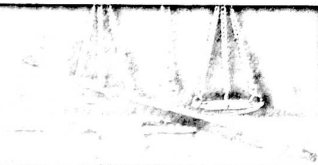


LGBTQ+ INCLUSION FROM THE BENCH: BEST PRACTICES BENCH CARD

Judges have an ethical and professional obligation to treat every person appearing before them with respect. Counsel appearing before judges are similarly obligated to treat others with respect. (Rule 2.3, Canon 2, ABA Model Code of Judicial Conduct)



WHEN OPENING A JUDICIAL PROCEEDING

Introduce yourself with your name & pronouns:

"Good morning, I am Judge Jane Smith, and my pronouns are she/her/hers."

Request that parties introduce themselves with their names & pronouns:

"Parties, please introduce yourselves to the Court with your names and pronouns."

HOW TO HANDLE DEADNAMES

To the greatest extent possible, never use a transgender person's deadname (former name) to reference/address them.

- There is often no need to explain any discrepancy between a person's deadname and name-in-use.
- When a deadname is not legally relevant, parties should only use a transgender person's name-in-use.
- **If a deadname must be used:**
 - Be transparent about why the deadname needs to be used, and the uses to which it will be put.
 - When possible, spell it out or have the person visually confirm their name, especially if others are present in the courtroom.
 - Do not overemphasize it.
 - Say it only as much as is necessary (ideally once).
 - Avoid saying it in a public setting, or use a husher.
 - Do not require a person to say their deadname.

IF YOU MISGENDER OR DEADNAME SOMEONE

Understand that your mistake, even if small, may cause significant harm to the individual.

Acknowledge your mistake with a short apology. Beware of focusing on yourself rather than the injured person and of making the injured person feel compelled to excuse harm.

Amend your language and correct your mistake.

EXAMPLES:

- "I apologize for assuming your pronouns. Now that I know how you should be addressed, I'll do so correctly in the future. Thank you for letting me know."
- "I apologize, that was a mistake. I will not refer to you by that name again."

IF SOMEONE ELSE MISGENDERS OR DEADNAMES SOMEONE

- Hold the offender accountable and request that they fix or change their language. If the mistake was made publicly, publicly and immediately correct it.
EXAMPLE: "Counselor, the plaintiff's pronouns are she/her. Please address her correctly moving forward."
- If an attorney misgenders or deadnames an individual repeatedly, it is appropriate to raise the ethical obligations and professional rules to which that attorney is bound.
- If it becomes clear that the attorney is deliberately disregarding your admonishment, and/or is intentionally trying to cause harm to an individual, it is appropriate to escalate the situation.

TERMS & ASSUMPTIONS TO AVOID AND ALTERNATIVES TO USE

A glossary of key terms relating to the LGBTQ+ community and LGBTQ+ experiences can be found in "LGBTQ+ Inclusion from the Bench: A Best Practices Guide for Judges"

INSTEAD OF SAYING: SAY THIS:

"Do you have a husband?" → "Do you have a spouse?"

"Mr. Smith;" "Ms. Smith" → "Counsel Smith;" "Smith"

"Ladies and gentlemen," → "Guests of the Court;" "Folks;" "Everyone;" "All"

"Homosexual" → "Gay;" "LGBTQ+;" or other specific adjectives or nouns ("lesbian;" "bisexual;" etc.)

"Preference" → "Sexual orientation" not "sexual preference;" "Pronouns" not "preferred pronouns"

"Lifestyle" → "Identity;" "sexual orientation;" "gender identity;" "gender expression"

"Sex Change" → "Gender affirming procedures;" "Gender affirming medical care"

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WHEN IS DISCUSSION OF SEXUAL ORIENTATION/GENDER IDENTITY APPROPRIATE VS. PREJUDICIAL?

- A party's LGBTQ+ identity is usually irrelevant in a legal proceeding. You can screen for anti-LGBTQ+ animus by looking for (1) assumptions that aren't backed up with relevant evidence, (2) inappropriate language or terminology, or (3) a recommendation or conclusion that doesn't seem to match the details of a report or lack supporting facts.
- **Judges may consider the following factors when determining whether discussion is becoming prejudicial:**
 - Is the legal matter directly related to anti-LGBTQ+ discrimination or a LGBTQ+ identity?
 - Would the Court analyze the matter in the same way if the individual were cisgender and/or straight?
 - Was the discussion initiated by the LGBTQ+ person, or by someone else? Is it speculation?
 - Do details revealing, hinting at, or emphasizing an LGBTQ+ identity feel unnecessary or irrelevant?
 - Does the discussion use salacious terms, encourage animus, or imply judgement of LGBTQ+ experiences?
- **If discussion is not relevant or necessary, redirect or correct those engaging in the discussion. Examples:**

"Counsel, please change how you are proceeding."

"Counsel, how is this relevant to the matter before the Court?"

"Witness, please answer the counselor's question."

LGBTQ+ ISSUES IN SPECIALTY COURTS

CRIMINAL COURT:

- Do not presume that police reports or records accurately name and gender individuals. Request self-identification, and if a discrepancy arises, handle it sensitively (**How to Handle Deadnames** on pg. 1).
- Evaluate whether non-LGBTQ+ experiences or identities would be raised, discussed, and carry similar or equal weight in the same situation during pre-trial, trial, and post-trial proceedings. Employ the evaluations suggested above to ensure bias and/or prejudice is not impacting the Court's proceedings or the jury (**When is a Discussion** on pg. 2).
- Provide jury instructions that advise jurors to consider only the facts and the law, and to account for any perceived biases or prejudices that may have impacted the trial or impact jury deliberations (**Jury Matters** on pg. 2).

FAMILY COURT:

- Minors' assertions of their identity, including gender, and their name-in-use should be respected and honored. If you make a mistake, a minor deserves an apology for misgendering and deadnaming as much as an adult does.
- Consider that the best interest of the minor regarding respect of their identity may differ from that of their parent/guardian.
- Consider the unique experiences and needs of LGBTQ+ minors, as well as the ways in which family dynamics may differ from families that are all heterosexual and cisgender.
- Educate yourself about the LGBTQ+ community's history with family court. Consider how that may impact proceedings.
- Ensure that the discussion is respectful and does not become prejudicial (**When is a Discussion** on pg. 2).

JUVENILE DEPENDENCY COURT:

- Minors' assertions of their identity, including gender, and their name-in-use should be respected and honored. If you make a mistake, a minor deserves an apology for misgendering and deadnaming as much as an adult does.
- Consider that the best interest of the minor regarding respect of their identity may differ from that of their parent/guardian.
- If you reasonably believe or know a minor to be LGBTQ+, or to come from an LGBTQ+ family, take reasonable steps to ensure that the minor is placed with supportive and affirming caregivers. Doing so is in the best interest of the minor.
- Ensure that the discussion is respectful and does not become prejudicial (**When is a Discussion** on pg. 2). Look for assumptions that aren't backed up with relevant evidence, inappropriate language or terminology, or a recommendation or conclusion that doesn't seem to match the details of an evaluation or report.

JURY MATTERS

PEREMPTORY CHALLENGES

If it is reasonably clear that counsel used a peremptory challenge because a potential juror is LGBTQ+, judges have a duty to ask follow-up questions to ensure counsel is not engaging in unintentional or intentional bias. (*Rule 2.3 (B - C), Canon 2 of the ABA's Model Code of Judicial Conduct*).

- Are any questions attempting to determine the jurors' sexual orientation or gender identity?
- Is counsel using unnecessarily gendered language and/or heteronormative familial expectations?

JURY INSTRUCTION

If LGBTQ+ status has come up over the course of the proceeding, instruct jurors:

- Not to let anti-LGBTQ+ bias impact their decision-making;
- To account for any perceived biases or prejudices that the witnesses presented may hold;
- To report any prejudice they hear during deliberations, especially if they feel that it impacted the outcome of the case.

