Rule 1.4 Communication

a) A lawyer shall:…

2. reasonably consult with the client about the means by which the client's objectives are to be accomplished;

-Keep in mind that there is very sensitive, sometimes medical, sometimes very private information regarding someone’s gender history or transition process that may be implicated by your litigation.

-There is also the very real possibility that your client’s gender in no way affects the legal matter that you are dealing with!

4. promptly comply with reasonable requests for information; and

-Maintain an understanding that the circumstances which would not cause a cisgender person concern, could be very stressful for some trans people. Reasonable information could include questions about checking in with security, courtroom procedure, or even access to gender segregated facilities in the courthouse.

Rule 1.4 Communication (cont'd.)

5. consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law

-Discuss legal identifiers vs. preferred names ahead of your court proceeding.

b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation

-Does the client know exactly what it will mean to engage in litigation?

-Do they have a clarity around the type of information which may become public or at least known to the opposing party?

-Are there safety concerns or other concerns which arise based on these types of disclosures?

Rule 1.6 Confidentiality of Information

a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

-Think carefully about this “implied authorization.” What is the scope of such authorization? How does this apply to medical and/or gender information?

*Healthcare matters

*Parentage

*When necessary historical documents were issued in a previous gender designation

*Other matters?

b) A lawyer shall reveal such information if necessary to comply with the duties stated in Rule 3.3.

Rule 1.6 Confidentiality of Information (cont'd.)

d) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

-What proactive steps can be taken to assure that no unauthorized disclosure is made?

-Sealing procedures, where applicable

-Motion in limine

-Prevent unethical behavior by the opposing party

-Gender history is NOT grounds for character impeachment.

e) The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

Rule 3.3 Candor Toward the Tribunal

a) A lawyer shall not knowingly:

1. make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

-Keep in mind that it is only in limited circumstances that a litigant's assigned sex would be considered a "material fact." A material fact is one germane to the decision being made by the court.

3. offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence before a tribunal…the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

-This would refer to the presentation of the assigned sex of an opposing party for the purposes of impeachment or a defense when the gender identity of that party is known.