

Top 7 Best Practices for Representing Transgender and Nonbinary Pro Bono Clients

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Transgender and nonbinary individuals are often among the most marginalized communities we serve as pro bono lawyers. In the US and abroad, transgender and nonbinary people have faced a history of discrimination in employment and housing, unequal access to healthcare, and violence. Indeed, as the Human Rights Campaign has reported, 2020 was the [deadliest year on record](#) for transgender and gender non-conforming people – and especially for transgender women of color, dozens of whom were violently killed. The [rates of suicide](#) attempts, particularly among transgender and nonbinary youth, are similarly alarming.

To ensure our lawyers and staff are providing client-centered and trauma-informed representation to our transgender and nonbinary pro bono clients, Proskauer welcomed [Dru Levasseur](#), the Director of Diversity, Equity, and Inclusion at [the National LGBTQ+ Bar Association](#), to speak on a panel alongside Associate [Ren Morris](#) and Pro Bono Counsel [Erin Meyer](#). This panel was the third in a series of trainings coordinated by Proskauer's [Diversity & Inclusion](#) team, at which Dru addressed the topic of LGBTQ+ cultural competency in the workplace.

The training program was interactive, with audience members responding to polling questions about how best to handle hypothetical scenarios based on real interactions with transgender and nonbinary pro bono clients seeking immigration relief and legal name changes. Together we identified several best practices that all lawyers and staff can use to provide the highest level of service to transgender and nonbinary pro bono clients:

1. **Avoid deadnaming and assumptions about your client's sexual orientation, gender identity, or pronouns.**

When introducing yourself to your client, share your name and pronouns. Ask your client what name they go by and what pronouns they use – avoid asking for “[preferred](#)” pronouns. Don’t refer to your client by a name they no longer use – a practice called “deadnaming” – even if that name still appears on their legal documents. Deadnaming invalidates a transgender person’s identity and can be very emotionally damaging.

Understand that “sexual orientation” is one’s romantic, physical, and/or sexual attraction, whereas “gender identity” is one’s deeply felt internal sense of being male, female, both, or neither. You cannot infer a client’s sexual orientation from their gender identity or vice versa.

You should not inquire about your client’s sexual orientation or gender identity if it is not relevant to your legal representation, but if you need to know this information to develop the client’s case – for example, where the client’s identity is relevant to their asylum claim – you should ask rather than assume how the client identifies, and you should explain to the client why this information is needed for their case.

2. Mirror your client’s language in describing their sexual orientation and gender identity, and accept that your client’s self-identification may evolve over time.

Taking a client-centered approach to your work with LGBTQ+ clients requires using the name and pronouns that the client uses to describe themselves and doing your best to mirror the client’s terminology when referring to their sexual orientation and gender identity. There are a wide variety of ways that LGBTQ+ people describe their identities, and these terms can also vary across different countries and languages. The [GLAAD Media Reference Guide](#) is a helpful resource that defines key terms used to describe LGBTQ+ identities and also explains which terminology should be avoided as outdated or offensive.

An LGBTQ+ client's understanding of their sexual orientation or gender identity can evolve over time, as it can for anyone. It is not uncommon for LGBTQ+ clients to change the way they describe and present their identity to others, especially when the client comes from a country of origin or family situation in which they had to closet or repress their authentic selves out of fear that they would be harmed or ostracized. When a client tells you that they have changed their name, pronouns, or the terms they use to describe their identity, you should accept this new information and change how you refer to the client accordingly. A change in identification or gender expression is not an indicator that the client is dishonest, but rather that the client has come to a new understanding of their identity and/or is feeling safer in expressing their authentic self publicly.

3. Beware of coercive narratives when describing LGBTQ+ identities in asylum applications.

Particularly in the context of asylum cases, there are times when the way your client self-identifies their sexual orientation or gender identity may not fit neatly into the "particular social group" categories that have been recognized in US immigration case law. In these instances, you may feel tension between trying to label your client's identity in a way that ensures a legally cognizable claim based on existing case law while also trying to mirror your client's language and understanding of their identity.

It can be very challenging to help your client draft an affidavit that is true to the client's self-identification and lived experiences while also ensuring the asylum officer or immigration judge will be convinced that the client is a member of a particular social group meriting a grant of asylum. The best approach is to have a candid conversation with the client about the limitations of US immigration law when it comes to recognizing "particular social groups" and to strategize with the client about how they want to describe their identity in their asylum application and how the adjudicator is likely to perceive the client's narrative. One possible solution is to mirror the client's terminology while also endeavoring to educate the judge or asylum officer about what those terms mean through analogizing to terms with which the judge or officer likely has greater familiarity. For a deeper dive on this complex topic, I recommend reading Connor Cory's journal article, [*The LGBTQ Asylum Seeker: Particular Social Groups and Authentic Queer Identities*](#).

4. Practice using the client's pronouns, but if you make a mistake, acknowledge, correct it, and move on.

We all make mistakes, and if your client corrects you or asks you to refer to them differently, you can respond along the lines of, "Thank you for trusting me with that information. I'm sorry for my mistake. I will do my best to get it right going forward, and I always appreciate you telling me how I can better support you." Don't dwell on the mistake or try to explain or justify it - your client will appreciate that you've made a graceful apology and that you moved on quickly.

It can be challenging to use "they/them" pronouns when you aren't used to doing so, but the fastest way to become better at it is to practice! Try talking to yourself in the mirror about your client, using they/them pronouns to describe them, and you'll find that it becomes easier over time.

5. Ensure your client will be able to access your office building and the bathrooms in accordance with their gender identity.

For any low-income pro bono client, coming to a corporate law office can be an intimidating and unfamiliar experience. This can be all the more true for a transgender or nonbinary client whose government-issued identification document does not match their name in use and gender identity.

You can make the client feel welcomed and safe by ensuring in advance that the security guards and receptionists know the right name and pronouns to use when greeting the client. You should not out the client as transgender if the client has not consented to your disclosing their gender identity - your goal is just to ensure that the client is not turned away or referred to by the wrong name given a potential mismatch between their name in use and the legal name on their photo ID. As a best practice and to build trust with the client, you can meet the client in the lobby, especially on their first visit to your office building, to introduce them to the security guard and ensure the client will have no difficulty accessing the building.

Similarly, you or your office receptionists can make it a practice to inform all clients upon their arrival where the restrooms are located, including the all-gender option, and that the firm's policy is that everyone can use the restroom consistent with one's gender identity. Ideally, you would not single out transgender or nonbinary clients when providing bathroom information but rather share this general information with all guests as a standard practice.

6. Be cautious when working with translators to ensure your client is not being misgendered.

When using a translator to speak with your transgender or nonbinary client, have everyone in the room introduce their names and pronouns to ensure the translator is aware of how each person should be addressed. This practice can help prevent the translator from unintentionally misgendering the client.

After using a translator to interview your client, check with the client to confirm that the client was comfortable with the translator. Using a second translator or over-the-phone translation service, ask the client whether they were satisfied with the translation service and whether the first translator did anything that made the client feel uncomfortable. Your client may not offer this feedback unless you directly solicit it, but this feedback is important because it enables you to intervene if the first translator was not using the correct pronouns or was translating terms such as "gay" or "transgender" into words that are offensive in the client's language.

Be particularly cautious if your client is an immigrant from a country where persecution based on sexual orientation or gender identity is pervasive. If the translator is also from the same country or region, the translator may have internalized the same cultural stereotypes and prejudices that caused the client to flee to the United States. It is important to ensure that the translator is not using homophobic or transphobic slurs when referring to LGBTQ+ identities.

7. Interrupt bias and be an ally to your client in court.

In Lambda Legal's 2012 "Protected and Served?" [survey](#) of 2,376 LGBTQ+ people, 19% of the survey respondents who had appeared in a court at any time in the past five years had heard a judge, attorney, or other court employee make negative comments about a person's sexual orientation, gender identity, or gender expression. Some of the survey respondents also had their sexual orientation or gender identity disclosed improperly, such as for the purpose of embarrassing them or attacking their moral character.

Transgender people who appear in court – whether as attorneys, witnesses, jury members, or parties to a case – often must deal with judges, opposing counsel, and court employees who refuse to acknowledge or respect their gender identity. As but one example of this, the survey cited an instance in which a judge demanded that a transgender woman not come back into the courtroom unless she was dressed as a man.

As a pro bono attorney, confronting overt transphobia in court can be very challenging, especially when the inappropriate remarks have come from a judge. You should prepare your client in advance for the unfortunate reality that transphobic comments can occur in court, and you should strategize with your client about how they want you to handle the situation if it unfortunately arises, including discussing the potential pros and cons of different approaches you could take to interrupt the biased behavior.

If your client is comfortable with taking a direct approach, you should respond immediately to any jokes or disrespectful statements about your client's gender identity that are made in court, and if the statements were made on the record, your response should also be on the record. You should also oppose the introduction of evidence about your client's LGBTQ+ identity where it is irrelevant to the case.

If your client is not comfortable with directly confronting biased comments in court, you can try the indirect approach of taking the perpetrator aside privately to explain why their comment was harmful and inappropriate. If the client prefers that you say nothing to the perpetrator, you should respect your client's wishes as your client knows what is best for their own safety. You can still be an ally to your client by showing empathy – let them know that you recognized the biased behavior for what it was and that you are there to support them.

These best practices are, of course, just the beginning when it comes to being an ally and developing a relationship of trust with your transgender or nonbinary pro bono client, but attorneys who adopt these practices from the outset of the attorney-client relationship will be on the path to a successful representation.

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