

# Representing Transgender Clients in Family Law

Webinar

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Sponsored by:

Gay & Lesbian Advocates & Defenders (GLAD),  
The American Bar Association's Commission on Sexual Orientation and Gender Identity,  
The American Bar Association's Family Law Section,  
The American Bar Association's Section of Individual Rights and Responsibilities and  
The National LGBT Bar Association

Moderated by: Jennifer Levi, Transgender Rights Project Director, GLAD

# Representing Transgender Clients in Family Law

Introduction

by Benjamin L. Jerner

Representing Transgender Clients in Family Law  
Introduction – Benjamin L. Jerner

## Make Your Office Welcoming and Respectful to Transgender Clients, Staff, and Visitors

- Educate your colleagues about gender identity and expression and transgender people's lives.
- Modify your intake form.
- Implement a restroom policy that allows people to use the facility consistent with their gender identity.
- Adopt office and employment policies that demonstrate your commitment to transgender rights.

Representing Transgender Clients in Family Law  
Introduction – Benjamin L. Jerner

# Provide Effective and Culturally Competent Representation for Transgender Clients

- Learn about transgender people's lives.
- Learn the key terms.
- Familiarize yourself with relevant case law.
- Be aware of your own bias and be deliberate about not letting it affect the representation.
- Prepare to educate the judge, opposing counsel, the jury and other parties and to respond to potential bias.

## Representing Transgender Clients in Family Law Introduction – Benjamin L. Jerner

### Discuss With a Transgender Client

- Ask about your client's transgender identity and transition only when relevant to the representation.
- Discuss your client's goals.
- Counsel your client to make an informed decision about how to express his/her gender identity and whether to use his/her preferred name and pronoun in court and in legal documents.
- Be a vigorous advocate for your client but do not advance legal arguments that can be damaging to the collective interests of the transgender community.

# Representing Transgender Clients in Family Law

Legal Recognition of Transition

by Jennifer Levi

# Representing Transgender Clients in Family Law Legal Recognition of a Transition by Jennifer Levi

## Legal Name Change

- Common law name change
- Court-ordered name change

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## Gender Marker Changes

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## Legal Recognition of Transition by Jennifer Levi

### Documents

- Birth Record (where possible)
- Other State Records
- Federal Records

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## Change to Birth Record

- Statutory
- Regulatory
- Administrative

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## Legal Recognition of Transition by Jennifer Levi

### Birth Record

- In-state Issued
- Out-of-state Issued

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## Legal Recognition of Transition by Jennifer Levi

### Examples of State Statutes to Change Birth Record

- **Alabama** - Ala.Code 1975 § 22-9A-19. Amendment of vital records
  - (d) Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual born in this state has been changed by surgical procedure and that the name of the individual has been changed, the certificate of birth of the individual shall be amended as prescribed by rules to reflect the changes.
- **Iowa** - I.C.A. § 144.23. State registrar to issue new certificate
  - The state registrar shall establish a new certificate of birth for a person born in this state, when the state registrar receives the following:
    - 3. A notarized affidavit by a licensed physician and surgeon or osteopathic physician and surgeon stating that by reason of surgery or other treatment by the licensee, the sex designation of the person has been changed. The state registrar may make a further investigation or require further information necessary to determine whether a sex change has occurred.

# Representing Transgender Clients in Family Law

## Legal Recognition of Transition by Jennifer Levi

### Federal Records

- Social Security
- Medicare
- Passport

# Representing Transgender Clients in Family Law

Family Formation: Protecting  
Transgender Clients' Parental Rights

Custody Disputes Involving  
Transgender Children

by Shannon Minter

## Family Formation: Creation and Protection of Parental Rights

- Legal parentage is usually acquired through statute or adoption. In some states, a functional parent may acquire some rights via equitable doctrines.
- Transgender parents should not rely on presumption or rule that they are a child's parent.
- Transgender parents who are biological parents are generally legal parents.
- To secure their parental rights, transgender parents should adopt or obtain a judgment of legal parentage.

## Challenges to Transgender Parents' Rights

- Being transgender should not affect parental status or ability to become a legal parent.
- A few courts have taken the extreme step of terminating parental rights based on a parent's transgender status.
- If a transgender person gains parental status by way of marriage, his/her parental rights may be vulnerable if the validity of the marriage is challenged.

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Custody Disputes Involving Transgender Children by Shannon Minter

## Custody Disputes Involving Transgender Children

- When parents agree about care for their transgender child, the state should not intervene. However, the state has sometimes removed transgender children from supportive homes.
- When parents disagree, litigation is more common.
- The supportive parent should document medical and other professional guidance and keep the other parent informed.
- Attorney should educate court and present expert testimony about transgender children, BIC, and harm of parental rejection.

# Representing Transgender Clients in Family Law

Transgender Parents' Rights After  
Relationship Dissolution

by Patience Crozier

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Transgender Parents' Rights after Relationship Dissolution by Patience Crozier

## Parents' Rights after Relationship Dissolution

### Fundamental Concerns

- **Critical:** Parental Status
- Best Interest of Child (“BIC”): fact-intensive and subjective standard

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Transgender Parents' Rights after Relationship Dissolution by Patience Crozier

## Parents' Rights after Relationship Dissolution

Next, determine Posture of Case

- For original custody action:
  - BIC is guiding principal
- For modification, require:
  - material and substantial change in circumstance
  - modification is in BIC

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Transgender Parents' Rights after Relationship Dissolution by Patience Crozier

## Transgender Legal Parents, Bias, and BIC

- Transgender identity should be irrelevant to custody and visitation determinations and BIC analysis
- Discrimination or bias in court system
- When transgender parent receives custody, court often requires him/her to repress his/her gender identity

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Transgender Parents' Rights after Relationship Dissolution by Patience Crozier

## Strategies to Counter Bias Against Transgender Parent: GAL

- Selection and Education of GAL
  - Determine whether you need an investigative or evaluative GAL
  - Research and assess GAL's experience with transgender parents
  - Attend first interview between GAL and transgender client
  - Educate GAL
  - No GAL is better than a bad GAL. An Excellent GAL is ideal.

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Transgender Parents' Rights after Relationship Dissolution by Patience Crozier

## Strategies to Counter Bias Against Transgender Parent

- Alternative Dispute Resolution
- Protective Orders
- Challenging restrictive orders
- Counter claim of presumed harm to child from contact with transgender parent (adjustment, stigma)
- Use child's therapist (or client's therapist) as a resource for non-legal issues

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Questions and Answers