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Practice Tips

**HAVE NO LGBTQ YOUTH CLIENTS? THINK AGAIN: WHAT EVERY ATTORNEY  
REPRESENTING YOUTH NEEDS TO KNOW**

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All lawyers will have clients who are or are perceived to be LGBTQ. To fulfill your professional and ethical obligation to be a zealous advocate, particularly when you represent LGBTQ children and adolescents, it is essential that you educate yourself about the unique stressors and risk factors of this largely hidden population, and how they might affect your client's experience in court.

But first, let's cover some basic vocabulary so we understand each other:

- **LGBTQ** means lesbian, gay, bisexual, transgender and queer. (For some, the Q means questioning.)
- **Queer** is an umbrella term that includes anyone who a) wants to identify as queer, and b) who feels somehow outside of the societal norms in regards to gender, sexuality and/or even politics, including young straight allies.
- **Sexual orientation** refers to a person's physical and/or emotional attraction to the same and/or different gender. "Heterosexual," "bisexual" and "homosexual" are all sexual orientations. A person's sexual orientation is distinct from a person's gender identity and expression.
- **Gender identity** is the individual's internal sense of being male or female.
- **Gender expression** refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns, and social interactions.
- **Transgender** individuals are people with a gender identity that is different from the sex assigned to them at birth.
- **Gender transition** is the process by which a transgender person goes from living and working as one gender to another.

\*11 For more explanation, see [The Genderbread Person](#).

**Why You Need to Know if Your Client is LGBTQ**

At a minimum, under Massachusetts's ethical rules, an attorney shall not "engage in conduct manifesting bias or prejudice based on ... sex ... or sexual orientation against a party, witness, counsel, or other person." **Mass. R. Prof. C. 3.4**, 426 Mass. 1308 (1998). Bias and prejudice are harmful. But ignorance can be just as harmful.

If a youth's LGBTQ status is a significant factor in their case (e.g., if it relates to why they are court-involved or which parent should get custody), failure to have this issue on your radar screen means your representation may fall short of your ethical obligation to provide competent representation, including inquiry into and analysis of the factual and legal elements of the matter. **Mass. R. Prof. C. 1.1 (comment 5)**. Even if the relevance of your clients' LGBTQ status is not immediately apparent, various statistics indicate that their actual or perceived sexual orientation and gender expression can affect their experience in the judicial system.

## **LGBTQ Status Makes a Difference**

Here are just some of the statistics:

- Though LGBTQ youth represent only 5-7% of the overall youth population, they comprise:
  - 13-15% of the juvenile justice system; see **Majd, Marksamer & Reyes, “Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts,” 2 (2009); Irvine, “‘We’ve had three of them’: Addressing the invisibility of lesbian, gay, bisexual, and gender non-conforming youths in the juvenile justice system,” 19:3 Colum. J. Gender & L. 675, 676-677 (2010);**
  - 40% of out-of-home or at-risk youth; see **Durso & Gates, “Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth Who Are Homeless or At Risk of Being Homeless,” 3 (2012).**
  - LGBTQ adolescents experience punishment by school and criminal justice authorities disproportionate to their rates of transgressive behavior, being between 1.5 and 3 times as likely as their peers to experience sanctions for similar behavior; see **Brückner & Himmelstein, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, Pediatrics, 49-57 (2010).**
  - LGBTQ youth in the juvenile justice system are twice as likely as their peers to have experienced family conflict, child abuse, and homelessness; see Irvine.
  - LGBTQ youth without family support and involvement in their case face more negative outcomes at every stage in the juvenile justice system; see Majd.
- \*12 • LGBTQ youth who have experienced family rejection are at very high risk for health and mental health problems (suicide attempts, depression, illegal drug use, and risk for HIV and sexually transmitted diseases); see Ryan, “Supportive Families, Health Children,” at 5 (2009).**

*So, the risk is significant that the LGBTQ status of a young client may be a substantial, relevant factor in your representation -- and one that you cannot ignore.*

## **How to be a Zealous Advocate for an LGBTQ Youth**

There are, of course, several key steps a lawyer can take to represent LGBTQ youth more effectively.

Most significantly, you need to develop basic cultural competence about LGBTQ youth. Unlike other demographic characteristics such as race or age, LGBTQ status may not be readily recognizable. You need to set the stage for a client to feel that it is safe to tell you that he or she is LGBTQ. You also need to be prepared to deduce for yourself if these issues are at play by considering the question as you review the facts and circumstances of the case. On the other hand, forcing the issue could damage your attorney-client relationship and it may not be necessary for effective representation as long as you are aware of the issue. If, for example, your client is an effeminate boy, you do not need to know if he is gay, bisexual, or transgender to get a safety plan in place at school. You should go a step further though and determine if the school climate is LGBTQ positive or not. If it is not, you are more likely to need to monitor compliance and enforce the safety plan. If you cannot identify any LGBTQ clients on your roster, chances are you are missing what is in plain sight and you should re-evaluate.

Here are some additional things you, as a lawyer, can do:

- Familiarize yourself with LGBTQ terminology.
- Display LGBTQ-positive signs such as rainbow stickers, posters, or books.
- Tell all clients (not just ones you perceive to be LGBTQ) that you are an ally who will work hard for your client, no matter their sexual orientation, gender identity or expression, or HIV status.

- Tell your clients that it could be helpful to their case if they are LGBTQ to tell you.
- Use open, inclusive language (e.g., instead of asking a boy if he has a girlfriend, ask: “Are you dating anyone?” or “Do you date boys, girls, or both?”).
- Make sure you know your client’s preferred pronouns (e.g., he/him/his, she/her/hers, they/them/their, or ze/hir/hirs). More young people are choosing the pronouns they wish to apply to themselves.

Here are some things to avoid:

- Don’t use the terms “homosexual,” “lifestyle,” or “choice” (some find these terms off-putting).
- Don’t assume someone’s sexual orientation or gender identity.
- Don’t “out” the youth to others.
- Don’t call someone’s romantic interest their “friend.”

### **\*13 Beyond the Basics**

Beyond basic cultural competence, there are still other ways better to represent an LGBTQ youth client:

**Be open to whether LGBTQ issues are at play.** In every matter, you should be mindful whether the problems that have caused your client to need services are related to the client’s actual or perceived sexual orientation, gender identity or expression, or HIV status. For example, if your client is skipping school, consider the possibility that he or she is being bullied because he or she is or is perceived to be LGBTQ even if he or she does not immediately tell you that. You may need to do some sleuthing here. Review school discipline reports and comments made about your client on Facebook and other social media for anti-LGBTQ statements, including about failure to conform to sex stereotypes. Also subtly ask family and friends why they believe your client is skipping school. And, being mindful of stereotypes, consider your client’s appearance and manner to assess whether others might perceive your client to be LGBTQ. This could require you to confront discrimination and institutional bias where it arises.

**Help educate family members.** You may face a situation where parents are at odds with their child because their child is LGBTQ, or parents who are at odds with each other because one is supportive of the youth and the other is not. In some cases, you can begin to educate the non-supportive parent. Resources such as the **Family Acceptance Project** offer research-based information to help parents evolve in their acceptance of their child. It also addresses religious questions, as do movies such as “**For The Bible Tells Me So**.” In other cases, you may have to help the young person advocate for a supportive placement using research to show the harm of an unsupportive placement. Every case is different and needs individual consideration.

**Use evidence-based interests, not presumptions.** All of us are familiar with the legal standard that decisions are to be made in the “best interests of the child.” However, best-interest lawyering should actually be evidence-based and not based on presumptions or prejudice. As an attorney, you have some latitude to present your own beliefs as to what is in the best interest of your client. Those notions, however, should be evidence-based citing statistics and social science research. Lawyering based on personal belief systems may violate your duty not to engage in conduct that manifests bias or prejudice.

**Confront your own discomfort.** You might think a young client is “flamboyant” and would “get along” better if only he or she would just tone it down. At the same time, the client likely feels he or she is simply being himself or herself. Clients get to make choices as long as they are educated about them, even if you are uncomfortable with the choice. **Care & Protection of Georgette**, 439 Mass. 28, 36-39 (2003). **Maintain client confidences.** Your client is the gatekeeper of information about his or her sexual orientation, gender identity and expression, and HIV status. As an attorney, you are obligated to keep client confidences. **Mass. R. Prof. C. 1.6**, 426 Mass. 1322 (1998). The

urgency is particularly great because family rejection can be devastating for an LGBTQ youth.

**\*14 Know how to find LGBTQ resources.** It is important to have a referral list of LGBTQ-friendly providers of services for the youth client. If you do not have one, you can develop such a list by calling GLAD's free information line: 800-455-GLAD (Mondays-Fridays, 1:30-4:30 p.m.) for help.

If you take these basic steps, you can make the world of difference to young LGBTQ clients and even serve as a role model to your colleagues.

#### Footnotes

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