

January 20, 2023

ADMcomment@courts.mi.gov
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909

RE: ADM 2022-03, MCR 1.109 amendment
Order issued [January 18, 2023](#)

This proposal is a healthy start and I encourage the Court to require more in this area. Below are four observations/suggestions when considering this file. These are my own.

1. **Constitutionality.** As for the Court's interest in the proposed rule's constitutional implications ("The Court is interested in receiving comments addressing the constitutional implications of this proposal."), the proposal falls within this Court's exclusive [Article VI, section 5](#) authority under the Michigan Constitution:

The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. . . .

2. **Crime victims deserve similar consideration.** The current proposal focuses on counsel and litigants. I encourage the Court to adopt a measure that similarly operationalizes Michigan Constitution [Article I, section 24\(1\)](#)'s right for crime victims to be treated with "respect for their dignity" throughout the criminal justice process. This could include, for example, when a victim testifies or submits an impact statement.

3. **Witnesses, jurors, and other court users deserve similar consideration in our court processes.** Since AO 2020-23 more expansively includes respect owed to others who engage with the courts, like witnesses and jurors, I also hope that the Court adopts a similar measure that ensures (rather than unenforceably encourages) equal respect for their dignity throughout the court process. [<https://perma.cc/WLA9-RXKB>].

You are probably already aware of the related work advanced in other jurisdictions.

British Columbia's provincial [<https://perma.cc/R3RN-A6F5>] and supreme court [<https://perma.cc/9ZUK-SPY6>] systems each adopted new practices in late 2020 to ensure that each participant's pronoun preference is respected.

Under the inclusive practices, all lawyers and anyone else in a courtroom (like witnesses or an accused person) should provide their full name together with their

gender pronouns and their title, whether it be Ms., Mr., or the gender neutral Mx., or simply “Counsel” during their introduction to the court. If someone doesn’t provide their pronouns, the court clerks ask them to specify.

Lisa Nevens (they/them) provided guidance for the new rules and explained, “We take all of the questions out of the equation, and people who are non-binary and participating in the system, can just focus on their participation, instead of being distracted by whether or not their identity will even be recognized, respected.”

U.S. federal magistrate Mustafa Kasubhai (he/him) has also written about his courtroom’s pronoun practices in the Oregon Women Lawyers [<https://perma.cc/D5FQ-BLWA>] and this linked court guide [<https://perma.cc/AP5B-REC8>]. His court guide clarifies the need: “Respectfully acknowledging an attorney’s, litigant’s, witness’, or juror’s gender identity with the appropriate pronoun and honorific in court affirms everyone’s dignity, cultivates fairness and equal treatment, the appearance of the same, and earns the public’s trust and confidence.” The guide includes helpful language use examples in case management, trial management, mediation, and other scheduling orders, the court website, email signatures, and the judicial signature byline.

Justice Welch’s recent concurring statement in *People v Gobrlick* (164080) about courts using gender-neutral pronouns acknowledges similar decency:

The Court of Appeals’ simple use of a footnote and gender-neutral pronoun demonstrates that words matter and that a small change to an opinion, even if unrelated to the merits, can go a long way toward ensuring our courts are viewed as open and fair to all who appear before them.

4. Case management data fields. Looking ahead and no matter what action the Court takes on this ADM file, can JIS please consider adding companion pronoun fields to its case management system modules particularly as Michigan moves toward a unified CMS?

Advance thanks to the Court for starting this conversation in Michigan and for considering these observations and suggestions.

Sincerely,
/s/
Lori Shemka
P.O. Box 15284
Lansing, Michigan 48901
shemka@gmail.com