Addressing the Issues of LGBTQ Cultural Competency

Richmond Bar Association Bench Bar Conference 2019
Respect Your Clients & Prospective Clients.

By knowing and using proper and respectful terminology
WE ARE ALL THE SAME INSIDE

I'm gay I'm lesbian I am bisexual I am transgender I am like you I'm human
Know the Letters:

L Lesbian
G Gay
B Bisexual
T Transgender
Q Queer/Questioning
I Intersex
GNC Gender Non-Conforming
A Asexual
SEXUAL ORIENTATION AND GENDER IDENTITY ARE TWO DIFFERENT CONCEPTS...
SEXUAL ORIENTATION is who you go home to

GENDER IDENTITY is who you go home as.
GENDER IDENTITY

Gender Non-Conforming: A term for individuals whose gender expression/behavior is different from societal expectations and/or stereotypes related to gender.

Gender Queer: A term which generally refers to a person who does not accept a gender binary world and refuses to conform their behavior to any gender stereotypical behavior.

Gender Identity: A person’s innate, deeply-felt psychological identification as a man, a woman, or some other status, which may or may not correspond with their external body or sex assigned at birth (i.e. listed on their birth certificate).

Gender Expression: The external manifestation of a person’s gender identity, which may or may not conform to the socially-defined behaviors and external characteristics that are commonly referred to as either masculine or feminine. These behaviors and characteristics are expressed through movement, dress, grooming, hairstyles, jewelry, mannerisms, physical characteristics, social interactions, and speech patterns (voice).

Gender is a spectrum.

Cross-Dresser: A term for people who dress in clothing not typically worn by their assigned birth sex, but who generally do not desire to live full-time as the other gender.

Intersex: Biologically, a person who was born with both female and male or indescribable or nondescribable sexual genitalia or chromosomal differences that create secondary sexual characteristics.
Definitions: Transgender People

**Transgender:** An umbrella term for people whose gender identity and/or gender expression differ from their assigned sex at birth (i.e., the sex listed on their birth certificates). **Not all transgender people want to live as the sex opposite of the one they were assigned at birth.** Individuals who cross dress, live androgynously or do not live their life in a gender binary manner (gender queer) are all within the umbrella term “transgender.” The preferred use of the word transgender is as an adjective and not a noun or a verb. *(Tony is a transgender man - NOT Tony is a transgender. OR Tony is transgendered.)*

**Transgender Man:** A term for a transgender individual who, assigned female at birth, currently identifies as a man. This is sometimes shortened to transman.

**Transgender Woman:** A term for a transgender individual who, assigned male at birth, currently identifies as a woman. This is sometimes shortened to transwoman.

**Transsexual:** People whose gender identity differs from their assigned sex at birth (i.e., the sex listed on their birth certificates). People who, often on a full-time basis, live their lives as a member of the sex opposite of their birth-designated sex. They may or may not take hormones or have surgery. **This term is hotly debated within the transgender community and should be utilized only if the individual is comfortable with the term.**
Definitions: Transgender People

Gender Affirmation or Transition: When an individual begins to live as the sex opposite of the one assigned at birth that process is referred to as transitioning or going through the gender affirmation process.

Process of Self-Authorization
Three phases of transition: social, legal and medical
Definitions: Transgender People
Medical/Psychological

Gender Dysphoria: is a DSM V diagnosis – not a term of general usage that describes a strong and persistent cross-gender identification and persistent discomfort with his or her sex or sense of inappropriateness in the gender role of that sex which causes clinically significant distress or impairment in social, occupational, or other important areas of functioning. Some, but not all, transgender individuals have gender dysphoria. This has been, and in some literature, still is referred to as “gender identity disorder,” however, many in the community consider the use of disorder to be offensive and gender dysphoria is now the preferred technical term.
Definitions: Transgender People
Medical/Psychological

Gender Reassignment Surgery (Also referred to as Gender Confirming Surgery or Gender Affirming Surgery): Terms that refers to various surgical procedures that change one’s body to align gender identity and presentation. Contrary to popular belief, there is not one surgery; in fact there are many different surgeries.

Hormone Therapy: The administration of hormones to facilitate the development of secondary sex characteristics as part of a medical transition process. Those medically transitioning from female to male may take testosterone while those transitioning from male to female may take estrogen and androgen blockers.
Definitions: Transgender People
Medical/Psychological

**Children:** Lupron used to suppress puberty and the development of secondary sex characteristics that can exacerbate gender dysphoria symptoms and make transitions at adulthood less successful. Reversible effect upon termination of therapy.

**WPATH:** World Professional Association for Transgender Health ([www.WPATH.org](http://www.WPATH.org)) debate on hormone therapy and surgery for minors.
Words not to use because they are out dated or considered offensive – “trannie,” “tranny,” “she-male,” “he-she,” ‘it,” “transvestite,” “sex change,” “sex change operation.”

Whenever possible, use a transgender person's chosen name even if it is not their legal name. Often transgender people cannot afford a legal name change or are not yet old enough to change their name legally. They should be afforded the same respect for their chosen name as anyone else who lives by a name other than their birth name (e.g., celebrities).
If it is not possible to ask a transgender person which pronoun he or she prefers, use the pronoun that is consistent with the person's appearance and gender expression. For example, if a person wears a dress and uses the name Susan, feminine pronouns are appropriate. If it is not obvious – try to avoid any use of gender terms until you can ask the person’s preference.

When describing transgender people, please use the correct term or terms to describe their gender identity. For example, a person who was assigned male at birth and transitions to female is a transgender woman, whereas a person who was assigned female at birth and transitions to male is a transgender man.
Grammar conventions are shifting just as quickly. Efforts to introduce nonstandard pronouns, some of which date to as early as the 1850s, have generated a vast array of alternatives, none of which have taken off, including “xe,” “ze,” “phe,” “er,” “ou.” In 1884, several newspapers tried to make “thon” happen. And increasingly, courtesy titles like “Mr.” and “Ms.” are having to make room for novel varieties like “Mx.” — pronounced “mix.” Today, many transgender people prefer the conventional “he” or “she,” but those who have adopted “they,” “them” and “theirs” as personal pronouns have become much more visible. Both The Washington Post and The Associated Press recently began permitting the singular “they” in their reporting on a case-by-case basis. In some cases, a reporter finds a write-around, like avoiding pronouns altogether. Other times the reporter confronts the terminology head-on in the introduction or body of the article. But readers will never find an unheralded “thon” in the paper.
And How Does An English Major – or Any Good Writer Handle?
Respect

Definitions: SEXUAL ORIENTATION

**Sexual Orientation:** A term describing a person’s attraction to members of the same gender and/or different gender. Sexual orientation and gender identity are different concepts.

**Gay:** A term used to describe a male who is sexually and emotionally attracted to other males. Also a generally descriptive term for gay men or lesbians. Many lesbians prefer to be called “lesbian” however.

**Lesbian:** A term used to describe a female who is sexually and emotionally attracted to other females.

**Bisexual:** A term used to describe a male or female who is sexually and emotionally attracted to both sexes.

**Questioning:** A term used to describe a person who is unsure and is questioning their sexual orientation.

**Heterosexual/Straight:** A term used to describe a person who is sexually and emotionally attracted to persons of the opposite sex.

**Gender Queer:** People who do not ascribe to a binary notion of sex/gender.

**Asexual:** Person with no desire for a sexual relationship with anyone
Definitions: SEXUAL ORIENTATION

Words not to use:

Offensive: "homosexual" (n. or adj.)

Preferred: "gay" (adj.); "gay man" or "lesbian" (n.); "gay person/people;” “bi/bisexual” (n) (adj.)

Please use gay or lesbian to describe people attracted to members of the same sex. Because of the clinical history of the word "homosexual," it is aggressively used by anti-gay extremists to suggest that gay people are somehow diseased or psychologically/emotionally disordered – notions discredited by the American Psychological Association and the American Psychiatric Association in the 1970s. Please avoid using "homosexual.”
Definitions: SEXUAL ORIENTATION

Words not to use:

Offensive: "sexual preference"

Preferred: "sexual orientation" or "orientation" The term "sexual preference" is typically used to suggest that being lesbian, gay or bisexual is a choice and therefore can and should be "cured." Sexual orientation is the accurate description of an individual's enduring physical, romantic and/or emotional attraction to members of the same and/or opposite sex and is inclusive of lesbians, gay men, bisexuals, as well as straight men and women.
SEXUAL ORIENTATION

Words not to use:

Offensive: "homosexual relations/relationship," "homosexual couple," "homosexual sex," etc.

Preferred: "relationship," "couple" (or, if necessary, "gay couple" or "same-sex couple"), "sex," etc. Identifying a same-sex couple as "a homosexual couple," characterizing their relationship as "a homosexual relationship," or identifying their intimacy as "homosexual sex" is extremely offensive and should be avoided. These constructions are frequently used by anti-gay extremists to denigrate gay people, couples and relationships.

As a rule, try to avoid labeling an activity, emotion or relationship gay, lesbian, or bisexual unless you would call the same activity, emotion or relationship "straight" if engaged in by someone of another orientation. In most cases, your listeners will be able to discern people's sexes and/or orientations through the names of the parties involved, your depictions of their relationships, and your use of pronouns.
Definitions: SEXUAL ORIENTATION

Words not to use:

Offensive: "gay lifestyle" or "homosexual lifestyle"

Preferred: "gay lives," "gay and lesbian lives" There is no single lesbian, gay or bisexual lifestyle. Lesbians, gay men and bisexuals are diverse in the ways they lead their lives. The phrase "gay lifestyle" is used to denigrate lesbians, gay men, and bisexuals suggesting that their orientation is a choice and therefore can and should be "cured."
Definitions: SEXUAL ORIENTATION

Words not to use:

Offensive: "admitted homosexual" or "avowed homosexual"

Preferred: "openly lesbian," "openly gay," "openly bisexual," or simply "out"  
Dated term used to describe those who self-identify as gay, lesbian or bisexual in their personal, public, and/or professional lives. The words "admitted" or "avowed" suggest that being gay is somehow shameful or inherently secretive. You may also simply describe the person as being out, for example: "Ricky Martin is an out pop star from Puerto Rico."
Definitions: SEXUAL ORIENTATION

Derogatory Language – don’t use and don’t allow anyone else to use.
"fag," "faggot," "dyke," "homo," "sodomite," and similar epithets

These derogatory terms should be treated in the same manner as vulgar epithets used to target other groups. They should not be used except in a direct quote that reveals the bias of the person quoted. So that such words are not given credibility in the media, it is preferred that reporters say, "The person used a derogatory word for a lesbian, gay, bisexual or transgender person."
Definitions: SEXUAL ORIENTATION

Derogatory Language – don’t use and don’t allow anyone else to use.

"deviant," "disordered," "dysfunctional," "diseased," "perverted," "destructive" and similar descriptions

The notion that being gay, lesbian or bisexual is a psychological disorder was discredited by the American Psychological Association and the American Psychiatric Association in the 1970s. Today, words such as "deviant," "diseased" and "disordered" often are used to portray LGBT people as less than human, mentally ill, or as a danger to society.
RESPECT

SEXUAL ORIENTATION

Derogatory Language – don’t use and don’t allow anyone else to use.

Associating gay, lesbian, bisexual and transgender people with pedophilia, child abuse, sexual abuse, bestiality, bigamy, adultery and/or incest or any “deviant” or anti-social behavior

Being gay, lesbian, bisexual or transgender is neither synonymous with, nor indicative of, any tendency toward pedophilia, child abuse, sexual abuse, bestiality, bigamy, adultery and/or incest. Such claims, innuendoes and associations often are used to insinuate that LGBT people pose a threat to society, to families, and to children in particular.
What is Polyamory?

Per Urban Dictionary:

**Polyamory**:

- A form of relationship involving more than two *people*. The relationships may be symmetrical (like a triangle), or something more complex. The relationships may also be open or closed, straight or *gay*, or a mixture.

A purely heterosexual form of *polyamorous* marriage was once practiced among the Tibetans: each man had many wives, and each woman had many husbands. This raises the possibility of your brother also being your husband-in-law-in-law.
What is Polyamory?

From Wikipedia:

- **Polyamory** (from Greek πολύ poly, "many, several", and Latin amor, "love") is the practice of or desire for intimate relationships with more than one partner, with the knowledge of all partners. It has been described as "consensual, ethical, and responsible non-monogamy"

- People who identify as polyamorous reject the view that sexual and relational exclusivity are necessary for deep, committed, long-term loving relationships. Those who are open to or emotionally suited for polyamory may embark on a polyamorous relationship when single or already in a monogamous or open relationship.

- Polyamorous arrangements are varied, reflecting the choices and philosophies of the individuals involved, but with recurring themes or values, such as love, intimacy, honesty, integrity, equality, communication, and commitment.

- Confusion arises when polyamory is misapplied in a broader sense, as an umbrella term for various forms of consensual non-monogamous, multi-partner relationships (including polyamory), or consensual non-exclusive sexual or romantic relationships.
SEXUAL ORIENTATION - POLYAMORY

Respect

HAVE YOU MET MY MOTHERS?
State of the law since *Obergefell v. Hodges*

- ALL married couples are entitled to have their marriage recognized.
- However LGBTQ couples still are encountering issues in being recognized as legitimate parents—especially with the marital presumption NOT applying to whether their legal parentage is valid—by way of example:
  - *Stankevich v. Milliron* (Mich. App. 2015) (where married and had child with each other by agreement—yet upon split—bio mom tried to say non-bio mom not a parent)
  - *But see—Pavon v Smith*, “the Constitution entitles same-sex couples to civil marriage on the same terms and conditions as opposite-sex couples.”
“As this Court explained in Obergefell v. Hodges..., the Constitution entitles same-sex couples to civil marriage “on the same terms and conditions as opposite-sex couples.” Id., at ___ (slip op., at 23). In the decision below, the Arkansas Supreme Court considered the effect of that holding on the State’s rules governing the issuance of birth certificates. When a married woman gives birth in Arkansas, state law generally requires the name of the mother’s male spouse to appear on the child’s birth certificate—regardless of his biological relationship to the child. According to the court below, however, Arkansas need not extend that rule to similarly situated same-sex couples: The State need not, in other words, issue birth certificates including the female spouses of women who give birth in the State. Because that differential treatment infringes Obergefell’s commitment to provide same-sex couples “the constellation of benefits that the States have linked to marriage,” id., at ___ (slip op., at 17), we reverse the state court’s judgment.
YOU MAY NOW KISS THE SUPREME COURT.
There is still lack of protection:

- Gay couples still need court orders to secure legal parentage of their children and cannot just rely on birth certificates – not just due to state differences in the US but globally.

- Transgender individuals still lack many protections – especially with regard to public accommodations and in other areas. Compare the Colorado “wedding cake” case *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. ___ (2018) to VA law.

- There is still a lot of insecurity and no security.
2 Relationship Building

Ensuring an LGBTQIA Law Friendly Law Office
WHAT VIBE DO YOU SEND?

• Do you have receptive indicators on your website and in your lobby?
• Or do you have negative indicators?
• Read the NCLR flyer in the materials.
• Have LGBT friendly magazines and/posters in your lobby area.
• Make sure your website has an LGBT friendly component.
Making Your Law Firm LGBTQIA Friendly:

ALL GENDER RESTROOM

Anyone can use this restroom, regardless of gender identity or expression
Make Your Law Firm LGBTQIA Friendly:
Law Firm Intake

• Intake Forms – Do they ask for the person’s sex or marital status?
• If yes, is that necessary to the intake?
• If yes and necessary to the intake – is the wording appropriate?
• Upon presentation of an individual whose sexual identity is not clear, but whose sexual identity is not germane to the attorney-client relationship, simply ask for the name and call the client by name. If you need more clarification – explain why.
• Ask the client/caller – what name do you prefer I call you?
Law Firm Intake (cont)

• Upon presentation of an individual whose sexual identity must be known as part of the legal representation (and it is not clear from appearance and name), simply ask “how do you identify in terms of your gender?” and if the info must be known (for example, in an adoption proceeding) – “is that the same gender that is on your legal identification documents?”
• Do not hesitate to explain why proper gender identification is necessary.

• In some cases – proof of gender identification may be necessary to the legal proceedings or to the statutory requirements.

• Explain why gender identification issues could be an issue in the legal proceedings – including from a practical (not legal) perspective (including juror or judge bias).
Making your Law Firm LGBT Friendly

• Add your LGBT friendly commitment to your website and all marketing materials – including your LGBT affiliations

• Stay Educated & Informed, Seek Out & Support LGBT Resources:
  – Utilize info from the Family Equality Council [www.familyequality.org](http://www.familyequality.org), GLAD [www.glad.org](http://www.glad.org) and the National Center for Lesbian Rights [www.nclrights.org](http://www.nclrights.org)
  – Join and Support:
    • The LGBT Bar Association
    • The Virginia Equality Bar Association
    • Equality Virginia
    • Gay RVA
Questions?