

Practice Issues Related to Meeting the
Needs of a More Diverse Population
and Building a More Diverse Staff.

**MASSNAELA ELDER LAW INSTITUTE
DIVERSITY, EQUITY, INCLUSION
REFERENCES AND GUIDES
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www.MassNAELA.com

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GENDER IDENTITY GLOSSARY OF TERMS

Sex refers to a person's biological status and is typically assigned at birth, usually on the basis of external anatomy. Sex is typically categorized as male, female or intersex.

Gender is often defined as a social construct of norms, behaviors and roles that varies between societies and over time. Gender is often categorized as male, female or nonbinary.

Gender identity is one's own internal sense of self and their gender, whether that is man, woman, neither or both. Unlike gender expression, gender identity is not outwardly visible to others.

For most people, gender identity aligns with the sex assigned at birth, the American Psychological Association notes. For transgender people, gender identity differs in varying degrees from the sex assigned at birth.

Gender expression is how a person presents gender outwardly, through behavior, clothing, voice or other perceived characteristics. Society identifies these cues as masculine or feminine, although what is considered masculine or feminine changes over time and varies by culture.

Cisgender, or simply cis, is an adjective that describes a person whose gender identity aligns with the sex they were assigned at birth.

Transgender, or simply trans, is an adjective used to describe someone whose gender identity differs from the sex assigned at birth. A transgender man, for example, is someone who was listed as female at birth but whose gender identity is male.

Cisgender and transgender have their origins in Latin-derived prefixes of "cis" and "trans" — cis, meaning "on this side of" and trans, meaning "across from" or "on the other side of." Both adjectives are used to describe experiences of someone's gender identity.

Nonbinary is a term that can be used by people who do not describe themselves or their genders as fitting into the categories of man or woman. A range of terms are used to refer to these experiences; nonbinary and genderqueer are among the terms that are sometimes used.

Agender is an adjective that can describe a person who does not identify as any gender.

Gender-expansive is an adjective that can describe someone with a more flexible gender identity than might be associated with a typical gender binary.

Gender transition is a process a person may take to bring themselves and/or their bodies into alignment with their gender identity. It's not just one step. Transitioning can include any, none or all of the following: telling one's friends, family and co-workers; changing one's name and pronouns; updating legal documents; medical interventions such as hormone therapy; or surgical intervention, often called gender confirmation surgery.

Gender dysphoria refers to psychological distress that results from an incongruence between one's sex assigned at birth and one's gender identity. Not all trans people experience dysphoria, and those who do may experience it at varying levels of intensity.

Gender dysphoria is a diagnosis listed in the Diagnostic and Statistical Manual of Mental Disorders. Some argue that such a diagnosis inappropriately pathologizes gender incongruence, while others contend that a diagnosis makes it easier for transgender people to access necessary medical treatment.

Sexual orientation refers to the enduring physical, romantic and/or emotional attraction to members of the same and/or other genders, including lesbian, gay, bisexual and straight orientations.

People don't need to have had specific sexual experiences to know their own sexual orientation. They need not have had any sexual experience at all. They need not be in a relationship, dating or partnered with anyone for their sexual orientation to be validated. For example, if a bisexual woman is partnered with a man, that does not mean she is not still bisexual.

Sexual orientation is separate from gender identity. As GLAAD notes, "Transgender people may be straight, lesbian, gay, bisexual or queer. For example, a person who transitions from male to female and is attracted solely to men would typically identify as a straight woman. A person who transitions from female to male and is attracted solely to men would typically identify as a gay man."

Intersex is an umbrella term used to describe people with differences in reproductive anatomy, chromosomes or hormones that don't fit typical definitions of male and female.

Intersex can refer to a number of natural variations, some of them laid out by InterAct. Being intersex is not the same as being nonbinary or transgender, which are terms typically related to gender identity.

REFERENCES:

A Guide To Gender Identity Terms, June 2, 2021, Laurel Wamsley, NPR
<https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq>

Everything you Ever Wanted to Know About Gender Neutral Pronouns, Jacob Tobia
May 12, 2016, TIMES
<https://time.com/4327915/gender-neutral-pronouns/>

What are Gender Pronouns? Why Do They Matter? Gemma Martin, Louis Choporis, and Bali White,
May 28, 2020
<https://www.edi.nih.gov/blog/communities/what-are-gender-pronouns-why-do-they-matter>

PRONOUNS

What is a pronoun?

A pronoun (e.g., I, me, he, she, herself, you, it, that, they, each, few, many, who, whoever, whose, someone, everybody, etc.) is a word that takes the place of a noun. In the sentence “Joe saw Jill, and he waved at her,” the pronouns “he” and “her” take the place of “Joe” and “Jill,” respectively. There are three types of pronouns: *subject* (for example, he); *object* (him); or *possessive* (his).

Source: <https://www.grammarbook.com/grammar/pronoun.asp>

What is a gender pronoun?

Gender pronouns are the pronouns that people choose to use for references to themselves. For example, if Sam's preferred pronouns are she, her, and hers, you could say, "Sam ate her food because she was hungry."

Some gender pronouns are gender neutral (them, they, theirs), some are not (she, he), and some have been created as an alternative to or rejection of the gender binary (ze/hir).

(Source: <https://www.newschool.edu/lgbtq/gender-identity-pronouns/>)

Why is it important to respect a person's gender pronouns?

Using someone's correct personal pronouns is a way to respect them and create an inclusive environment, just as using a person's name can be a way to respect them.

It can be offensive or even harassing to make up a nickname for someone and call them that nickname against their will. Likewise, it can be offensive or harassing to guess at someone's pronouns and refer to them using those pronouns if that is not how that person wants to be known.

Worse yet, actively choosing to ignore the pronouns someone has stated that they go by could imply the oppressive notion that intersex, transgender, nonbinary, and gender nonconforming people do not or should not exist.

(Source: <https://www.mypronouns.org/what-and-why>)

How does this relate to elder and special needs law?

So much of our work in elder and special needs law involves using words - whether in oral advocacy or document drafting. Because culture and language is evolving, attorneys must be alert to the implications of pronoun usage, and sensitive to the way individuals choose to use pronouns.

Drafting attorneys must be thoughtful about how pronouns appear in their documents. Knowing your client's preferred pronouns, along with other relevant personal and family information, is becoming a standard part of customizing accurate legal documents for a client.

However, because clarity is paramount in legal drafting, and avoiding ambiguity is a top priority, be aware that the use of some pronouns - especially "they/them" - can create unwanted confusion. In such cases, it may be best to use the individual's name, instead of referring to the individual by a pronoun.

Examples and resources

She/Her. "**She** is a writer and wrote that book **herself**. Those ideas are **hers**. I like both **her** and **her** ideas."

He/Him. "**He** is a writer and wrote that book **himself**. Those ideas are **his**. I like both **him** and **his** ideas."

They/Them. "**They** are a writer and wrote that book **themselves**. Those ideas are **theirs**. I like both **them** and **their** ideas." Please note that although "they" pronouns here are singular and refer to an individual, the verbs are conjugated the same as with the plural "they" (e.g. "they are"). Also note that in this singular pronoun set many use "themselves" rather than "themselves," although both are typically acceptable.

Ze/Hir. "**Ze** is a writer and wrote that book **hirsself**. Those ideas are **hirs**. I like both **hir** and **hir** ideas." Please note that "ze" is usually pronounced with a long "e" and that "hir" and its forms are usually pronounced like the English word "here." Some people instead go by "ze/zir" pronouns because of the more consistent pronunciation and spelling.

No Pronouns - Use My Name (example for someone whose name is “Lan”): “**Lan** is a writer and wrote that book. Those ideas are **Lan’s**. I like both **Lan** and **Lan’s** ideas.” If the reflexive component was important to communicate a message, you could use alternative language such as “**Lan** wrote that book unassisted” or “**Lan** was the sole author of that book.” Some might simply say “**Lan** wrote the book **Lan's self**.”

Find more information here:

- <http://mypronouns.org/she>
- <http://mypronouns.org/he>
- <http://mypronouns.org/they>
- <http://mypronouns.org/ze>
- <http://mypronouns.org/neopronouns>

(Source: www.mypronouns.org/how)

DRAFTING GENDER NEUTRAL DOCUMENTS

Courts have adopted gender neutral language in the interest of inclusion. For example, the most recent edition of the Massachusetts Supreme Judicial Court Style Manual devotes a section to the topic, recommending six specific approaches to legal writing for achieving more “inclusive language.” As of its March 1, 2019 issue, the Massachusetts Rules of Appellate Procedure are revised to use gender-neutral references. The Massachusetts Juvenile Court Rules that went into effect in November, 2018, replace the word “paternity” with the gender-neutral term “parentage.” In its publication “Practicing with Professionalism – Resource Materials,” the Massachusetts Continuing Legal Education, Inc. urges attorneys to use “gender neutral or gender inclusive terms” if they personally seek to foster an atmosphere of equal access to the courts.

Acknowledging the critical role that words play in our legal drafting and our judicial system, not only avoids unintended slights or compromises, but also moves us towards a fuller embrace of the idea of equality.

THINGS TO CONSIDER/IDEAS

1. **WRITE IN THE FIRST PERSON**

. “I” to replace “settlor” or “grantor”

2. **REPEAT THE NOUN TO REPLACE THE PRONOUN**

. “to be the testator’s last will” “at the testator’s request” “in the testator’s presence”

3. **CHANGE THE PRONOUN**

. “that belief” instead of “his belief”

4. **USE OF GENDER NEUTRAL TERMS**

. “child” or “beneficiary,” to replace of “son” or “daughter.”

. “testator” regardless of gender

5. **REPHRASE TO AVOID THE NEED FOR A NOUN OR PRONOUN**

. “it was signed” instead of “he signed it”

. “which justify doing so” instead of “justify him doing so”

. “A court clerk can give you advice on that form,” instead of
“A court clerk can give you his advice on that form”

6. **USE PLURAL NOUNS**

. “Jurors must make their own assessments of the credibility of each witness,”
instead of

“A juror must make his own assessment of the credibility of each witness.”

7. **EXPRESSIONS THAT ARE GENDER EXCLUSIVE CAN EASILY BE SUBSTITUTED:**

USE reasonable person
artificial
staff
a one-person operation
high ranking officials
diplomacy

AVOID reasonable man
man-made
manpower
one-man operation
men in high places
statesmanship

8. **USE OF INCLUSIVE TERMS**

USE chair
members of the jury
colleagues

AVOID chairman
gentlemen of the jury
brethren

9. **DESIGNATIONS FOR PROFESSIONALS OR CATEGORIES OF WORKERS**

USE police officer
fire fighter
worker
homemaker
nurse
executive
journalists
representative
Member of the Assembly
Member of Congress
Representative

AVOID policeman
fireman
workman
housewife
male nurse
businessman
gentlemen of the press
spokesman
Assemblyman
Congressman

10. SAMPLE NOTARY CLAUSE

Before me, the undersigned authority, on this day personally appeared **TESTATOR NAME** known to be the Testator and Witnesses as listed below, respectively, whose names are signed to the foregoing instrument, and all of these persons being by me duly sworn, **TESTATOR NAME**, the Testator, declared to me and to the Witnesses in my presence that the said instrument is the LAST WILL AND TESTAMENT and **TESTATOR NAME** had willingly signed it and that **TESTATOR NAME** executed it as **TESTATOR NAME'S** free and voluntary act for the purposes therein expressed; and each of the Witnesses stated to me, in the presence of the Testator, that they signed the LAST WILL AND TESTAMENT as Witness and that, to the best of their knowledge, the Testator was eighteen (18) years of age or over, of sound mind and under no constraint or undue influence.

11. SAMPLE WITNESS PARAGRAPH

TESTATOR NAME signed the foregoing instrument in our presence, publishing and declaring it the LAST WILL AND TESTAMENT, and as witness thereof, we two do now at **TESTATOR NAME'S** request, in **TESTATOR NAME'S** presence, and in the presence of each other, hereto subscribe our names

REFERENCES:

<https://ww2.nycourts.gov/sites/default/files/document/files/2018-07/fair-broch2.pdf>

<https://7a21077a.flowpaper.com/GuidetoGenderNeutralDrafting/>

<http://employmentblog.practicallaw.com/inclusivity-and-the-necessary-art-of-gender-neutrality/>

https://www.americanbar.org/groups/real_property_trust_estate/publications/probate-property-magazine/2016/march_april_2016/2016_aba_rpte_pp_v30_2_article_madaan_cultural_competency_and_the_practice_of_law_in_the_21st_century/

<https://www.mintz.com/insights-center/viewpoints/2911/2020-01-how-write-gender-neutral-contracts>

<https://www.keshetonline.org/resources/a-guide-to-creating-lgbtq-inclusive-forms/>

INTAKE CONSIDERATIONS

Making it possible for a potential client to share information about gender identity in your intake forms can communicate that your law firm recognizes these issues and understands the relevance of this information.

In some circumstances, asking a potential client about their legal name can invoke negative feelings. Though necessary, it is important to understand that such a person may consider their “legal name” a “deadname,” a name that is no longer used by the individual in an effort to reclaim their identity, as part of a personal transition, or for other reasons.

Ask about clients’ gender identity as you would any other questions. Do not create a stigma by labeling gender questions as especially “personal” or “sensitive.” Doing so can send a message that there is something wrong with the client or that you are uncomfortable working with them.

Of course, it is important to inform the client that their gender information, as with their other personal and financial information, will be kept confidential.

Here are some tips:

1. Intake forms should account for a client using a chosen name in addition to their legal name and should allow people to identify their sex based on their current gender identity.
2. Follow a two-step approach for questions involving gender and gender identity. First, ask about the gender with which the person currently identifies. Then ask about gender assigned at birth. Do NOT ask about a client’s genitals or physical characteristics.
3. Ask which pronouns the person uses. Avoid asking about “preferred pronouns” because some consider their gender as their identity and not simply a preference or choice.
4. Change gendered “husband” and “wife” terms to neutral terms like “you,” (the person answering) and “spouse” (married) or “partner” (unmarried). Parents may be changed from “father” and “mother” to “parent 1” and “parent 2.” “Brothers” and “sisters” may be changed to “sibling 1,” “sibling 2,” etc.

5. Checkboxes can be a double-edged sword. While including a number of gender identities beyond male and female is more open-minded, invariably there is a box for “other,” perhaps with a line for the person to fill in their gender identification. This can be alienating. No one likes to think of themselves as an “other.” A more inclusive approach is simply to leave a blank space after each question that the person can fill in themselves.

Examples:

Chosen Name: _____
Legal Name: _____
Pronouns: _____
Gender Identity: _____
Gender At Birth: _____

6. Follow up at the in-person meeting to get any important gender identity information that the client refuses to provide on a form.
7. Develop systems to use the identifying information that clients provide on the intake form. For example, use the client’s preferred name on files and case management systems so that when the client contacts your office, you and your staff will refer to the client in the correct manner. The less the client has to repeat their individual preferences, the better.

REFERENCES:

<http://laaonline.org/wp-content/uploads/LGBT-intake-and-case-handling.pdf>

<https://one-colorado.org/wp-content/uploads/2019/06/Intake-Questions-Best-Practices.pdf>

<https://www.rainbowhealthvic.org.au/media/pages/research-resources/inclusive-practices-for-non-binary-clients/3002223371-1605661768/inclusive-practices-for-non-binary-clients-ra.pdf>

<https://therainbowot.com/2020/10/16/inclusive-intake-forms/>

<https://denverptc.org/resource.php?id=231>

<https://www.lgbthealtheducation.org/publication/focus-forms-policy-creating-inclusive-environment-lgbt-patients/>

<https://williamsinstitute.law.ucla.edu/publications/geniuss-trans-pop-based-survey/>

<https://nnev.org/wp-content/uploads/2019/06/Tip-sheet-intake-forms.pdf>

HOW TO EXPAND STAFF/CLIENTELE DIVERSITY

The world is changing. Your Elder Law Practice needs to change with it. Your mindset, your biases, the way you practice needs to keep pace in order to ensure your continued success as a business and your reputation as a professional.

Diversity brings different perspectives, opinions, creativity, and consideration of cultural factors and issues. These can all enhance your practice making it more interesting, more professional, and possibly even more profitable.

Some statistics that may startle you:

- 54% of students in law school are women, 25% are black, 20% are Hispanic. There are 30,000 women and minority law school graduates each year.
- A 2018 Study of 1000 major law firms found that of the lawyers working, women composed 35.41%, racially diverse women composed 8%, LGBTQ lawyers composed 2.86%, and disabled lawyers composed .53%.
- 86% of lawyers are non-Hispanic whites, 5% are black, 5% are Hispanic, 2% are Asian, .5% are Native-American.
- As of May, 2018, 4.5% of the US population was LGBTQ

The following are some points and tips on making these changes in a small to medium sized Elder Law Practice:

EXPANDING DIVERSITY IN YOUR STAFF

1. Look to non-traditional sources for hiring people you need to help run your practice. Affinity Bar websites, newsletters, law schools DEI organizations. NOTE: This will require more work than usual. But helping expand diversity in the workplace and possible relationships with diverse communities is worth the time and effort.
2. Consider mentoring diverse attorneys: MassNAELA Mentor program, Affinity Bar programs.
3. Lower level positions can be employed to work remotely, and diverse staff from other geographical areas in your state may be available.

4. Look for things that might be discouraging diverse staff. Look around your office, ask why wouldn't diverse staff want to work for you?
 5. YOU need diversity training/bias understanding/interview skills/cultural understanding to hire diverse staff correctly.
 6. Networks that diverse staff bring to the employment position, that can in turn come to your practice, can be valuable to your business.
 7. Be creative: for instance, mandate a parental leave policy that doesn't penalize persons for their life choices. Would a same-gender couple undertaking an adoption get parental leave? Parental leave might create an opportunity for diverse associates to succeed in their community and help them market themselves and your practice. Don't overlook disabled staff: make sure the office is set up and can take advantage of their skills. Be prepared to do more to make it work.
 9. Note in job descriptions that you encourage minority applications. Make sure your job description does not describe a particular person you may have had in mind. Because of your own implicit biases that person is not likely diverse.
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To find out more:

Diversity Lab Mansfield rule 4.0 <https://www.diversitylab.com/mansfield-rule-4-0/>

ABA Resolution 113 <https://blogs.microsoft.com/on-the-issues/2016/11/22/aba-resolution-113-creating-legal-profession-reflects-public-serves/>

National Assn for Law Placement <https://www.nalp.org/index.cfm>

Minority Corporate Counsel Association <https://www.mcca.com/membership-advancing-dei/>

Disability Rights Bar Association <http://disabilityrights-law.org/>

EXPANDING DIVERSITY IN YOUR CLIENTELE

1. As the demographics change, you need to acknowledge your willingness to accept diverse clients in your marketing materials, your website, your presentations, and any other place you market your practice.
2. How do you approach a client? Consider whether your questionnaires, initial contact materials, etc., show a willingness and openness to diverse cultures, ethnicities, and races.
3. Faith-based planning opportunities should be part of your repertoire. (Add URL to speaker's video). In your questionnaires and client contact materials, are there any questions inquiring about a potential client's wish to engage in faith-based planning? You need to solicit that information so that it can be reflected in planning. Some faiths have charitable giving requirements. In 2018 \$427 billion went to charities, and \$125 billion went to religious organizations. See [KINGDOM LEGACY BUILDING ESTATE PLANNING WEBINAR](#) for further education on this topic.
4. Do you include email footers that indicate your willingness to cater to diverse clientele?
5. Do you engage in pro-bono activities that are not limited to your geographical area if that area does not encompass a diverse population?
6. Consider your ethical duties as a human being: there is a need to help lessen the disproportionately widening wealth gap due to lack of estate planning. White families are 5 times more likely to inherit than black families. 51% of white adults have a Will in place, only 28% of non-white adults have one. Same with advance care planning.
7. How can language barriers be addressed? You need to exhibit cultural, age and gender sensitivity.
8. Make your practice more interesting: educate yourself to learn to understand and deal with cultural differences.
9. Did you know 1.3 million households led by a person of color have net liquid assets of \$1M or more?

10. Gender is becoming fluid. Build flexibility into your documents. Ask the hard questions, recognize terminology-but if you mess up, be authentic and apologize. Realize problems with legal relationships: non-traditional adoption issues. etc.

11. You need cultural dexterity-learn about multi-cultures. There is a myriad of cultural differences, and you need to note that family differences may be cultural, not personal.

To find out more:

Wired Article: Help! How Do I Make My Workplace More Diverse?

<https://www.wired.com/story/ooo-how-do-i-make-my-workplace-more-diverse/>

Webinar sponsored by CLIO: Embracing Diversity and Inclusion in your Practice/Family Office:

https://gateway.on24.com/wcc/eh/2855635/lp/3026541/embracing-diversity-and-inclusion-in-your-practicefamily-office?utm_rid=CPG09000041890454&utm_campaign=32264&utm_medium=email&elq2=6672a9680d934f499a2190569a38b885&oly_enc_id=9763J7040034H0D

Wealth Management.com article: How to Make Your Practice More Diverse and Inclusive <https://www.wealthmanagement.com/estate-planning/how-make-your-practice-more-diverse-and-inclusive>

DIVERSIFYING WHO YOU DO BUSINESS WITH

Proactively seeking out minority-owned elder and special needs law-related businesses (e.g., financial advisors, care managers, home care agencies, insurance companies, etc.) can be a way to widen and diversify your network of colleagues. Cultivating diverse business connections within your community, and in new communities, allows attorneys to offer more options for current clients, and reach new clients as well.

The Commonwealth of Massachusetts Directory of Certified Businesses is a tool for searching for new and diverse business connections. The Directory offers search criteria including type of industry, location, and certified status of enterprise. You can search for businesses that are certified as:

- Minority Business Enterprise (MBE)
- Women Business Enterprise (WBE)
- Disadvantaged Business Enterprise (DBE)
- Portuguese Business Enterprise (PBE)
- Veteran Business Enterprise (VBE)
- Lesbian Gay Bisexual Transgender Enterprise (LGBTBE)
- Service-Disabled Veteran-Owned Business Enterprise (SDVOBE)
- Disability-Owned Business Enterprises (DOBE)

Go here to begin your search:

<https://www.sdo.osd.state.ma.us/BusinessDirectory/BusinessDirectory.aspx>

TRANSGENDER CONSIDERATIONS

Transgender considerations can arise in various scenarios in an elder law practice. Issues which may arise include the need formally to change a name and/or gender, such as for U.S. passport, driver's license or state identification, or Social Security purposes. A client may wish to make a formal name change through the appropriate probate court process and may wish to correct a birth certificate or other public document, such as a court docket. Special considerations may apply in criminal matters and contexts in which a transgender person may be imprisoned for a period of time. The materials below summarize very briefly some of the procedures available for dealing with these issues. Please refer to GLAD, www.glad.org (name and gender change guide) for the most complete information on the process.

It is recommended that the documents be changed in the order presented below.

1. Name Change for Adults

Filed with Probate and Family Court in county of residence:

- a. Complete and notarize CJP-27 Petition to Change Name of Adult
- b. Submit an original certified copy of long-form birth certificate;
- c. Submit a certified copy of any prior name change
- d. Complete CJP-34 Court Activity Record Information (CARI) and Warrant
 - i. Management System (WMS) authorization form
 - ii. A certified copy of any prior name change, such as a marriage certificate or judgment of divorce
- e. Filing fee \$150, plus \$15 surcharge, and \$15 for publication if required
- f. Upon completion, you will receive a Name Change Order

2. Name Change for Minors

Filed with Probate and Family Court in county of residence. Requirements and completion are the same as adult, except:

- a. CJP-25 Petition to Change Name of Minor form
- b. Completed OCAJ-1 TRC IVAffidavit Disclosing Care and Custody form
- c. Original certified long-form birth certificate
- d. Death certificate of deceased parent or guardian
- e. Complete CJP34 CARI form and WMS

3. Name and Gender Change for Social Security for Adults

- a. Use SS-5 Application for a Social Security Card form to change name and gender (genders kept in a computer file, not on card)
- b. Need Name Change Order from probate court to change name
- c. To change gender, need a signed letter from physician, or birth certificate showing correct gender or court order recognizing the correct gender (not the probate court order) or U.S. passport showing correct gender
- d. Submit at local Social Security office (can also mail)

4. Name and Gender Change for U.S. Passport

- a. Have a valid passport? (<https://travel.state.gov>)
 - i. If have a valid passport, use DS-8 to change gender for first time; DS-18 for renewal with no change in gender
 - ii. Either DS-SS04 or DS-82 form for name changes
 - iii. May need current unexpired passport
 - iv. Name Change order of probate court
 - v. Applicable fee
 - vi. Recent color photo
- b. Don't have a valid passport or changing name and gender?
 - i. If no valid passport or changing name and gender, use DS-11 Application for a U.S. Passport form
 - ii. Proof of identity (driver's license or state ID with new name on it)
 - iii. Birth certificate
 - iv. Recent color photo
 - v. Applicable fee

5. Name and Gender Change for Massachusetts Driver's License and State ID

- a. Name Change only
 - i. Update Social Security first
 - ii. Bring Name change Order to a MA RMV
- b. Gender Marker Change
 - i. Fill out new license and ID card application and check "Change of Information" box
 - ii. Can indicate M, F, or X for a gender marker
 - iii. Must submit in person
 - iv. Best to obtain a Real ID (needed for TSA and U.S. for travel)

6. Amendment of Birth Certificate

- a. Can change name and gender marker on birth certificate in Massachusetts, only M or F markers, and can only change once, other times with court order
- b. Need probate court order for name change before amending
- c. Completed Applicant Affidavit in Support of Amendment of a Birth Certificate following Medical Intervention for the Purpose of Sex Reassignment
- d. Additional requirements for minors:
 - i. To change gender marker, also need a completed notarized Physician's Statement in support of the amendment affidavit, indicating new gender
 - ii. To change name, also need name change order
- e. Bring in person to Registry of Vital Records and Statistics - new birth certificate same day
- f. Fee - \$50; \$32 to obtain a certified amended record by mail

7. Transgender Awareness in Court Proceedings

- a. May wish to correct name and/or gender on the docket for civil or criminal proceeding
- b. Motion for New trial for denial of effective assistance of counsel if counsel or court do not properly refer to name and gender
- c. Work with court reporter to use proper pronouns, names, gender
- d. M.G.L. c. 127, Section 32A, Treatment of Prisoner Having Gender Identity Differing From Prisoner's Sex Assigned at Birth
- e. Need awareness of safety and other issues that may arise upon incarceration
- f. Judge may be able to step in if issues in the court room
- g. Probation records?
- h. Background checks?

8. Additional Resources

<https://www.mass.gov/name-changes>, comprehensive guide to name changes at various Massachusetts state agencies

<https://www.glad.org/id/> (GLAD ID Project quick reference guides)

<https://transequality.org/know-your-rights/social-security>, guides to rights in various contexts

<https://transequality.org/know-your-rights/passports>

National Center for Transgender Equality www.transgenderequality.org (name change)

ABA Commission on Sexual Orientation and Gender Identity

https://www.americanbar.org/groups/diversity/sexual_orientation/

GLAD, www.glad.org (name and gender change guide)

Transgender People in the Trial Court, training, located at

<https://www.mass.gov/guides/diversity-equity-inclusion-and-experience-activities-guide>

Massachusetts Transgender Political Coalition, <https://www.masstpc.org>

LIMITED ASSISTANCE REPRESENTATION (LAR)

The needs of the population have changed over the years and the demand for legal services have increased exponentially. Boston Bar Association Task Force on Self-Represented Litigants conducted a survey in 1998, which found that one or both litigants on each case were self-represented in more than 2/3 of the cases. The SJC steering committee on Self-Represented Litigants recognized the need of these litigants for competent legal representation. The steering committee began working with an advisory committee, representing many sectors of the bar to actively seek ways to encourage attorneys to assist litigants representing themselves.

A pilot program was established and SJC promulgated court forms to provide notice to the court and parties of the parameters of the limited assistance arrangement, as well as simplified procedures for withdrawing when the limited assistance duties were completed. The SJC issued an order allowing the implementation of Limited Assistance Representation in any department of the trial court effective May 1, 2009. The Probate and Family Court adopted Limited Assistance Representation that month; and in May of 2010, The Boston Municipal Court adopted it for civil cases; The Housing Court followed in 2010, the District Court in 2011; and the Land Court in 2013 and then the Superior Court. Currently, it is available in all courts with the exception of Criminal and Juvenile court.

I. LAR - WHAT IS IT?

A. A DEPARTURE FROM FULL SERVICE REPRESENTATION

Limited assistance representation permits attorneys to assist a client on a limited basis rather than having to fully represent the client in all aspects of the litigation. There are three basic types of LAR.

An important difference from full service representation is the requirement that you advise the client of various limitations of limited legal assistance. This is not difficult to do, but cannot be omitted. One good way is to provide to the client a written description of limited assistance.

LAR *does not mean limited liability*. The attorney remains responsible for the conduct of all the tasks which he or she undertakes, whether in the context of full service or limited scope. This means that, within the confines of the limitation on scope, the attorney still owes the client full duties of loyalty, confidentiality, and competence. For that reason, attorneys must still keep careful conflict records. Confidentiality applies, even as to those matters which are outside the scope of the limited representation. And, of course, there is never a waiver of the duty of competence. Once you and the client have agreed on which portions you will undertake, your duty of care for that limited portion is the same as it would be for those same professional activities in the context of full service representation.

B. THREE BASIC TYPES OF LAR

i. Document preparation

An attorney may provide LAR in the form of preparing documents, including pleadings and motions, a practice commonly referred to as “ghostwriting.” The SJC Order does not require the attorney to sign the document, but it does require the attorney to note on the document “prepared with assistance of counsel.”

ii. Representation in Court

An attorney may provide limited assistance in the form of one or more court appearances. For this type of limited representation, the SJC Order requires the filing and service of a Notice of Limited Appearance. There are also special instructions for documents filed by attorneys making a limited appearance.

iii. Advice of Counsel (Consulting)

An attorney may provide limited assistance in the form of advice and counsel, a practice that is unchanged by the SJC Order.

II. REQUIREMENTS: ATTORNEY; CLIENT; MEETING; CONTRACT

A. MEETING WITH CLIENT

While most of the rules which apply to full service representation are equally applicable to limited assistance, there are a few specialized rules which you must keep in mind. They are:

- a. Limitations in scope require the client's informed consent;
- b. Limitations in scope must be reasonable;
- c. An attorney has a duty to advise clients fully about the issues, even if not asked; and
- d. Any change in scope must be documented. These duties are non-delegable and must be governed by the professional judgment of the attorney.

i. Client Assessment

As an attorney, it is your responsibility to ensure that the client understands the consequences and trade-offs inherent in limited assistance representation. Your responsibility includes advising the client about the options available for limited assistance and ascertaining not only that the limitation is reasonable under the circumstances but also that the client has given informed consent to the limitation. For example, it would generally not be reasonable to assign a particularly technical or complex issue to a self-represented litigant.

ii. Scope clearly delineated

There are many ways in which an attorney and client can limit the services to be performed by the attorney, either by assigning specific tasks to the attorney and others to the client or by agreeing that the attorney will handle certain issues, while the client will be responsible for others.

For example, the attorney and client may agree that the attorney will handle drafting in legal format a motion to compel discovery documents, such as a document production. The attorney may apportion the various tasks between them.

The Attorney and the Client can decide what those are. The attorney may draft the motion to compel documents, while the Client can on his or her own can go through each request to see what items or documents have not been produced and provide the list to the Attorney. The Client can then file the prepared motion with the court; provide copies of the requests and represent him or herself at the hearing.

B. CONTRACT IN WRITING AND SIGNED BY PARTIES

i. Consulting

A simple single page document which is not properly a fee agreement so much as a nonretention agreement. It memorializes the fact that the client will consult with you for a single service which when completed no further services are contemplated. This form would be most likely used when your assignment is to draft a single document, such as an order after hearing.

ii. Coaching

Contemplates that you will be coaching the client, perhaps advising on law and procedures, but the client will only be consulting with you. You will not be drafting documents, filing pleadings with the court, or making a court appearance.

iii. Drafting

Designed for a situation where you would be more involved with the legal matter, perhaps drafting pleadings, negotiating, reviewing discovery, assisting with exhibit preparation, or some other ongoing service. This is the vast majority of limited assistance arrangements, and this agreement is designed to be tailored to the specific needs of your client and issue.

iv. Apportionment of Tasks

Memorialize the apportionment of tasks and responsibilities in an attachment to the agreement. This would probably be the most practical format if you suspect that the scope may change because of new issues arising.

v. **Fee, and Basis of Fee; Hourly or Flat**

Because of the nature of the LAR arrangement, the Training Manual recommends that limited assistance representation be “pay as you go.” In some cases, you are having only one session. In other cases, you may decide for a longer period of engagement, where you are working on retainer.

If you have not done so already, it is a good idea to set up your office to take credit cards. It is up to you whether you charge an hourly rate or, if appropriate, a task-based flat fee. Most limited assistance lawyers still use an hourly rate unless they are making a single court appearance on a very limited issue. How you do this is up to you and your client. However, if you elect to use an hourly rate, there are a couple of considerations which you should take into account when setting the rate:

- a. Remember that your professional responsibilities for the work you undertake within the limitation on scope are precisely the same as your responsibility for that work in the context of full service. There is no reason to charge a lower rate when your professional duties are the same, unless you elect to do that as a marketing tool or to provide pro bono representation;
- b. If your assignment includes work which will be done outside the client’s presence, such as drafting or research, many practitioners require a deposit equal to the fee for a minimum number of hours, which is replenished as needed; and
- c. Remember to always send a disengagement letter when your LAR services are completed, so there is no mistake that you are not full representation.

C. AMENDMENTS – CHANGE OF SCOPE

If the Client returns or changes occur in representation such that new services are required or requested, then the scope of representation may change. If you and your Client agree that you will assist with this new issue, the new and expanded limitation on scope must similarly be reasonable and memorialized in a written fee agreement signed by the client before you undertake work outside the original scope. It is a good idea to put into every initial LAR agreement the following language: “If the Client and the Attorney agree, then the scope of services may change by written amendment to this LAR Agreement. This will take place only upon the signing by both parties of such an amendment, which subsequently, should be attached to this LAR Agreement.”

III. IS LAR RIGHT FOR YOU?

A. BENEFITS

One obvious benefit is that it is cost effective. For the average person or low income person, it is much easier to come up with a small retainer than a larger one, which can be done when services are limited or segmented. LAR allows for this.

Some people worry that hiring an attorney to represent them on a matter is like writing a blank check, an open-ended commitment that could break the bank. When one hires an attorney, there is an innate understanding that the person hiring needs to trust the attorney. This can be challenging when there has been no prior relationship between the attorney and the person needing help. With LAR a person can hire an attorney for a service and get to know the attorney without a long-term commitment. LAR can allow the person to build trust in the attorney over time. With cases broken down into segments, the person, now a Client, can pay as he or she goes depending on each carefully selected scope of services.

In probate matters for example, a surviving heir may not have access to money after the loss of a loved one. They need to be appointed as the Personal Representative of the Estate to access funds such as bank accounts to pay the attorney. LAR allows the Attorney and the Client to contract for the Attorney to prepare and file all of the probate documents, provide for Publication per the Citation and give notices to the heirs and Massachusetts Estate Recovery— all for a set or approximate cost. Then when the Client is appointed as PR; and can access the estate funds with his or her Letters of Authority, he or she can choose to represent him or herself on the estate or sign an amendment with the Attorney for additional services or go to another attorney for representation if they are not happy with the current attorney.

You do not have to file a motion to withdraw as counsel. You file a Notice of Withdrawal with the Court and send it to opposing counsel if any. The Judge is not supposed to interfere in LAR representation when it comes to an Attorney withdrawing.

B. DRAWBACKS

While LAR can be a very reasonable option for both the attorney and client, it does present some unique challenges especially over the long haul for cases involved in litigation. When a Client returns after several months after your limited consulting has ended and requests additional services on the same case, it can be difficult for the Attorney to get up to speed with the current situation, unless the Client is very good at keeping his records and notes. The case can seem disjointed or incomplete, thus costing the Client money for the Attorney's time to get on top of the situation to address the new scope of services. This should be explained to the Client at the first meeting when retained. Another drawback is when the Client does not focus on the overall litigation strategy but only on specific tasks. The overall strategy should always be documented so the Client understands the limitation of the Attorneys services and has a reasonable expectation of the services provided.

Another challenge in litigation can result if it is unclear to opposing counsel when exactly an LAR attorney has entered and, more importantly, has exited the case. Not knowing whether the opposing party is represented or is pro se can make communication difficult.

Timely providing copies of the limited appearance and withdrawal to opposing counsel is therefore critically important.

C. HOW TO QUALIFY

To qualify as an LAR attorney, an attorney must complete training, as provided for in the Uniform Protocol for Limited Assistance Representation Training in the Massachusetts Trial Court. An attorney must certify that he or she is LAR-qualified on the court-approved Notice of Limited Appearance.

REFERENCES:

LAR TRAINING MANUAL: <https://www.mass.gov/doc/limited-assistance-representation-training-manual/download>

Sample LAR Fee Agreement: See Appendix 8 of the LAR Training Manual;

Sample Amendment, also called “Change of Scope Letter for Additional Services:” See Appendix, 8, 9, 10, and 11, of the LAR Training Manual;

Sample Notice of Limited Appearance: <https://www.mass.gov/doc/notice-of-limited-appearance-tc005/download>

Sample Notice of Withdrawal of Limited Appearance: <https://www.mass.gov/doc/notice-of-withdrawal-of-limited-appearance-tc006/download>

How to become certified as an LAR Attorney: <https://www.mass.gov/doc/uniform-limited-assistance-representation-training-protocol/download>

How to get on the public list of court certified LAR attorneys: <https://www.mass.gov/info-details/limited-assistance-representation-information-for-lawyers#joining-a-public-list-of-lar-lawyers->.