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Top 6 Tips for Lawyers Working with Transgender Clients and Co-Workers

Clients

Transgender clients are not fundamentally different than non-transgender clients. They have the same need for resolution, respect, effective representation, and returned phone calls. Most often, the unique challenges they face originate from discomfort or disinterest on the part of others. For some transgender people, previous experience with discrimination may lead them to be wary about opening up to a lawyer. This barrier may be something you will need to overcome in order to provide effective representation. Here are some things to keep in mind when representing a transgender client:

- 1. It isn't always about a person's transgender status.** Sometimes the legal challenge facing a transgender person is unrelated to their gender identity. It is important not to focus so narrowly on the fact that a person is transgender that you end up making that characteristic more important than the actual reason the person is seeking your services. It is important that you help your client focus on the real issue and steer them away from focusing on their gender identity if that is not the core legal issue.
 - 2. Be aware of assumptions you are making about a person's gender.** It is very common to assume that you know a person's gender or gender identity based on sex stereotypes. In most cases, you will "guess" correctly. However, some people's gender or gender identity is not immediately evident, or is different than what you would assume or expect. Transgender people in particular may not conform to narrow gender stereotypes. If you are unsure what a person's gender identity is, ask them (privately, if possible) what name and pronouns they would like you to use, and how they would like to be addressed.
 - 3. Reach out to attorneys who have experience working with transgender issues.** Because so many legal issues concerning transgender people are issues of first impression or are still being developed, it's important that you connect with knowledgeable attorneys as you begin to frame your legal arguments. In other cases, there may be an established approach to recurring issues, but one that is not well known outside of the community of advocates who specialize in transgender issues. Avoid becoming a well-intentioned attorney who creates bad law because they don't fully understand the issues.
 - 4. Use the correct name and pronoun in all correspondence, court papers, and settlement agreements.** Except in extremely rare circumstances, it is very important that you use the name and pronoun that corresponds to a person's gender identity (for example, use male pronouns if your client has transitioned from female to male). In addition, your client may
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choose to use a name that is gender-neutral or associated with the gender that is the opposite from the pronouns he or she prefers. It is important to be aware of and respect this decision. Also, it may be necessary to footnote the person's prior name in a document, or to clarify in an initial letter that the recipient of the letter may know your client by their prior name or gender but that you will be referring to the client by their current name and gender. It is also important that you respectfully urge opposing counsel, court staff, and judicial officers to do the same.

5. Make sure your office has transgender-friendly policies. Your intake forms should account for a person having an AKA and should encourage or allow people to identify their sex based on their current gender identity. Your restrooms should be accessible to people based on their gender identity (as opposed to their birth sex or genital anatomy). Where possible, it is always a good idea to have a gender neutral restroom option available. However, use of a gender-neutral bathroom should be an option for anyone who wishes to use it; a transgender employee should not be forced to use a gender-neutral bathroom, and forcing the person to do so may be unlawful. Finally, your co-workers should be trained in basic transgender cultural competency including understanding preferred name and pronoun usage.

6. Offer Inclusive Health Insurance

Many health insurance policies specifically exclude coverage for transition-related health care. These exclusions often prevent transgender employees from obtaining medically necessary care such as hormone replacement therapy. Exclusions may even jeopardize a transgender employee's ability to get care for a procedure that has nothing to do with their transition. More and more employers are recognizing this inequality in the workplace and entering into health insurance contracts that do not exclude transition-related care. Advocate for your employer to become one of them.

Co-Workers

Transgender people are employed in every industry and profession throughout the country. As a community, however, transgender people face enormous amounts of employment discrimination leading to high rates of unemployment and underemployment. Ensuring that your workplace is one in which all employees can fully participate is vital to combating discrimination and providing competent services to transgender clients. Here are some ways to ensure that transgender co-workers feel welcome.

- 1. Create meaningful and enforceable non-discrimination policies.** It is important to have a general statement of non-discrimination that includes transgender people. It is even more helpful to provide specific guidelines explaining what non-discrimination means in this context. Such guidelines would include information about the need to use a person's correct name and pronoun, restroom accessibility, and confidentiality.
- 2. Have staff trainings.** Whether you know that you have a transgender employee on staff or not, it is important to have staff trainings on the issue. Some transgender employees may not be "out" about their transgender status and may have transitioned years before coming to the

company. In addition, while most staff want to be supportive of transgender co-workers, many will need guidance on how to do so. Trainings are a much more effective way of creating a respectful environment than simply relying on written policies.

- 3. Respect confidentiality and privacy.** It is almost never necessary to disclose a person's transgender status to clients or other co-workers. In addition, it is never appropriate to do so without permission from your transgender co-worker. Also, it is also generally inappropriate to ask co-worker questions about their private medical history or treatment. Such inquiries may violate HIPAA privacy rules. If you have information about the health care that someone has accessed as part of their transition, do not freely share it with anyone else unless your transgender co-worker has given you permission to do so.
- 4. Help co-workers who are having trouble with another employee's transition.** It is vitally important that co-workers assist and support one another in respecting a transgender co-worker's gender identity. When a transgender person transitions on the job, it can sometimes be difficult for co-workers to remember to use the correct name and pronoun. If you hear a co-worker using the wrong name or pronoun, talk to them about it. It is likely just an unintentional slip and they will appreciate the reminder. However, if you hear co-workers making inappropriate comments about a transgender co-worker's appearance or medical history, it is important to intervene in a respectful and constructive way. In most cases, co-workers genuinely want to be accepting and supportive of transgender co-workers and may simply not be fully aware of how to do so.
- 5. Don't assume that a transgender co-worker either knows about all transgender issues or wants to work on transgender cases.** While some transgender employees may have a special interest in working on or discussing transgender-related issues, others may not. If you have an employee whom you know to be transgender, make sure that you aren't expecting them to have all of the answers or to do your research for you. Expecting a transgender person to be the company's expert on all things transgender is both an unfair burden on that person and can inadvertently serve to tokenize them within the company.

Resources:

Representing Transsexual Clients

http://www.nclrights.org/site/DocServer/Proyecto_Poderoso_Flyer_cd.pdf?docID=2321

State of Transgender California

http://www.transgenderlawcenter.org/pdf/StateTransCA_report_2009Print.pdf

California Transgender Law 101: A Practice Guide for Attorneys and Advocates

http://transgenderlawcenter.org/pdf/ca_trans_law_101.pdf

Advancements in State and Federal Employment Law in Regards to Transgender Employees

<http://transgenderlawcenter.org/pdf/AdvancInStateAndFedLawReCATransEmployees.pdf>