal stays true to this commitment. Through deadnaming, misgendering, discrimination, and violence, many use interactions with transgender people to make a political statement. The impact of such behavior in court is particularly strong. Transgender litigants, like all others, entrust the judiciary to safeguard their life, liberty, and property as a party to an action. Any lay person normally faces heightened anxiety in such situations. Hostile behavior from the bench targeting people based on gender identity or presentation will serve only to call the proceeding and its result into question. This rule addresses the issue directly in a narrow fashion. Judges can use gender neutral terms (like "plaintiff" or "defendant") or a litigant's name to refer to them. And it does not address non-judicial speech. A judge is free to say their piece literally any place other than the courthouse. As such, I believe the rule is both appropriate and necessary.

For these reasons, I support this amendment and ask that this Court vote to ADOPT it.

To: Michigan Supreme Court April 12, 2023

From: Judge Jon Hulsing, 20th Circuit Court

Re: Proposed Amendment to MCR 1.109 (ADM File No. 2022-03)

I present several concerns with the proposed modification to the above court rule.

It appears that one reason for implementation of the rule change is to ensure respect for a certain class of persons. Canon 2B of the Code of Judicial Conduct reads:

> A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect

At present, any judge who disrespects or is discourteous to any person is subject to judicial discipline. The proposed change will *require* the court and parties to use certain language when referring to certain persons regardless if that person is present or not, and regardless of the context of the conversation/assertion/statement/opinion.

Obviously, courts and judges are *required* to comply with the court rules; and, failing to do so can and should lead to disciplinary action. The proposed rule change could/would result in a legitimate grievance in that the failure to use designated pronouns is not only a violation of the court rule, but is also suggestive that the language was disrespectful in violation of Canon 2B, regardless of context. For example, the following scenarios can (and probably will) arise:

1. A judge uses grammatically correct language regarding a third-person during an in-chambers conference and refers to a biological female as "she." If that person has expressed a desire to be referred to as "they," "he," or "zinzer," is the judge subject to a grievance?
2. One attorney refers to a biological male as "he" during an in-chambers conference when that person has expressed a desire to be referred to as "they," "she," or "zir." Must the judge stop the conversation, and correct the pronoun or risk a grievance?
3. During trial, a witness refers to a biological male as "he" when that person has expressed a desire to be referred to as "they." Must the court stop the proceeding to ensure that the proper pronoun is used to avoid being grieved and to promote "respect"? If so, has the witness's testimony been altered by the court?

Historically, words have meaning, and are used to engage in dialogue using the meaning of the words chosen. If a word's meaning is disassociated with the word, communication becomes difficult if not impossible. Until recently, only certain defined letter combinations were considered "pronouns." However, some individuals are using certain letter combinations in order to form

unique "pronouns." If the court rule is enacted, then the court is *required* to recognize and use letter combinations, which may or not be real words, in order to appease one's subjective meaning of "pronouns" or risk a grievance.

In addition, would a person's preferred "pronouns" be limited to third-person pronouns? In other words, can an individual also create their own preferred *second-person* pronouns such as "good-looking" or "innocent?" If not, why not? Instead of you or yours, must the court then use these preferred "pronouns" when talking directly to that person? Similarly, what if the person's pronouns are "fluid?" Must a judge also recognize and apply the changing moods of a person as reflected in their new iteration of a preferred pronoun? Would this enhance communication?

As mentioned earlier, Canon 2B of the Code of Judicial Conduct states in part: "At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary." One important function of the Supreme Court is to ensure that public confidence in the integrity of the judiciary is maintained. Requiring the use of certain language when that language is disassociated form a word's meaning may not enhance public confidence in the judiciary. While the proposed speech rule may make a small percentage of persons "more comfortable," an equal or higher number of persons may feel uncomfortable by using words that have been deprived of their meaning and for which they morally object.

The current requirements in the Code of Judicial Conduct that require judges to treat all with dignity and respect is sufficient and anyone who feels that a judge has violated those requirements already has the tools to take action and correct the misconduct.

I would ask that Supreme Court reject this proposal.

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April 14, 2023

Clerk of the Court
Michigan Supreme Court
c/o ADMcomment@courts.mi.gov

RE: ADM File No. 2022-03

Dear Clerk of the Court Larry S. Royster:

Thank you for the opportunity to comment on the proposed change to MCR 1.109. The Court is urged to not approve the amendment for the reasons set forth below.

Amending the rule would only add to the confusion over gender identity and cause confusion in the court record. Gender dysphoria is a serious issue and it is desirable to treat litigants with sensitivity and compassion. As this is already the law[1], no change in the court rules is necessary. Further, science and studies, not to mention many individual experiences, indicate that it is not compassionate or caring to perpetuate a litigant's misconception in this area. A recent study shows that suicide rates among transgender individuals are not reduced even after their transition.[2] To encourage such ideology is anything but respectful or compassionate. Although there are many causes of gender dysphoria, supporting transgenderism does not affect the root of the dysphoria.

As a member of the State Bar of Michigan for over 30 years, I have never encountered an instance where this proposed court rule would have been necessary. To the contrary, it is likely that this proposed change will result in confusion in the court record. The issue here is not treating litigants with respect but, rather, the issue is whether to require that judicial officers affirm a falsehood, whether genuinely believed or not.

At best, the proposed rule is redundant and unnecessary. At worst, it requires the court to affirm and perpetuate a life-threatening falsehood. Truth matters. Sex matters. How can a hate crime be established if "gender identity" has no concrete meaning as a matter

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[1] Canon 2 of the Code of Judicial Conduct already requires judges to treat all persons with "courtesy and respect"; MRPC 6.5(b) requires "A lawyer serving as an adjudicative officer shall, without regard to a person's race, gender, or other protected personal characteristic, treat every person fairly, with courtesy and respect."

[2] Long-Term Follow-up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden, Published February 22, 2011, https://doi.org/10.1371/journal.pone.0016885

of law? Civil rights laws that are intended to protect men and women from having their rights violated essentially makes those laws meaningless.

However, it appears that this debate is not a debate about clarity, truth and science but rather about ideological imperatives. Adoption of this rule change would cause the Court to assert its own ideology and would no longer be blind. For the Court to take sides in a raging culture war does so at its own peril, especially when the side taken is not consistent with truth and science.

Respectfully submitted,

Theresa K. Cottrell (P41888)

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Douglas J. Curlew
dcurlew@cmda-law.com

April 14, 2023

Supreme Court Administrative Counsel
P.O. Box 30052
Lansing, MI 48909

Re: **ADM File No. 2022-03-Proposed Amendment of MCR 1.109**

Dear Administrative Counsel:

I write to comment upon the proposed amendment of MCR 1.109(D)(1)(b) to permit parties to designate "any personal pronouns" for purposes of reference in court proceedings.

Doubtless the intent of the proposal is to be respectfully inclusive. But the terse comments so far posted by the court fail to grasp the significance of the proposal. Indeed, the initiators of the proposal may not grasp the significance either.

But empowerment of self-selection of pronouns for purposes of legal proceedings easily leads to (at least, demand for) self-definition of *legal status*. The proposal, like the societal trends that spur it, is rooted -- whether knowingly or not -- in "postmodern" epistemology that threatens the ability of the legislature and the courts to draft and interpret the law.

The "Plain Meaning" Problem.

The vagary and variability of self-selected "pronouns" are not the primary issues. But these are the place to begin.

Use of gendered pronouns that deviate from a person's biological sex is one thing -- albeit quite problematic by itself. For decades, the Bar Journal has had a special section devoted to "plain language." Deviation of referential pronouns from biological sex runs somewhat counter to the plain language principle. But this is only the tip of an iceberg.

The comments posted thus far seem to presuppose that the option is simply to designate the ordinary, binary, gendered pronouns, contrary to a party's biological sex. But the proposed rule is not limited to gendered pronouns. It allows "*any* personal pronouns." As written, the rule equally allows a party to designate nongendered plural pronouns ("they"/"them") in the place of he or she for first-person singular references. More importantly, the proposed rule is open to "neopronouns" and "xenopronouns" or "noun-self" references

(ne, ze, xe/zem/xyr) fae/faer/faeself, kitten/kittenself), as advocated by some groups (e.g., the Human Rights Campaign).

Despite resources like the New York Times neopronoun guide (*https://www.nytimes.com/2021/04/08/style/neopronouns-nonbinary-explainer.html*), this variable terminology does not contribute to clarity of meaning. To most readers, this is gibberish. And this is particularly problematic for judicial opinions that are supposed to communicate the meaning of the law to the general public, not merely the legal community or a trendy cultural elite.

The Legal Classification Problem.

Self-selection of pronouns implies a more fundamental concept of self-definition, whereby a person can unilaterally declare membership in a group or classification. Given that the legal system largely functions through define and categorization of people, such self-definition is unworkable.

It is a relatively minor matter for a biological male to identify as female and use female pronouns. But it is quite another thing for a biological male to identify as female and, therefore, demand to be treated as female for broader purposes, e.g., sports participation. By self-definition, Lia Thomas participated in the NCAA women's swimming championships and dominated the event.

This is not just a matter of a private entity sponsoring sporting events. Intercollegiate athletics, and many other activities, are legally regulated. Even as women are now benefitting from legal mandates to provide parity with men in athletic opportunity, they are now at risk of being displaced from those opportunities by biological males self-identifying as women.

And what may become of other categorical programs? Must a specialized transit service providing rides to disabled individuals offer up its limited seating to physically whole persons who self-identify as disabled? (Such people do exist.)

Such concerns can be addressed. But this requires legally limiting the scope of self-definition and/or, ironically, creating more legal categories (which cannot hope to encompass all the host of potential self-definitions).

The limitation of self-definition is quite common in the law. One cannot claim legal treatment as a "married" person, unless they have obtained a marriage license for their relationship. One cannot claim legal treatment as a corporation or an LLC, unless they have filed the appropriate forms and been granted such status. Even the change of one's personal name (for legal purposes) requires a probate court proceeding. MCL 711.1 For the transgendered, Michigan affords a legal option for formal change of one's birth certificate. MCL 333.2831(c).

Certainly, the imposition of legal standards and proceedings for such matters are limitations on personal freedom. But such formalities incorporate a measure of deliberation and permanency to the new legal status. Alteration of legal status -- with its resulting legal

effects upon the person and those interacting in legal and economic spheres with them -- should not be as simple as posting on Tik Tok.

The matter of categories is more complicated. The law is full of categories based on a multitude of factors (e.g., age, disability, residency). And these are unquestionably valid. An epileptic twelve-year-old resident of Detroit should not be able to evade Michigan law and obtain a driver's license by self-identifying as a healthy, adult Ohioan.

Additional classifications can be created for people (e.g., legal mandates requiring specified accommodation for the transgendered). But, given that virtually every type of condition or status is now viewed as a "spectrum" rather than a polarity, not every possible self-identification can be accommodated. A free-for-all of self-identification is unworkable.

We are addressing only pronouns today. But it cannot be expected to end there. Once pronouns are self-selectable in legal proceedings, parties will swiftly demand that their attorneys press the matter beyond form to substance.

The proposed pronoun rule inevitably reaches much farther than pronouns. The rule should not be adopted until its full ramifications are addressed, such that the impact is carefully defined -- and limited.

The More Fundamental Problem.

As stated above, the concept of self-definition exemplified by pronoun choice is a manifestation of postmodern social and cultural analysis.

What is now recognized as "postmodernism" first developed in the field of literary criticism. But it has spread through academia and society as a broader epistemological skepticism. In an apt summary, postmodernism proceeds from "the belief that there is no true objectivity," in literature or science, such that "'all value-orientations are equally well-founded.'" Salberg, Stewart, Wesley and Weiss, *Postmodernism and Its Critics*. (University of Alabama Dept of Anthropology, https://anthropology.ua.edu/theory/postmodernism-and-its-critics/).

The Court should be cautious in opening the door to such concepts. Postmodern analysis implicates a fundamental challenge to effective rule of law. Before adopting a seemingly minor accommodation of self-selected pronouns, the Court should consider the full implications of the postmodern baggage such action invites.

For the sake of brevity, I will (over)simplify by highlighting two such implications: (1) subjective textual interpretation and (2) a resulting personal unilateralism that necessarily becomes anarchic.

It is well established that the "primary goal" of statutory interpretation "is to ascertain and give effect to the Legislature's intent." *Rouch World, LLC v Department of Civil Rights*, 510 Mich 398, 410; __ NW2d __ (20-22). Equally, this Court certainly intends its own opinions to have meaning -- and to be enforced accordingly, until this Court itself says

otherwise. *Associated Builders & Contractors v Lansing*, 499 Mich 177, 191-2 (2016), *Boyd v W G Wade Shows*, 443 Mich 515, 523 (1993).

But postmodern analysis rejects the fixed meaning -- traditionally accepted as having been imparted to a text by the *author* -- in favor of the individual, subjective interpretation of the *reader*. In postmodern theory, "the reader...should act independently of any supposed intentions of the author" and the author's "delimiting authority." Christopher Butler, *Postmodernism: A Very Short Introduction*, New York, Oxford University Press, 2002), p. 23. "Meanings become the property of the interpreter." *Id.*, at 24.

Obviously, such notions fundamentally contradict the principle that statutes (and judicial opinions) should be read and applied in accordance with the intent of their authors. "The danger, but also the point, for many postmodernists...is that the text is left open to all sorts of interpretations." Butler, *Postmodernism*, at 11. Of particular relevance, "a statute, the holding of a case, or a legal doctrine can be deconstructed" -- thus fundamentally undermining the legally controlling meaning intended by the author(s). Peter C. Schank, *Understanding Postmodern Thought and Its Implications for Statutory Interpretation*, 65 S Cal L Rev 2505, 2505 (1992).

Under postmodern analysis, such deconstruction becomes the right of the reader -- at variance with, or in defiance of, the formerly "privilege[d]" intent of the author. Butler, Postmodernism, at pp. 20-1, 23-4 . As famously stated by Roland Barthes, "we must reverse [the] myth: the birth of the reader must be ransomed by the death of the author." Roland Barthes, *The Death of the Author* (originally 1967). By such reasoning, subjective personal beliefs of the reader (the reader's "narrative") determines the meaning of a text (e.g., a statute or court decision) as applicable to them.

Pronoun choice, by itself, may be a small thing. But epistemological principles from which the notion of such choice has arisen are a much bigger thing.

Postmodern thought is already an active force in the legal community. It is at the heart of the various forms of "critical" legal theory that have become contentious points of debate in the legal (and political) arena. Schank, *Understanding Postmodern Thought and Its Implications for Statutory Interpretation*, at 2507, 2512-3.

As should be clear, however, postmodern concepts are fundamentally problematic for the effectiveness of a legal system and government in general. Postmodernist analysis has a laudable goal of inclusiveness -- albeit postulated in debatable Marxian terms of power and marginalization. Butler, *Postmodernism*, pp. 44-46, 56. It is the origin of "identity politics." *Id.*, p. 57.

But empowering subjective personal choice of identity (e.g., male, female, neither, etc.) necessarily conflicts with any effort by legislators or the courts to create and enforce classifications of people for legal purposes. Any attempt to make or enforce legal distinction between people can be negated by an individual's unilateral self-declaration to identify as something different. Every person can presume to dictate their legal status. If indulged, they become a law unto themselves.

An extreme example (*rare in Michigan case law, but well known in federal courts*) are the so-called "sovereign citizens" and "Moors," who claim to be outside the reach of state and federal law (particularly tax laws and licensing requirements). See Charles E. Loeser, *From Paper Terrorists to Cop Killers: The Sovereign Citizen Threat*, 93 N C Law Review 1106 (2015) and Michael Crowell, *A Quick Guide to Sovereign Citizens*, UNC School of Government Administration of Justice Bulletin, No. 2015/04, November 2015. In their fanciful historical (and conspiratorical) narrative, statutes and court decisions have no authority over them at all (except to the extent they choose).

Obviously, the declaration that one's pronouns are "xe/xyr," by itself, is of a different nature from the defiance of governmental authority advocated by the "sovereigns." **Again, however, empowerment of self-selection of pronouns for legal proceedings easily leads to self-definition purposes of legal status for broader legal purposes.** It is not a far stretch for an attorney to argue that a client recognized as a "she" for purposes of a legal caption and reference by the court, they should be deemed a "she" for everything else -- from bathrooms to college scholarships -- with no additional criteria or conditions apart from personal declaration.

Conclusion.

The proposed rule allowing parties to designate "any personal pronouns" guarantees confusion. But it implicates much more dubious and pernicious results.

Without rejecting inclusiveness, gender transition or non-binary rejection of gender altogether, it behooves the Court to beware of empowering unbounded self-definition. Until the broader implications are addressed, adoption of the proposed revision to MCR 1.109 is premature.

Very truly yours,

Douglas J. Curlew, J.D., Ph.D.

CATHOLIC LAWYERS SOCIETY
OF METROPOLITAN DETROIT

Statement on ADM File No. 2022-03
Opposing Proposed Amendment to MCR 1.109(D)(1)(b)

The Court should decline to insert itself into one of the most controversial social issues of our time, declare a winner, dismiss objections as mere products of bigotry, and threaten to punish dissenters whilst ignoring their constitutional rights.

THE INTEREST OF THE SOCIETY

The Catholic Lawyers Society of Metropolitan Detroit (the "Society") is an association of Catholic lawyers and judges that exists to promote the social, intellectual, temporal, and spiritual welfare of its members; to uphold the highest standards and best traditions of the legal profession; and to promote the ideals and beliefs of the Catholic faith through education and charitable acts.

The Society opposes ADM 2022-03 because it proposes the adoption of a rule that is incompatible with the Catholic faith and would infringe on the constitutional rights of Catholic judges. And, although the proposed rule would apply only to judges, we harbor no illusions that Catholic lawyers will be exempt from addressing litigants and judges according to designated pronouns that do not align with the sex in which God created them.

In this statement, we summarize relevant Catholic beliefs, with citations for further study, to explain why the proposed amendment is highly objectionable to Catholic lawyers and judges. We also refute the uncharitable accusations of bigotry leveled by some who have submitted comments in support of the proposed amendment—unironically insulting men and women of deep faith while purporting to invoke decency, civility, and respect for others as justification for the rule. Finally, we respond to substantive legal positions advanced by those who have filed statements supporting the proposed amendment.

The Society's board of directors approved this statement on April 14, 2023.[†]

[†] The Society's board consists of 15 directors divided into two classes consisting of lawyers and one class consisting of judges. The judges abstained from voting on the statement because they may be called upon to interpret the proposed amendment if it is adopted. Cf. Letter from Judges of the Court of Appeals to Larry S. Royster, Esq., Clerk of the Supreme Court, at 2, n 4 (Mar. 1, 2023).

THE STORY OF SALVATION

Religious objections are often demeaned these days as "fig leaves for prejudice," as one supporter of the proposal puts it. Such *ad hominem* attacks are hardly the hallmark of reasoned discourse. Calling those who disagree with you bigots is aimed at silencing dissent by embarrassment. Yet, as Christians, we are "not ashamed of the gospel of Christ," *Romans* 1:16, we rejoice at being "counted worthy of suffering dishonor for the sake of the name [of Jesus]," *Acts* 5:41, and we see our objections as a faithful response to the story of salvation.

Fr. John Riccardo, a priest of the Archdiocese of Detroit, distills the essence of the Good News in *Rescued: The Unexpected and Extraordinary News of the Gospel*, framing the story of salvation into four words: created, captured, rescued, response.[2] We share that story so the Court has a frame of reference for our objections.

Created. Why is there something rather than nothing? Why is there a universe with planets, stars, and galaxies? Why do you exist?

Not mankind.

You.

Why do *you* exist?

Because God, who is love, willed you into existence, and he made it all *for you*. The pinnacle of everything he made—the creature that he most loves—is you. Not "mankind." *You*. He made *you* in his image and likeness, he made *you* for friendship with him, and he made *you* for love.

Captured. Then why is everything in this world so messed up? Because Lucifer, one of the creatures he made, a creature who was made good, chose to rebel against God. He made himself an enemy, a foe of God. He rebelled out of envy.

What did he envy? *You*. He envied you and the plan that God has for you. So he declared war. Not so much against God; Lucifer knows he's a creature who can't vanquish God. So he went to war against the creature God loves the most: *you*. At the beginning of our race, he tricked our first parents into thinking God was not good, that he kept things from us and did not want what was best for us. Falling for that trick, our first parents sold themselves and all of us into slavery against powers we were helpless to compete against: Sin and Death. That we are subject to Death is obvious; the one thing you know with

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[2] See also Jake Khym and Brett Powell, *Men in the Arena: Fr. John Riccardo*, *Way of the Heart* Podcast, Season 12, Episode 15, at 53:33 (Nov. 2, 2022), from which this section is drawn almost verbatim.

certainty will happen to you is that one day you will die. Sin too is obvious. Have you ever done anything you didn't want to do, that you knew you shouldn't do, that you hated doing, but you did it anyway? That's Sin exercising its power, abusing you and causing you to abuse others. It's like being in the hands of a human trafficker.

Rescued. What, if anything, has God done about it? Imagine you're in the hands of that trafficker. You've been abused, and used, and hurt. One night, you're lying there chained up. You feel a touch on your shoulder. You recoil in fear because it means you're about to be hurt. You open your eyes to see the evil about to be visited upon you. But this time, you see the face of someone the likes of whom you've never seen before in your life. You immediately know you're safe; this man isn't here to hurt you. As he stands you up, you begin to feel great love coming from this man. He unchains you and starts to walk you out the door where you've been held captive. You're gripped with exhilaration and terror. Exhilaration because you might get free; terror because you know who's on the other side of the door. When you cross the threshold, you look at the floor and see the strong man who's kept you prisoner. The one who's with you says, "Don't worry about him. I've taken care of him. He can't hurt you anymore." That's Jesus, and that's what he did for you. He rescued you from the powers of Sin and Death. You don't have to sin anymore. You don't have to fear death anymore. They can no longer keep you from the eternal friendship with God that he made you for.

This was all done in the extraordinary way of the Incarnation: God became flesh and hid himself in this world as a man named Jesus, so that he could engage Lucifer in battle. The battle took place during Jesus' passion and death on the cross. On the cross, even though it might seem like Jesus was the victim, he was actually the aggressor. Think about it. He's omnipotent. God couldn't be arrested, chained, scourged, crowned with thorns, and nailed to a cross unless he wanted to be. He hung there to lure the devil in, tricking him as Lucifer tricked our first parents. It was inconceivable for the devil to accept that God would lower himself to become a creature. Jesus submitted to Death—he entered its realm—to subdue it.

> Death could not devour our Lord unless he possessed a body, neither could hell swallow him up unless he bore our flesh; and so he came in search of a chariot in which to ride to the underworld. This chariot was the body which he received from the Virgin [Mary]; in it he invaded Death's fortress, broke open its strong-room and scattered its treasure.

St. Ephrem the Syrian, *Sermon on the Death of Christ*.

By dying on the cross, Jesus could storm hell and rescue our ancestors. Then he came back for us. With his resurrection, he overcame the power of Sin and Death once and for all.

Response. Who will you ever be able to trust more than the one who freed you from hell by sacrificing his own life? What will you give him for rescuing you? There's really only one answer: everything.

Of course, God created you with free will. You can always choose to reject his love and cooperate with Sin and Death. Like the strong man tied up outside the cell, they're still there. And they'll gladly keep you away from God if *you* let them. But why would you ever want to untie them and willingly go back into the dungeon?

That's the story of the Gospel.

You matter to God.

So much so that you're worth fighting for and dying for.

And the only right and just response is to give him first place in your life.

HOW THE PROPOSED RULE CONFLICTS WITH CATHOLIC BELIEFS

Having shared the Good News, we hope the Court recognizes that the proposed rule treads upon the creation element of the Gospel. The Catholic Church has spent 2,000 years teaching the details of each element of the story through the revealed word of God, the sacraments, and the Church's traditions. We focus here on creation to explain how the proposed rule conflicts with Catholic beliefs.

"A fundamental tenet of the Christian faith is that there is an order in the natural world that was designed by its Creator and that this created order is good." U.S. Conference of Catholic Bishops Committee on Doctrine, *Doctrinal Note on the Moral Limits to Technological Manipulation of the Human Body* ¶2 (Mar. 20, 2023) ("USCCB Note"). "What is true of creation as a whole is true of human nature in particular: there is an order in human nature that we are called to respect. In fact, human nature deserves utmost respect since humanity occupies a singular place in the created order[.]" *Id.*, at ¶3. "'God created man in his own image, in the image of God he created him, ***male and female he created them***.' Man occupies a unique place in creation: (I) he is 'in the image of God"; (ii) in his own nature he unites the spiritual and material worlds; (III) he is created '***male and female***'; [and] (IV) God established him in his friendship." *Catechism of the Catholic Church* ("CCC"), at ¶355 (2d ed., 2000), quoting *Genesis* 1:27 (emphases added).[3]

[3] See also *Matthew* 19:4 ("Jesus said in reply, 'Have you not read that from the beginning the Creator "made them male and female," and said "For this reason a man shall leave his father and mother and joined to his wife, and the two shall become one flesh?"'").

"The root reason for human dignity lies in man's call to communion with God." St. Paul VI, *Gaudium et Spes* §19 (1965).[4]

"Man and woman have been ***created***, which is to say, ***willed*** by God: on the one hand, in perfect equality as human persons; on the other, in their respective beings as man and woman. 'Being man' or 'being woman' is a reality which is good and willed by God: man and woman possess an inalienable dignity which comes to them immediate from God their Creator." CCC, at ¶369 (emphases in original). Having been made in God's image, "man may not despise his bodily life. Rather he is obligated to regard his body as good and to hold it in honor since God has created it and will raise it up on the last day." CCC, at ¶364, quoting *Gaudium et Spes*, at §14. "[W]hatever violates the integrity of the human person, such as mutilation … are infamies indeed. They poison human society, and … are a supreme dishonour to the Creator." *Gaudium et Spes*, at §27; St. John Paul II, *Evangelium Vitae* §3 (1995).[5]

"To find fulfillment as human persons, to find true happiness, we must respect that order. We did not create human nature; it is a gift from a loving Creator. Nor do we 'own' our human nature, as if it were something that we are free to make use of in any way we please." USCCB Note, at ¶3. "A crucial aspect of the order of nature created by God is the body-soul unity of each human person. Throughout her history, the Church has opposed dualistic conceptions of the human person that do not regard the body as an intrinsic part of the human person, as if the soul were essentially complete in itself and the body were merely an instrument used by the soul." *Id.*, at ¶4. "[T]he Church has always maintained that, while there is a distinction between the soul and the body, *both* are constitutive of what it means to be human, since spirit and matter, in human beings, 'are not two natures united, but rather their union forms a single nature.'" *Ibid.*, quoting CCC, at ¶365. "Just as bodiliness is a fundamental aspect of human existence, so is either 'being a man' or 'being a woman' a fundamental aspect of existence as a human being, expressing a person's unitive and procreative finality." USCCB Note, at ¶5.

Early in his pontificate, Pope Francis explained why transgenderism conflicts with the right order of things:

> **[*Modern gender ideology*]** denies the difference and reciprocity in nature of a man and a woman and envisages a society without sexual differences, thereby eliminating the anthropological basis of the family. This ideology leads to education programmes and legislative enactments that ***promote a personal identity*** and emotional intimacy

[4] The Latin title *Gaudium et Spes* translates to English as "Joy and Hope."

[5] The Latin title *Evangelium Vitae* translates to English as "The Gospel of Life."

> ***radically separated from the biological difference between male and female.*** Consequently, human identity becomes the choice of the individual, one which can also change over time.
>
> It is a source of concern that some ideologies of this sort, which seek to respond to what are at times understandable aspirations, manage to assert themselves as absolute and unquestionable, even dictating how children should be raised.[6] … ***It is one thing to be understanding of human weakness and the complexities of life, and another to … fall into the sin of trying to replace the Creator.*** We are creatures, and not omnipotent. Creation is prior to us and must be received as a gift. At the same time, ***we are called to protect our humanity, and this means, in the first place, accepting it and respecting it as it was created.***

Pope Francis, *Amoris Lætitia* ¶56 (2016).[7]

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[6] In an alarming trend, some courts are now citing opposition to a child's desire to "transition" as a factor in favor of stripping parents of the God-given and constitutionally protected right to the custody and parenting of their children. It seems increasingly "absolute and unquestionable" that judges view resistance to transgender ideology as a new secular heresy from which they must protect children. See, *e.g.*, *Schoenheide v Shaw*, 2022 MI App 360568–39, pp 20–21 (affirming a trial court's decision to consider, among other things, a mother's "resistance" to "transitioning" her daughter into a "male" against the mother when evaluating which parent has a "stable home"); *SP v CB*, 2023 WL 1458605, at *5 n 6, *12 (NY Sup Ct, Jan 31, 2023) (citing a mother's "misgendering" of her female child instead of using the child's preferred "they/them/their" pronouns as a factor in stripping her of custody, based on the judge's personal belief that "misgendering" affects mental health and "denies a person the autonomy to determine and outwardly express their gender[.]"); *In re KL*, 252 Md App 148; 258 A3d 932 (2021) (affirming the decision of a trial court to expand the limited guardianship of a social services department over a boy who wanted to "transition" to a girl over the mother's objection because "[m]other … simply is not accepting of KL's female gender identity, referring to her by the pronoun 'he[,]' in contrast to the department "which has supported KL's gender transition over the years[.]"); *Matter of AC*, 198 NE3d 1 (Ind App, 2022) (affirming the trial court's order depriving parents of custody over their son when their son claimed mental health problems because his parents did not support his desire to be treated as a female; the opinion engaged in legal sophistry to find that the court was taking custody, not because of the parents' religious objections to transgenderism, but because those objections were causing adverse health effects—paving the way for any child to get his or her way by tantrums).

[7] The Latin title *Amoris Lætitia* translates to English as "The Joy of Love."

Ven. Pius XII taught that a person "is not the absolute master of himself, of his body, of his mind. He cannot dispose of himself just as he pleases … [he] does not have an unlimited power to effect acts of destruction or of mutilation of a kind that is anatomical or functional." USCCB Note, at ¶7, quoting Pope Pius XII, Discours aux participants au Congrès International d'Histopathologie du Système Nerveux (Sept. 14, 1952).

"There are essentially two scenarios recognized by the Church's moral tradition in which technological interventions on the human body may be morally justified: (1) when such interventions aim to repair a defect in the body; [and] (2) when the sacrifice of a part of the body is necessary for the welfare of the whole body." USCCB Note, at ¶8. See also Pope Pius XI, *Casti Connubii* ¶71 (1930) (noting that sacrificial interventions are permissible only "when no other provision can be made for the good of the whole body"). Interventions that "aim to alter the fundamental order of the body" fall into neither category. *Ibid.*

Surgical and chemical interventions that aim to exchange the sex characteristics of a person's body for those of the opposite sex or for simulations thereof are "not morally justified as attempt to repair a defect in the body or as attempts to sacrifice a part of the body for the sake of the whole." USCCB Note, at ¶¶14-15. "First, they do not repair a defect in the body: there is no disorder *in the body* that needs to be addressed; the bodily organs are normal and healthy." *Id.*, at ¶15 (emphasis added). Second, in the sacrificial context, "removal or reconfiguration of the bodily organ is reluctantly tolerated as the only way to address a serious threat *to the body*." *Ibid.* (emphasis added). Yet, in the case of so-called gender-affirming treatments, "the removal or reconfiguring [of the person's anatomy] is itself the desired result," rendering them morally unjustified. *Ibid.*

One could rightly observe at this point that the proposed rule has nothing to do with such interventions, only forms of address that correspond with the person's declared pronouns. But the same false sense of compassion that drives such interventions for those experiencing gender dysphoria also animates the proposed rule. It would be false compassion to "affirm" a visibly gaunt anorexic by agreeing she is overweight and encouraging her to lose weight. It is equally false compassion to "affirm" those with gender dysphoria by encouraging their disordered self-perception by using false pronouns or offering surgical or chemical alterations of their bodies. See Diocese of Lansing, *Theological Guide on The Human Person & Gender Dysphoria* 12 n.13 (2021) ("DOL Guide").

The Church recognizes the need for pastoral guidance and a merciful concern for those afflicted with this condition—to accept them with love, respect, compassion, and sensitivity—but without "diminish[ing] or deny[ing] the gift of our bodies ***as given to us by God.***" *Id.*, at 12 (emphasis added).

"'To love is to will the good of another.'" CCC, at ¶1766, quoting St. Thomas Aquinas, *Summa Theologicæ* I–II, Q.26, art. 4. Leading another into error—and thereby leading them away from God and the person who God created them to be—is by definition willing what is bad for another. It is therefore never an authentic expression of love. The nature of truth is correspondence of the mind with reality. St. Thomas Aquinas, *Summa Theologiæ*, I, Q.16, art. 2. "To decouple the mind from objective reality is to erode the foundations of our dignity and our awareness of the genuine needs of our neighbor." DOL Guide, at 15. Thus, "affirming" the gender dysphoric person's objective misconception of the self erodes truth, can therefore never be "the good of another" and thus can never be an authentic expression of love. As St. Teresa Benedicta of the Cross—who was known as Edith Stein before converting from Judaism, becoming a Discalced Camerlite nun, and being gassed at Auschwitz—explained with beautiful simplicity: "Do not accept anything as the truth if it lacks love. And do not accept anything as love which lacks truth! ***One without the other becomes a destructive lie***." St. John Paul II, *Homily at the Canonization of Edith Stein* §6 (May 1, 1987) (emphasis added).

It is out of genuine love that Catholicism rejects transgenderism. We will the good of our brothers and sisters in Christ. And the good is, objectively, for them to see in their bodies the truth: the person who God created as inescapably male or female.

Rather than let them show ***genuine*** love and respect toward litigants as they were created by God, the rule demands that Catholic judges subscribe to and promote the destructive lie that those experiencing gender dysphoria have the power to re-create themselves in their own image by fiat and to bend the will of everyone around them to "affirm" that belief.

ANALYSIS

I. Constitutional objections

A. Freedom of speech

"Free speech … is essential to our democratic form of government, and it furthers the search for truth." *Kennedy*, 142 S Ct at 2464. "***Whenever [government]*** prevents individuals from saying what they think on important matters or ***compels them to voice ideas with which they disagree, it undermines these ends.***" *Kennedy v Bremerton Sch Dist*, —US—; 142 S Ct 2407, 2464; 213 L Ed 2d 755 (2022) (cleaned up).

So essential is free speech to a free people, our Founders restricted the government's power to abridge it: "Congress shall make no law … abridging the freedom of speech[.]" U.S. Const., amd. I. Notwithstanding the explicit reference to Congress, the First

Amendment applies to the whole of government, including the judicial branch. *Richmond Newspapers, Inc v Virginia*, 448 US 555, 575; 100 S Ct 2814; 65 L Ed 2d 973 (1980). It also applies to state governments by way of the Due Process Clause of the Fourteenth Amendment. *Cantwell v Connecticut*, 310 US 296, 303; 60 S Ct 900; 84 L Ed 1213 (1940).

On its face, the proposed rule would compel speech. It would mandate the use of false pronouns unless otherwise necessary to ensure a clear record: "[C]ourts are ***required*** to use [false] personal pronouns when referring to or identifying the party or attorney, either verbally or in writing. Nothing in this subrule prohibits the court from using the individual's name or other respectful means of addressing the individual ***if*** doing so will help ensure a clear record." ADM 2022-03, Proposed Amendment to MCR 1.109(D)(1)(b) (emphases added). The plain language of the proposed rule says that a judge cannot use "other respectful means" of addressing a litigant ***unless*** he or she needed to do so to ensure a clear record. And this is confirmed by the proposed official comment, which provides that the rule would "***require*** courts to use th[e] [false] pronouns both verbally and in writing, ***unless*** doing so would result in an unclear record." *Id.*, at cmt. (emphases added).

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, shall prescribe ***what shall be orthodox*** in politics, nationalism, religion, or other matters of opinion ***or force citizens to confess by word or act their faith therein***." *West Va Bd of Educ v Barnette*, 319 US 624, 642; 319 S Ct 1178; 87 L Ed 1628 (1943) (emphases added). Laws that compel speech "pose the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information or ***[to] manipulate the public debate through coercion rather than persuasion.***" *Turner Broad Sys, Inc v FCC*, 512 US 622, 641; 114 S Ct 2445; 129 L Ed 2d 497 (1994) (emphasis added). Compelling speech also coerces people into betraying their convictions. *Kennedy*, 142 S Ct 2464. "***Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning***[.]" *Ibid.* (emphasis added) See also *Janus v Am Fed'n of State, Co, & Muni Employees*, —US—; 138 S Ct 2448, 2463; 201 L Ed 2d 924 (2018) ("***compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command***[.]"). "[F]or this reason, … a law commanding 'involuntary affirmation' of objected-to beliefs [requires] 'even more immediate and urgent grounds' than a law demanding silence." *Kennedy*, 142 S Ct at 2464. Promoting strongly disputed notions of civility cannot warrant compelling Catholic judges into betraying their religious convictions by involuntarily affirming gender ideologies that conflict with Church doctrine on the order of creation.

There are those who contend that mandating the use of false pronouns is a *de minimis* infringement on free speech. The Supreme Court of the United States has already

rejected a seriousness-of-the-infringement approach to First Amendment jurisprudence and confirmed that the First Amendment protects against the State "invad[ing] the sphere of intellect and spirit" and compelling a person to become an unwilling courier of "idea[s] they find morally objectionable." *Wooley v Maynard*, 430 US 705, 715; 97 S Ct 1428; 51 L Ed 2d 752 (1977). This is precisely what the proposed rule does to Catholic judges. To borrow from academia, the rule "ideologically colonizes" the intellect and spirit of dissenting jurists and compels them to espouse an idea they find morally objectionable—to wit: that a man can be a woman, that a woman can be a man, or that a person can have no sex or gender at all.

Proponents of the rule also point to the distinction drawn between government as sovereign and government as employer. In *Garcetti v Ceballos*, 547 US 410; 126 S Ct 1951; 164 L Ed 2d 689 (2006), the high court held that the First Amendment does not protect public employees from discipline for speech made in the discharge of their official duties, while leaving intact protections for speech that public employees make as citizens on matters of public concern. The *Garcetti* principle does not apply, however, to elected officials. "The state cannot regulate the substance of elected officials' speech under the First Amendment without passing the strict scrutiny test." *City of El Cenizo v Texas*, 890 F3d 164, 184 (CA 5, 2018), citing *Williams–Yulee v The Fla Bar*, 575 US 433, 444; 135 S Ct 1656; 191 L Ed 2d 570 (2015). To pass strict scrutiny, the state's restriction of speech must be narrowly tailored to serve a compelling interest. *Williams-Yulee*, 575 US, at 444. Because the proposed court rule would "command[] 'involuntary affirmation' of objected-to beliefs[,]" only the most "immediate and urgent grounds" could be compelling enough to even entertain the idea of compelling speech in the manner contemplated by the rule. *Kennedy*, 142 S Ct at 2464. Proponents contend they are seeking only to promote respect and civility, but such generic, subjective concepts have never sufficed as a compelling interest, much less do they rise to "immediate and urgent" grounds as to warrant compelling Catholic judges—or judges of other faiths that believe humanity was divinely created as a sexually dimorphous race—to involuntarily affirm a contrary belief to which they morally object.

A few supporters have cited *Grievance Administrator v Fieger*, 476 Mich 231; 719 NW2d 123 (2006), as providing constitutional cover for the proposed rule, but there is ample daylight between the facts in *Fieger* and the iconoclastic nature of the proposed rule. The first and most obvious distinction is that *Fieger* did not involve ***compelled*** speech. Second, Mr. Fieger was sanctioned for the "crudest and most vulgar" language: he "declare[d] war" on the judges who ruled against him; likened them to Hitler, Goebbels, and Braun; and said they should "kiss [his] ass" and be sodomized with a finger, a plunger, or a fist *Id.*, at 261. In remanding for entry of an order of reprimand, the Court said, "[a]s

should be clear, these [ethics] rules are designed to prohibit only 'undignified,' 'discourteous,' and 'disrespectful' conduct or remarks. The rules are a call to discretion and civility, ***not to silence or censorship***, and they do not even purport to prohibit criticism." *Id.*, at 246 (emphasis added). To cite *Fieger* as support for the constitutionality of the proposed rule would validate the fear of retired Justice Cavanaugh, a liberal lion of the Court: "[D]espite the majority's protestations to the contrary, [upholding the civility rules] does in fact impermissibly exalt the protection of judges' feelings over the sanctity of the First Amendment's guarantee of freedom of speech." *Id.*, at 282 (Cavanaugh, J., dissenting). Substitute "litigants'" for "judges'" and the concern remains exactly the same.

Some proponents couch their support as promoting impartiality, fairness, and integrity of elected judges, which has been accepted in the past as a compelling interest. *Williams–Yulee*, 575 US at 445. But these attributes of judicial office have a historical meaning: "A judge instead must 'observe the utmost fairness,' striving to be 'perfectly and completely independent, ***with nothing to influence or control him but God and his conscience***.'" *Id.*, at 447, quoting Address of John Marshall, Proceedings and Debates of the Virginia State Convention of 1829–1830, p 616 (1830). See also, *e.g.*, *Republican Party of Minn v White*, 536 US 765, 775–76; 122 S Ct 2528; 153 L Ed 2d 694 (2002) (noting the historical definition of "impartiality" is equal application of the law and holding that neither this historical definition nor nonstandard definitions of preconceived legal views and open-mindedness qualify as compelling state interests for abridging free speech—reasoning that also calls *Fieger* into question). No proof has been put forward to suggest that any judge, much less a Catholic judge, has ruled for or against a person on a point of law or a question of fact because he or she claimed transgendered status.

The LGBTQA Law Section of the State Bar of Michigan cites a 2016 report from Lambda Legal that cites a single instance of a person, filing a complaint for divorce, being offended that a court clerk in Massachusetts asked to see proof of birth for the named defendant. This reportedly "forced" the filer to "out" the defendant "as a trans person." Lambda Legal, *Protected and Served?*, at 7 (2016). This anecdote did not involve a judge (and judges, not clerks, are the target of the proposed rule). Nor did it involve any context. Assuming this account is true—no last name is provided, no case number, no courthouse, nothing is supplied that would allow the reader to verify the story—one is left to wonder if proof of birth was a legal requirement in Massachusetts or if there was some administrative reason why the information was requested. To make a knee-jerk assumption of discrimination based on this story is cognitive bias. "To a man with a hammer, everything looks like a nail."

The same report is cited for the proposition that 13 percent of those surveyed were "denied equal treatment or service, verbally harassed, or physically attacked in [court or in a courthouse] in the past year because of being transgender."[8] *Id.*, at 14. Yet the report defines such denials, harassment, and attacks in a most curious way: "[Percent] of those who said staff knew or thought they were transgender." *Ibid.* How does one square this with the proposed rule? By such logic, 100 percent of those who declare pronouns will be victimized because, apparently, merely knowing (or suspecting) that a person identifies as transgender is *ipso facto* discrimination, harassment, or violence to the authors of the report.

In the very judicial opinion that seems to have served as the impetus for the proposed rule, the concurrence in *People v Gobrick*, 2021 MI App-U 352180-40; 2021 WL 6062732, at *9 (Dec. 21, 2021), Judge Boonstra "fully concur[red] in the majority's legal analysis and in its decision to affirm [the] defendant's conviction and sentence," while expressing his opposition to entertaining false pronouns. Presumably, the authors of the Lambda Legal

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[8] Of note, the survey consisted of 2,376 participants who self-reported being 18 years old or older, living in the United States, completing at least one-third of unspecified "key demographic questions," and self-identifying as one or more of "LGB, questioning, queer, SGL, other sexual orientation, transgender, two spirit, genderqueer, gender-nonconforming, other gender identity, [or] HIV-positive." Lambda Legal, *Protected and Served?*, at 6 (2016). Because the survey is not limited to those identifying as transgender, we cannot know how many survey respondents are captured within the 13 percent who claimed discrimination, harassment, or violence. But even assuming *arguendo* every respondent claimed transgender status, the maximum number equals 308 people who reported such adversity in the courts *nationwide*. Our nation numbers 334.5 million. A 2022 UCLA study reported that 1.6 million Americans self-identify as transgender. Jody L. Herman, *et al.*, *How many adults and youth identify as transgender in the United States?* at 1, UCLA School of Law Williams Institute (Jun. 2022). If one assumes *arguendo* that these reports are scientifically valid, as one imagines their authors would, extrapolating the data to the general population would go something like this:

> The number of people claiming to be transgendered (T_N), multiplied by 13%, equals the number of people claiming to be transgendered people who also claim to have suffered discrimination in courts or courthouses (T_D), divided by the national population (P) equals the rate of discrimination (R_D),

represented by the formula: $T_D \div P = R$, where $T_D = T_N \times 0.13$. Entering the variables yields this result: 1,640,000 multiplied by 0.13 equals 213,200, which is then divided by 334,500,000, which equals 0.0006 percent. Unverified claims of discrimination by six ten-thousandths of one percent of the population hardly suggests rampant discrimination or harassment by the judicial branch against those who self-identify as transgendered.

report would consider Judge Boonstra's opinion to be discrimination or harassment. Yet he wrote only to express his disagreement with using false pronouns. If that is the motive for the proposed rule—to silence dissenting views on gender ideology—and we perceive that it is, then the rule is not about ensuring judicial "impartiality, fairness, [or] integrity," but about forcing judges to conform to an ideology contrary to an immutable truth of their faith.

It also proves fanciful the idea that judges could, without causing the same offense, declare their belief in traditional gender norms and state in a footnote or in a concurring or dissenting opinion that they are using false pronouns under compulsion of law. Tyler Sherman, *All Employers Must Wash Their Speech Before Returning to Work: the First Amendment & Compelled Use of Employees' Preferred Gender Pronouns*, 26 Wm & Mary Bill of Rights J 219, 236 (contending that mandatory pronoun laws are constitutional because employers would remain "free to post signs declaring their religious or political support for traditional gender norms … and … to engage in conversation with customers in order to explain their beliefs"—as if a person offended by being "misgendered" would take no offense at such a discussion or a sign (or a passage in a judicial opinion) that reads some variation of "God made us male and female; men are men and women are women, and genital mutilation cannot alter that. I am compelled to use false pronouns by laws indulging this fiction."). We have already seen examples where such approaches provoke not only the same hostility that "misgendering" would but also threats of discipline. In the State of Washington, for example, a storeowner and a patron sparred over a sign rejecting the idea that transwomen are women. Emily Crane, *Store owner gets in heated exchange with transgender woman over offensive sign*, NY Post (Aug. 6, 2021) (while we do not endorse the crude wording of the sign, the point remains that the option endorsed in the law review article is not a viable one, as any disapproval of gender ideology will trigger hostile responses from those unwilling to tolerate opposing viewpoints, as happened between this shopkeeper and patron). And in Ohio, college professor Nicholas Meriwether was investigated for creating a hostile environment in the classroom by referring to students as "sir" or "miss" based on their biological sex out of a sincerely held religious belief, and he was told he could not include a disclaimer on his syllabus to state his beliefs and that he was complying with a pronoun policy under compulsion. His only option was to scrub pronouns from his speech, comply with the policy, or be fired. Fortunately for Professor Meriwether, the U.S. Court of Appeals for the Sixth Circuit found that the college trampled on his First Amendment rights. *Meriwether v Hartop*, 992 F3d 492 (CA 6, 2021).

Other proponents contend that "misgendering people is harmful and creates an unsafe environment." Such statements rest on a freewheeling conception of harm and safety. Within our lifetimes, parents routinely taught children to be thick-skinned with a simple rhyme: "sticks and stones may break my bones, but words will never hurt me."

The speech-is-violence crowd rejects such common wisdom. It advocates for cocooning people from the "harm" of others disagreeing with their viewpoint, their "lived experience," or perceived insensitivity (*i.e.*, so-called microaggressions). It claims that anyone unwilling to "go along to get along" with the crowd creates an unsafe environment and must be banished to preserve a "safe space" for the fragile objector. In essence, proponents of this view posit that there is a legal right not to be offended, and that offensive speech must be suppressed in the name of "tolerance and inclusiveness." To them, feelings are more important than constitutional rights. And they detect no irony that suppressing speech with which they disagree is—by definition—intolerant and excludes the suppressed speaker. "***[L]earning how to tolerate speech … of all kinds is part of learning how to live in a pluralistic society, a trait of character essential to a tolerant citizenry.***" *Kennedy*, 142 S Ct, at 2430.

Still other proponents of the rule contend anything short of full-throated support of their gender ideologies is "bigoted" and "hateful" speech unworthy of First Amendment protections. As explained earlier, the Catholic position is neither bigoted nor hateful; it is grounded in biblical truth and authentic love for the person as God truly created him or her. Those tolerant and inclusive souls who cannot tolerate Catholic beliefs should consider that even Voltaire, an avowed secularist who spent his life criticizing the Catholic Church, believed in defending the speech of his clerical opponents unto death: "Reverend, I detest what you write, but I would give my life to make it possible for you to continue to write." Letter from Voltaire to Abbé (Fr.) François Louis Henri Leriche (Feb. 6, 1770).

Espousing a similar view on freedom of speech, Justices Holmes and Brandeis once opined, "if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought that we hate." *United States v Schimmer*, 279 US 644, 654–55; 49 S Ct 448; 73 L Ed 889 (1929) (Holmes, J., dissenting). See also *Texas v Johnson*, 491 US 397, 414; 109 S Ct 2533; 105 L Ed 2d 342 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.") Although Holmes and Brandeis were dissenting justices in *Schimmer*, their view was later vindicated when the Court quoted them when overruling *Schimmer* less than 20 years later in *Girouard v United States*, 328 US 61, 68; 66 S Ct 826; 90 L Ed 1084 (1946). Indeed *Girouard* carried their view even further:

> The victory for freedom of thought recorded in our Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the State. ***Throughout the ages men have suffered death rather than subordinate their allegiance to God to the authority of the***

> ***State.*** Freedom of religion guaranteed by ***the First Amendment is the product of that struggle.*** As we recently stated, … ***freedom of thought, which includes freedom of religious belief, is basic in a society of free men*** … Over the years, Congress has meticulously respected that tradition ***and even in time of war*** has sought to accommodate the military requirements to the religious scruples of the individual.

Id., at 68–69 (emphases added). *Girouard* calls to mind the mother and her seven sons who bravely faced torture and brutal deaths for refusing the king's command to eat pork in violation of Jewish dietary laws, 2 *Maccabees* 7, and the martyrdom of St. Polycarp, the bishop of Smyrna and a disciple of St. John the Apostle, who was killed around 155 A.D. for refusing to offer a pinch of incense to Caesar lest he betray God. *Martyirum Polycarpi*, Chaps. 9–16.

Lamentably, there prevails today a sentiment that society can no longer endure the tension between freedom (to do as we ought in the eyes of God) and license (to do as we please), and that the tension must be resolved in favor of licentiousness at the expense of religious liberty. Yet the Supreme Court of the United States, when the world was at war (and far more concerned with real aggressions than "micro" ones), confidently "appl[ied] the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization [of our nation]." *Barnette*, 319 US at 641. It went on to observe that "freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order [or, as here, the proposed order that would be dictated by the proposed amendment]." *Id.* at 642. Forcing acquiescence to a litigant's pronouns would demand that the Catholic judge accept and conform to the dictates of gender ideology—an ideology that the Church teaches is a destructive lie about the very nature of what it means to be created in the image of God. The proposed rule thus "invades the sphere of intellect and spirit which [the] First Amendment … reserves from all official control." *Id.* at 642.

B. Freedom of worship

Our state constitution—ordained by a people "grateful to Almighty God for the blessings of freedom," Const (1963) preamble, and who recognize that "[r]eligion, morality, and knowledge [are] necessary to good government and the happiness of mankind," Const (1963), art. 8, §1—protects every person's "liberty to worship God according to the dictates of his own conscience." Const (1963), art 1, §4. The Worship Clause in Michigan's constitution protects religious liberty "at least" as much as the Free Exercise Clause of the First Amendment. *People v DeJonge*, 442 Mich 266, 273, n 9; 501 NW2d 127 (1993).

Justice Murphy observed when concurring in *Barnette*, a Free Exercise Clause case, that "[o]fficial compulsion to affirm what is contrary to one's religious beliefs is the antithesis of freedom of worship which, it is well to recall, was achieved in this country only after what [Thomas] Jefferson characterized as the 'severest contests in which I have ever been engaged.'" *Barnette*, 319 US at 646 (Murphy, J., concurring). The proposed rule, as already outlined earlier, would constitute official compulsion to affirm gender ideologies that are contrary to Catholic religious beliefs and therefore infringe on Catholic judges' freedom of worship.

Strict scrutiny applies to challenges arising under the Worship Clause, regardless of whether the government action at issue is generally applicable and religion-neutral. *McCready v Hoffius*, 459 Mich 131, 143–45; 586 NW2d 723 (1998), vacated in part on other grounds, 459 Mich 1235; 593 NW2d 545 (1999). Strict scrutiny assesses: (1) whether a belief, or conduct motivated by the belief, is sincerely held; (2) whether that belief, or conduct motivated by the belief, is religious in nature; (3) whether a state regulation burdens the exercise of that belief or conduct; (4) whether a compelling state interest justifies the burden imposed on that belief or conduct; and (5) whether there is a less obtrusive form of regulation available to the state. *DeJonge*, 442 Mich at 280. As outlined in *The Story of Salvation* and *How the Proposed Rule Conflicts with Catholic Beliefs* sections above, the use of correct pronouns is a sincerely held belief that is religious in nature and, as explained in in those sections and in Section I.A, *supra*, the proposed rule burdens that belief for Catholic judges because it would require them to use false pronouns except in the presumably rare instance when it would be necessary for a clear record. For the reasons explained in Section I.A, *supra*, none of the motives for the rule advanced by its proponents qualify as a compelling state interest, which this Court has defined thusly: "[A] compelling state interest must be truly compelling, threating the safety or welfare *of the state* in a clear and present manner." *Id.* at 287 (emphasis added). Protecting someone from perceived slights is not the kind of clear and present threat to the safety or welfare of the state that can pass muster under the fourth element of the *DeJonge* test.

C. Religious civil rights clause

The same section of our state constitution also provides that "[t]he civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief." Const (1963), art 1, §4. The proposed rule runs afoul of this clause because it would impose a *de facto* religious test for judicial office—Catholics and others who believe in traditional binary sex and gender as a tenet of their faith risk being removed from judicial office if they do not comply with the rule. Const (1963), art 6, §30(2) (granting this Court the power to remove a judge for "misconduct in office");

MCR 9.202(B)(1)(c)–(d) (defining misconduct in office as persistent failure to treat persons fairly and courteously and as treatment of a person unfairly or discourteously because of the person's race, gender, or other protected personal characteristic). We have little doubt that the proponents of the rule would consider violations to be misconduct in office and would weaponize the rule to seek the removal of judges who decline to use false pronouns (absent a risk of an unclear record). It takes no imagination to foresee that those like the ones who heckled United States Circuit Judge Kyle Duncan at Stanford Law School over his refusal to use the false pronouns demanded by a sex offender (and who felt justified in calling for the rape of his daughter over their disagreement with his position) would gleefully file a complaint with the Judicial Tenure Commission over a violation of the proposed rule.

In the same vein, the proposed rule will discourage people of faith from running for office, functioning practically like the old "No Irish Need Apply" signs of an apparently not-so-bygone era. To this we observe: "The trenchant words in the preamble to the Virginia Statute for Religious Freedom remain unanswerable: 'all attempts to influence the mind by temporal punishment, or burthens [burdens], or by civil incapacitations, tend only to beget habits of hypocrisy and meanness.'" *Barnette*, 319 US at 646 (Murphy, J., concurring).

D. Free exercise of religion

"Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities." *Kennedy*, 142 S Ct at 2421 (citations omitted). "That the First Amendment doubly protects religious speech is no accident. It is a natural outgrowth of the framers' distrust of government attempts to regulate religion and suppress dissent." *Id.*, citing A Memorial and Remonstrance Against Religious Assessments, in Selected Writings of James Madison 21, 25 (R. Ketcham ed. 2006). "[I]n Anglo–American history, … government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince." *Kennedy*, 142 S Ct at 2421.

Proponents of the proposed rule may wave away religious liberty concerns, citing the rational basis test that often applies to free-exercise claims since *Employment Div, Dep't of Human Res v Smith*, 494 US 872; 110 S Ct 1595; 108 L Ed 2d 876 (1990). But even *Smith* recognized that strict scrutiny applies when a challenged government action implicates more than one constitutionally protected interest. *People v DeJonge*, 442 Mich 266, 249 n 27; 501 NW2d 127 (1993) (noting that *Smith*, 494 US at 881–83, acknowledged that strict scrutiny applies when religious liberty claims arise "in conjunction with other

constitutional protections"). Here, the proposed rule implicates both freedom of speech and religious liberty, so strict scrutiny applies. And, for reasons already argued, the proposed rule cannot pass strict scrutiny.

At least one proponent contends that "judicial displays of religiosity are unconstitutional" violations of the Establishment Clause, citing *American Civil Liberties Union of Ohio Found, Inc v DeWeese*, 633 F3d 424 (CA 6, 2011), and *North Carolina Civil Liberties Union Legal Found v Constangy*, 947 F2d 1145 (CA 4, 1991). But those cases turned on the now-abandoned *Lemon* test. *Kennedy* retired the *Lemon* test because it wrongly treated the Establishment Clause as superior to the Free Exercise Clause whenever there was a clash between the interests protected by both clauses. As Justice Gorsuch explained, "the Establishment Clause does not include anything like a modified heckler's veto, in which religious activity can be proscribed based on perceptions or discomfort." *Kennedy*, 142 S Ct at 2427 (cleaned up). "The Clauses have 'complementary' purposes, not warring ones where one Clause is always sure to prevail over the others." *Id.*, at 2426.

Nor is a religious objection to compelled use of false pronouns remotely akin to the facts in *DeWeese* or *Constangy*. In *DeWeese*, the judge posted the Ten Commandments in his courtroom. In *Constangy*, the judge opened court with a prayer. While neither ruling prohibiting these acts would likely survive *Kennedy*, the use of truthful pronouns—he/him/his for men, and she/her/hers for women—is not remotely akin to posting the Ten Commandments or opening court with a prayer. Or "administer[ing] the Eucharist in the courtroom" for that matter, as one proponent put it.

II. The proposed rule is vague and overbroad.

Several who commented in support of the proposed rule seem to assume that there are only three pronoun options—she/her/hers, he/him/his, and they/them/their—and that compliance would be simple. But as twelve Court of Appeals judges and the Diocese of Lansing observe, the proposed rule calls for the use of "any" pronoun, which opens the way to a limitless variety of pronouns, including those that are offensive, abusive, or obscene. And nothing in the proposed rule limits the scope of personal pronouns to those pertaining to sex or gender. People who believe they are animals, elves, objects, and even weather systems[9] would be entitled to be addressed as such and in ways that they alone get to define.

[9] See, *e.g.*, *Otherkin*, Wikipedia; *Why be human when you can be otherkin?*, University of Cambridge (Jul. 16, 2016); Callie Beusman, *I Look at a Cloud and I See It as Me: The People Who Identify as Objects*, Vice (Aug. 3, 2016) ("But the category of non-human is far broader than one would initially suspect. In addition to the otherkin [who] identify as animals, there are some who identify as mythical creatures, like dragons, fairies, or

It is no response that we can deal with such absurdities as they arise. By what standard would the Court specify acceptable pronouns?[10] The creation of an "approved pronouns lexicon" would create its own set of constitutional and procedural problems. And of course, today's supporters who fall on the wrong side of that absurdity line will be tarred as tomorrow's bigots, haters, and transphobes.

The exception to the proposed rule—allowing correct pronouns when using false pronouns would result in an unclear record—suffers from similar problems. By what standard would a judge decide that the record would be unclear if false pronouns were used? What findings would a judge need to make before "using an individual's name or other respectful means"? Would that decision be challengeable on appeal, and if so, using what standard of review? Would this lead to an increase of interlocutory appeals or complaints for superintending control? If the next highest tribunal disagreed with the lower tribunal(s), would that support vacatur or reversal of a lower judgment, or would it be "harmless error"—a phrase well understood in the legal community, but one that would likely further "trigger" a dissatisfied litigant who "feels harmed" by the error? Would a finding of error automatically result in a referral to the Judicial Tenure Commission?

III. The mask has slipped on the supposed distinction between sex and gender drawn by adherents to gender ideologies.

When public discussion of transgenderism started in earnest just a few years ago, much emphasis was placed on the supposed distinction between sex and gender. Today, that pretense has been dropped. Several jurisdictions, including Michigan, now allow residents to reclassify their sex on vital records and identification documents—records that have never listed "gender." One can even self-designate a sex of "X." See Mich Sec'y of State Sex Designation Form (Nov. 2021). The newspeak is "trans women are women" and "trans men are men." See, *e.g.*, Tweet of Justin Trudeau (Mar. 8, 2023) ("I want to be very clear about one more thing: trans women are women."); Henry Zeffman, *Transgender women are women, says [Sir] Keir Starmer[, MP and Leader of the Labour*

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vampires; fictionkin, who identify as fictional characters, frequently from anime series or videogames; weatherkin, like Marco, who identify as weather systems; conceptkin, who identify as abstract concepts; spacekin, who identify as celestial bodies; and several other even more obscure categories (musickin, timeperiodkin—the list goes on).").

[10] It is worth pausing here to note that the Court has never required judges or attorneys to use specific terms when referring to someone's sex, race, or ethnicity—*e.g.*, "woman" instead of "lady" or "girl"; "Latina/Latino" instead of "Hispanic." It has wisely allowed usage to evolve organically and trusted to the good sense, and courtesy, of the bench and bar.

Party] in call for legal action, The Times (Mar. 12, 2022); Tweet of National Hockey League (Nov. 22, 2022) ("Trans women are women. Trans men are men. Nonbinary identity is real."). We are now treated to bizarre coverage of criminal charges against a "female [for] using 'her penis' to rape two vulnerable women," Aaron Kliegman, *Male rapist transitions before trial, sent to all-female prison as transgender woman*, NY Post (Jan. 26, 2023). See also, Ed Whelan, *Judicial pronoun police issue warning to prosecutors*, National Review (Nov. 25, 2022) (recounting how the California Court of Appeals admonished a prosecutor for "misgendering" a female defendant who led police on a chase in her car but then decided to "identify as male" at trial).

The judiciary should not validate this ideology, much less give it preeminence in the marketplace of ideas. It would be wrong for the Court to proceed as if this ideology were neutral and incontestable truth. Even for those who do not share our religious objections, some find the entire concept of pronouns to be illiberal by its very nature. As one playwright, journalist, and political satirist recently observed:

> Activists insist that it is just a way to be inclusive and polite—and in many cases that is clearly the intention. Yet the genuinely liberal position is to oppose pronoun declaration, and it is worth outlining this case in full given that most of us, at some point in the near future, will be faced with the choice between explaining our reasons for refusing or capitulating for the sake of an easy life.
>
> When you ask someone to declare pronouns, you are doing one of two things. You are either saying that you are having trouble identifying this person's sex, or you are saying that you believe in the notion of gender identity and expect others to do the same. As a species we are very well attuned to recognising the sex of other people, so, for the most part, to ask for pronouns is an expression of fealty to a fashionable ideology—and to set a test for others to do likewise.
>
> * * *
>
> Yet gender identity ideology is simply not a belief system that most people share. I do not identify as male; it's a biological fact, as mundane as the fact that I've got blue eyes or that I'm right-handed. I am not here talking about gender dysphoria—those people who feel a[t] odds with their sex and seek to adapt either through medical procedures or the way in which they present themselves—but rather the notion that we each have an inherent gender that has nothing to do with our bodies. This is akin to a religious conviction, and we would be rightly appalled if employers were to demand that their

> staff proclaim their faith in Christ the Saviour or Baal the Canaanite god of fertility before each meeting.
>
> * * *
>
> It is often forgotten that many transgender people are opposed to pronoun declaration for a number of reasons. It draws needless attention to them when they just want to get on with their lives. It can have the effect of "outing" people against their will, particularly if they are in the early stages of their transition. It creates a false impression that gender identity ideology is the norm even though it is a belief system shared by relatively few. Most importantly, compelled speech is a fundamentally illiberal prospect, one that should always be resisted by all.
>
> It is strange that the objections to pronoun declaration are so often construed as being "reactionary" when they are essentially progressive. Many who believe in liberal values will therefore feel uncomfortable in refusing to state pronouns at work. But until more people are prepared to make their feelings clear on this issue, it will continue to be misinterpreted as "a Right-wing talking-point."
>
> A refusal to participate in these rituals need not be antagonistic, and most employers will be happy to hear your reasons. There is always the possibility that you could be accused of transphobia or hate, but this is simply part of the coercive strategy. For all the awkward conversations that might arise, there is nothing Right-wing about standing up to ideologues who insist on imposing their values onto everyone else.

Andrew Doyle, *The liberal case against pronouns: There's nothing progressive about compelled speech*, UnHerd (Mar. 2, 2022).

CONCLUSION

St. Thomas More, the patron saint of lawyers and statesmen and a loyal servant of King Henry VIII, resisted unto death the king's claim to be head of the Church in England. He famously told the crowd at his execution, "I die the king's good servant and God's first." Catholic judges are good and faithful servants of the law, but they are always servants of God first. The Court should not adopt a rule that will abridge their freedom of speech and their freedom of worship and require them to choose between public service and faithfulness to Almighty God.

Outlaws of the University of Michigan Law School

Statement Supporting Proposed Amendment MCR 1.109

In our society, the courtroom is the stage of justice upon which the community seeks resolution to often deeply personal issues. As such, it must be a place where dignity and respect extend to every individual. The Michigan Code of Judicial Conduct, the Michigan Rules of Professional Conduct, and the Rules of Etiquette and Conduct for the Michigan Supreme Court all reflect this view. Cannon 2 of the Michigan Code of Judicial Conduct notes that "[a]t all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect." Similarly, Rule 3.5(d) of the Michigan Rules of Professional Conduct prohibits lawyers from "enag[ing] in undignified or discourteous conduct toward the tribunal." The Rules of Etiquette and Conduct for the Michigan Supreme Court set the standard that all other courtroom visitors "must conduct themselves in a manner that recognizes and protects the dignity of the proceedings."

Transgender and gender non-binary individuals deserve the same dignity and respect as every other person who appears before the court. Members of the trans community have historically faced oppression in the legal system, from laws criminalizing their existence to individuals within the system erasing trans identities by deadnaming and misgendering transgender and gender nonconforming people. As a society, we have made small steps toward rectifying these wrongs. Instructing the members of our legal system to use the preferred pronouns for individuals before the court would be a step in the right direction. Not only would this rule bring Michigan courts into compliance with established rules of conduct, but it would also align court rules with existing legal principles.

The 14th Amendment's Equal Protection Clause has played a crucial role in safeguarding the rights of marginalized communities, including transgender individuals. This amendment guarantees equal protection under the law for all citizens, and since its ratification in 1868, the courts and Congress have applied it to various aspects of public life.

In line with the ideals established under the 14th amendment, federal and state courts have included gender identity as a protected class under certain foundational laws. In *Frontiero v. Richardson*, the Supreme Court of the United States held that sex-based classifications are inherently suspect and must, therefore, be subjected to a more stringent level of scrutiny. 411 U.S. 677, 690 (1973). More recently, in *Bostock v. Clayton Cty.*, the Supreme Court held that Title VII of the Civil Rights Act of 1964's employment protections extend to transgender individuals. 140 S. Ct. 1731, 1742 (2020). Similarly, in *Rouch World, LLC v. Dep't of C.R.* the Michigan Court of Claims held that the Elliott-Larsen Civil Rights Act's prohibition of discrimination "because of sex" includes discrimination based on gender identity. 510 Mich. 398, 409 (2022). The court followed *Bostock*'s reasoning that discrimination based on gender identity presupposes a preference for certain gender roles and characteristics. Therefore, to discriminate against someone for their gender identity also implies discriminating against them based on sex.

These cases, coupled with the recent amendment explicitly expanding the Elliott-Larsen Civil Rights Act to protect against discrimination based on sexual orientation and gender identity, unequivocally establish the illegality of discrimination based on gender identity in Michigan. As such, the proposed amendment to MCR 1.109 is consistent with protections against sex-based discrimination, including discrimination based on gender identity.

Opponents of this rule change may argue that the First Amendment protects the right to speak freely in public, including the right to refer to another person they way they see fit. However, it is well-

established that courts have the authority to restrict what parties can and cannot say in the courtroom. The Michigan Code of Judicial Conduct, the Michigan Rules of Professional Conduct, and the Rules of Etiquette and Conduct for the Michigan Supreme Court all reflect the view that speech can be regulated to ensure the "integrity and impartiality of the judiciary." The court can even regulate speech in its courtroom to ensure efficient and fair administration of justice such as the prohibition against evidence that is more prejudicial than probative, the utilization of hearsay, and the use of inflammatory rhetoric. *See People v. Blackston*, 751 N.W.2d 408, 413 (2008)*; People v. Gursky*, 786 N.W.2d 579, 587 (2010); *Sheppard v. Maxwell*, 384 U.S. 333, 357 (1966).

Therefore, the First Amendment cannot be used to justify speech that is inconsistent with the judicial ideal of integrity and impartiality in the courtroom. Our Nation's courts should be respectful to all parties involved, ensuring that all individuals before the court are afforded equal protection under the law. As such, the courts may regulate speech to protect the rights of historically oppressed groups. *See Estate of Grable v. Brown (In re Dudzinski)*, 667 N.W.2d 68, 72 (2003).

As future lawyers, we see a need for the profession to show sensitivity to the diverse range of experiences and identities that people bring to the legal system. How can we convince a transgender or gender nonconforming client to trust that they will receive fair treatment by the legal system if we cannot assure them that the judge will at least use their preferred pronouns? How will transgender and gender nonconforming lawyers provide their best representation to clients if judges and opposing counsel misgender and disrespect them during proceedings? How will transgender and gender nonconforming lawyers become respected and effective judges in a system that permits discriminatory behavior against their gender identities?

At the end of the day, you do not need to understand someone else in order to show them the basic respect and dignity every person deserves as a human right. If nothing else, remember the golden rule: treat others how you wish to be treated. If we expect all members of the community to treat the court and its representatives with respect, judges, lawyers, and other members of the legal system must in turn treat the individuals before the court with that same respect.

From: Del Kostanko
To: ADMcomment
Subject: Proposed changes to court pronoun usage
Date: Thursday, January 19, 2023 1:34:24 PM

To whom it may concern,

I saw on a WLNS broadcast today that the Michigan Supreme Court is considering mandating that court documents, employees, and proceedings, utilize the preferred pronouns of the people involved. I am voicing my opinion that this proposal NOT be adopted.

It's my opinion that the basic biology of natural genders is self evident and permanent. Forcing others to acknowledge the pronoun preferences of those who have attempted to alter their true biological gender is a waste of time, confusing, deceitful, and against the laws of nature. The duties of the courts should be limited to legal matters, not venturing into the rabbit hole of societal whims.

Respectfully,
Del Kostanko
Concerned voter

Name: Alec Waples-Dexter
Date: 01/19/2023
ADM File Number: 2022-03

Comment:
I believe requiring a person's pronouns to be respected is in line with both the the standards and regulations courts are held to, as well as the Michigan state constitution.

Misgendering persons in the court serves no purpose other than to belittle and discriminate. If a Person goes to the effort to identify their pronouns, then persistently using anything but those pronouns is a clear and intentional action to discriminate and make said person feel unsafe.

I support this proposal and hope that it is passed.

From: Michael Clanton
To: ADMcomment
Subject: ADM File No. 2022-03
Date: Friday, January 20, 2023 7:40:35 PM

I am opposed to the court requiring that preferred pronouns be used. Requiring that anyone refer to another by a preferred pronoun other than one which matches their biological gender is nonsense. No one should be required to play along with another's delusion. There are biologically only two genders. To require anyone to use someone's preferred pronouns when they do not agree with their biological gender would violate the first amendment rights of speech and religion.

From: Ryan Kaiser
To: ADMcomment
Subject:
Date:
ADM File No. 2022-03
Friday, January 20, 2023 6:27:22 PM

Hello, I would like to express my support for this order. People do not have to use pronouns that they do not like,

instead using someone's proper name, but if they choose to use pronouns, they should use the correct pronouns for whomever they are addressing. Failure to do so is unhelpful and rude.

Ryan Kaiser

Name: James Brinks
Date: 01/20/2023
ADM File Number: 2022-03

Comment:
I think this will just add to the mental illness that these people already have. I am against this rule.

Name: Gabrielle O'Connor
Date: 01/20/2023
ADM File Number: 2022-03

Comment:
Respect is one of the most fundamental moral rights that we have in society. We are taught to respect others and ourselves as children. Our Courts should be a reflection of the best, most equitable, and most dispassionate parts of our society. How is a litigant to feel that they are getting the fairness and respect of the Court when the Court refuses to honor how they represent themselves in society?

We must not remain rooted in the past for the sole purpose of tradition. Indeed, we have already seen the transformation of gender roles in the court system. Femme presenting attorneys are allowed to use the salutation of "Ms." because her martial status is immaterial to her practice. We do not require the use of Miss or Mrs.

The law must be inclusive. Respect is fundamental to that inclusively.

Gabrielle O'Connor, Esq.
these comments are my own and are not necessarily a reflection of any particular group or employer

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Name: Bret
Date: 01/20/2023
ADM File Number: 2022-03

Comment:
This is a great idea. Don't let the nay sayers discourage you from adding this inclusivity to the court room. Just because someone is on trial doesn't mean they deserve to be disrespected.

Name: Angelina Rodano-Osborne
Date: 01/20/2023
ADM File Number: 2022-03

Comment:
Yes.

Name: Garrett Williams
Date: 01/20/2023
ADM File Number: 2022-03

Comment:
Using a client’s preferred pronouns is one of the most valuable signals of respect for the individual and one that

requires virtually no effort. I support this rule change, as I believe the Court and their accompanying proceedings should reflect how an individual presents themselves in public.

Garrett Williams, DNP, RN

Name: Isaac S-K
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
As someone who came out as non-binary in October 11, 2022, I fully support this proposal

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From: Johanna C. Szalankiewicz
To: ADMcomment
Subject: ADM File No. 2022-3
Date: Saturday, January 21, 2023 10:17:04 AM

To Whom it May Concern;

I think this proposal to respect person's pronouns is an excellent idea. Respecting people is what should always be done.

In a court of law the need for error free records is a must. Calling someone by the incorrect pronoun is a big error. Especially if jail time is involved.

Also if the judge wants everyone to respect and adhere to their pronoun of Your Honor they must give the same respect they are receiving.

Thank you from a 62 year old white woman,

Johanna C. Szalankiewicz

Name: Holly Eatinger
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
I believe this is an important issue and agree with requiring the correct use of pronouns.

Name: Melanie
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
This is ridiculous. The court should refer to persons as their biological gender pronoun. The court should not pander to political parties or cater to delusional people.

Name: Travis Bishop
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
I think this is the right call.

If a dude was constantly called “she/her”, even is they are not trans and identify as male, we wouldn’t and shouldn’t allow that either.

I think this is the right call.

Name: John Mellott
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
I think that this is an appropriate decision. Whether or not you agree with their choices everyone should be treated with respect when navigating through our court system. This does not place any undue burden on anyone to use proper pronouns when addressing parties in court. Besides we already use gender neutral pronouns for the judges why not extend that to everyone.

Name: Luke
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
This is the dumbest proposal I've ever seen. There are bigger issues in Michigan!

Name: Mary Hartman
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
This matter is important to me and my family, as speaking to a person with their preferred pronouns is an easy thing to do, and shows respect. When you meet a dog on the street, the owner might correct you and tell you the pet's preferred pronouns. The same respect should be shown to our fellow humans in a court of law. Going to court is an incredibly stressful process. Let's alleviate some stress for trans people, and allow clear thinking from the person being addressed by avoiding causing them dysphoria (a medical condition) and unwanted pain.
Thank you.

Name: Christian Karr
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
To promote preferred pronouns is silly at best. To compel speech in others for personal gratification is wholly barbaric. I'm example if the self identified pronouns are "Your and God" then everyone would be making a religious declaration for the hypothetical person's ego without crossing a line of court confusion.

Name: Daria Kingman
Date: 01/21/2023
ADM File Number: 2022-03

Comment:

I support this proposal. How can people have faith in equality under the law, if the behavior of the court staff/judge indicates a belief that the person in question is a second-class citizen, unworthy of basic respect?

Name: Jack Griffes
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
No, the court should NOT require any person to use the "personal pronouns" selected by any person. This could and predictably would require people who are sworn to tell the truth, the whole truth, and nothing but the truth to tell a lie if any attorney or party to a case selected as their pronouns the pronouns which apply to the opposite biological gender. Literally every cell in the body of a person bears witness at a chromosomal level as to what biological gender it actually is - this is objective truth. Forcing people to say what is objectively untrue via the means of requiring the use of "selected pronouns" would put those sworn to tell the truth in the position of having to either keep their oath and tell the truth OR tell the lie the court requires and thus break their oath which the court also requires them to abide - they cannot do both - they would be forced to decide which they would do. If they chose to keep their oath then they would not use “selected pronouns” which caused them to tell an untruth about biological gender and they might be subject to punishment for so doing. And if they decided to break their oath and use “selected pronouns” which were not true relative to biological gender then the court could punish them for breaking that oath. And one would think that the oath to tell the truth, the whole truth, and nothing but the truth is a higher matter. ------ Additionally those who believe that God made man in His own image and made only two genders - male and female - would be put in a position of being forced by the court to go against their deeply held religious beliefs - it would violate their natural Rights to that deeply held religious belief. And the court is prohibited from doing so because it has not been delegated authority from the people to make any rules or laws which violate free exercise of religion. If the court made such a rule they could only do so by usurpation of powers not delegated to them by the people and that would render that ruling null and void from inception. Thus it would not be wise nor prudent to so rule in the first place. --- Additionally the very notion of requiring people of sound mind to comply with the wishes of those who are delusional relative to gender (which can be proven by running a test to determine if they have XX or XY chromosomes) defies good sense - caring about those with mental illnesses which cause them to have any sort of delusion is not done by going along with and in fact affirming the delusion. Rather it is done by loving and respecting the person and bringing them nearer and nearer to accepting truth and abiding by truth. We do not help people in any real and lasting sense by pretending they are correct when literally every cell in their body knows the truth at a chromosomal level but their brain is deluded into believing and proclaiming something other than the actual truth. And our courts should never make it a rule to violate truth, to violate religious freedom, and to violate good sense. Candidly I am stunned that such a proposal would even be made.

Name: Charles Walter Brooke IV
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
For the Courts to be required to entertain a LIE about whether someone is a man or a woman (defined by an XY or XX chromosome that cannot be changed), would affirm that Justice has become Willfully Blind, and will ignore the Truth for the sake of a woke politically correct agenda that actively weakens and undermines the most fundimental foundation of our nation. The natural and divinely designed Family unit. There natural order of this universe defines what things are, not arogant, prideful, foolish, selfish, mortals with ambitions and opinions that do not comport with reality.

Our Courts must honor and practice White's Law, not play the games of deception and manipulation practiced with Black's Law.

-Charles Walter Brooke
(Sui Juris)

A Living Breathing Man, and an uconditionally Soveriegn born Citizen of the soil of the Michigan republic, one of the several states of the united States of America.

Name: Kim Scott
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
The courts must not fall in line with this craziness. You can't be forced to change the use of pronouns otherwise you will be changing this every time someone wants to be addressed a different way.

Name: Tammy Snowden
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
Just have them called by their legal name. We can't have people coming in saying they are cats or some nonsense. No one will take the court serious.

Name: Andrew
Date: 01/21/2023
ADM File Number: 2022-03

Comment:
This is one of the dumbest things I've seen in a while, you are either a male or female. You are either he or she non of that other nonsense these woke people are trying to push. The courts should only recognize people as what they were biologically born as, it's as simple as that.

Name: Anonymous
Date: 01/22/2023
ADM File Number: 2022-03

Comment:
With all due respect, court should be a place of the utmost accurate and lawful/legal information. Words mean what they mean. Specific pronouns are used to address someone of a specific biological sex, not what sex they wish they were. Court is not the place to make up or change word definitions. This also goes for calling someone in court by their legal name or alias only, not a nickname or other name they go by socially. If someone wants to change their name they can follow the legal steps to do so. Perhaps in the future there can be a legal way to change someone's pronoun as well, but in the mean time correct pronouns should be used in all legal cases such as court. The other acceptable option is to simply refer to the person by name and avoid pronoun use all together. I understand many people struggle with different types of identity disorders, but court is not the proper place to try and work on that. Thank you for your time.

Name: Kim Jscobs
Date: 01/22/2023
ADM File Number: 2022-03

Comment:
Does the MI Supreme Court have nothing better to do?! Such a disgrace!!

Name: Vera H.
Date: 01/22/2023
ADM File Number: 2022-03

Comment:
The proposed alteration to administrative procedures performed by the Court is in no small sense a long overdue course correction, shifting away from pandering to those who refuse to extend the bare minimum of respect to their fellow citizens. The necessity of a clear baseline of ethics by which to treat another, especially for an exalted position such as that of a member of the court, is deeply saddening to me as a constituent.

Nevertheless, as Appeals Judge Mark Boonstra has demonstrated, there are those within the court system that actively desire permission to actively discriminate against one of the most marginalized communities in the nation, and that renders this correction needed on every account.

I sincerely hope this measure passes, as court ethics rules and anti-discrimination laws coming from the Legislature are the only things keeping people like Mr. Boonstra from using their position as a bludgeon against my community.

That said, this measure does not go far enough. Everyone needs afforded this same treatment, and as present, this measure would focus on council and litigants, and excludes crime victims, jurors, and witnesses. If we are to establish a baseline of ethical treatment for those within the court systems, then we need to extend that hand to everyone who is involved. A half measure is a failed measure.

Respectfully,
Vera (she/her)

Name: Susan Fortney
Date: 01/22/2023
ADM File Number: 2022-03

Comment:
A pronoun is a word that can take the place of or represent a noun. Examples of pronouns he, she, you , my, I, we ,us, rhis, them and that. Alterations in human sexuality is not, nor should it be interfering with the English language. I see no reason for this proposed amendment. If someone who is a biological female wants to be refered to as he, I am fine with that but, do not legislate pronouns.

Name: Mae Ochtel
Date: 01/22/2023
ADM File Number: 2022-03

Comment:
My personal opinion is follow common sense and science. A person is what God made them ... male or female. Calling a person anything else is a lie. The Supreme Court is suppose to search and judge on TRUTH.

From: Jeanne Lutz
To: ADMcomment
Subject: prefered pronouns
Date: Monday, January 23, 2023 2:36:24 PM

Please do not waste the time and money for this ridiculous request. You only further validify this behavior which is not normal. You should be looking at serious issues like protecting parental rights, protecting the

unborn, protecting our Constitutional rights including and especially the first, second and fourth amendmants.

thank you.

Jeanne Lutz

From: Kevin Bigelow
To: ADMcomment
Subject: Proposals to force judges from Michigan Supreme Court to use pronouns.
Date: Monday, January 23, 2023 9:50:14 AM

Sorry, but this is very insanely ridiculous!
When are people going to come to their senses.
You must vote "NO" this proposal.

Sincerely,
Kevin Bigelow
13360 Hogan Rd.
Linden Michigan

From: Linda Savoyard
To: ADMcomment
Subject: ADM File No. 2022-03
Date: Monday, January 23, 2023 11:57:23 AM

I am writing in regard to ADM File No. 2022-03. It is my opinion that such a requirement is absurd and unnecessary. It is reminiscent of the Emperor's New Clothes in that it would require officers of the court to join the woke left in its denial of reality.

Regards,
Linda Savoyard, MA, MBA, LPC

Name: Kristy
Date: 01/23/2023
ADM File Number: 2022-03

Comment:
God created us all as equals. He also created man and then woman. Our constitution also states that we shall not discriminate an race, religion and gender. The constitutional amendment was based on God's creation of man and woman, not man's interpretation and slant on the Bible. Using identity pronouns, promote confusion for the younger generation as well as confusion in public etiquette. Please turn down this proposed amendment, it will only create more confusion for teachers doctors flight, attendance, restaurants, staff, etc. and most importantly our children.

Name: Rhonda Lange
Date: 01/23/2023
ADM File Number: 2022-03

Comment:
I am opposed to this measure. The court should be a place of law, order, TRUTH and facts. If this proposal is allowed it will diminish the integrity of the court. I would dare ask if someone's preferred pronoun is "it" are they

going to refer to the person as it? If they identify as a furry and their pronoun is woof/meow is the court going to refer to them as such? If nothing else and a compromise is needed refer to them as "defendant" "plaintiff" or better yet their legal name and leave off the prefix. Please stop the insanity.

Thank you for the opportunity to leave a comment

Name: Richard Maloley II
Date: 01/23/2023
ADM File Number: 2022-03

Comment:
I support this proposed amendment to show dignity to all persons who interact with the Courts.

Name: Nancy
Date: 01/23/2023
ADM File Number: 2022-03

Comment:
A person is born a male or a female and is given a name at birth. Let's just stick to that. I vote NO to this proposal. We should not have to bend to the whims of a small fraction or group!

Name: Brett Howell
Date: 01/23/2023
ADM File Number: 2022-03

Comment:
This is a terrible idea. The courts should not be part of this gender or pronoun insanity. As stated by Judge Boonstra:

"Once we start down the road of accommodating pronoun (or other) preferences in our opinions, the potential absurdities we will face are unbounded. I decline to start down that road, and while respecting the right of dictionary- or style-guide-writers or other judges to disagree, do not believe that we should be spending our time crafting our opinions to conform to the 'wokeness' of the day."

Name: Terry Allen
Date: 01/23/2023
ADM File Number: 2022-03

Comment:
This is the dumbest most idiotic thing I have ever heard and we are all dumber for reading it.

Name: Brian Pratt
Date: 01/23/2023
ADM File Number: 2022-03

Comment:
Absolutley not.

Refer only as one normally would, as a MALE or FEMALE.

There Is No Other ...as God made us male and female.

God...Not church or religion....And it is God that our laws are based upon.

And given authority from in the United States of America, and the State of Michigan.

You all went ro law school, it is all written there, so you simply cannot go against what God said, as we have always done here.

By doing so will change everything, and then there is no basis for law, only whatever whims anyone could dream up.

You absolutely cannot even consider this..it is filthy and terrible and will undermine every law of of God, which, gave this court, you all, th e authority to rule.

That is in your laws look it up.

This is about believing in God and following our laws set up by Him, and the bible upon which we swear to uphold our constitutions....which also were declared to have authority from God, if you go back and look, even in your own doctrines under which you can legally operate and govern us, the people. Do what is right. And stop this madness...

From: John Elias
To: ADMcomment
Subject: Pronouns
Date: Tuesday, January 24, 2023 5:41:53 AM

It's either a man or a woman. End of story. Body parts matter!!

Name: Roger
Date: 01/24/2023
ADM File Number: 2022-03

Comment:
This is nonsense !

Name: Kristy
Date: 01/24/2023
ADM File Number: 2022-03

Comment:
God created man and then woman. Man has a penis and woman has a vagina. He made it so simple, he or she. Our society has warped his creation to have more than 2 unique sexes. I do not agree with the use of personal pronouns. We have in God we trust on our coins, shouldn't we trust him in the determination of a sex of an individual?

From: Diane Haskin
To: ADMcomment
Subject: ADM File No. 2022-03/Pronouns
Date: Friday, January 27, 2023 2:35:28 PM

Where in our history have we been required to speak a certain way?

In regards to ADM File No. 2022-03, a requirement like this is absurd and unnecessary. It would require officers of the court to join the woke left in its denial of reality.

It goes against what is taught in the Bible. God created them male and female. His Word addresses issues like this where people reversed the roles of the genders that He created and it is an abomination to Him.

As a christian I am discouraged and offended at another attempt to go against the Almighty Lord and His ways. I feel like we are inviting his judgement on our country for the many ways we have turned our back on Him.

Sincerely,
Diane Haskin
231-342-8645

Name: Aidyn L. Colter
Date: 01/31/2023
ADM File Number: 2022-03

Comment:
There is no reason to further traumatize possible trans victims with waves of gender dysphoria in the courtroom and not provide basic respect along with "innocent until proven guilty" for trans accused persons. This should definitely be adopted.

From: Marilyn Miner
To: ADMcomment
Subject: Using pronouns
Date: Wednesday, February 1, 2023 7:45:57 PM

Absolutely not Everything should stay the same Pronouns should not be used

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Name: Ruth Elwart
Date: 02/01/2023
ADM File Number: 2022-03

Comment:
This is totally ridiculous. Stop catering to this insane rhetoric.

Name: Dianne Cotter
Date: 02/03/2023
ADM File Number: 2022-03

Comment:
The story of the Emperor's New Clothes comes to mind. There is no rational reason to confound the English language in support of gender-deniers. Individuals who insist that others speak to them in a certain way, outside of the norms of grammar, are selfish and socially mal-adjusted. The Michigan Supreme Court ought not enable such a damaging-to-general-society scheme. (of course, my personal pronouns would be Her Royal Majesty, even though we fought a Revolution against such compelled speech.) On a practical note, there is no way that such a change could be implemented without creating confusion. Attorneys have enough trouble communicating well as it is. And this I know because I am one. P60483.

Name: Phillip Cotter
Date: 02/04/2023
ADM File Number: 2022-03

Comment:
No place for a social agenda in the courts. VOTE THIS DOWN.

Name: Concerned citizen
Date: 02/05/2023
ADM File Number: 2022-03

Comment:
This seems like an unnecessary burden for the court, opposing legal team, and those following a case. This rule would codify a social phenomenon unsupported by science. In addition, the rule provides a distraction from the true legal matter at hand in any case. This provides the involved parties and unfair advantage to saturate the courts limited attention and processing power by forcing them to follow arbitrary self picked pronouns. For example, a smart legal team would pick their pronoun to be "your honor".

A much clearer and straightforward approach would be to use the pronouns. He/she. Or avoid the pronouns altogether of the individual homo-sapien requesting this special attention by using defendant/ plaintiff or the individual's first and/or last name.

Name: Mary Hamilton
Date: 02/08/2023
ADM File Number: 2022-03

Comment:
Courts must be consistant and clear. Adopting proposed amendment MCR 1.109 would be difficult for the courts to maintain this goal.

Because gender is fluid and can change at any time based on the self-identification of the person that day, or moment. Furthermore, there is no exhaustive list of pronouns. Today, free-dictionary lists 100 pronouns. Last year it was in the 70s.

How will court papers be read when someone's pronouns are one thing at the begining of a case, and change throughout it? How much confusion will be created when the person's pronouns changes from conviction to conviction?

Is clarity maintianed when someone's preferred pronoun is "they" while there are multiple people as Complainants or Defendants? With an infinite list of potential pronouns and individual can want, will the court accept them all (even if vulgar)? What happens when the court denies someone "their pronoun."

This proposal is also discriminatory against the elderly, who may not be able to adapt to using pronouns outside thouse they were taught, or when the person presents as one sex but self-identifies as another.

Courts don't let people use their "preferred name" in legal cases & demand others in the court do the same or be held in contempt, the same should be true for "preferred pronouns," especially when the latter is "fluid."

Like names, Michigan has a way for people to legally change their sex.

Like names, courts only accept the *legal* sex of the person. It is therefore reasonable that pronouns are limited to the the standard English pronouns he/she/they based upon their *legal* sex status. People can accept that or choose to be called by their name each time.

That is consistant and not confusing.

Courts aren't about "feelings" they are about precidents, facts of law, and prior case law. Adopting a rule that would confound the process is not in the best interest in the judicial arm of the government.

Thank you.

Name: Kim Lubbers
Date: 02/15/2023
ADM File Number: 2022-03

Comment:
I am in support of this proposal. People deserve basic respect and despite the fact that some people think you are either him or her, they are mistaken. Nature isn't always 'perfect' and the way different people identify is something we should respect, not demean.

Name: Rachael Koeson
Date: 02/28/2023
ADM File Number: 2022-03

Comment:
Calling people by the names and pronouns that they use is basic human respect. Our society, including our courts, should offer this basic respect to people. Using names and pronouns that are not what an individual uses is disrespectful and creates a negative environment for that person and, by extension, for others present as well. I support this proposed amendment.

Name: Shannon Tatum
Date: 02/28/2023
ADM File Number: 2022-03

Comment:
I support this amendment.

Name: Julie Staley
Date: 03/01/2023
ADM File Number: 2022-03

Comment:
Julie Staley
ADM File No. 2022-03
Proposed Amendment of MCR 1.109

"With all due respect."

I hear this phrase often, mostly being applied as a negative, followed by a disagreeing perspective. However, this amendment is a perfect positive application of this phrase. We are all due basic respect, especially by a system in which we look to for guidance and support. If those in authority do not show respect for all, they are certain to encourage the same disrespect from others.

Most of the opinions I have read objecting to this amendment are based on people's personal opinions, hateful bigotry, or a feeling as if their religious beliefs should somehow govern, at the least, everyone else's behavior, and at most, the laws that we must abide by. This is not only unsupported by the Constitution, but is being used as a hammer on a daily basis to deny people basic rights and respect simply because others disagree with their

point of view, or worse, their fundamental understanding of who they are.

The usage of respectful pronouns by the Court harms no one. The disregard of basic respect for others harms everyone. Most people don't understand that until the subject is something they personally care about. I wholeheartedly support this amendment. It is simply basic human decency.

Thank you.
Julie Staley

Name: Nancy Lewis
Date: 03/01/2023
ADM File Number: 2022-03

Comment:
I support the proposed amendment to MCR 1.109.

This amendment is compatible with the increased provision of personal pronouns in societal communications.

Recognition and use of appropriate pronouns for parties and attorney would be a sign of respect. Our courts should respect all individuals with whom they interact.

Misgendering someone, intentionally or unintentionally, can cause emotional distress, psychological harm and aggravate physical disorders, such as hypertension. It is reasonable to have courts operate in a manner that prevents undue harm to those with interacting with the courts.

Finally, the ignorance of some about the existence of gender variation is not a reasonable reason for the court to show disrespect to individuals who wish to have their gender accurately recognized by the court.

Name: Corey Volmering
Date: 03/03/2023
ADM File Number: 2022-03

Comment:
I support this amendment.

Name: Charlotte Croson
Date: 03/03/2023
ADM File Number: 2022-03

Comment:
I oppose this amendment.

It raises fee speech concerns as it compels parties, witnesses, and attorneys to engage in government mandated speech with which they may not agree or to which they have objections based in religious or other beliefs.

It raises equity and equality issues. For example, it could compel victims of sexual violence to testify about a crime, or identify an assailant, under oath in ways that are inaccurate as to the facts of the alleged crime and/or the victim's experience of that crime.

In cases involving material issues of sex equality/inequality, for example domestic violence, sexual violence, sexual harassment, sex discrimination, and sexual orientation discrimination, the sex of the relevant parties is a

material fact. A government speech code that compels, encourages, or allows disregard or obfuscation of relevant facts encourages misapplication of law to facts and an unclear record, at the least.

Judges already have the authority and discretion to run a civil courtroom. A government speech code detracts from that authority and discretion and threatens to make courtrooms less civil.

I support the proposed change to MCR 1.109. I am leaving this comment as a transgender employee of our One Court of Justice who uses a neutral name and pronouns in my life outside work.

Canon 2(B) of the Michigan Code of Judicial conduct provides, "Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect." This is repeated in Canon 3(A)(14), which provides the following concerning the responsibilities of judges: "Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect."

I believe this court-rule change is a sad necessity in light of Judge BOONSTRA's concurring opinion in People v Gobrick, unpublished per curiam opinion of the Court of Appeals, issued December 21, 2021 (Docket No. 352180). While I appreciate that some Justices of our Supreme Court have rejected the views expressed in this concurring opinion, its existence underscores the need for this amendment. Had I been the subject of this opinion, I would not have been treated with courtesy and respect. The proposed court rule merely provides a clear guideline regarding what is already expected of our courts and judiciary.

This is not a matter of politics, religion, or speech. It's a matter of common courtesy.

Lou (they/them)

Name: National Lawyers Guild, Detroit and Michigan Chapter
Date: 03/06/2023
ADM File Number: 2022-03

Comment:
As an organization dedicated to human and civil rights, the National Lawyers Guild, Detroit and Michigan Chapter, strongly supports the proposed amendment of MCR 1.109 . The amendment would allow parties and attorneys to designate their correct pronouns and require those pronouns to be used appropriately in court records and proceedings.

Equal protection under the law must begin with treating all people with respect in our courts. The Michigan Supreme Court held just last year that transgender people are protected by our state's non-discrimination laws. Courts cannot uphold the rights of transgender and nonbinary people, however, if they do not respect their gender identities in their language.

When nonbinary and transgender people appear in Michigan courts as litigants, attorneys, or criminal defendants, they deserve the same respect and dignity afforded to every other person. This includes the right to be addressed in a way that respects their correct gender.

This proposed rule harms no one. No judge, court employee, litigant, defendant or attorney loses anything by being required to refer to someone else in the way that person states is accurate. Contrary to what some who have opposed this rule have argued, acknowledging and referring to someone properly does not jeopardize any religious right.

On behalf of our Board and the hundreds of lawyers, legal workers, jailhouse lawyers and activists who form our membership, we encourage the adoption of this amendment. It is a necessary step toward ensuring that all individuals receive equal treatment and respect in Michigan courts.

Respectfully submitted,
Naomi Zikmund-Fisher, Secretary
On behalf of the Board of National Lawyers Guild, Detroit and Michigan Chapter

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Name: Davi Lev Lebow
Date: 03/06/2023
ADM File Number: 2022-03

Comment:
I strongly support this proposed amendment

Name: Natalie Pate
Date: 03/06/2023
ADM File Number: 2022-03

Comment:

The Proposed Amendment of MCR 1.109 would allow individuals to identify their preferred pronouns to the Court, and would require that the Court respect and use those pronouns absent a clear-record concern.

It is a sad day for Michiganders when a simple proposed amendment is met with bigoted comments. Not only do many of these comments display overt hate, they display a serious misunderstanding. Those who scoff at the idea of showing baseline respect for individuals' pronouns show how much more work is left to be done in Michigan.

I support the Proposed Amendment of MCR 1.109.

Natalie Pate, Esq

Name: Elyse O'Neill
Date: 03/06/2023
ADM File Number: 2022-37

Comment:
I think that this is a very good idea. Validating people's gender identity and given lawyers and clients an easy way to let judges and opposing counsel know their pronouns is a simple way to make the profession more inclusive.

Name: Brendan Jackson
Date: 03/06/2023
ADM File Number: 2022-03

Comment:
As a lifelong Michigander, a queer man, and a law student who will practice law in Michigan, I am wholly in support of this amendment. It is vitally important to affirm trans and non-binary people's gender identities, especially in ways that have been traditionally resistant to such changes (like the legal apparatus). It is a simple thing to change that can make truly meaningful change for our fellow Michiganders.

Name: R
Date: 03/06/2023

ADM File Number: 2022-03

Comment:
I am writing to express support for parties and attorneys to be able to identify themselves as they see fit with personal pronouns both verbally and in-writing. This is just something that should be expected given there are many different kinds of individuals who would be entering the law profession and needing the support of varying attorneys. Although there are those who would claim that is not necessary, that is a refusal to deal with the fact that people will continue to identify themselves in a way that they see fit and will continue to work in professions that will allow them to support others in the courts.

Name: Annie Xu
Date: 03/06/2023
ADM File Number: 2022-03

Comment:
I strongly support this proposed amendment and echo the eloquent arguments others have already made in its defense. I would add that not only does this improve the legal environment for trans lawyers and clients, it also reduces microaggressions towards lawyers (often immigrants, POCs, and other marginalized individuals) who have names that aren't immediately identifiable within the male/female binary. My thanks to the courts for considering this amendment.

Name: Michigan Law Student
Date: 03/06/2023
ADM File Number: 2022-03

Comment:
I strongly support this proposal. It's an easy and meaningful way to create an inclusive environment for all attorneys and parties, and avoids the trauma and anxiety of being misgendered for individuals who may already be vulnerable in the courtroom.

Name: Rory Peters
Date: 03/06/2023
ADM File Number: 2022-03

Comment:
I support this proposal, and I am commenting as a transgender individual who has undergone court proceedings in which my pronouns were not respected. As another commenter has noted, this proposed rule merely provides a clear guideline regarding what is already expected of our courts and judiciary---treating every person fairly, with courtesy and respect, regardless of their gender.

Respecting someone's pronouns harms no one and does not require any extra effort or expense. Not respecting someone's pronouns can be detrimental to their health and well-being, as it signals to the individual that their very existence is somehow wrong, and that they do not have the freedom to express themself in the ways that best represent their core identity.

Not understanding gender variance or the experiences of transgender individuals is not an excuse to dispose of basic human decency. Our courts and judicial officers are expected to treat each individual they interact with with common courtesy and respect, and this proposal merely clarifies that expectation.

Thank you,
Rory Peters (they/them)

Name: Brandon Wright
Date: 03/06/2023
ADM File Number: 2022-03

Comment:
I support this amendment.

Courts should refer to all parties by their preferred pronouns, as that indicates the basic level of respect due to all persons. Free speech is no more implicated than when a court instructs someone to refer to another person as "Mr." or "Mrs." It is a sign of basic respect, not a substantive compulsion. Any opposition to this rule based on (faulty) biology or religious ideas is simply irrelevant.

Moreover, no one (or, at best, a vanishingly small number of people) will attempt to "fake" their identities via use of pronouns to gain some sort of legal advantage. This is just another variation on the idea that transgender people are inherently deceptive predators.

Name: McKenna Thayer
Date: 03/06/2023
ADM File Number: 2022-03

Comment:
This amendment is necessary. The court needs to be a space where everyone before it has their dignity and humanity respected, which this amendment would allow. Michigan has the chance to be a leader in the US for treating its citizens with respect, and we should take it. The vocal minority may cry out in opposition, but the majority of Michiganders support the courts recognizing the pronouns of the people whose lives it has in its hands.

Name: Alex Rizzutto
Date: 03/06/2023
ADM File Number: 2022-03

Comment:
I don't get to choose what your name is and you don't get to choose what mine is. If we possess any element of respect for each other, we will honor each other by using the names we share with one another. I see no reason why pronouns should be any different.

If any attorney, jury member, judge, or any other individual member of the court doesn't possess the base-level mental capacity to address someone by their chosen pronouns, then they certainly don't have the mental capacity to fulfill their intended role in the court and should be recused.

Anyone saying that this would be a distraction is utterly mistaken considering that, if this amendment is not passed, it may lead to one party using someone's proper, chosen pronouns and the other party (and possibly other members of the court) using whatever pronouns fit their outdated and disproven views of gender. That would be true confusion.

Name: Natasha Abner
Date: 03/06/2023
ADM File Number: 2022-03

Comment:
Our attorneys deserve to have their identities acknowledged and respected

Name: Wayde Hoppe
Date: 03/07/2023
ADM File Number: 2022-03

Comment:
This is a very bad idea. We do not get to choose our own pronouns anymore than we get to choose our own adjectives. And forcing someone to speak something that isn't true is incorrect, morally objectionable and legally dubious. Please do not pass this measure.

Name: Haydn Lambert
Date: 03/07/2023
ADM File Number: 2022-03

Comment:
Addressing others using the name and pronouns with which they identify is a simple act of collegiality and kindness that ought to be expected of all who appear in Michigan's courts. I support the proposed amendment to MCR 1.109.

Name: Hannah W.
Date: 03/07/2023
ADM File Number: 2022-03

Comment:
I support this amendment. Using a person's preferred pronouns is a sign of respect that should be afforded to everyone participating in the legal system.

Name: Caleb Cogswell
Date: 03/07/2023
ADM File Number: 2022-03

Comment:
I strongly support the adoption of this amendment. It ensures everyone in the court room is treated with dignity and respect, which should be a foundational component of our legal system. It is straightforward, notes that the use of legal name is allowed when necessary for clarity. There is no way in which this amendment can cause harm.

I had my name legally changed in 2017 and remember that the judge tried his best to be respectful and only used my birth name a single time when he realized I was trans.

Getting my name changed took months and several hundred dollars. It's not a feasible option for everyone (and not something everyone wants to go through); this rule could also apply to the follow folks:

- People actively going through a divorce and don't want to be referred to with their current last name since they're going to change it post divorce
- People named after another person and don't like that
- People who literally never go by their birth name and are pretty much only known by their nickname (Bills, Bobs, Kates, etc)
- Seniors/Juniors/IIIs/etc when they don't actually go by the name, but kept the tradition going

Again, this seems like a straight forward, common sense rule to make.

Name: Mel mousssau
Date: 03/07/2023
ADM File Number: 2022-03

Comment:
Yes please! This rule would benefit me should I ever need to appear in court. Thank you.

Name: Nicole Pearson
Date: 03/07/2023
ADM File Number: 2022-03

Comment:
I strongly agree with adopting this amendment. Showing people respect of using their preferred pronouns is a basic human decency and should be extended to all.

Name: Hailey
Date: 03/07/2023
ADM File Number: 2022-03

Comment:
I full heartedly support this proposal! It brings dignity and respect to the courtroom.

Name: Alycia Socia
Date: 03/08/2023
ADM File Number: 2022-03

Comment:
This amendment would allow for all people to be treated with respect.

Name: Celeste Vieira
Date: 03/08/2023
ADM File Number: 2022-03

Comment:
This amendment would help maintain a sense of dignity and safety for any individual in the courtroom. Every person deserves to have their identity honored, and this is especially important during legal proceedings which can already be an anxiety-inducing situation. It is important to allow all individuals going through court proceedings to be addressed in the manner that makes them the most comfortable.

Name: Kelsey Neminski
Date: 03/08/2023
ADM File Number: 2022-03

Comment:
I'm writing to wholeheartedly support this amendment. Pronouns are important in respecting the identity, dignity, and humanity of all citizens.

Name: Kara Kearns
Date: 03/08/2023
ADM File Number: 2022-03

Comment:

This is a common sense proposal that will be easy to implement and will help many Michiganders. Legal proceedings are often stressful and this will help "level the playing field" so everyone involved is appropriately identified.

Name: Annie Schuver
Date: 03/08/2023
ADM File Number: 2022-03

Comment:
I am a Michigan Law Student and former co-chair of the Michigan Law Outreach Clinic, which assists Washtenaw County residents with legal name changes. I strongly support this proposed amendment because using the proper pronouns in public filings is respectful and, in some instances, necessary for the safety of parties and attorneys.

Name: Tara
Date: 03/08/2023
ADM File Number: 2022-03

Comment:
I support this proposal.

Name: Fiona Redmond
Date: 03/10/2023
ADM File Number: 2022-03

Comment:
I strongly support this proposed amendment. Dignity and respect in the courtroom is something all people deserve, and this amendment is a positive step towards that. Thank you to the court for considering this amendment.

Name: Ewurama Appiagyei-Dankah
Date: 03/10/2023
ADM File Number: 2022-03

Comment:
I am writing to share my strong support for this proposed amendment. I support this proposal because it is a common-sense reform that might seem small, but would be extremely meaningful to many people in our state. It would affirm the dignity and humanity of people who interact with Michigan's court system, and would, in some instances, protect the safety of parties and attorneys appearing in Michigan courts.

Name: Cameron Johnson
Date: 03/10/2023
ADM File Number: 2022-03

Comment:
I support this proposed amendment, and hope to see Michigan continue to ensure transgender and gender non-conforming parties and attorneys are treated with dignity and respect.

Name: Adam Owen
Date: 03/10/2023
ADM File Number: 2022-03

Comment:
I support this amendment, it would reduce anxiety for some and is not onerous to implement. I see no downside.

Name: Jon
Date: 03/10/2023
ADM File Number: 2022-03

Comment:
This proposal should be rejected. We don't get to chose our gender or sex. They are permanently linked in scripture and they are OBSERVED at birth, not assigned. You will not compel speech.

Name: Thao
Date: 03/10/2023
ADM File Number: 2022-03

Comment:
As an American I fiercely oppose this amendment as it is a violation of our right to free speech. There should not be compelled speech. This will make its way down to all citizens. Please do not pass this rule. Thank you.

Name: Rachel Janisse
Date: 03/10/2023
ADM File Number: 2022-03

Comment:
Yes!

Name: Carole Cryderman
Date: 03/10/2023
ADM File Number: 2022-03

Comment:
I disagree with this proposal. This is ridiculous. We need to uphold the truth in our courts and a man will always be a man even if he puts on a dress and a woman will always be a woman. This would make our courts and our state more of a laughing stock then it already is.

Name: Pam
Date: 03/10/2023
ADM File Number: 2022-03

Comment:
I oppose this rule change. It only feeds into the delusion of people who think they can be something that is opposed to science and reality. I would think this would fit into the category of compelled speech.

Name: Anne
Date: 03/10/2023
ADM File Number: 2022-03

Comment:
Violates free speech. Thus is compulsory speech that is violative of the first amendment.

Name: Matt
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
The judge or judges that proposed this rule should be impeached for treason. Compelled speech is not only a blatant violation of the First Amendment but also a violation of human rights. This is authoritarianism. You will NOT pass this law.

Name: Renee Wilson
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
This proposal is a blatant violation of the 1st amendment because the government CANNOT force anyone to say anything that is a lie. Biology isn't a lie, pronouns are a "feeling", thats changes daily. This is a shame & we can't continue encouraging mental illness that pronouns are real.

Name: Nicole Thompson
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
As a Michigan attorney I hate to see our courts travel down this road. Compelling speech is unacceptable, and just imagine the ridiculous efforts to discern legal opinions where people use plurals for their pronouns. Am I required to call people whatever they ask me to? The idea of forcing words from one person to ensure someone else's political agenda is met and their feelings accommodated is antithetical to the concept of individual liberty, and if we expect it from the judges they will demand it of the rest of us one day soon. The courts of our State of Michigan should not be forced to pander to politics that aren't based in biological reality, and to indulge people's egos and whims at the expense of judicial dignity and personal liberty.

Name: Max Dickerson
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
This proposal would be a violation of first amendment rights and would force compelled speech under threat of punishment. It is an amendment designed to force ideological beliefs into people who do not share them. This amendment must not pass, bc to institute compelled speech laws here will only lead to more compelled speech laws in other settings, untill there is no longer freedom of speech. Michigan has seen an increase in authoritarian behaviors by it's elected representatives in the last several years and this amendment is continued propagation of such behavior.

Name: Rich
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
This ridiculous phase of wokeness has gone far enough. This is a violation of free speech and we must stop catering to small minority groups with decisions that impact the masses

Name: Shelli Waroquier
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
Compelled speach is prohibited and violates our constitution. Stick to the facts please.

Name: Joseph Stafford
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
I oppose this amendment and urge that it not be adopted. All during the COVID pandemic we were exhorted to "follow the science" and criticized and even demonized if we did not "follow the science." But now we are supposed to ignore science, biology, X and Y chromosomes and common sense and deny reality that a man is a man and a woman is a woman? This is a modern version of the Emperor's New Clothes. This amendment should be rejected and reality and science should be embraced in our courtrooms. Let's be consistent and "follow the science" at all times.

Name: Amanda Vande Streek
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
Absolutely oppose this proposal. Someone’s feeling of who they are that day is not a legal representation of the actual person. There are two genders that are assigned at birth. You can not force someone to feed someone else’s delusions.

Name: Kaleigh
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
Insane overreach and obviously a violation of government imposed speech. I don't know how this idea even popped into the head of our state's highest court as being okay.
As a Michigander it is very worrying to me that my own Supreme Court doesn't seem to know, or doesn't respect, the 1st ammendment of the United States.

Name: Joe Fitzpatrick
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
As a citizen of Michigan I oppose this amendment and any any other amendment that violates the liberties guaranteed to us by the United States constitution. Compelled speech is a clear violation of those rights. The nature and merits of the compelled speech are irrelevant.

Name: Angela Russell
Date: 03/11/2023
ADM File Number: 2022-03

Comment:

I mistakenly made this comment in another section. But I find this proposal completely inappropriate. If we're trying to prevent people being offended create a rule requiring the use of legal names. At least that would not compel others to say things that are untrue.

Name: Andrea
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
I do NOT support this proposal. The adoption of this amendment would compel people to lie in an official capacity on behalf of the government and violate their rights to free speech and exercise of religion, when public trust of the government has already been badly damaged over the last few years. Furthermore, if a judge is required to address a man as a woman, would this also require housing said man in a prison designated for female inmates, thus jeopardizing these women's safety? If the state government can force their employees to use one's personal pronouns, how long would it take before the rest of us are forced to do the same?
The issue of trans rights has been a hot topic for the past few years across the entire country, and we have all seen countless stories of the slippery slope created by this insidious agenda. We need to nip this in the bud now by rejecting this proposal.

Name: John Ross Jordan
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
A pronoun demands an antecedent. An antecedent anything other than biological sex is an imaginary construct and has no place in a court of law. One can not choose their biological sex, thus one can not choose their pronoun.

Name: Michael Drost
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
This is an outrageous proposal that is illegal and could have extremely negative ramifications for Michigan going forward. Just as a professor could not be forced to use the "preferred pronous" of a trans-identified student in Meriweather v. Hartop, the government cannot force public officials to make statement contrary to their beliefs. This is compelled speech and is prohibited under the first amendment.

Name: Monica
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
I urge that this proposed amendment not be adopted. All during the COVID pandemic we were exhorted to "follow the science" and were criticized and even demonized if we did not "follow the science." This proposal denies and rejects science, biology, X and Y chromosomes and denies reality. This is a modern day version of The Emperor's New Clothes. Please reject this proposal and "follow the science."

Name: Jane Clement
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
I urge that this proposed amendment not be adopted. All during the COVID pandemic we were exhorted to "follow the science" and were criticized and even demonized if we did not "follow the science." This proposal denies and rejects science, biology, X and Y chromosomes and denies reality. This is a modern day version of The Emperor's New Clothes. Please reject this proposal and "follow the science."

Name: Stephen Clement
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
I oppose this rule change. It only feeds into the delusion of people who think they can be something that is opposed to science and reality. I would think this would fit into the category of compelled speech.

Name: Shirley Clement
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
This is an atrocity! I vehemently oppose this proposal. I am 88 years old and am appalled at how this state along with the powers in charge these last few years have used our children as pawns and are exploiting their innate innocence for perversion. This is an abomination!

Name: Nikole
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
I oppose this proposed rule change for many reasons. First, it has clear potential to obfuscate proceedings and potentially confuse the jury in cases related to sexual assault, and could be used by a shrewd defense team to sway the jury's focus away from the merits of the case to irrelevant factors pertaining to gender expression. Second, there are only 2 genders biologically. Forcing actors in court under penalty of law to deny biological reality, particularly in a place where determining the truth and administering justice is the clear goal, is antithetical to reason.
Third, this is a clear violation of free speech and free exercise of religion. You cannot compel someone to speak in a way that violates their beliefs. I urge the court not to adopt this rule change.

Name: Charles LeFurge
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
Ef the left and their illiterate and immoral to the core souls.

Name: Amanda
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
Compelled speech is a violation of the first amendment right to free speech. It is unconscionable to require an individual to say things they do not believe to be true, and it is especially reprehensible to require that in the

court of law. Perhaps our justices should read the constitution they vowed to uphold instead of undermining it in such a reckless and short-sighted way. Once you have crossed the line of compelled speech, you cannot uncross it. This Amendment is not only illegal, unconstitutional, and a violation of individual rights, but a reckless danger to future generations' free speech protections.

Name: Aaron
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
It is incredibly dangerous to affirm someone in their delusions of reality and even more dangerous to then require people to affirm it. This is in direct conflict with the 1st amendment, a not too obscure section in the US Constitution. Marxist gender ideology is every bit as dangerous as the original which has killed tens of millions of people.

Name: Dennis Dershem
Date: 03/11/2023
ADM File Number: 2022-37

Comment:
I think this is one of the stupidest things I've ever heard of, unless a person has changed their identity legally. They shouldn't be allowed to change their pronoun on a whim. It opens up too many possibilities in the course of a legal action

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Name: Joel White
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
This rule change is clearly violation of the 1st amendment. Do not adopt please don't adopt this or any rule that compels speech of any kind.

Name: Debra White
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
This rule should not be established. While failing to use a certain pronoun may cause hurt feelings; enforcing the rule plays into manipulation of decisions, which is the purpose of the court
Please do NOT contravene the very purpose of the court for potential, percived political offenses too lightly taken!

Name: Allan E. Hoekstra
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
I would oppose requiring courts to use personal pronouns selected by individuals appearing before the court if the selected pronoun is not in alignment with the individual's sex. In order for society and for the courts to function we need language, language consists of words that have commonly understood meanings. Pronouns (he, him, she, her) have fixed meanings that refer to the sex of an individual. They are not chosen, they are real. Your proposal implies words have no meaning.

Name: Julie Miller
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
This proposed amendment of MRC 1.109 violates the compelled speech principle and free exercise of religion set for in the Constitution. Forcing judges to use attorney's preferred pronouns violates the First Amendment. The First Amendment prohibits government from compelling public officials to make statements contrary to their beliefs.
Uphold those Constitutional rights!

Name: D Hoehl
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
I oppose an amendment to Rule 1.109 of the Michigan Court Rules to force courts to comply with attorneys' and parties' desired pronouns in speech and in writing. This is a violation of the First Amendment, freedom of religion and speech.

Name: Jason Jackson
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
You can not change your chromosomes. You can not force people to lie. You can not force your reality onto anyone. This will cost the state millions in court expenses. Nifty way to waste tax payer money!

Name: Elie Scarit
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
I oppose this rule change. It will inevitably lead to problems including the declaration of mistrials and dismissals over personal feelings rather than the rule of law.
It also violates the 1st amendment rights of citizens. The government has no right to dictate how a citizen speaks or interprets their environment as relates to speech.

Name: Jim Putlock
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
Forcing judges and lawyers to use someone's created personal pronouns is a violation of their First Amendment rights. It flys in the face of our Constitution and should not be approved. Keep woke politics out of the courts.

Name: Rich
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
Please don't embarrass yourselves by agreeing with this ridiculous proposal. The goal of proponents is to change and disrupt our society while your job is to ensure that this doesn't happen.

Name: Kerry
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
I oppose. This violates the right of free speech and will cause nothing but problems within the justice system and our courts.

Name: Tony
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
This is an outrageous violation of the First Amendment. The courts cannot compel speech. It is tyranny.

Name: Jill Renee
Date: 03/11/2023
ADM File Number: 2022-03

Comment:
This is the most ridiculous thing I've ever read. How about the Michigan Supreme Court just does its job...interpret the law. You have one job and it has nothing to do with compelling people to use speech that violates their beliefs. There are 2 sexes/genders...male and female...most Americans believe this. Let's stop living in clown world and acknowledge the truth.

Name: Nancy
Date: 03/12/2023
ADM File Number: 2022-03

Comment:
Please deny this proposed amendment as this violates the First Amendment. Our Freedom of Speech needs to be protected. This would restrict the rights of individuals to speak freely.

Name: Scott McFarland
Date: 03/12/2023
ADM File Number: 2022-03

Comment:
With all due respect, this "change" to appease the vocal minority is uncalled for and extreme. The fact that taxpayer dollars are being spent to even consider this is ridiculous and inappropriate.
No - this is an easy answer.
Respectfully,

Name: Andrew L Goss
Date: 03/12/2023
ADM File Number: 2022-03

Comment:
Anytime something asks for preferred pronoun I put down that mine is Grand Master of the Universe. If the Michigan Supreme Court starts mandating parties use preferred pronouns then I will spend money to find a way to have a case heard before them just so I can demand they refer to me as Grand Master of the Universe, as that is my preferred pronoun. The money would be worth the satisfaction of the experience. It would be on official record forever.

From: Steve Boeve
To: ADMcomment
Subject: Rule 1.109
Date: Monday, March 13, 2023 5:34:41 PM

Good morning, courts are places where we go for justice and truth. Why would it be good to force people to say something that is not true? Do not agree with the changes to Rule 1.109 because the majority of people in Michigan feel that if you are a man you cannot become transformed into woman and if you are a woman you cannot be transformed into a man. Science supports this truth. Chromosome tests confirmed this.
Thanks,
Steven D Boeve 49424

From: Stephanie Hoekstra
To: ADMcomment
Subject: Comment on Rule 1.109
Date: Monday, March 13, 2023 11:46:55 AM

Good morning, Our courts are places where we go for justice and truth. Why would it be good to compel people to say something that is not true? Please do not agree with the changes to Rule 1.109 because most people in Michigan feel that if you are a man you cannot become a woman and if you are a woman you cannot become a man. Science supports this truth. Thanks, Stephanie Hoekstra 49424

Name: Kevin
Date: 03/13/2023
ADM File Number: 2022-03

Comment:
We have come to a point in society where even our latest Supreme Court justice, Ketanji Brown Jackson, does not believe she is qualified to define what a woman is. I don't believe we want to put our legal system in a situation where they are required to accurately define someone's pronouns. For example, how would one define a minors pronoun if both parents disagree on what that pronoun is? Or what about someone who is mentally unstable? A rule such as this would have the potential to distract from what the court was established to do, Interpret the law,

Maybe it would be best to instead have an internal policy to do our best to minimize the use of pronouns in our written correspondence and instead use the persons name with a boiler plate note that states any reference to pronoun is done, to the best of our ability, in reference to one's biology not their identity.

Name: francine martin
Date: 03/13/2023
ADM File Number: 2022-03

Comment:
this must NOT be put into play...

your name is what your parents gave you at birth, unless you change it in a court designed for those issues...you are a boy/man if you have testicles and penis.
you are a girl if you have a vagina and breasts.
to allow those preferred pronouns theory is just chasing you tail and obliterating lines for silliness!

Name: Tammy Westman
Date: 03/13/2023
ADM File Number: 2022-03

Comment:
The court of law is based on truth and reality. Therefore I believe is would be wrong to enact this rule. It gives credence to a falsehood. Just because a person identifies as a gender other than their biological gender does not make thar person what they identify as. If a person inventories as a bear, would the judge have to refer to that person as a bear and accept growling as appropriate responses? Would his council have to keep a chain and leash on said bear? How aboutba song bird? Would the client be carried in a cage and tweeting songs be acceptable as responses? No, of course not. Just because a person dresses a part does not make them that part. We need to keep a line of truth in court. This will also make paperwork crystal clear who the person is. Simple write 'identifies as ____' in documents. No judge or court personelle should be force to speak a lie in court.

Name: jane mary
Date: 03/13/2023
ADM File Number: 2022-03

Comment:
I wholeheartedly agree with the statement made by the Diocese of Lansing.

Name: Robert Viviano
Date: 03/14/2023
ADM File Number: 2022-03

Comment:
The court is proposing compelling people to ignore reality; to lie. Despite radical gender theorists' assertions, there are only two genders. Sex and gender are essentially synonymous. Gender is determined by nature, and identified (NOT assigned) at birth. It is how we are organized for reproduction.
Compelling people to support a person's delusion is neither helpful nor constitutional.
What is a woman? If a woman can be anything, then a woman is nothing.

Name: Ernesto Bridgnanan (P74214)
Date: 03/15/2023
ADM File Number: 2022-03

Comment:
I share a great concern about imposing such a rule and I would encourage the Court to not adopt this rule. I am particularly concerned with the the section of the proposed rule which indicates that "courts are required to use those personal pronouns when referring to or identifying the party or attorney, either verbally or in writing." This would be a clear violation of the rights of judges and individuals employed by the Courts, a violation of United States Constitution- specifically the first amendment. Mandatory use of pronouns will violate deeply held religious beliefs of many Christians and Muslims who believe that sex and gender are conclusively linked. Secondly, this would be compelled speech which would also be an unconstitutional violation of free speech. Additionally, in "Meriwether v. Hartop," 992 F.3D 492 (6th Cir. 2021), the Sixth Circuit Court of Appeals

determined that a public university professor who failed to use pronouns was afforded First Amendment protections.

Name: Alyssa
Date: 03/15/2023
ADM File Number: 2022-03

Comment:
I am a law student at the University of Michigan, and would like to express my opposition to this change. Compelling attorneys to use pronouns that contradict the reality before their eyes is an affront to free speech, something that the State of Michigan should respect.

As an advocate for the rights of women in particular, recognizing men as women through the use of she/her pronouns will always cause confusion, particularly in the case of crimes that are often gendered. For example, judges and jurors will hear "she sexually assaulted the victim" and "he sexually assaulted the victim" in different ways, largely because of the fact that men commit the vast amount of violent crime in our society. By referring to a male in a way that implies he is female, anyone who reads the court record will be unable to consider this societal context in deciding and later analyzing this case.

If this change has to occur, I would want the individual's biological sex noted somewhere in the record to promote accurate record keeping. Otherwise, we will create misleading records that make it difficult for future researchers to track things like violence against women in court.

Respectfully,
Alyssa Schams

Name: Amanda Hartley
Date: 03/15/2023
ADM File Number: 2022-03

Comment:
It only takes 30 days and $9 to legally change the sex on your ID in Michigan. The barrier for the change is so low - why would you not require someone to update their ID to reflect their identity before treating them as that gender identity legally?

For purposes of the legal system, I would expect documentation by the court of someone's birth name and sex as well as their current name and sex. These are important legal records about a person.

I think it's appropriate for judge and legal counsel to use pronouns that represent someone's legal gender identity, with the understanding that people are human and it's normal to use pronouns in line with someone's birth sex, so there may be occasional mistakes. There has to be room for conscientious objectors as well.
I don't think the expectation should extend to victims of crime, family members, or witnesses. They should should be able to describe what they saw or the person they know without fear of reprisal - including the name or gender identification of the person in question.

If a witness "saw a man in the dark" or a parent loves their child whom they've always known with a certain name, or a victim describes being attacked by a man - it's critical their ability to testify also be protected.

Name: Reena
Date: 03/16/2023
ADM File Number: 2022-03

Comment:

Seems like a solid proposal. It would give trans and gender-nonconforming folks the basic respect they deserve in a courtroom setting.

It is true that nowadays it is easier than before to get gender markers fixed legally; it is also true that someone could feasibly have not known or haven't had time for those changes to go into effect. In addition, even if a party has already done their legal due diligence, a courtroom misgendering a party either out of contempt or ignorance can be a frustrating experience.

This is a lightweight amendment that I doubt will cause much trouble (in spite of the trolls who claim they would abuse the system) and would advance and codify respect for hundreds of thousands of Michiganders.

Name: Mary Harp
Date: 03/16/2023
ADM File Number: 2022-03

Comment:
I strongly oppose this amendment. Existing opposing arguments cite the violation of the First Amendment of the U.S. Constitution (as argued, for example, in the Statement from Diocese of Lansing dated 23 February 2023) and the danger of adverse judicial consequences arising from ambiguities in a number of aspects of the proposal (specifically, the Statement from 12 judges of the Michigan Court of Appeals dated 01 March 2023). We consider the points made in their arguments very valid.

We need to make sure that our judicial system is understood by all and that limits are not put on the speech of judges, lawyers, etc. They should not be required to put aside their own beliefs and morals just to satisfy a single person.

Name: Jay R. Taylor, a resident of Brandon Township.
Date: 03/16/2023
ADM File Number: 2022-03

Comment:
To: The Chief Justice and Justices of the Michigan Supreme Court

Subject: Administrative File 2022-03 – Proposed Amendment of MCR 1.109 (link)

I am writing in response to the proposed amendment to Rule 1.109.

I strongly oppose this amendment. Existing opposing arguments cite the violation of the First Amendment of the U.S. Constitution (as argued, for example, in the Statement from Diocese of Lansing dated 23 February 2023) and the danger of adverse judicial consequences arising from ambiguities in a number of aspects of the proposal (specifically, the Statement from 12 judges of the Michigan Court of Appeals dated 01 March 2023). We consider the points made in their arguments very valid.
In addition to the concerns expressed in the aforementioned statements, we would like to provide yet another reason that this amendment should be rejected. English is the de-facto international language of commerce, culture, and society. English-speaking countries thus have an obligation to keep the language consistent for international usage. Individuals have no right to compel alterations of this established language, the norms of which non-native speakers of English work hard to follow in order to participate in the international community.

I'm disappointed that a proposal such as this one has even come up, in the judicial arena of all the places. Many non-native English speakers look up to the court as a model of an impeccable command of the language. The integrity of a language that carries such importance should not be subjected to individual whim.
We agree with one Concerned Citizen that "A much clearer and straightforward approach would be to use [...]

'He/She' [or] avoid the use of pronouns altogether for individuals [who are] requesting this special attention by using [the term] 'defendant/ plaintiff' or the individual's first and/or last name." (In fact, we do know that some Asian languages work precisely in this manner. Perhaps, a cleaner solution is to switch the language altogether to something like Japanese that does not use pronouns with gender reference as do many Western languages – if those taking serious issues about traditional English pronouns are willing to exert the required effort to master it.) In summary, we find this proposed amendment to provide no value while potentially overburdening and degrading the administration of justice – perhaps by intent.

Please stop these changes. Thank you.

Name: Rachel Tear
Date: 03/16/2023
ADM File Number: 2022-03

Comment:
Like...It's really not sure why allowing parties in literal courts to publicly, professionally, and intentionally misgender and dehumanize other human beings is even a question. And we all know it will only happen to people in the LGBTQIA+ community, so hello, discrimination, and this is exactly why we have the Elliot Larsen Civil Rights Act.

Name: Clio Hartzer
Date: 03/16/2023
ADM File Number: 2022-03

Comment:
Today, the Governor signed the expansion of Elliott-Larsen to add gender identity to the list of protected classes. It would be consistent with that expansion for the courts to allow parties to specify pronouns that reflect their personal gender identity. Opponents speak of "delusions" with regards to transgender people, but that is all the more reason for the courts to add this amendment: All mainstream medical associations accept the reality of transgender identities, and formally compelling stakeholders in the courts to respect what is now codified law (ELCRA) would prevent individuals from deciding for themselves which gender identities of others they choose to respect.

Name: Gale Barr
Date: 03/17/2023
ADM File Number: 2022-03

Comment:
I support this whole-heartedly!

Name: Maureen nicholas
Date: 03/17/2023
ADM File Number: 2022-03

Comment:
I support this proposal and the rights of trans men and women everywhere.

Name: Kent Morford
Date: 03/19/2023
ADM File Number: 2022-03

Comment:

Supreme in both Michigan and the United States is the freedom from ANY government interference of any person's freedom of expression. And that includes preventing any government from mandating thought or speech. But that is exactly what this proposed amendment attempts to do. Judges and court personnel are NOT exempt from this Constitutional protection. Judges are protected from the State government's attempt to control their language in this way. Of course this topic of pronouns has been and will forever be a subjective and non-science based demand. And the State of Michigan has no moral authority to push this subjective idea, this new theory of the needs of a few fellow citizens this way.

I am stunned the State is even entertaining such a proposal. The State of Michigan has many, many other ways to promote good mental health of its residents. But not by affirming dysphoria. Not by placating a loud and threatening group. Not by running and grabbing ahold of non-science based theories because some of you in the agencies and departments want to feel good about your virtue.

Help those suffering from gender dysphoria by good cognitive behavior therapy (CBT) and not damaging them through affirming and continuing their mental health problem. Please.

Please do not approve this amendment.
Kent Morford
Rockford, MI

Name: Adrienne N. Young
Date: 03/22/2023
ADM File Number: 2022-03

Comment:
I want to be part of a world where people can show up authentically in all spaces. I support the amendment to MCR 1.109.

Name: Katie Walt
Date: 03/22/2023
ADM File Number: 2022-03

Comment:
LGBTQIA+/2S youth who have access to spaces that affirm their sexual orientation and gender identity reported lower of attempting suicide. (Trevor Project's 2021 National Survey on LGBTQ Youth Mental Health). To claim that such an impact is limited to children and youth would be misguided at best and ludicrous at worst. Providing space for someone to share what pronouns they use is a simple way to learn the most respectful and correct way to refer to them. This amendment would make courtrooms throughout Michigan a safer and more inclusive space for people who too often forced to the periphery, and quite frankly could help save lives. I strongly support this proposal.

Name: Matthew Boehringer
Date: 03/23/2023
ADM File Number: 2022-03

Comment:
I concur with the comments that correctly voice the concerns of religious liberty, but this proposed rule is much more than that. This strikes at the very heart of justice and directly undermines our judicial system because it deals with objective, verifiable truth. Can the court rules force judges to say that two plus two equal five? This would force the judges to lie on their own written opinions. This violates their oath of office and their obligation to speak the truth. Judges, of all people, must speak the truth. This now only applies to the courts. Of course, the next step is applying it to all parties. The government cannot change reality because it has an ideological

goal. Implementing this rule puts us exactly where Orwell said we would be: if the government says two plus two equal five, then it is so. Do not make 1984 a reality. Truth matters.

Name: Melissa Luberti
Date: 03/23/2023
ADM File Number: 2022-03

Comment:
Yes! Please adopt this!

Name: Alex Hood
Date: 03/23/2023
ADM File Number: 2022-03

Comment:
Allowing folks to use their pronouns in court and requiring courts to use them properly will help everyone feel safe, respected, and heard by the United state government and by the court of law. It is important that every human feels respected and understood by those in power and to ensure their continued respect for the government.

Name: Courtney
Date: 03/23/2023
ADM File Number: 2022-03

Comment:
I support the proposed amendment to MCR 1.109. The proposed changes to MCR 1.109 respects folks' gender identities.
This amendment would be an amazing foot forward for Michigan in supporting our LGBTQIA+ community.
I hope other states who haven't taken this action see us an example to bring their own changes.
Being non binary, trans, or queer isn't new- it's that people feel safe enough to be out AND have the right words to name what they feel.
To disregard and misgender any person is insulting, degrading and outright wrong.
I look forward to seeing Michigan be a trailblazer towards gender equity and progress.

Name: Ali mosshart
Date: 03/23/2023
ADM File Number: 2022-03

Comment:
I support this proposal!

Name: JM Triplett III
Date: 03/23/2023
ADM File Number: 2022-03

Comment:
I fully support this proposal.

Name: Julia Paholak
Date: 03/23/2023
ADM File Number: 2022-03

Comment:
Yes!

Name: Michelle Miele
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
This is a really important change for inclusivity and would be amazing to see this!

Name: Angelina
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
I agree and support this proposal.

Name: Maggie Brown
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
Please pass this piece of legislation. All people deserve respect and to be treated with dignity in the court of law.

Name: Avery Green
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
We should ABSOLUTELY pass this amendment to make sure we are honoring everyone's pro-nouns.

Name: zoie nicoal
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
approve this proposition as it should've been human rights and not up for debate in the first place. thanks.

Name: Meghan Hill
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
People should absolutely be able to use their preferred pronouns in court. Please allow this, it means a lot to be to be able to use their preferred pronouns!

Name: Shyanna
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
people of all walks of life should be respected

Name: Sheila Smith
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
Using correct pronouns is incredibly important and the only way to guarantee a safe and productive space for LGBTQ+!

Name: Olivia
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
I fully support this proposal. It is a necessary change for people of all genders to be treated with the respect and dignity.

Name: James Witman
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
The appropriate use of transgender persons' pronouns in our courts acknowledges the existence of transgender people, aligns with the mainstream medical and scientific consensus regarding the importance of using pronouns that are congruent with the person's gender identity, and accords them the same dignity afforded to other litigants.

Making this change will also help assure people subjected to widespread discrimination and abuse that they won't be facing a court system that is inherently biased against them. It is a message that needs to be sent, especially now.

A recent national survey found that 63% of the transgender people interviewed have experienced a serious act of discrimination—one that would have a major impact on a person's quality of life and ability to sustain themselves financially or emotionally. The most recent FBI hate crimes report shows that hate crimes against transgender people (particularly transgender women of color) have increased over the past several years.

The same community is also under attack by politicians claiming to be the champions of conservative values. But in our courts, everyone is entitled to fair and impartial treatment—regardless of which ways the political winds are blowing.

Name: Jacob McCloughan
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
The appropriate use of transgender persons' pronouns in our courts acknowledges the existence of transgender people, aligns with the mainstream medical and scientific consensus regarding the importance of using pronouns that are congruent with the person's gender identity, and accords them the same dignity afforded to other litigants.

Name: Michael Mazur
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
The official comment to MRPC 6.5 begins, "A lawyer is an officer of the court who has sworn to uphold the federal and state constitutions, to proceed only by means that are truthful and honorable, and to avoid offensive personality. It follows that such a professional must treat clients and third persons with courtesy and respect. For many citizens, contact with a lawyer is the first or only contact with the legal system. Respect for the law and for legal institutions is diminished whenever a lawyer neglects the obligation to treat persons properly. It is increased when the obligation is met."

This proposed amendment of MCR 1.109, which gives the multitude of individuals involved in our state's legal system the opportunity to clarify their identity to a court and to be acknowledged properly so that one's identity is not a distraction from the legal issues being considered, is consistent with MRPC 6.5 and a sensible extension of the obligation all Michigan lawyers and judges already hold.

It appears some of the comments listed in opposition to this proposed amendment come from those who want to treat those they disagree with disrespectfully. Our profession's goals of professionalism and civility are strengthened, not harmed, by this proposed rule. I admire the Supreme Court's willingness to consider the topic of personal pronouns and the efficiency of the amendment's language as written.

Name: Jared Boot-Haury
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
As a gender therapist in Michigan, I know that adopting a rule on pronoun usage would align with consensus in the scientific and medical community regarding transgender identity and gender dysphoria, would expand access to our courts and public confidence in the fairness of our justice system, and would ensure that persons who come before a court can do so with an expectation that they will be treated with courtesy and respect.

Name: Aaron Boot-Haury
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
Adoption of the proposed amendment will send an important message to Michigan’s transgender and gender non-binary community: you will be accorded the same dignity, courtesy and fairness given to cisgender persons, and you can expect equal access to justice in Michigan courts. At this critical time, when so many of our public institutions (including the Michigan judiciary) are trying to invest in a renewed commitment to equity and inclusion, the proposed amendment should be adopted.

Name: Cortney
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
It's literally as simple as referring to someone in the way they prefer. How on earth could anyone care. Just let people go by what they want

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Name: Mani Brito
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
I think this is a great system for ensuring that people are referred to in a way they are most comfortable with. It does not require pronouns to be disclosed unless the person wants to, so should not be a barrier to anyone that does not understand the practice or want to participate for whatever reason. Yet, would give a marginalized group (trans and gender nonconforming folks) equitable access to legal procedures

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Name: Amanda J. Frank
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
As a licensed attorney in Michigan who has worked in both Michigan appellate courts as a law clerk and in private practice as a litigator, I strongly support this amendment. All litigants in Michigan deserve to be treated with the utmost respect from the bench and bar, and using an individual's correct pronouns - which can only be determined by the individual - is an essential step in maintaining a respectful courtroom and legal system in this state.

Name: Chris Scholl
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
Honoring preferred pronouns is a harmless courtesy to all as long as the court has a process for excluding pronouns that would make a mockery of the practice. An example might be, "His Royal Highness." There would be limited occasions to honor such a pronoun, since the U.S. does not recognize titles of nobility. Another case where pronouns might be abused would be those who subscribe to the "sovereign citizen" viewpoint. As long as there is a standard of good faith use of preferred personal pronouns, it makes sense that the court would honor those pronouns.

Name: Erica Dutton
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
I support this proposal because it shows respect for others. It's a small thing but very important

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Name: JD Day
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
As a lifelong Michigan resident, it would be wonderful to finally have my intersex status properly acknowledged. Please allow correct pronouns and chosen names prevail in all spaces to honor the diverse spectrum that is humanity. Thank you.

Name: Tracy Thornburg
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
It's common courtesy to ask and use a person's pronouns the same way that you would ask and use a person's name. To call someone by a name other than what they've told you to use is absurd. Using someone's chosen pronouns is the same thing. Thank you for opening the option. It is my sincere hope that people can feel heard and respected in our highest court.

Name: Michele Millhouse
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
Research has shown that the use of preferred pronouns reduces suicidality among individuals who identify as transgender and improves mental health outcomes. It also shows respect to transgender individuals. Michigan is making progress in LGBTQ rights. Please continue this trend by requiring the use of preferred pronouns.

Name: Anthony Toster
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
I support this document 100%

Name: Anna L. EldenBrady
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
Please amend the rules to allow transgender and nonbinary people a fair day in court. Dealing with microaggressions, misgendering, and deadnaming only adds stress to already stressful circumstances and puts a further barrier in place that will drive these individuals away from seeking justice. If the courts cannot respect all people who come before then, then they have already failed them before they even set foot in the door.

Name: Benji
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
I support this Amendment

Name: Bexley Dale
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
Please pass this! It would help so much with my anxiety. I'm so scared of being summoned for whatever reason (defense, prosecutor, witness, and reason at all) and being forced to sit through misgender after misgender. Please, I'd cry if I saw this passed. So much stress with this.

Name: Kaya
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
Courts must show respect for the people they serve! Denying use of proper pronouns shows open contempt for any person involved, and as people are expected to bend over backwards for the courts in terms of decorum and respect I do not see anything wrong in asking for that bare minimum in return.

Name: Rosemary Blase, PhD
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
I support proposed amendment of MCR1.109. I believe that each person has the ability and right to personal identity. The state must acknowledge and respect a personal identities.

Name: Katie
Date: 03/24/2023
ADM File Number: 2022-03

Comment:
Each and every human deserves the respect to be recognized as who they are. A dead name is just that dead, and should not be used. By using a person's correct name and pronouns you will make them feel seen, respected, NORMAL. Because all people are human and deserve "normal".

Name: Petra Grivins
Date: 03/25/2023
ADM File Number: 2022-03

Comment:
The use of personal pronouns costs nothing, and is a simple way to respect fellow humans.

Name: Christopher Flournoy
Date: 03/25/2023
ADM File Number: 2022-03

Comment:
Speaking as a citizen, I support allowing all parties interacting with our judicial system being allowed to use their chosen pronouns without regard for prior classifications. The dignity of the human being, no matter the circumstances should always be respected and there is no greater respect than to acknowledge one's own innate identity.

Name: Justin
Date: 03/25/2023
ADM File Number: 2022-03

Comment:
Democracy inches closer to it's potential when all are treated equal and scientific consensus lights the way. Should be an obvious choice..

Name: Cassandra Mosley
Date: 03/25/2023
ADM File Number: 2022-03

Comment:
I fully support this amendment. As a registered nurse, and as a human I know that it costs nothing to treat everyone with respect & dignity. I imagine the stresses of being in the judicial system are difficult to navigate without the added offense of being misidentified.

It is common practice in places of business, including health care to address people by their preferred name and pronouns. There is absolutely no reason not to extend this courtesy to matters of the law.

Name: Nan Hanagud
Date: 03/25/2023
ADM File Number: 2022-03

Comment:
Michigan's Code of Judicial Conduct requires both judges and court staff to treat litigants with courtesy and respect and that includes transgender people. A person's identity, including their name and pronouns, is a powerful, central element of someone's dignity and humanity. When a judicial officer refuses to acknowledge someone's pronouns, they are asserting a power to deny their identity and effectively erase them from our society.

Making this change will also help assure people subjected to widespread discrimination and abuse that they won't be facing a court system that is inherently biased against them. It is a message that needs to be sent, especially now.

Name: Kristina
Date: 03/26/2023
ADM File Number: 2022-03

Comment:
I support this.

Name: Hendrix Moise
Date: 03/27/2023
ADM File Number: 2022-03

Comment:
As a nonbinary attorney, this rule is very important. I also represent LGBTQ People, and this court rule would be beneficial for them and for me. This has been a tough profession to work in and I would like to see this change happen.

Name: Joe Boggs
Date: 03/27/2023
ADM File Number: 2022-03

Comment:
While we should respect those who suffer from gender dysphoria and related mental health issues, this rule change could potentially cause greater suffering for those suffering from sexual abuse. Imagine an instance in which a female victim of rape has to use the preferred pronoun of an individual who identifies as a female but obviously used their male genitalia to commit the violent assault. Should the female victim be forced to comply with this unscientific, delusional use of language when they are already suffering from physical trauma?

Name: Chris Scates
Date: 03/27/2023
ADM File Number: 2022-03

Comment:
I find that forcefully employing false pronouns (not recognized by any English-speaking dictionary) of an extremely small, gender dysphoric minority is nothing short of Orwellian, best represented by the Newspeak of his book, 1984. To have any part of the government support usurping the First Amendment of the Constitution of the United States is a sizable step toward authoritarianism and soft persecution of American citizens' rights to free speech and religion under the First Amendment. This proposed amendment is a mockery of equality, since its official employment will conversely relieve the majority of American's civil rights for a tiny minority in the name of "equity, diversity, and inclusion." As the juridical arm of the government, it is imperative that truth and justice be upheld. Truth is not served when it is replaced by scientific and biological error; and justice is not served when it is manipulated to force a population to adhere to untruth and fallacious logic.

Name: Vic Gipson
Date: 03/27/2023
ADM File Number: 2022-03

Comment:
I would like to comment in support of MCR 1.109.

As a transgender individual who resides in Michigan, this amendment would be very impactful for folks like me feeling seen and respected. When I went to court to legally update my records, the judge who took my case was extremely respectful and used correct name and pronouns as soon as he read my request. He also made it a point to speak about the importance of folks like me feeling safe in court settings and having the ability to make such changes. His respecting of my identity made me feel safe, seen, and proud to be a Michigander.

If this amendment is adopted, it could give this same feeling of pride and respect to many other folks like me. Transgender people and other folks who wish to have personal pronouns respected in these settings deserve the same respect and acknowledgement others do. Especially during such times of grief and targeting in this community, we need supportive acts like this.

We need to know that judicial officers and staff will remain true to the Judicial Code of Conduct despite any personal beliefs they may hold of the community outside of their profession.

We aren't asking for folks to change beliefs or views, but we do ask for respect.

Name: Tracy Kreitzburg
Date: 03/27/2023
ADM File Number: 2022-03

Comment:
My family and I vehemently object to this proposed amendment of MCR 1.109 on the grounds that it violates U.S. citizens' Constitutionally-guaranteed rights to free speech and religious liberty. No branch of government in this country has the authority to compel speech.

Name: David Mieras
Date: 03/27/2023
ADM File Number: 2022-03

Comment:
Yes please!

Name: Hector
Date: 03/27/2023
ADM File Number: 2022-03

Comment:
As a teenage Catholic, I find it disgusting that amendments that are trying to take away our religious freedoms by forcing us to use pronouns that would make us go against our Christian faith are being proposed. Our religious freedom is at stake for things like this. I ask you to reject this proposed amendment that is putting many people's dearly held religious freedoms at stake.
Sincerely,
Hector Guzman

Name: Lorene Cookies
Date: 03/27/2023
ADM File Number: 2022-03

Comment:
Please support the proposed amendments and rule changes that apply to the use of personal pronouns in all state courts in Michigan.

Courts have a duty to acknowledge the requested pronouns of all litigants and parties before them, in all communications and pleadings as well as inside the courtroom. It is a vital component of equal access to justice. The Michigan Code of Judicial Conduct requires judges and court staff to treat litigants with courtesy and respect:

"Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect. To the extent possible, a judge should require staff, court officials, and others who are subject to the judge's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the court."

It is the responsibility of Michigan courts to ensure equal treatment under the law for all people before them, including transgender people. When people participating in our legal system feel unsafe or uncomfortable because of their gender identity, access to justice and full participation in democracy is undermined.

A person's identity, including their name and pronouns, is a central element of dignity and humanity. Using the articulated pronouns of litigants and their attorneys is a positive start to equity and inclusion in Michigan courts. Please support the proposed amendments to make this happen.

Name: Theodore
Date: 03/27/2023
ADM File Number: 2022-03

Comment:
This is excellent! I feel this change would greatly impact many people, during times of high stress such as in court, the act of being misgendered can be very distressing.

Name: Becky
Date: 03/28/2023
ADM File Number: 2022-03

Comment:
I strongly oppose this amendment. There are very good existing opposing arguments which cite the violation of

the First Amendment of the U.S. Constitution (as argued, for example, in the Statement from Diocese of Lansing dated 23 February 2023) and the danger of adverse judicial consequences arising from ambiguities in a number of aspects of the proposal (specifically, the Statement from 12 judges of the Michigan Court of Appeals dated 01 March 2023). The points which both of these groups make are very valid and should be taken seriously.

The First Amendment of the US Constitution protects us from being compelled to say something we don't want to say. The proposed amendment of MCR 1.109 would indeed be a violation of this First Amendment by compelling the speech of the court (ie. judges, lawyers, clerks, etc.). Compelling people to speak messages they disagree with or that conflict with the truth, is antithetical to our Constitution's protection of free speech.

Name: Lauren Malatesta
Date: 03/28/2023
ADM File Number: 2022-03

Comment:
I am in support of requiring judges and their staff to use a person's chosen pronoun and name when addressing attorneys and other people appearing before them, and also when addressing them in writing.

Name: Katrina Garrison
Date: 03/28/2023
ADM File Number: 2022-03

Comment:
Every person deserves respect especially in a court of law. The use of honorifics and ceremony is so ingrained in our system. It makes no sense to deny the right of anyone involved the use of their personal pronouns. The whole process is built on mutual respect, let's do what we need to do to make sure that a behavior that's so simple to implement, with such a big impact, is written into our shared rule of law.

Name: Mary
Date: 03/28/2023
ADM File Number: 2022-03

Comment:
In favor.

Name: Nathan
Date: 03/28/2023
ADM File Number: 2022-03

Comment:
Adopt this measure and give dignity to a very small margin of the population. We should be looking out for marginalized groups of people, not trying to erase them.

Name: Dana
Date: 03/28/2023
ADM File Number: 2022-03

Comment:
No! Tired of people expecting special treatment because of insane choices they make. If you're born a man or woman you should be addressed as such. Or just have the court address then as plaintiffs or defendants. Stop trying to coddle people so their feelings don't get hurt.

Name: Ryan
Date: 03/28/2023
ADM File Number: 2022-03

Comment:
As a Catholic, and speaking for any Catholic judge or legal professional who would be affected by this rule, this constitutes compulsory speech and is a clear violation of the first amendment rights to free speech and free exercise of religion, as was found to be the case in the Sixth Circuit Court of Appeals in the Meriwether v. Hartop case in 2021. This rule is unnecessary and unconsitutional.

Name: St.James
Date: 03/28/2023
ADM File Number: 2022-03

Comment:
In 2023 we are having this discussion. Your Honor, my preferred pronoun is Your Honor! You will respectfully address me as Your Honor! Let that sink in?

Name: Geoff
Date: 03/29/2023
ADM File Number: 2022-03

Comment:
Madness. Reject this pronoun business. Our legal system is based on truth, objectivity, and operating with clarity. Kowtowing to this would amount to tacit approval of any party's ideology in a court of law.
Let's operate with two genders, ie, common sense.

Name: JDB
Date: 03/29/2023
ADM File Number: 2022-03

Comment:
Please do not bow to the prevailing narrative here, founded on the errors of expressive individualism and radical autonomy. If you cannot speak to the objective truth in this matter, how can the people whom you serve have confidence in your judgments? This illogical trend will continue as long and as far as we feed it. So many of our trusted institutions have fallen already. Do not be the next to fall. Guard truth.

Name: Diane yauch
Date: 03/29/2023
ADM File Number: 2022-03

Comment:
No.

Name: Eric Stordahl
Date: 03/29/2023
ADM File Number: 2022-03

Comment:
This should not be a requirement but should be an option for the court. By making it a requirement, it would be an attempt to change the culture of the United States by amending the English language and other languages

that might be used in court and is unacceptable to me. I think it might also be a freedom of speech issue. I oppose.

Name: Katherine Larson
Date: 03/29/2023
ADM File Number: 2022-03

Comment:
I strongly endorse this proposed rule, not from personal need but because I have seen the pain felt by those who are misgendered and because as a retired lawyer with passionate belief in our justice system I believe it to be essential that that system be seen by all participants as being open to and respectful of their personhood.

Name: Mark A. Manning P-36369
Date: 03/29/2023
ADM File Number: 2022-03

Comment:
This has to be one of the stupidest proposed amendments to the Court Rules I have seen in more than 40 years. The rules of pleading are well established. Allowing the introduction of frankly extraneous "feel good" foolishness into pleadings only will create a wellspring for attorneys or litigants to become fake victims because they are not similarly addressed pleadings or worse yet court proceedings in the future. It is damn hard enough to practice law now without having to determine the flavor of the week pronoun or gender identity. I strongly recommend this rule not be adopted.

Name: Jillian Gage
Date: 03/30/2023
ADM File Number: 2022-03

Comment:
I am strongly opposed to this amendment and the attempted compelling of speech. So many 'transgenders' use pronouns that are not congruent with the English language (xe/xer) and/or are not grammatically incorrect (they/them) or plain disrespect themselves (it/its). This amendment will cause more confusion than necessary. This is a slippery slope down to the abatement of the First Amendment.

Name: Jim VanderBie
Date: 03/30/2023
ADM File Number: 2022-03

Comment:
To force anyone to address another person anything other than what sex they've been given at birth is forcing them to comply with what they know is wrong. A transgender can call themselves what they want but you can't make a judge deny the truth.

Name: Alex Williams
Date: 03/30/2023
ADM File Number: 2022-03

Comment:
As a registered nurse, I strongly support people being respected in what they would like to be called and how they would like to be addressed. It is simple kindness and courtesy and is very important for transgender individuals' mental health and inclusion in society, as well as for their safety. I love multiple people who are transgender and I strongly support this proposal!

Name: Matt
Date: 03/31/2023
ADM File Number: 2022-03

Comment:
Personally I'm tired of this grand plan of LGBTQ community. It's not about equal treatment or equality. It's about doing what they say or want. If you don't they will cancel you. I'm not in favor of this. If you're a biological male your pronouns are he/him. If you're a biological female it's she/her. You don't get to decide what you prefer just like you can't play dress up to be the opposite gender. This grand delusion must stop somewhere. We have biological men competing in women's sports and dominating. We have doctor's that can't define gender. How is that even a thing? We have others suggesting you're assigned a gender not born one. How has this country fallen so far. I am not comfortable that my daughter may have to change or use a bathroom where a biological male appears. It's time to stop this madness now. You can one small step by not pass in this bill. Although from most of the comments I'm arguing a lost cost. The end of days are truly upon us.

Name: Matthew L
Date: 03/31/2023
ADM File Number: 2022-03

Comment:
"Treat people how they would like to be treated," and other variants of the Golden Rule are in play here. If someone identifies a particular way, I make the effort to identify them that way. It's just respectful to hear someone out and honor the way they'd like to be identified and seen.

To boot, this is a pretty simple bill: If someone in court identifies a particular way, the court would be bound to stick to that identification. Any anti-trans hysteria that would blow up the comments with unrelated phenomena about sports and personal medical decisions does not apply to this bill, and it's also counterproductive and overall harmful for society, othering people they don't understand. I stand with trans people and the right of the people to be called the way they want to be called.

Name: Kayla Lyle
Date: 03/31/2023
ADM File Number: 2022-03

Comment:
I am a proud supporter of this proposed amendment! I feel like we are taking great strides in creating an inclusive environment for everyone by doing this. As a black citizen of this country, I want to continue seeing progress and I have high hopes that everyone will have their rights protected in this country. Having inclusive language in the courts will help us achieve this goal.

Name: Erika Tuttle
Date: 03/31/2023
ADM File Number: 2022-03

Comment:
There are multiple problems with this proposal. First, it is an obvious violation of the First Amendment for two reasons. It would violate both the protection of freedom of speech and freedom of religion to require anyone to use or refrain from using certain language. Whether we like it or not, the idea of anyone being transgender is directly contrary to the religious and scientific beliefs of many people and you cannot force them to speak to the contrary. In contrast, the First Amendment does not give anyone the right to be called by the pronoun of their choice.

Secondly, this proposal would open the court up to mockery. The proposal would subject the court to the whim of the parties and would open a veritable Pandora's box of pronouns that would be never ending. How would the court address pronouns such as "Your Highness", "Your Honor", "Prevailing Party", "poopoo"? It may sound ridiculous, but there is nothing in the court rule or the rationale behind it that would prevent that madness. You may scoff at the absurdity of these examples, but how would the court decipher what was a sincere pronoun request and what was not? What criteria would be applied? The court is not composed of psychiatrists, and it is not equipped to determine the emotional or mental state of the litigants.

The court is a body of lawyers trained to apply the law impartially. Once you start mandating the preference of the parties into the opinion of the judges, where does it end? When will the ruling itself have to be altered because the mental or emotional state of one of the litigants is triggered by losing a case or because they feel unsafe that the law does not favor them. Will the court have to cease awarding attorney's fees because the losing party is emotionally traumatized by having to pay their opponent? Perhaps we will do away with damages altogether.

Our system of elected judges offers a much simpler solution to any real problem of a disrespectful judge. The judge can lose an election. It is foolish to trample on the First Amendment and open the court up to certain mockery by adopting this rule.

Name: Ben Irwin
Date: 04/02/2023
ADM File Number: 2022-03

Comment:
I am commenting in support of the proposal to require courts to use the preferred pronouns Of parties and their attorneys. Everyone has a fundamental right to identify how they wish. Respecting another persons preferred name and pronouns is a matter of basic human dignity. It puts no meaningful burden on the other person. It causes no harm to require someone to use the correct pronouns when addressing another person. Thank you.

Name: Shannon Hilliker
Date: 04/02/2023
ADM File Number: 2022-03

Comment:
I'm commenting in support of this proposal. Any individual in the court needs to be able to be addressed in agreement with their gender identity. It's an important step to ensuring that everyone can feel safe and accepted while accessing our court system.

Name: Emme Zanotti
Date: 04/02/2023
ADM File Number: 2022-03

Comment:
If judicial institutions can't afford people basic respect and dignity, what should we expect of the people in how they then regard the institutions? So many of our values as a society and a country are entwined in fundamental notions of fairness, and I fully support the proposed amendment to MCR 1.109 because it's rooted in these same principles. This proposal, if adopted, strengthens our judicial system, by conveying to its constituents, regardless of their gender identity or expression, that they will be afforded a process that is as fair to them as it is to any other.

Name: Rayne Smith
Date: 04/03/2023
ADM File Number: 2022-03

Comment:
I believe that all pronouns are all equally valid and must be acknowledged and used consistent with those that have been identified by the speaker. To use someone's pronouns is the most basic acknowledgment of their humanity, and the most basic acknowledgement of respect. Under the law, everyone must be treated with the same amount of respect and dignity, and that must include something so basic and mundane as a person's pronouns.

Name: Leeann D
Date: 04/03/2023
ADM File Number: 2022-03

Comment:
I am in support of this requiring judges and their staff to use a person's chosen pronoun and name when addressing attorneys and other people appearing before them, and also when addressing them in writing. It is one small step in making the legal system and our society more inclusive.

Name: R Smith
Date: 04/04/2023
ADM File Number: 2022-03

Comment:
Yes, I fully support this. It makes no sense to not expect one's pronouns to be known and used correctly in court. It would be ridiculous for a judge to call someone by the wrong name, so why wouldn't it be expected for them to use the correct pronoun (which is just another way to refer to the person). It's grammatically correct. It's respectful. And if a court doesn't use someone's correct pronouns when referring to them, are they actually referring to them? This should be enforced. Not doing so affects everyone, but disproportionately targets trans and non-binary people, forcing them to withstand open disrespect or harassment in court if someone so chooses. This would enforce the most basic of protections and decency within our judicial process.

Name: Louisa H.
Date: 04/07/2023
ADM File Number: 2022-03

Comment:
I support the proposed rule amendment. (I find the sentiment among some other public comments here that this would "restrict their personal free speech" to be a bizarre argument, as these commenters are presumably not members of the court who would be held to this rule.)

Name: Lisa Marie
Date: 04/08/2023
ADM File Number: 2022-03

Comment:
Court is supposed to be about truth. If the people involved dont even have to be honest about who and what they are, how is truth achieved? If courts allow "my truth" or "your truth" over THE TRUTH they will lose even more credibility than they already have.

Name: Elizabeth Doty
Date: 04/08/2023
ADM File Number: 2022-03

Comment:
To whom it may concern,

I believe this proposal would be a measure that is common sense. While I'm certain many people would point to the benefit to the trans community, I'd like to point out another case where this option would be a remedy to a common problem. There is often confusion, especially with gender-neutral names, as to the specific pronouns of the parties involved in a variety of disputes, even when all people involved are cisgender. This would allow people whose names are often confused for the opposite sex to have the option to prevent that issue from occurring.

-Elizabeth Doty, Proud Resident of the State of Michigan

Name: Zachary Marsh
Date: 04/08/2023
ADM File Number: 2022-03

Comment:
I am fully in support of this proposal.This is just common courtesy, it's literally calling people who they are. What's the issue? Furthermore, in court, you have to call the judge 'Your honor'. If you wouldn't have an issue with that, then you shouldn't have an issue with this.

Name: Madison Schmidt
Date: 04/08/2023
ADM File Number: 2022-03

Comment:
LGBTQ rights are something that is becoming increasingly important to be aware about. This law would take us one step further to ensure that LGBTQ people- especially transgender people- are being respected in every way they should be, which includes the court room. Law should not be exclusionary, when it affects everyone in some way or another.

Name: Jacey
Date: 04/08/2023
ADM File Number: 2022-03

Comment:
this law must be passed!!

Name: Travis Kondak
Date: 04/08/2023
ADM File Number: 2022-03

Comment:
We need this. Respecting pronouns is easy and simple to do, and it will have a largely positive result.

Name: Cam
Date: 04/08/2023
ADM File Number: 2022-03

Comment:
I support this Amendment, it would alleviate anxiety in court for those who are unsure if they will be misgendered.

Name: Sarah K.
Date: 04/09/2023
ADM File Number: 2022-03

Comment:
To whom it may concern,

I am in favor of this important proposal (MCR 1.109).

I believe this proposal is critical to ensure that all individuals participating in court are treated with respect and dignity.

I look forward to seeing this amendment passed soon.

Sarah K
Washtenaw County voter

Name: Rachel W.
Date: 04/09/2023
ADM File Number: 2022-03

Comment:
I am NOT in support of playing along with the insanity of this proposal. God created TWO genders, male and female. We do NOT get to choose which one will be or what "pronoun" we feel like using. Please stick with applying the law and stop trying to appease the minority. When will the insanity end?

Name: Eri Jutila
Date: 04/09/2023
ADM File Number: 2022-03

Comment:
As a transgender person and a therapist, I feel that this change would be extremely helpful for transgender people as being misgendered in public institutions is something that causes a great deal of stress and we have to go through it often. I think it would help improve people's mental health by reducing constant feeling of anguish trans people feel when we see that they are not being acknowledged as our true gender.

Name: Mary Ann Olson
Date: 04/10/2023
ADM File Number: 2022-03

Comment:
Re: Adm file No. 2022-23, proposed amendment of MCR 1.109
I strongly urge you NOT to support this amendment. The potential & actual confusion is incalculable at this time. Unintended consequences will surely come into play. Searching records & correctly identifying people is already an issue, this would only increase that.
The layers of confusion cannot be stated in this brief space. This will add to the problems caused by perpetuating something false. No matter what I identify myself as, no matter what I do to change reality, as a

female I will never have a Y chromosome in my DNA, if I were a male, I would always have a Y chromosome in my DNA. People are free to make choices for themselves but the unreality should not be treated as reality. Truth is basic & absolutely necessary to avoid our entire culture from spinning off into dystopia.

Name: Ben Mordechai-Strongin
Date: 04/14/2023
ADM File Number: 2022-03

Comment:
This is a necessary and important rule that I am very grateful to this court for proposing. There are already so many hurdles to practicing law and being comfortable doing it. No one should feel discomfited in the practice of law because the court refuses to acknowledge them appropriately.

Name: Con
Date: 04/14/2023
ADM File Number: 2022-03

Comment:
This proposed rule benefits court room decorum. Rather than requiring an attorney or a party to interrupt proceedings to make sure they are accorded the fundamental and basic human respect of being treated as who they are, that right will be required as a matter of court room procedure.

Name: Abhi P.
Date: 04/14/2023
ADM File Number: 2022-03

Comment:
This amendment should absolutely be enacted. Litigation is often incredibly stressful for all parties, and the risk of being misgendered by someone with authority over you and your legal fate should not be an added stressor. Judges are expected to comport with rules that require them to act with integrity and without discriminating, and calling people by their names falls within that. As a soon-to-be lawyer, I know that I will feel more confidence and safety in the courts that are governed by this rule.

Name: Kathleen Blumer
Date: 04/15/2023
ADM File Number: 2022-03

Comment:
I'm a retired pediatrician who treated many LGBT patients. Well done studies over many years consistently show increased depression and acting out in young people who are not supported by their culture. Having the state's highest court require respect for people's identities should have a positive trickle down effect and who knows, may even help prevent a suicide or a suicide by mass shooting. Not doing so also can prejudice the various parties in a court case against the person not being so respected. Would the court allow an attorney to refer to a woman as a girl? Failing to respect pronouns is a form of that behavior. Thank you

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Name: Maggie Tiffman
Date: 04/15/2023
ADM File Number: 2022-03

Comment:
I am strongly in support of this proposed amendment to require courts to use the correct personal pronouns of parties and attorneys. This amendment would help ensure all individuals are treated with dignity and respect.

Transgender and non-binary individuals are more likely to experience suicidal thoughts, substance abuse, and other mental health concerns. Respecting an individual's name and personal pronouns is essential in reducing this disproportionality.

Name: Ellen Adele Harper
Date: 04/15/2023
ADM File Number: 2022-03

Comment:
This amendment would show that Michigan respects all of it's citizens. It would demonstrate the importance of human rights within this state, and it would be highly appreciated by all of us who lie elsewhere on the spectrum of gender identity. Thank you for even considering it.

Name: Ellen Adele Harper
Date: 04/15/2023
ADM File Number: 2022-03

Comment:
This amendment would demonstrate that the state of Michigan is committed to respect and human rights for all citizens. It would be roundly appreciated by all of us who lie elsewhere on the spectrum of gender identity. Thank you for even proposing it.

Name: Julie Roy
Date: 04/15/2023
ADM File Number: 2022-03

Comment:
I support individuals using preferred pronouns

Name: Jason Pittman
Date: 04/15/2023
ADM File Number: 2022-03

Comment:
I support the Proposed Amendment of MCR 1.109 because it is common courtesy and common sense to use everyone's preferred pronouns. Doing otherwise would suggest animosity instead of equal treatment under the law.

Name: Elizabeth Ullrich
Date: 04/15/2023
ADM File Number: 2022-03

Comment:
This is an issue of fairness and respect, two values integral to the practice of justice in a legal justice system. You don't have to agree with transgender people. But you don't have the right to take away their existence simply because you don't agree with them. We've already had this fight when it comes to women and people of color in our legal justice system. We know to exclude them means to violate their right to personal dignity and it undermines their ability to be self-reliant. This rule change has the potential to hurt no one. What will it do instead? It will reflect the fact that transgender people exist. And it will undermine some people's beliefs that transgender people don't exist or are "delusional." And I am just fine with that. Because the Court has a greater obligation towards fairness and respect than it does toward factional hate and bigotry.

Name: Cindy Drake
Date: 04/16/2023
ADM File Number: 2022-03

Comment:
Just to clarify for anyone who might be confused. Gender and sex are not binary. That is not a "woke" statement, it is a biological fact. Individuals can be born with a wide range of anatomical differences including, but not limited to, external body parts looking "female" (so the doctor would write female on the birth certificate) while they have testes internally (and no ovaries). The opposite can also be true. And that's just the beginning. Our bodies develop due to the influence of a massive soup of hormones and external factors. Just as there are an infinite number of recipes for vegetable soup (for example) there are an infinite number of ways your hormone soup can influence your body. Because of that it's important to understand that these are all NORMAL HUMAN VARIATIONS.

To say otherwise is ignorance and an excuse to be bigoted and diminish the reality and value of others and goes against basic human differences.

To recognize a person's personal pronouns and name is critical to acknowledging these normal human variations. You would address a married person by their new married name and this is even more basic to a person's individual identity.

Name: Michael Rudell
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
Please allow them to use their preferred pronouns.

Name: Alison Blattner
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
I am relieved to see this proposal being considered. Amendment MCR 1.109 is a common-sense change that will allow for clarity in court records and dignity for all Michiganders (especially those who identify as transgender). When a person spends their entire life responding to a specific name and set of identifiers, it becomes incredibly confusing for all involved to not be able to use that same language when interacting with the Courts. This is felt not only by trans Michiganders who must interact with the justice system, but by any person commonly referred to by a different name than the one they were given at birth. This amendment will allow for a more smooth process for everybody involved since there won't be a need to constantly clarify if parties, attorneys, and the Court are referring to the same person when legal titles differ from a person's most commonly used name/pronouns.

Name: Richard Finch
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
I concur with the statement of the Catholic Lawyers Society of Metropolitan Detroit.

Name: Marla LeMae
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
I believe that individuals should be recognized by their preferred pronouns and honorifics when involved in any part of the legal system as a sign of respect. It is a small word that holds tremendous power (he/him/she/her/they/them). It is literally the very least we can do as a society to be respectful and treat individuals with dignity and worth.

Name: Sharon Brown
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
I support this amendment because each individual has the right to be addressed with the common courtesy of pronouncing their name right and using the pronouns they prefer.

Name: Joseph Larkin
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
I do not agree with this proposal. If necessary a person can be referred to as the "Plaintiff", "Defendant" or "Witness" with their sir name.

Name: Jordan else
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
As strongly support this proposal. Or a transgender in non-binary neighbors, need our love and support. This is crucial to uplifting them, and showing that we love and value them.

Name: Lorraine Smith
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
I 100% believe people should be referred to by whatever pronoun they choose. It is simply a sign of respect.

Name: Aron Drake
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
I support the adoption of MCR 1.109. This amendment would allow individuals to clearly identify their preferred manner of being addressed by those in the courtroom and avoid any confusion by the court on how they prefer to be addressed especially those individuals that do not fall into the gender binary. Further, it will help to prevent, whether intentional or unintentional, misgendering of individuals in the court.

Name: Robin Fowler
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
an easy way to show respect in the courtroom (or to be intentionally a jerk, if we don't pass this)

Name: Andrea Satchwell
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
As both a Michigan attorney and a member of the LGBTQ community, I wholeheartedly support this change to the court rules. Allowing all human beings this basic respect and recognition is necessary in order for our courts to serve the interests of justice.

Name: Brittney Williams
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
As a public defense social worker, I fully support this amendment. It is imperative that people's identities are respected as they navigate the court system.

Name: Brittany
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
Plus use proper preferred pronouns.

Name: Rebecca W
Date: 04/17/2023
ADM File Number: 2022-03

Comment:
This makes perfect sense. I'm not she's why you'd want to ignore someone's stated preferences at a sensitive time in their life when they want to concentrate on the proceedings.

Name: Myles Eldred
Date: 04/18/2023
ADM File Number: 2022-03

Comment:
This is a common sense update to an antiquated rule. Allowing a person to identify themselves as they themselves experience their identity paves the way for more inclusion and less exclusion. Further, it removes an unnecessary tension between individuals and the courts while making the courts more approachable for the everyday person.
This is such as easy way to improve the courts public relations and image that it makes absolutely no sense not to implement this proposed amendment.

Name: Jonah Siegel
Date: 04/18/2023
ADM File Number: 2022-03

Comment:
This proposed amendment should be adopted without question. I've been working in Michigan's criminal justice system for almost two decades and as a state employee for the last eight. The court strives to create an environment of respect, with all parties respecting the court, and the court respecting all parties. This is an easy step that the courts can take toward this end. Not adopting this amendment would make a clear statement that the court does not respect trans and non-binary individuals in the state.

Name: Shania
Date: 04/18/2023
ADM File Number: 2022-03

Comment:
I am in full support of this proposal. There is no reason to not use someone's preferred pronouns. This proposal is a necessity, it makes a stressful environment a little less stressful for members of the LGBTQ+ community. Acknowledging a persons preferred pronouns is a basic sign of respect which should be upheld in Michigan courts.

Name: Paola
Date: 04/18/2023
ADM File Number: 2022-03

Comment:
Let's live in a world where we embrace our differences instead of being scared of them (or even hating someone because of them). Allow people to use the pronouns that they identify with.

Name: Rebekah McDowell
Date: 04/18/2023
ADM File Number: 2022-03

Comment:
Gender-affirming services for the trans and nonbinary community are an essential part of the health and wellbeing of individuals. To simply use the proper pronoun when referring to someone--and providing them with the opportunity to share their pronouns--helps people feel seen and heard. Individuals have business before Michigan courts for a variety of reasons. Not one of them should interfere with the court's ability to see them as fully human, deserving of dignity and visibility. A ruling like this would be an easy and harmless way to do just that.

Name: Matthew Langworthy
Date: 04/18/2023
ADM File Number: 2022-03

Comment:
I am not one that will be affected by this amendment, but I believe this to be an incredibly important validation for many people's existence. Trans people not being affirmed in court only damages the purposes of a hearing: to acknowledge someone's existence and perspective.

Name: Mark Kinney
Date: 04/18/2023
ADM File Number: 2022-03

Comment:
I support this change.

Name: Susan Prentice-Sao
Date: 04/19/2023
ADM File Number: 2022-03

Comment:
Parties and attorneys should be permitted to identify their personal pronouns and courts should be required to use those pronouns both verbally and in writing.

Name: Andy Brosius
Date: 04/19/2023
ADM File Number: 2022-03

Comment:
I strongly support this rule as a non-binary person. This is simply an issue of respect, and there are no arguments to be made against it that aren't rooted in bigotry.

Name: Elizabeth Taylor
Date: 04/20/2023
ADM File Number: 2022-03

Comment:
Parties and attorneys should be permitted to identify their personal pronouns.
Courts should be required to use those pronouns both verbally and in writing.

FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS

==========

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by September 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov .

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PROPOSED

The Committee proposes amending the Reasonable Doubt instructions found in M Crim JI 1.9(3) and 3.2(3) to add the sentence, "Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt." The amendment was prompted by research showing that the clear-and-convincing standard was considered by the general public to be higher than the beyond-a-reasonable-doubt standard. The Model Jury Instruction Committee proposes the additional sentence to impress upon the jurors the level of certainty required for a criminal conviction. A number of Committee members preferred not to make any change to the instruction, but agreed to publication of the proposal for public consideration. Comments suggesting other wording for the reasonable-doubt instructions are welcome, but the Committee is only considering whether to adopt the change proposed, or wording substantially similar to the proposal. The added language is underlined. There is an extended comment period for this proposal.

[AMENDED] M Crim JI 1.9(3) and 3.2(3) Reasonable Doubt

(3) Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based on reason and common sense. A reasonable doubt is just that: a doubt that is reasonable after a careful and considered examination of the facts and circumstances of this case.

Public Policy Position
Model Criminal Jury Instructions 1.9(3) and 3.2(3)

Oppose

Explanation:
The committee voted unanimously (19) to oppose the Model Criminal Jury Instructions as drafted.

Position Vote:
Voted For position: 19
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 7

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
Sofia V. Nelson snelson@sado.org

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by June 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

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PROPOSED

The Committee proposes amending jury instruction M Crim JI 4.11a, the "Other Acts" jury instruction, to add acts of sexual assault per the language of MCL 768.27b, which includes acts of sexual assault with acts of domestic assault as other acts that a jury can consider. Additionally, a few linguistic changes were made to improve readability and understandability of the instruction. The instruction's Use Note was also amended. Deletions are in strike-through, and new language is underlined.

[AMENDED] M Crim JI 4.11a Evidence of Other Acts of Domestic Violence or Sexual Assault

(1) ~~The prosecutor has introduced evidence of claimed acts of domestic violence* by the defendant for which [he / she] is not on trial.~~ You have heard evidence that the defendant [*describe the alleged conduct by the defendant*]. [He / she] is not on trial for [that / those] [act / acts].

(2) Before you may consider ~~such alleged acts as~~ this evidence ~~against the defendant~~, you must first find that the defendant actually committed ~~such~~ the [act / acts].

(3) If you find that the defendant did commit ~~those~~ the [act / acts], you may consider [it / them] in deciding ~~if~~ whether the defendant committed the [offense / offenses] for which [he / she] is now on trial.

(4) You must not convict the defendant ~~here~~ in this case solely because you think [he / she] is guilty of other bad conduct. The evidence must convince

you beyond a reasonable doubt that the defendant committed the ~~alleged crime~~ offense for which [he / she] is now on trial, or you must find [him / her] not guilty.

Use Note

* "Domestic violence" for purposes of this instruction is defined in MCL 768.27b(~~5~~ 6) (a) and (b). "Sexual assault" crimes are those offenses under the Sex Offenders Registration Act found at MCL 28.722(r), (t), and (v).

Public Policy Position
Model Criminal Jury Instructions 4.11a

Support

Explanation:
The Committee voted unanimously, with one abstention, to support the proposed amendments to Model Criminal Jury Instruction 4.11a as drafted. The Committee agreed that updating the instruction is necessary to reflect the update in statute.

Position Vote:
Voted For position: 16
Voted against position: 0
Abstained from vote: 1
Did not vote (absent): 9

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
Sofia V. Nelson snelson@sado.org

Public Policy Position
M Crim JI 4.11a

Support

Position Vote:
Voted for position: 13
Voted against position: 0
Abstained from vote: 0
Did not vote: 1

Contact Person: Takura N. Nyamfukudza
Email: takura@cndefenders.com

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

==========

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by June 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

==========

PROPOSED

The Committee proposes a jury instruction, M Crim JI 7.26, for the defense to parental kidnapping (M Crim JI 19.6) found in MCL 750.350a(7) – protecting the child from an immediate and actual threat of physical or mental harm. The instruction is entirely new.

[NEW] M Crim JI 7.26 Parental Kidnapping – Defense of Protecting Child; Burden of Proof

(1) The defendant says that [he / she] is not guilty of parental kidnapping because [he / she] was acting to protect [*name child*] from an immediate and actual threat of physical or mental harm, abuse, or neglect. A person is not guilty of parental kidnapping when [he / she] proves this defense.

(2) Before considering the defense of protecting the child, you must be convinced beyond a reasonable doubt that the defendant committed the crime of parental kidnapping. If you are not, your verdict should simply be not guilty of that offense. If you are convinced that the defendant committed the offense, you should consider the defendant's claim that [he / she] was protecting the child from an immediate and actual threat of physical or mental harm, abuse, or neglect.

(3) To establish that [he / she] was acting to protect the child, the defendant must prove three elements by a preponderance of the evidence. A preponderance of the evidence means that [he / she] must prove that it is more likely than not that each of the following elements is true.

(4) First, the defendant must prove that [*name child*] was in actual danger of physical or mental harm, abuse or neglect.[1]

(5) Second, the defendant must prove that the danger of physical or mental harm, abuse, or neglect to [*name child*] was immediate. That is, if the defendant failed to act, [*name child*] would have been physically or mentally harmed or would have suffered abuse or neglect very soon.

(6) Third, the defendant must prove that [his / her] actions were reasonably intended to prevent the danger of physical or mental harm, abuse, or neglect to [*name child*].

(7) You should consider these elements separately. If you find that the defendant has proved all three of these elements by a preponderance of the evidence, you must find [him / her] not guilty of parental kidnapping. If the defendant has failed to prove any of these elements, the defense fails.

Use Note

1. The terms "physical harm," "mental harm," "abuse," and "neglect" are not defined in MCL 750.350a. The Committee on Model Criminal Jury Instructions does not recommend importing definitions from other statutory provisions if the jury questions the meaning of the terms, but suggests the use of dictionary meanings.

Public Policy Position
Model Criminal Jury Instructions 7.26

Support

Explanation:
The Committee voted unanimously to support proposed Model Criminal Jury Instruction 7.26, for the defense to parental kidnapping found in MCL 750.350a(7) – protecting the child from an immediate and actual threat of physical or mental harm – as drafted.

Position Vote:
Voted For position: 16
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 10

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
Sofia V. Nelson snelson@sado.org

Public Policy Position
M Crim JI 7.26

Support

Explanation:
They are all entirely new and we all agreed that these are useful, necessary instructions.

Position Vote:
Voted for position: 14
Voted against position: 0
Abstained from vote: 0
Did not vote: 0

Contact Person: Takura N. Nyamfukudza
Email: takura@cndefenders.com

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by June 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

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PROPOSED

The Committee proposes a jury instruction, M Crim JI 13.19b, for the offense of using a 9-1-1 service for a prohibited purpose, contrary to MCL 484.1605. The instruction is entirely new.

[NEW] M Crim JI 13.19b Prohibited Use of Emergency 9-1-1 Service

(1) The defendant is charged with the crime of prohibited use of emergency 9-1-1 service. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [used / attempted to use] an emergency 9-1-1 service.

(3) Second, that the defendant [used / attempted to use] the emergency 9-1-1 service [for a reason other than to call for an emergency response service[1] / more than one time to report a crime or seek nonemergency assistance and was told on the first call to call a different number].

(4) Third, that when the defendant [used / attempted to use] the emergency 9-1-1 service [for a reason other than to call for an emergency response service / more than one time to report a crime or seek nonemergency assistance and was told on the first call to call a different number], [he / she] knew that [he / she] was using the service for a reason other than to call for an emergency response service.

Use Note

1. An *emergency response service* is defined by MCL 484.1102(m) and means a public or private agency that responds to events or situations that are

dangerous or that are considered by a member of the public to threaten the public safety. An emergency response service includes a police or fire department, an ambulance service, or any other public or private entity trained and able to alleviate a dangerous or threatening situation.

Public Policy Position
Model Criminal Jury Instructions 13.19b

Support

Explanation:
The Committee voted unanimously to support proposed Model Criminal Jury Instruction 13.19b, for the offense of using a 9-1-1 service for a prohibited purpose, contrary to MCL 484.1605, as drafted.

Position Vote:
Voted For position: 16
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 10

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
Sofia V. Nelson snelson@sado.org

Public Policy Position
M Crim JI 13.19b

Support

Explanation:
They are all entirely new and we all agreed that these are useful, necessary instructions.

Position Vote:
Voted for position: 14
Voted against position: 0
Abstained from vote: 0
Did not vote: 0

Contact Person: Takura N. Nyamfukudza
Email: takura@cndefenders.com

FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

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The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by June 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

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PROPOSED

The Committee proposes a jury instruction, M Crim JI 33.2, for the offense of cruel and inhumane treatment of an animal, contrary to MCL 750.50. The instruction is entirely new.

[NEW] M Crim JI 33.2 Cruel and Inhumane Treatment of an Animal

(1) The defendant is charged with the crime of cruel and inhumane treatment of an animal. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [owned, possessed, or had custody of (a / an) (*identify vertebrate*) / was (an animal breeder / a pet shop operator)[1] with (a / an) (*identify vertebrate*) under (his / her) care].

(3) Second, that the defendant

[*Select from the following according to the charges and evidence:*]

(a) failed to provide the [*identify vertebrate(s)*] with adequate care. "Adequate care" means providing enough water, food, and exercise and providing sufficient shelter, sanitary conditions, and veterinary care to keep an animal in a state of good health.[2]

(b) drove, worked, or beat [*identify vertebrate(s)*] cruelly, or caused [*identify vertebrate(s)*] to be driven, worked or beaten.[3]

(c) carried [*identify vertebrate(s)*] in a vehicle or caused the [animal / animals] to be carried in a vehicle with [its / their] feet tied together.

(d) carried [*identify vertebrate(s)*] in or on a vehicle or caused the [animal / animals] to be carried in or on a vehicle without a secure space or cage for the [(*identify livestock vertebrate*[*s*])[4] to stand / *identify vertebrate(s)* to stand, turnaround, and lie down].

(e) abandoned the [*identify vertebrate(s)*] or caused the [animal / animals] to be abandoned without making provision for adequate care of the [animal / animals].[5]
"Adequate care" means providing enough water, food, and exercise and providing sufficient shelter, sanitary conditions, and veterinary care to keep an animal in a state of good health.[2]

(f) was negligent in allowing [*identify vertebrate(s)*], including aged, diseased, maimed, or disabled animals, to suffer unnecessary neglect, torture, or pain.
"Neglect" means failing to sufficiently and properly care for an animal to a degree that the animal's health is jeopardized.[6]

(g) tethered the dog with a rope, chain, or similar device that was less than three times the length of the dog from nose to the base of its tail.[7]

(4) Third, [8]
[*Select from the following aggravating factors according to the charges and evidence:*]

(a) [the offense involved two or three animals / (an / the) animal died as a result of the offense].

(b) the offense involved four to nine animals.

(c) the offense involved ten to twenty-four animals.

(d) the offense involved twenty-five or more animals.

Use Note

1. *Breeder* is defined at MCL 750.50(1)(e), referencing MCL 287.331. *Pet shop* is defined at MCL 750.50(1)(j), also referencing MCL 287.331.

2. *Adequate care* is defined in MCL 750.50(1)(a). "Shelter" is further defined in MCL 750.50(1)(*l*), and "water" is defined in MCL 750.50(1)(*o*).
3. *Cruelly* is not defined in MCL 750.50. The Committee on Model Criminal Jury Instructions does not recommend importing definitions from other statutory provisions but notes that the child abuse statute, MCL 750.136b(1)(b), defines "cruel" as ". . . brutal, inhumane, sadistic, or that which torments."
4. In MCL 750.50(1)(g), the definition of "livestock" references MCL 287.703.
5. There are exceptions to the abandonment provision found at MCL 750.50(2)(e) involving premises abandoned to protect human life or prevent human injury or lost animals. It appears that the defendant would have to offer evidence to interpose such defenses.
6. *Neglect* is defined in MCL 750.50(1)(h).
7. *Tethering* is defined in MCL 750.50(1)(n).
8. Provide this instruction only when the prosecution seeks sentence enhancement based on these factors.

Public Policy Position
Model Criminal Jury Instructions 33.2

Support

Explanation:
The Committee voted unanimously to support proposed Model Criminal Jury Instruction 33.2, for the offense of cruel and inhumane treatment of an animal, contrary to MCL 750.50, as drafted.

Position Vote:
Voted For position: 16
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 10

Contact Persons:
Nimish R. Ganatra ganatran@washtenaw.org
Sofia V. Nelson snelson@sado.org

Public Policy Position
M Crim JI 33.2

Support

Explanation:
They are all entirely new and we all agreed that these are useful, necessary instructions.

Position Vote:
Voted for position: 14
Voted against position: 0
Abstained from vote: 0
Did not vote: 0

Contact Person: Takura N. Nyamfukudza
Email: takura@cndefenders.com

FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS

==========

The Committee on Model Criminal Jury Instructions solicits comment on the following proposal by June 1, 2023. Comments may be sent in writing to Andrea Crumback, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov .

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PROPOSED

The Committee proposes jury instructions, M Crim JI 33.4, 33.4a and 33.4b for the offenses involving killing or torturing animals, contrary to MCL 750.50b(2) to (7), and M Crim JI 33.4c for a "just cause" defense to such charges. These instructions are entirely new.

[NEW] M Crim JI 33.4 First-Degree Killing or Torturing an Animal

(1) The defendant is charged with the crime of first-degree killing or torturing an animal. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant intentionally

[*Choose any supported by the charges and the evidence:*]

(a) [killed / tortured / mutilated, maimed, or disfigured] [a / an] [*identify vertebrate*].

[or]

(b) poisoned [a / an] [*identify vertebrate*] or caused the animal to be exposed to a poisonous substance intending that the substance be taken or swallowed.

(3) Second, that the [*identify vertebrate*] that the defendant [killed / tortured / mutilated, maimed, or disfigured / poisoned or caused to be exposed to a poisonous substance] was a companion animal.

A "companion animal" is a vertebrate commonly considered to be a pet or considered by [*identify complainant*] to be a pet.[1]

(4) Third, that the defendant intended to cause [*identify complainant*] mental anguish or distress or intended to exert control over [*identify complainant*][2]

[*Select the appropriate option according to the evidence:*]

(a) by [(killing / torturing / mutilating, maiming, or disfiguring) the animal / poisoning the animal or causing the animal to be exposed to a poisonous substance].

[or]

(b) by threatening to [(kill / torture / mutilate, maim, or disfigure) the animal / poison the animal or cause the animal to be exposed to a poisonous substance].

[*Read the following bracketed material only where the charge involves a threat:*]

[A threat does not have to be stated in any particular terms but must express a warning of danger or harm. Further, it must have been meant as a true threat and not, for example, idle talk, a statement made in jest, or a solely political comment. It must have been made under circumstances where a reasonable person would think that others may take the threat seriously as expressing an intent to inflict harm or damage. It does not matter whether the defendant actually intended to carry out the threat or could carry out the threat.]

Use Note

1. *Companion animal* is defined in MCL 750.50b(1)(b).

2. This is a specific intent crime.

[NEW] M Crim JI 33.4a Second-Degree Killing or Torturing an Animal

(1) [The defendant is charged with the crime / You may also consider the lesser offense] of second-degree killing or torturing an animal. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant

[*Choose any supported by the charges and the evidence:*]

(a) intentionally [killed / tortured / mutilated, maimed, or disfigured] [a / an] [*identify vertebrate*].

[or]

(b) intentionally poisoned [a / an] [*identify vertebrate*] or caused the animal to be exposed to a poisonous substance intending that the substance be taken or swallowed.

[or]

(c) intended to cause [*identify complainant*] mental anguish or distress or intended to exert control over [*identify complainant*][1]

[*Select the appropriate option according to the evidence:*]

(i) by [(killing / torturing / mutilating, maiming, or disfiguring) the animal / poisoning the animal or causing the animal to be exposed to a poisonous substance].

[or]

(ii) by threatening to [(kill / torture / mutilate, maim, or disfigure) the animal / poison the animal or cause the animal to be exposed to a poisonous substance].

[*Read the following bracketed material only where the charge involves a threat:*]

[A threat does not have to be stated in any particular terms but must express a warning of danger or harm. Further, it must have been meant as a true threat and not, for example, idle talk, a statement made in jest, or a solely political comment. It must have been made under circumstances where a reasonable person would think that others may take the threat seriously as expressing an intent to inflict harm or

damage. It does not matter whether the defendant actually intended to carry out the threat or could carry out the threat.]

[I have just described the (two / three) alternatives that the prosecutor may use to prove this element. To find that this element has been proven, you must all agree that the same alternative or alternatives has or have been proved beyond a reasonable doubt.][2]

(3) Second, that the [*identify vertebrate*] that the defendant [killed / tortured / mutilated, maimed, or disfigured / poisoned or caused to be exposed to a poisonous substance] was a companion animal.

A "companion animal" is a vertebrate commonly considered to be a pet or considered by [*identify complainant*] to be a pet.[3]

Use Note

1. This is a specific intent crime.
2. Read this paragraph only where two or three alternatives for this element were read to the jury.
3. *Companion animal* is defined in MCL 750.50b(1)(b).

[NEW] M Crim JI 33.4b Third-Degree Killing or Torturing an Animal

(1) [The defendant is charged with the crime / You may also consider the lesser offense] of third-degree killing or torturing an animal. To prove this charge, the prosecutor must prove the following element beyond a reasonable doubt:

(2) That the defendant

[*Choose any supported by the charges and the evidence:*]

(a) intentionally [killed / tortured / mutilated, maimed, or disfigured] [a / an] [*identify vertebrate*].

[or]

(b) intentionally poisoned [a / an] [*identify vertebrate*] or caused the animal to be exposed to a poisonous substance intending that the substance be taken or swallowed.

[or]

(c) committed a reckless act[1] that the defendant knew or had reason to know would cause [an animal / (a / an) (*identify vertebrate*)] to be [killed / tortured / mutilated, maimed, or disfigured].

[or]

(d) intended to cause [*identify complainant*] mental anguish or distress or intended to exert control over [*identify complainant*][2]

[*Select the appropriate option according to the evidence:*]

(i) by [(killing / torturing / mutilating, maiming, or disfiguring) the animal / poisoning the animal or causing the animal to be exposed to a poisonous substance].

[or]

(ii) by threatening to [(kill / torture / mutilate, maim, or disfigure) the animal / poison the animal or cause the animal to be exposed to a poisonous substance].

[*Read the following bracketed material only where the charge involves a threat:*]

[A threat does not have to be stated in any particular terms but must express a warning of danger or harm. Further, it must have been meant as a true threat and not, for example, idle talk, a statement made in jest,

or a solely political comment. It must have been made under circumstances where a reasonable person would think that others may take the threat seriously as expressing an intent to inflict harm or damage. It does not matter whether the defendant actually intended to carry out the threat or could carry out the threat.]

[I have just described the (two / three / four) alternatives that the prosecutor may use to prove this element. To find that this element has been proven, you must all agree that the same alternative or alternatives has or have been proved beyond a reasonable doubt.][3]

Use Note

1. *Reckless act* is not defined in MCL 750.50b. In the context of driving offenses, it is defined as willful and wanton disregard for the safety of persons or property or knowingly disregarding the possible risks to the safety of people or property.

2. This is a specific intent crime

3. Read this paragraph only where two, three, or four alternatives for this element were read to the jury.

[NEW] M Crim JI 33.4c Just Cause as a Defense to Killing or Torturing an Animal

(1) The defendant claims that [he / she] had just cause to commit the acts alleged by the prosecutor. Where a person has just cause for killing or harming an animal, [he / she] is not guilty of the crime of killing or torturing an animal.

(2) You should consider all of the evidence and the following rules when deciding whether there was just cause for the defendant's actions.

(3) The defendant must have honestly and reasonably believed that [his / her] conduct was necessary or just, considering the circumstances as they appeared to the defendant at that time.

(4) It is for you to decide whether those circumstances called for the defendant's conduct and whether [his / her] conduct was necessary to address those circumstances.

(5) The defendant does not need to prove that [he / she] had just cause to kill or harm the animal. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant did not have just cause to kill or harm the animal.

Use Note

This instruction should only be read where evidence of just cause has been introduced.

Public Policy Position
Model Criminal Jury Instructions 33.4, 33.4a, 33.4b, 33.4c

Support

Explanation:
The Committee voted unanimously to support the proposed Model Criminal Jury Instructions 33.4, 33.4a, and 33.4b for the offenses involving killing or torturing animals, contrary to MCL 750.50b(2) to (7), and proposed Model Criminal Jury Instruction 33.4c for a "just cause" defense to such charges, as drafted.

Position Vote:
Voted For position: 16
Voted against position: 0
Abstained from vote: 0
Did not vote (absent): 10

Contact Persons:
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Public Policy Position
M Crim JI 33.4, 33.4a, 33.4b, and 33.4c

Support

Explanation:
They are all entirely new and we all agreed that these are useful, necessary instructions.

Position Vote:
Voted for position: 14
Voted against position: 0
Abstained from vote: 0
Did not vote: 0

Contact Person: Takura N. Nyamfukudza
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