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Comment:

Pursuant to MCR 1.109(D)(1) "Filing Standards," only the "names of the parties" must be included in captions. There is no compelling governmental interest to force the use of pronouns. In short, the proposed court rule seeks to compel speech in violation of the First Amendment.

Here, undisputed is the fact there has been a recent waive in pop culture on the focus of the choice of pronouns. Both the marginalized and those not marginalized are participating in this waive. This is a choice that one should be entitled to participate in if they so desire and not be penalized for participating. However, there are varying levels of scrutiny and by requiring pronoun designations upon the courts, which is the very decisional framework that determines equality and justice for all races, creeds, religions, sexual identities, and genders we would be asking the tail to wag the dog.

If an individual's gender identity is relevant to the subject matter of the litigation, it is expected to be included as a basis of the litigation itself. Amending the court rules to force the use of pronouns, therefore, appears, at best a surreptitious attempt to compel speech in violation of the First Amendment. Practically, it is an invitation to invite additional and unnecessary dialogue that may be misinterpreted and bring adversity into the mix because of one's perceived issues that are non-issues. If they are issues include them in your litigation.

That is, enforcement of sanctions of violations of the standards provides little guidance:

(5) Effect of Signature. The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:

(a) he or she has read the document;

(b) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(c) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(6) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

(7) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

MCR 1.109(E)(5).

Applied here, an aggrieved litigant might accuse the Court of not appropriately using a preferred pronoun. The aggrieved litigant might be a member of a protected class, and the litigation could then take on wholly different course than originally intended with the court confronted with a motion for recusal, in for example, a slip and fall case having no bearing on the designated pronoun issue.

Coupled with this, it is not clear whether under this court rule any aggrieved individual would have to first prove under 5(c) "the document was not interposed for any improper purpose, such as to harass or to cause unnecessary delay or [to] needless[ly] increase in the cost of litigation."

Finally, if an individual later files a document changing their pronoun designation to a different one that initially appeared in that individual's first public filing, it is not clear whether the Court must, under MCR 1.109(E)(6) order sanctions for violations for inconsistent filings. Alternatively, it is not clear whether a party making an honest mistake using an incorrect pronoun, could also be sanctioned.