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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 incongruity. 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,

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

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

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

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/11_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,

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Rev. Dr. Roland Stringfellow
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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>>.

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