

February 13, 2019

Re: FINAL WARNING

You are being issued a final written warning as a result of your violation of The Legal Aid Society Policy Prohibiting Discrimination and Harassment (hereafter “EEO Policy”) in connection with the complaints of numerous staff members regarding a blog post written by you entitled, “Are You a Cissy?” You distributed a link to this blog post to the CRIMINAL ATTYS ALL distribution list on the Legal Aid e-mail system.

**Blog Post**

On May 18, at 11:41 p.m., you sent the following e-mail to CRIMINAL ATTYS ALL.

The enclosed link referred to the following blog post:

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## Are you a cissy?

Posted on [May 18, 2017](#)



One of the many annoyances of being accused of a crime is having to put up with humiliating questions from your lawyer. Like, “Was your grandmother a drug addict?” “When was the last time you had sex?” or “Do you hear voices?” [Correct answer: Yes, when people are talking].

But that’s nothing compared to what lawyers are supposed to ask now, based on the latest advances in client-centered embarrassment:

*Scene: Arraignment pens, counsel visiting area.*

Lawyer: Hi there! I’m Suzy, a cis-gendered woman, and I’ll be your attorney for today.

Defendant: About time. I’ve been locked up for a week without seeing a lawyer. I’m innocent. The cops broke down my door without a warrant –

Lawyer: What name would you like me to call you?

Defendant: My homies call me Killer, but I’d rather you didn’t mention that in court. More prejudicial than probative, if you know what I mean. As I was saying, the cops said they’d shoot my dog if I didn’t voluntarily come to the precinct –

Lawyer: [*Reading from a card*] I need to know whether your name expresses your internal deeply-held sense of your gender which may or may not be the same or different from your sex assigned at birth –

Defendant: Yeah, whatever. Then they handcuffed me to a chair and started throwing lighted matches on my lap, causing imminent danger to my manhood –

Lawyer: Tut, tut, gender isn't a matter of stereotypical physical characteristics –

Defendant: – so I confessed. But I can prove it's false because there's a surveillance tape showing I was on the other side of town at the time. My wife –

Lawyer: Your wife? What gender identity does they go by?

Defendant: Yo, are you calling me a FRUIT?

Lawyer: That's a very discredited terminology. The term is non-binary gender fluid –

Defendant: Will you lower your voice? I'm in a holding cell with 20 other guys, you know what I'm saying?

Lawyer: I'd feel so much better about our relationship if you'd only come out of the closet.

Defendant: But I'm a man. Like Muddy Waters says, "M-A-N, I'm the hootchie cootchie man -"

Lawyer: You sexist pig, how dare you! (*Exit*)

Defendant: Damn these girl lawyers.

In response to this posting, the following complaints were received:

**1. Complaint #1:**

"I am reporting the content of this blog as creating a contributing [sic] to a hostile work environment. Please read it. It is terrible."

**2. Complaint #2:**

"I am writing to file a complaint about discriminatory harassment for <https://appellatesquawk.wordpress.com/2017/05/18/are-you-a-cissy/> . This blog post

characterizes asking a client's name and preferred pronoun as "the latest advance[] in client-centered embarrassment" and as a "humiliating" question.

The post then goes on to provide a transcript of an imaginary conversation between a cis-gender woman attorney and her client. In the exchange, the client describes having been subjected to a series of egregious constitutional violations by the police. The attorney is portrayed as being so fixated on confirming her client's gender identity and sexual orientation that she is oblivious to these egregious violations.

The attorney is shown admonishing the client for purportedly equating his genitals with his gender identity (e.g., after the client says that the police handcuffed him to a chair and "started throwing lighted matches on my lap, causing imminent danger to my manhood," the lawyer responds with, "Tut, tut, gender isn't a matter of stereotypical physical characteristics"). The client is portrayed as homophobic and sexist ("Yo, are you calling me a FRUIT?" and "Damn these girl lawyers") and the attorney is portrayed as being more invested in correcting the client's language than paying attention to the client's legal needs ("That's a very discredited terminology. The term is non-binary gender fluid"). Further, the post also belittles the use of "they" as some individuals' preferred pronoun ("Your wife? What gender identity does they go by?").

Overall, the post mocks and demeans the efforts of The Legal Aid Society to incorporate practices that affirm our clients' gender identities and/or sexual orientations. It implies that attorneys who are invested in affirming our clients' identities are incapable of simultaneously recognizing and responding to our clients' legal issues and needs.

I believe [Appellate Squawk] violated The Legal Aid Society's Anti-Discrimination policy simply by using the Society's email system to distribute material that is offensive to transgender or gender non-conforming individuals, as well as to lesbian, gay, or bisexual individuals (e.g., LGBTQ individuals). Because the Society's EEO Policy prohibits conduct that constitutes or contributes to harassment based on an individual's sexual orientation and gender identity or expression, sending such content over the Society's email system is an expression of harassment of a protected class of individuals.

Also, although the Appellate Squawk blog's "About" page includes a quote from Jonathan Swift ("Humor hath more power / To reform the world than sour"), which implies that the blog's author intends to be funny or satirical, the EEO Policy also prohibits conduct or language meant as a joke or prank.

I would be happy to provide additional information or answer any questions the Anti-Discrimination/Harassment Committee may have regarding this complaint.

### 3. Complaint #3:

I am still new to Legal Aid but I believe you are the person I should write about this. I was really disheartened to see this email about the training CAB attorneys received on how we can adjust our practice to account for the disproportionate amount of transgender and gender-non-conforming people arrested in this city and in need of indigent defense. Full disclosure, I have friends and family who fall into these categories and I am perhaps more sensitive than others about making light of this issue, but I figured I would voice my concerns anyway.

First, that training was absolutely not advocating that attorneys act in the manner that the blog described. I hope very much that it is clear to that the training did not advocate, among other things, endangering clients by prodding them to out themselves in the pens. [Appellate Squawk] would have known this if they had attended the training. We were given really helpful ways to give clients opportunities to naturally disclose their gender identity if they feel so inclined. Questions like, “Is there a name you feel more comfortable using?” would certainly not elicit a response like “Killer” in the context of representation. The idea that it would is absurd and the whole imaginary exchange depicts our clients as a homophobic, trans- phobic caricature. I really hope that [Appellate Squawk] doesn’t actually view our clients in this way.

Second, this issue really is important and even critical to zealous advocacy and it hurts that Appellate Squawk would publicly make a mockery of such an important issue. In my previous job, I represented a lot of transgender Latinas who experienced being misgendered by their defense attorneys and I can say with certainty that it did harm the attorney-client relationship and led to a lot of them pleading guilty to crimes because they understandably believed their attorney was not on their side anyway. I know Squawk is supposed to be funny but a joke at the expense of the very idea of practicing with a mind that transgender people exists is just mean- spirited.

Lastly, I am afraid that [Appellate Squawk's] public blog could impact the reputation of Legal Aid. I am new, but I am very proud to be a part of Legal Aid, especially CAB where I get to learn from people like Appellate Squawk, who have literally shaped NY’s criminal laws. I don’t know how widely it is known that Squawk is written by a Legal Aid attorney but the legal world is small and I would hate for the actions of one attorney to cast us all as being resistant to inclusivity.

Thank you for fielding this and please let me know if I should be sending the complaint to someone else.

#### **4. Complaint #4:**

I am writing to file a complaint of discriminatory harassment against [Appellate Squawk]. This blog post characterizes asking a client's name and preferred pronoun as "the latest advance[] in client-centered embarrassment" and as a "humiliating" question.

The post then goes on to provide a transcript of an imaginary conversation between a cis-gender woman attorney and her client. In the exchange, the client describes having been subjected to a series of egregious constitutional violations by the police. The attorney is portrayed as being so fixated on confirming her client's gender identity and sexual orientation that she is oblivious to these egregious violations.

The attorney is shown admonishing the client for purportedly equating his genitals with his gender identity (e.g., after the client says that the police handcuffed him to a chair and "started throwing lighted matches on my lap, causing imminent danger to my manhood," the lawyer responds with, "Tut, tut, gender isn't a matter of stereotypical physical characteristics"). The client is portrayed as homophobic and sexist ("Yo, are you calling me a FRUIT?" and "Damn these girl lawyers") and the attorney is portrayed as being more invested in correcting the client's language than paying attention to the client's legal needs ("That's a very discredited terminology. The term is non-binary gender fluid"). Further, the post also belittles the use of "they" as some individuals' preferred pronoun ("Your wife? What gender identity does they go by?").

This email has served as a huge distraction from doing my job today. I am upset and really troubled that someone who works at the Legal Aid Society- an organization whose motto is to make the case for humanity- is joking about the importance of honoring a person's preferred pronoun and gender. It is disturbing that the message indicates that an attorney cannot zealously represent their client while inquiring about a client's preferred pronoun and gender identity. If anything, by asking a client about their pronoun \*furthers\* an attorney's ability to best represent their client.

This email has also contributed to making the office a toxic environment for many of us to work. I am deeply concerned that these sentiments reflect a lack of respect and compassion towards trans and gender non- conforming people, which is discriminatory towards our colleagues and our clients. This email is hostile and shows a deep disdain for asking a client questions about their preferred pronoun and name. I am concerned for our colleagues, but even more for our clients who are placing their freedom in our hands.

I am happy to discuss all of this further with the Anti-Discrimination committee.

#### **5. Complaint #5:**

I would like to file a complaint against Appellate Squawk, due to the blog post communication that was sent out below through Legal Aid's email system.

## **6. Complaint #6:**

My name is [REDACTED], and I am a new attorney in CAB; I have been here for [REDACTED], and I am very proud to work at Legal Aid and with so many amazing colleagues. I am writing to express my concern regarding the offensive blog post (denigrating our clients, people who identify as transgender and LGBTQ generally, as well as the terrific LGBTQ trainings that CAB recently provided) that was forwarded to all staff earlier today by [Appellate Squawk]. See below. This is the second offensive email that Lorca has sent since my being here; I have pasted the earlier one (denigrating ACLA) below that.

Although I believe in free speech, I think it is truly inappropriate to be sending a personal and offensive blog to all members of the staff, especially where that blog creates a hostile work environment. As a cis-gendered, heterosexual, and white woman, I am upset about how getting emails like these makes my gender-non-conforming and transgender colleagues feel about working here. It is an ugly slap/laugh in the face that suggests to them that their identity and struggles are silly and do not matter. That's what the blog suggests to me. It also unfairly places them, or in other situations attorneys of color, in the entirely unfair and exhausting position of having to defend themselves, educate others, or simply internalize this disparagement. Management (or the union?) should step in so that the affected and accused individuals do not have to be the ones to respond, and to send a clear message that Legal Aid will not allow an unsafe, unwelcoming work place and finds blast emails such as these to the whole organization unacceptable. I have worked at many non-profit organizations (REDACTED) where such emails would be fireable offenses.

The deeply offensive nature and ugliness of her blog-post, on many accounts, is my primary concern: it makes majority-jokes at the expense of transgender people and gender-non-conforming people, and belittles the LGBTQ training which I am proud that LAS, as other organizations I have worked at before, mandates. But it also uses stereotypes and paints our clients in an utterly disparaging light; it is upsetting.

A secondary concern, however, is how this blog reflects back on Legal Aid generally, my colleagues and I, and our clients. Clients may read this thinking this is the view of, or even condoned by, LAS, and judges may, as well.

I have heard about the notoriety of Legal Aid's battles over email policies; and I realize

there are no easy answers here when it comes to email and free speech. Nonetheless, I do not stand with my colleague Appellate Squawk in believing [they] has a right to send deeply offensive emails out willy nilly. I do not want to receive [their] blog. And I find their attacks on efforts to ensure all employees are supported—and especially those who are people of color and LGBTQ-identified—deeply disturbing and unacceptable.

Thank you for hearing my concerns.

## **The EEO Policy and City Human Rights Law**

The EEO Policy prohibits conduct that constitutes or could lead or contribute to harassment because of, inter alia, an individual's gender identity or expression. The City Human Rights Law likewise prohibits discrimination based on gender identity or expression. Among conduct prohibited by the EEO Policy is the “use of Society computers (including via the Internet) or the Society's e-mail system to engage in any communication that is offensive to persons based on characteristics protected under this Policy.” Under the EEO Policy, “Harassment does not require an intent to offend. Thus, inappropriate conduct or language meant as a joke, a prank, or even a compliment can lead or contribute to harassment.”

## **Findings**

The Committee finds that the blog post violated the EEO Policy because it was reasonably understood by the complainants to denigrate persons based on characteristics protected under the Policy and the City Human Rights Law, namely, gender identity and expression. As several of the complainants observed, the blog post demonstrated not just a lack of respect and compassion for, but outright hostility toward trans and gender non-conforming clients. By making jokes at their expense, the blog post can reasonably be interpreted to denigrate the concept of gender identity and ridicule the notion that questions should be asked of clients designed to ascertain and respect their gender identities. These messages are reasonably interpreted as derogatory toward persons in a protected class. It should be noted that the City Human Rights Law expressly states that the deliberate mis-gendering of a client (such as by deliberately using an incorrect gender pronoun) is an act of

discrimination subject to penalties under the law.

In addition, the blog post denigrated clients by using stereotypes to paint our clients in a disparaging light. Particularly offensive was attributing the use of racially charged language such as “homie” and “call me Killer” to the pretend client.

Although the blog post was evidently an attempt at humor, the EEO Policy explicitly states that inappropriate conduct or language meant as a joke can lead or contribute to harassment.

### **Actions To Address These Violations**

You are required to attend the next training on Sexual Orientation, Gender Identity and Expression (SOGIE) that we will provide for the staff of the Criminal Appeals Bureau. This date will be provided to you as soon as it is scheduled. Failure to attend could be grounds for further discipline, including termination.

Further, you are warned that the content of any future blog post you elect to share on our email system will be reviewed to ensure that it comports with both our internal policies and the law. Should your blog post violates our policies again, this will be grounds for further discipline, including termination.

Retaliation is strictly prohibited under our policies. Any founded acts of retaliation against any staff member who you believe made a complaint against you that formed the basis of this final warning and action plan will be subject to immediate termination.

Your right to grieve this final warning and action plan under the collective bargaining agreement is preserved.