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Submitted online

Chief Justice Elizabeth T. Clement
Michigan Supreme Court
Lansing, Michigan

ADM File No. 2022-03, Proposed Amendment of MCR 1.109

Dear Chief Justice Clement,

The State Appellate Defender Office strongly supports the proposed amendment requiring courts to either use a person's pronouns or their names. It is a minor and simple step towards ensuring basic dignity of people in court.

SADO client Gobrick illustrates the need for change.

One illustration of both the necessity of this court rule amendment and the non-controversial impact of this change comes from the situation involving SADO client Gobrick, a transgender woman, who uses they/them pronouns. In the Court of Appeals [opinion](#) affirming their conviction, the Court majority made the simple yet essential choice to refer to our client using the correct [pronouns](#). The Kent County Prosecutor made the same choice.

The Court's use of our client's pronouns would not have warranted any further discussion or comment, except that a third Court of Appeals judge on the case issued a [concurrency](#) rejecting this approach due to stated concerns of grammar, clarity, and a resistance to change. As the majority observed, many [commentators](#) disagree with this judge's stylistic objections, but that is not the point. It should be too self-evident to write, but courts should prioritize access and respect of all parties involved over professed grammatical concerns. At its core, the concurring opinion relied on an incendiary and [inaccurate](#) ideology declaring gender to be "immutable truth."

By turning the simple recognition of a transgender person into a larger political issue, the concurring opinion made the same error as many of the opponents to this court rule proposal. This proposal is not a policy position on educational curriculum or transgender people's athletic team participation. It is a simple declaration that people should be addressed as they wish.

The proposed rule will prevent harm.

Failing to respect transgender and non-binary individuals is [harmful](#) to their mental health and wellness and alienates them from the legal system. There is a pronounced need for recognition and respect of transgender people in all aspects of our legal system. Transgender individuals are disproportionately both crime victims and people charged or convicted of crimes. The Williams Institute at UCLA School of Law [reported](#) that transgender people are over four times more likely than cisgender people to be victims of violent crimes, including rape and assault. The Human Rights Campaign [reported](#) that at least fifty transgender or gender non-conforming people were homicide victims in 2021, though this figure is almost certainly affected by underreporting. According to a [report](#) from the Movement Advancement Project and Center for American Progress, over 21% of transgender women have been incarcerated, compared to 5% of the general population, and 22% of transgender people report mistreatment by police.

These are sobering numbers with complex and systemic [causes](#). At the very least, courts should respond to this dynamic by respecting people regardless of their gender, sex, sexuality, race, religion, class, country of origin, or ability. Our courts must lead by example and demonstrate that they serve all communities, especially the most marginalized.

The Court's proposal is sensible and simple.

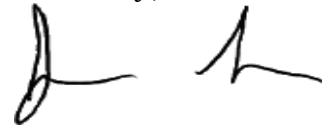
This court rule proposal and the approach taken by the Court of Appeals majority in *Gobrick*, is not novel or controversial. In his [opinion](#) finding that firing an employee for being gay or transgender violated Title VII of the Civil Rights Act, Supreme Court Justice Neil Gorsuch respected the plaintiff's gender identity. In his description of the Michigan plaintiff, a transgender woman, Justice Gorsuch referred to her as "Ms. Stephens" and used she/her pronouns.

The American Bar Association House of Delegates adopted a [resolution](#) to encourage "use within the legal profession and justice system of pronouns consistent with a person's gender identity, including in filed pleadings, during mediations and court proceedings, and within judicial opinions." The resolution underscores the need to respect the humanity of all involved in court proceedings, including by respecting each person's pronouns.

Commentators cite exaggerated concerns with ambiguity, confusion, and misuse of pronouns. None of these arguments account for the allowance in this proposal for courts to use an individual's "name or other respectful means of addressing the individual if doing so will help ensure a clear record." In 1988, a federal judge threatened to hold an attorney in [contempt](#) for not using her married name in court. Rather than showing basic respect for her choice of address, that judge potentially found the attorney's decision to use "Ms." and her original last name ambiguous and a reflection of values he did not share.

At SADO, we applaud the court rule proposal for recognition of transgender and non-binary people. It is a simple and respectful solution.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Sacks', with a stylized, cursive script.

Jonathan Sacks
Director

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