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To: ADMcomment@courts.mi.gov  
Re: ADM File No. 2022-03  
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### **Diocese of Lansing Comment to proposed amendment to Rule 1.109**

The Diocese of Lansing, overseen by Bishop Earl Boyea, has supervisory responsibility for all Catholic persons and entities within its geographic boundaries in ten mid-Michigan counties. This includes seventy-two Catholic parishes, over thirty Catholic grade schools and high schools, six Catholic charities agencies, and 170,000 Catholics.

The Diocese submits this comment to proposed amendment to Rule 1.109 out of concern for Michigan’s judicial system—a system which above all must be rooted in truth—and concern for freedom of religion, conscience, and speech for Catholics, Christians, other religious believers, and all who object to gender ideology. In particular, and given the nature of the proposed amendment, the Diocese writes out of concern for judges who would be compelled to use a party’s designated personal pronouns in court.

The proposed amendment to Rule 1.109 would permit parties and attorneys to include their personal pronouns in court documents and would *require* courts “to use those personal pronouns when referring to or identifying the party or attorney, either verbally or in writing.”

There are many reasons for objecting.

#### **1. The proposed rule contradicts the truth of human sexuality.**

First, and most importantly, the judicial system must be rooted in truth. The judicial system exists to dispense justice, and at the heart of justice is the pursuit of truth. The adversarial process has itself been described as a truth-finding process. See Comments, Rule 3.3., Michigan Rules of Professional Conduct. Not surprisingly, the Michigan Rules of Professional Conduct require lawyers to speak truthfully, prohibiting lawyers from “knowingly mak[ing] a false statement of material fact or law to a third person.” Rule 4.1.

In accord with the dictates of gender ideology—an ideology that has crept its way into this state and which the people of Michigan have never legislatively or otherwise adopted—the proposed rule would discard the standard of truthfulness and compel judges to adhere to a person’s subjective sense of gender identity. While we should certainly sympathize with anyone who is confused about his or her identity or feels uncomfortable regarding his or her biological sex, and while we

should treat all persons with respect in accord with their dignity as a person created in the image and likeness of God, disregarding the truth of biological sex is no kindness.

Moreover, regardless of any sense of compassion the court may feel for someone's confusion regarding his or her sexual identity, the Court's primary duty is to justice and truth. Were the Court to adopt this proposed amendment, it would be forsaking its duty to truth, and undermining the very purpose of its existence: the dispensing of justice, which can only occur in accordance with truth.

And what is the truth regarding the human person and human sexuality? That man exists as a unity of body and soul; that each human person, from the moment of conception, is created either male or female; and that man and woman are complementary, with the sexual union of a man and woman having the unique capacity to generate human life. The present cultural movement to demand that others adhere to new categories of pronouns expressing a subjective gender identity is an attack on these truths. Applying this false ideology either in law or court rule would be a fundamental injustice.

## **2. Michigan's Constitution and laws recognize man and woman.**

Michigan's constitution and laws do not acknowledge or adopt the tenets of gender ideology. Preferred personal pronouns are not required by any law, nor has gender ideology been adopted by any Michigan law. To the contrary, Michigan's Constitution, to this day, continues to recognize the unique import of biological sex. Section 25 of the Constitution's declaration of rights states: "To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose." Even though the U.S. Supreme Court in *Obergefell v. Hodges* now requires the state to recognize marriages between those of the same sex, this 2004 amendment to Michigan's Constitution remains a part of Michigan's Constitution. Michigan's courts should not be elevating the concept of gender identity above the biological reality of man and woman recognized in Michigan's Constitution.

Additionally, myriad Michigan laws reference man or woman or male and female persons. The Court should not be elevating the new (and subjective) concept of gender identity above the objective biological reality of male and female that has long been recognized in Michigan law.

## **3. The U.S. Constitution and Michigan Constitution protect free speech.**

In publishing the proposed amendment to MCR 1.109, the Court specifically expressed interest in receiving comments addressing the constitutional implications of this proposal. In brief, requiring courts, i.e., judges, to use a person's own

designated personal pronouns is an unconstitutional violation of free speech and free exercise of religion. The idea of compelling speech has long been odious to constitutional government in America. As just one example of this, in 1995, a unanimous U.S. Supreme Court held that Massachusetts could not require private citizen parade organizers to include marchers expressing a message the organizers did not wish to convey. *Hurley v. Irish American, Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557. The Court stated that the government “may not compel affirmance of a belief with which the speaker disagrees.” *Id.* at 573. And as vital as the interest in free speech is for ordinary citizens, or groups of citizens, it is perhaps even more important for judges to be free of any compulsory speech.

More recently, the Sixth Circuit Court of Appeals directly addressed the issue at hand—the compulsory use of preferred pronouns—in its 2021 case of *Meriwether v. Hartop*, 992 F.3d 492. In this case, the court considered whether a public college could punish one of its professors for refusing to abide by the school’s new policy of requiring faculty to refer to students by their preferred pronouns. The court noted: “Pronouns can and do convey a powerful message implicating a sensitive topic of public concern.” *Id.* at 508. Not surprisingly, the court determined that compelling speech in this area raised plausible claims that the college was violating the plaintiff’s rights to free speech and free exercise of religion. Ultimately, the Sixth Circuit’s remand to the district court led to a \$400,000 settlement with the professor.

#### **4. The U.S. Constitution and Michigan Constitution protect free exercise of religion.**

As the Sixth Circuit found in *Meriwether v. Hartop*, in addition to violating free speech, compulsory pronoun use can also result in violations of the free exercise of religion. Compelling preferred pronoun use imposes a significant burden on many religious people. Christianity, Judaism, and Islam all recognize that God created man as male and female. Genesis 1:27 states: “So God created man in his own image, in the image of God he created him; male and female he created them.” Likewise, Genesis 2 tells of the creation of the first man and the first woman, Adam and Eve, and how they were created *for* one another. “God created man and woman *together* and willed each *for* the other.” Catechism of the Catholic Church, ¶371. In the Gospels, Jesus Christ affirmed this when, citing Genesis, he stated: “Have you not read that he who made them from the beginning made them male and female, and said, ‘For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one’? So they are no longer two but one.” Matthew 19:4-6.

These are fundamental truths at the heart of Christian anthropology and the Christian faith. Denying these truths compromises the Christian faith. In

particular, Catholics understand God's law regarding marriage and the nature of man and woman not as arbitrary commands meant to limit human freedom. To the contrary, they are part of the Good News of the Gospels that are fundamental truths about the human person and lead to human flourishing. "I came that they may have life and have it abundantly." John 10:10. Followers of Christ are instructed by Christ to love one another and, as St. Thomas Aquinas stated, to love is to will the good of the other. Compelling a Catholic to use another person's preferred personal pronouns when those pronouns contradict that person's biological sex is to force a Catholic to ignore the good of the other and to participate in and affirm that person's confusion regarding his or her sexuality. This is the opposite of love. Real love often means challenging a loved one in a mistaken belief or persuading them to give up a destructive behavior. In this area, it means assisting a person who is confused about his or her identity to reconcile that self-perception with the objective reality of his or her body.

Here in the Diocese of Lansing, Catholics and Catholic institutions are expected to adhere to the Church's teaching regarding the biological reality of sex and male-female complementarity. The Diocese of Lansing has a policy requiring this in all our Catholic entities. As part of this, and in accord with Catholic teaching, we expect those working for the Diocese to use pronouns in accord with a person's God-given biological sex. Additionally, the Diocese has published a Theological Guide addressing Catholic teaching regarding the human person and gender dysphoria. See <https://www.flipsnack.com/dolmi/theological-guide-the-human-person-and-gender-dysphoria.html>.

All this is to say that a court rule that compels a Catholic judge to use pronouns that do not accord with biological reality creates a significant conflict with the Catholic faith and would force such a judge to choose between the court rule or his faith. The Court should avoid creating such a conflict.

##### **5. The present conflict is unnecessary.**

The conflict presented by the proposed court rule is unnecessary and avoidable. Everyone should be treated with dignity and respect. In this, the Catholic faith agrees wholly with Michigan's existing Rules of Professional Conduct, which state: "A lawyer shall treat with courtesy and respect all persons involved in the legal process. A lawyer shall take particular care to avoid treating such a person discourteously or disrespectfully because of the person's race, gender, or other protected personal characteristic." Rule 6.5. The State Bar's Lawyers Oath and the Michigan Code of Judicial Conduct (in particular, Canons 1 and 3) include similar expectations.

This expectation of professional conduct, civility, and courtesy is all that is required. There are other ways to treat people courteously that do not require the compulsory

use of a person’s preferred pronouns. In *Meriwether v. Hartop*, Professor Meriwether proposed calling on the student demanding use of certain pronouns by that student’s last name. The court described this compromise as a win-win: “Meriwether would not have to violate his religious beliefs, and Doe would not be referred to using pronouns Doe finds offensive.” *Meriwether*, 992 F.3d at 510-511. Unfortunately, the school, which at first supported this proposal, backed away from it, leading to litigation.

Here, the Court can avoid the present conflict by abandoning the proposed amendment to Rule 1.109 and adhering to the existing rules in place for lawyers and judges. These rules expect civility and respect but avoid compulsory speech. And as the presently proposed rule addresses solely the conduct of courts, it is certainly unnecessary: surely we can trust Michigan’s judges to treat everyone with civility and respect.

**6. The role of custom and etiquette.**

The use of pronouns has never been something that has been regulated by the courts and properly belongs to the realm of custom and etiquette. It is true that sometimes customs evolve, but they do so organically and over time and without coercion. The use of pronouns has certainly evolved greatly in the last fifty-plus years as inclusive language has gradually brought about the use of “he or she,” “his or her,” and “him or her” to replace the exclusive use of masculine pronouns that were meant to refer to both genders. This evolution occurred gradually and without coercion.

Another excellent example of a custom widely followed that requires no coercion is the practice of calling judges by the pronoun, “Your Honor.” There is no court rule that requires this term of respect, yet the practice is universal in the courts as a matter of custom and etiquette. Not everything needs a rule. This is especially so with the proposed amendment which creates a conflict with free speech and free exercise of religion.

**7. Challenge of adhering to the rule.**

The proposed rule would require courts to use a person’s personal pronouns when referring to the party either verbally or in writing. This is far more difficult than it sounds. A quick internet search reveals a variety of recently introduced pronouns that go far beyond male and female. Here is one such chart:

Sub.	Obj.	Poss.	Determiner	Possessive Pronoun	Reflexive
ce	cir	cir		cirs	cirself
co	co	cos		cos	coself
cy	cyr	cyr		cyr	cyrself

ey	em	eir	eirs	emself
he	him	his	his	himself
hey	hem	heir	heirs	hemself
ne	nem	nir	nirs	nemself
qui	quem	quis	quis	quemself
she	her	her	hers	herself
sie	hir	hir	hirs	herself
tey	tem	teir	teirs	temself
they	them	their	theirs	themself
xe	xem	xyr	xyr	xemself
xie	hir	hir	hirs	herself
yo	yo	yos	yos	yoself
ze	zir	zir	zirs	zirsself
ve	vis	ver	ver	verself

See <https://www.lgbtqnation.com/2022/08/incomplete-list-gender-pronouns/>. And as the site is careful to preface, “we can’t provide an exhaustive list of all pronouns, **as people come up with new pronouns all the time.**” (Emphasis added.)

It should be obvious that adhering to these many, newly coined pronouns is no easy task and would require great mental energy for any legal speaker or writer. And while it’s true that languages naturally evolve, enforcing such newly coined pronouns via court rule, especially when such pronouns are not commonly used in daily speech, is no natural evolution of the language. In fact, it is a corruption of language that confuses rather than clarifies.

Further, the idea of a court rule mandating a person’s preferred pronouns—the number of which have no limit and can be invented capriciously and changed upon a whim—is antithetical to justice. This returns us to the initial objection. Courts of justice are vehicles for pursuing truth—not “my truth,” or “your truth,” or “his or her truth,” but **the** truth. (“Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?”) Exalting subjectively chosen pronouns by which a party intends to deny or minimize the importance of the objective reality of biological sex does violence to the concept of justice and the pursuit of truth.

### 8. Gender ideology is an attack on human sexuality.

As gender ideology has advanced in our society its aims have become clearer. What at first may have appeared as an appeal to treat people confused about their sexuality with courtesy and respect has more clearly become an attack on the nature of sexuality itself. Gone are the days when transgenderism was limited to a man dressing as a woman (although not asserting that he **was** a woman) or a woman dressing as a man. Today, transgenderism and gender ideology have become

an all-out attack on the nature of human sexuality as male and female. An unlimited number of genders have been proposed, and it has become fashionable among the young to assert that one is “non-binary.” More and more, those embracing this ideology are not experiencing dysphoria but are instead claiming a protected status and using that status to attack traditional sexual norms. The court rules should not be siding with this attack on human sexuality nor should they coerce judges to embrace such an ideology.

#### **9. The proposed rule could result in the mockery of crime victims.**

A final reason, and one not to be ignored, is that the proposed court rule could, and likely would, result in a mockery of crime victims, and particularly of victims of rape and other sexual assaults. Just such a mockery recently occurred in Scotland where biological male Adam Graham was recently convicted of two violent rapes of two women. See <https://www.cbsnews.com/news/transgender-woman-rape-scotland-mens-prison-nicola-sturgeon-uk/>.

Prior to trial, Graham claimed that he was transgender, had begun transitioning and wished to be considered as a woman under the new name of Isla Bryson. Upon conviction, he was sent to an all-female prison while awaiting sentence. A public outcry followed. The chief executive of Rape Crisis Scotland said: “It cannot be right for a rapist to be in a women’s prison.” Meanwhile, Bryson’s estranged wife asserted that her husband’s claim to be transgender was “a sham” to seek attention and easier jail time. The Scottish Government relented and Bryson was sent to an all-male prison.

Under the proposed court rule, Michigan’s courts would be required to go along with such a criminal defendant’s charade, requiring judges to reference the defendant by preferred personal pronouns. Imagine the mockery that a female rape victim would endure who, throughout trial and sentencing, would hear the court refer to her male rapist by feminine or other pronouns. And it would not only mock the crime victims; such a situation would also mock the court.

#### **10. Conclusion**

Gender ideology, which is the ideological source of the presently proposed pronoun rule, is a cancer that attacks the very concept of truth. In attacking the sexual binary of male and female, a truth revealed by the natural order and in biology, it also denies that the nature of a thing—*any* thing—can be truly known. This is radical and dangerous. In attacking truth, this cancer ultimately attacks the justice system, which is a system that seeks the truth and expects its practitioners to do so vigorously yet professionally.

Gender ideology deceives many under the false guise of compassion. But a compassion that is not rooted in truth does not lead to the true good of the other.

Affirming someone in their confusion—or in other instances, their intentional attacks on biological reality—is false compassion. Even worse is the use of governmental coercion to force those who truly seek to love their neighbor to comply with a false and destructive ideology.

Fortunately, in our system of constitutional government, the rights of free speech and free exercise protect against such coercion and would be violated by the imposition of the proposed amendment to the court rule. The Court should not adopt a rule that conflicts with these constitutional rights or that would enshrine a falsehood.

It has become the fashion for many leaders in our society to acclaim the fad that is gender ideology lest they be accused of not seeing what others apparently see. “Oh, how fine are the Emperor’s new clothes! Don’t they fit him to perfection? And see his long train!”

The Court should not lend its credibility to this project. As the little child in Hans Christian Anderson’s story rightly said as the emperor passed by: “But he hasn’t got anything on.” Indeed.

How much worse if the Court adopts a rule *compelling* judges to affirm the beauty of the emperor’s new clothes?

/s/

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