



25TH ANNIVERSARY
MCLE SPECTACULAR!
Friday, November 22, 2019



The CCCBA Estate Planning & Probate and Litigation Sections proudly present...

**#3 LOVE MAKES A FAMILY AND REPRESENTING
TRANSGENDER AND GENDER NON-CONFORMING CLIENTS.**

Jess Laird – Rainbow Community Center
Summer Selleck – SC Selleck Law (w/title, company/firm)
Jonna Thomas – Wells Fargo Bank (w/title, company/firm)

AGENDA

Introduction

Classification of persons

Gender Identity with the Gender Bread Person Activity

Sexual Orientation

Transgender

- Binary vs. Non-binary

Genetic Sex

Phenotypic Sex

Romantic Attraction

Transition

Gender Pronouns

Title VII

- SCOTUS Case Update 2019 | CA Gender Recognition Act 2017

Trans People

CisGender

Gender Expression

Heteronormativity

Gender Non-binary

Bias Awareness

- Micro Aggression
- Queer
- Communication Tips | General Tips
- Office Ideas

Jess Laird, ACSW, is a transgender man who holds a Master of Social Work and a Master of Public Administration degree. He currently works for the Rainbow Community Center, the LGBTQ+ resource and community mental health center in Contra Costa County. At Rainbow, Jess serves as the Intake & Referral Coordinator and is also an associate clinician. He often assists community members with legal name and gender marker changes as well as in accessing resources such as housing, healthcare, and employment. Jess lives in Concord with his husband, young son, and very quirky cat.

Summer C. Selleck is a solo practitioner at SC Selleck Law in Walnut Creek, California. She practices primarily in the areas of Estate Planning and Probate. Summer's deep passion is protecting and advocating for the rights of diverse classes and she is deeply involved in her community while continuing to build her solo practice. Over the course of her life, she has worked zealously defending the rights of the Lesbian, Gay, Bisexual, Transgender and the Queer (LGBTQ) community in numerous campaigns. She continues to promote tolerance and diversity in both the legal profession and the community and is impacting the lives of others through community engagement and outreach campaigns designed to build relationships, educate the community and create a broader social impact. Summer Selleck was born and raised in the Bay Area. She received her Undergraduate B.A. in history from UCLA, her Masters in Education from Pepperdine University and her Juris Doctorate from Western State University. Summer has been a proud and active member of the Contra Costa County Bar Association. She is currently on the CCCBA Board of Directors. Summer is also a Board Member of California Women Lawyers. She was also appointed to the Contra Costa County Advisory Council on Aging. Summer is a Super Lawyer Rising Star for 2017 and 2018. Summer was named Diablo Magazine's Best "40 Under 40" in 2018.

Jonna M. Thomas

Senior Fiduciary Advisory Specialist
East Bay Region
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Jonna Thomas is a vice president and senior fiduciary advisory specialist located in the Walnut Creek Wells Fargo Private Bank office. Ms. Thomas works with clients to integrate fiduciary and investment knowledge into each client's custom wealth plan. She coordinates with investment strategists to align investments with the client's goals and values. Based on the particular situation, Ms. Thomas can coordinate a variety of Specialized Wealth Services in order to help grow and protect assets, while working toward the client's overall wealth management goals.

Prior to joining Wells Fargo, Ms. Thomas served for eight years as a senior associate attorney with Hartog, Baer and Hand APC, assisting clients to resolve conservatorship, trust and estate related disputes.

Ms. Thomas is a State Bar Certified Specialist in Estate Planning, Trust and Probate Law. She earned her Juris Doctorate with distinction from Pacific-McGeorge School of Law and was admitted to the State Bar of California in 2005. She received her Master of Laws (LL.M.) in taxation with honors from Golden Gate University in 2014.

Ms. Thomas is a thought-leader in the East Bay Trust and Estate community where she is regularly asked to speak at industry association events and enjoys educating other professionals on topics in the field.

Ms. Thomas shares Wells Fargo's vision to lift up the communities it serves. She was a founding member of East Bay Children's Law Offices (EBCLO), a non-profit law firm, serving abused and neglected children where she now volunteers on its board of directors as treasurer. She is an active member of the East Bay Community Foundation (EBCF) Professional Advisors Leadership Council (PALC) where she previously served as a co-president.

Ms. Thomas is a proud mother of twin second graders and a toddler. In her free time, she and her wife enjoy taking them on wilderness adventures throughout the Bay Area.

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TRANSGENDER INCLUSIVITY



MCLE SPECTACULAR
NOVEMBER 22, 2019

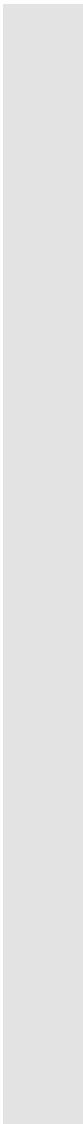
SEX

The classification of a person as male or female. At birth, infants are assigned a sex, usually based on the appearance of their external anatomy.



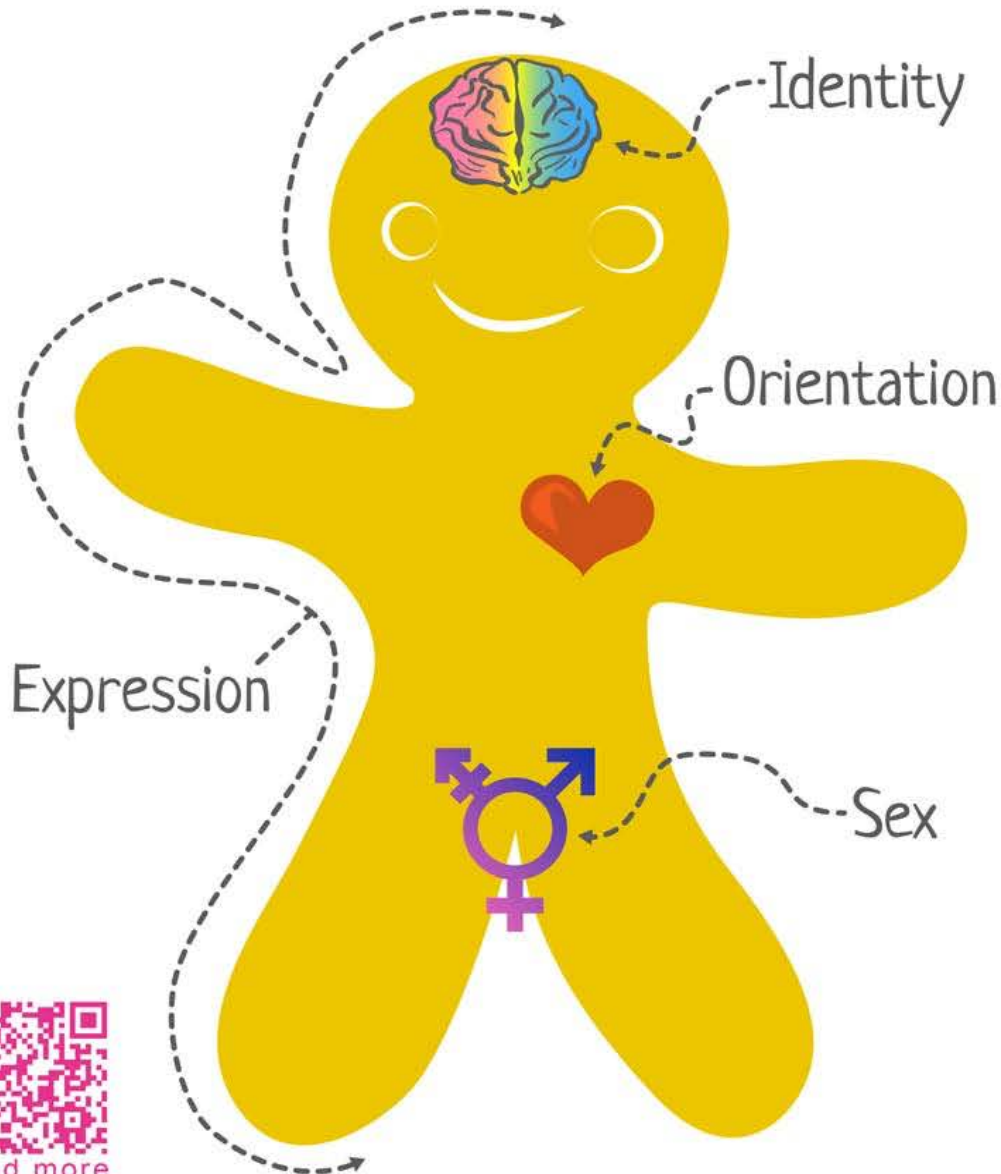
GENDER IDENTITY

A person's internal, deeply held sense of their gender. For transgender people, their own internal gender identity does not match the sex they were assigned at birth. Most people have a gender identity of man or woman (or boy or girl). For some people, their gender identity does not fit neatly into one of those two choices. Unlike gender expression, gender identity is not visible to others.



The Genderbread Person

by www.ItsPronouncedMetrosexual.com



Gender Identity

Woman

Genderqueer

Man

Gender identity is how you, in your head, think about yourself. It's the chemistry that composes you (e.g., hormonal levels) and how you interpret what that means.

Gender Expression

Feminine

Androgynous

Masculine

Gender expression is how you demonstrate your gender (based on traditional gender roles) through the ways you act, dress, behave, and interact.

Biological Sex

Female

Intersex

Male

Biological sex refers to the objectively measurable organs, hormones, and chromosomes. Female = vagina, ovaries, XX chromosomes; male = penis, testes, XY chromosomes; intersex = a combination of the two.

Sexual Orientation

Heterosexual

Bisexual

Homosexual

Sexual orientation is who you are physically, spiritually, and emotionally attracted to, based on their sex/gender in relation to your own.



read more

SEXUAL ORIENTATION

Describes a person's enduring physical, romantic, and/or emotional attraction to another person.

Gender identity and sexual orientation are not the same. Transgender people may be straight, lesbian, gay, bisexual, or queer.

TRANSGENDER_(ADJ)

An umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth. People under the transgender umbrella may describe themselves using one or more of a wide variety of terms - including *transgender*. Some transgender people are prescribed hormones by their doctors to bring their bodies into alignment with their gender identity. Some undergo surgery as well. But not all transgender people can or will take those steps, and a transgender identity is not dependent upon physical appearance or medical procedures.



Transgender

Binary

Trans man

Trans woman

Non-Binary

Genderqueer

Demiboy

Demigirl

Neutrois

Genderfluid

Bigender

Agender

And more!

GENETIC SEX

Or chromosomal sex is the sex as determined by the presence of the XX (female) or the XY (male) genotype in somatic cells, without regard to phenotypic manifestations.

PHENOTYPIC SEX

The phenotypic manifestations of sex determined by endocrine influences, such as development of breasts and genital organs.

SEXUAL ATTRACTION

Describes a person's attraction to another person. Gender identity and sexual orientation are not the same. Transgender people may be straight, lesbian, gay, bisexual, or queer.



ROMANTIC ATTRACTION

Describes a person's romantic attraction to another person.



TRANSITION

Altering one's birth sex is not a one-step procedure; it is a complex process that occurs over a long period of time. Transition can include some or all of the following personal, medical, and legal steps: telling one's family, friends, and co-workers; using a different name and new pronouns; dressing differently; changing one's name and/or sex on legal documents; hormone therapy; and possibly (though not always) one or more types of surgery. The exact steps involved in transition vary from person to person.

	Subject	Object	Pronoun	Pronunciation
Gender Binary	she	her	hers	as it looks
	he	him	his	as it looks
Gender Neutral	they*	them*	theirs*	as it looks
	ze	hir	hirs	zhee, here, heres
	ze	zir	zirs	zhee, zhere, zheres
	xe	xem	xyrs	zhee, zhem, zheres

**used as singular*

Gender Pronouns

Please note that these are not the only pronouns. There are an infinite number of pronouns as new ones emerge in our language. Always ask someone for their pronouns.

Subjective	Objective	Possessive	Reflexive	Example
She	Her	Hers	Herself	She is speaking. I listened to her. The backpack is hers.
He	Him	His	Himself	He is speaking. I listened to him. The backpack is his.
They	Them	Theirs	Themselves	They are speaking. I listened to them. The backpack is theirs.
Ze	Hir/Zir	Hirs/Zirs	Hirself/ Zirself	Ze is speaking. I listened to hir. The backpack is zirs.

Design by Landyn Pan

transstudent.tumblr.com
facebook.com/transstudent
twitter.com/transstudent

For more information,
go to transstudent.org/graphics

TSER
Trans Student Educational Resources

TITLE VII

Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex.

Discrimination against an individual because of gender identity, including transgender status, or because of sexual orientation is discrimination because of sex in violation of Title VII.

SCOTUS CASE

Heard Oct 4, 2019

A provision of federal law, [Title VII of the Civil Rights Act of 1964](#), makes it illegal for employers to discriminate because of, among other factors, a person's sex. But the lower federal courts are divided on whether that language also covers sexual orientation and gender.

"One simply cannot consider an individual's sexual orientation without first considering his sex. A gay man is only a gay man if he's attracted to other men."



R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission

The court will also consider whether Title VII outlaws discrimination against transgender employees. A federal appeals court ruled that Aimee Stephens was impermissibly fired from her job at a Michigan funeral home two weeks after she told her boss she is transgender. The company said she failed to follow the dress code.



R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission

The funeral home would have treated a woman who wanted to dress and present as a man, with grieving family members and clients of the funeral home, exactly the same way that Stephens was treated," said John Bursch of the Alliance Defending Freedom, a conservative legal group representing her former employer.

But the American Civil Liberties Union said even if the meaning of Title VII is confined to biological sex, it still makes her firing illegal. If she had been "assigned a female rather than a male sex at birth," she would not have been fired for living openly as a woman.

The funeral home also fired her for failing to conform to its views of how men and women should dress and act, the group said, contrary to long-standing court rulings that forbid firing employees because of sex-based stereotypes.



R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission

Across the nation, 21 states have their own laws prohibiting job discrimination based on sexual orientation or gender identity. Seven more provide that protection only to public employees. Those laws would remain in force if the Supreme Court rules that Title VII does not apply in LGBTQ cases. But if the court rules that it does, then the protection would apply nationwide.



California's Gender Recognition Act of 2017 (SB 179)

After months of hard work on the part of transgender activists and organizations, SB 179, the Gender Recognition Act, was signed into law on October 15, 2017. This groundbreaking legislation makes it significantly easier for all transgender people who are living in or were born in California to obtain identity documents that reflect their genders, and makes California the second state in the country to offer a standard path to obtaining a nonbinary gender marker on state documents.

That said, the law does not go into effect all at once, and only affects certain documents. Notably, it does not affect documents issued by other states or the federal government (including Social Security cards, passports, and documents issued by US Citizenship and Immigration Services). This fact sheet offers some clarification of the timeline and nature of the changes.

Jan. 1, 2018:

Changes to the process of requesting an updated birth certificate take effect

- No physician's declaration of any kind will be required to update the gender marker on a California birth certificate; instead, applicants will simply have to submit an affidavit attesting, under penalty of perjury, that the request for a change of gender is to conform their legal gender to their gender identity and not for any fraudulent purpose.
- It will also be possible to request that the gender marker on a California birth certificate be listed as "male," "female," or "nonbinary."

Sept. 1, 2018:

Changes to the process of requesting a gender change court order take effect

- No physician's declaration of any kind will be required to petition for a gender change court order; instead, petitioners will simply have to submit an affidavit attesting, under penalty of perjury, that the request for a change of gender is to conform their legal gender to their gender identity and not for any fraudulent purpose.
- Individuals will be able to request a change of legal gender to "male," "female," or "nonbinary."

Jan. 1, 2019:

Changes to the process of requesting an updated driver's license take effect

- It will no longer be necessary to obtain a doctor's certification in order to update the gender marker on a CA driver's license or state ID.
- Instead, people seeking to update the gender marker on their ID will simply be able to self-select "male," "female," or "nonbinary" on the application form. (SB 179 Sections 16, 17, and 18)

5

THINGS YOU SHOULD KNOW ABOUT **TRANS** PEOPLE

1

NOT ALL TRANS PEOPLE IDENTIFY AS MALE OR FEMALE. TRANS PEOPLE HAVE ALL SORTS OF DIFFERENT IDENTITIES OUTSIDE THE GENDER BINARY.



2

TRANS FOLKS ACTUALLY HAVE MANY DIFFERENT SEXUAL ORIENTATIONS. GENDER IDENTITY AND SEXUAL ORIENTATION ARE SEPARATE SPECTRA. LEARN MORE AT: WWW.TRANSSTUDENT.ORG/GENDER



TRANS PEOPLE LED THE STONEWALL RIOTS. SYLVIA RIVERA AND MARSHA P. JOHNSON WERE TWO AMONG MANY TRANS WOMEN OF COLOR WHO WERE ON THE FRONT LINES.

3

4

NOT ALL TRANS PEOPLE WANT SURGERY AND EVEN FEWER GET SURGERY.



THE WORD TRANSGENDER WAS POPULARIZED BY ACTIVIST VIRGINIA PRINCE IN 1969. SHE FIRST PUBLISHED THE WORD IN THE DECEMBER 1969 ISSUE OF "TRANSVESTIA".

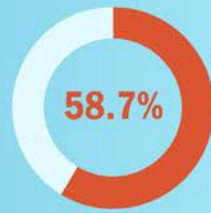
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WHY TRANS PEOPLE NEED MORE VISIBILITY

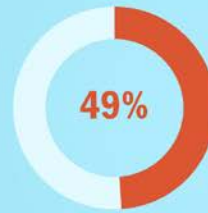
With more visibility comes more understanding. These statistics can and will get better as trans people become more visible in our society.



80% of trans students felt unsafe at school because of their gender expression



of gender non-conforming students experienced verbal harassment in the past year because of their gender expression, compared to 29% of their peers



of trans people reported physical abuse in a 2007 survey

The Gender, Violence, and Resource Access Survey found that

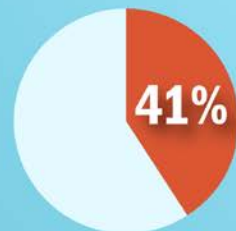


of trans people have been raped or assaulted by a romantic partner

30%



of trans women have been incarcerated



of trans people have attempted suicide



Trans women have a **1 in 12** chance of being murdered...



...or a **1 in 8** chance for a trans woman of color

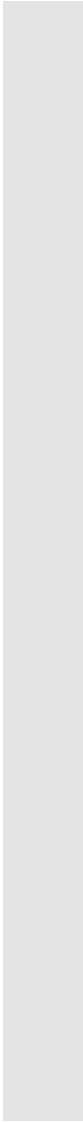
CISGENDER

A person whose gender identity corresponds with their biological sex assigned at birth (for example, assigned male at birth and identifies as a man).



GENDER EXPRESSION

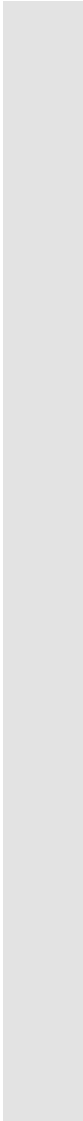
External display of one's gender through a combination of dress, demeanor, social behavior and other factors, generally measured on culturally-sanctioned scales of masculinity and femininity.





HETERONORMATIVITY

The assumption, in individuals or in institutions, that everyone is heterosexual and cisgender, and these identities are more “normal” or superior compared with other sexualities and gender identities. This leads to invisibility and stigmatization.



GENDER NON-BINARY

A catch-all term for gender identities outside of the gender binary and cisnormativity. People who identify as gender non-binary may think of themselves as one or more of the following, and may also define these terms differently:

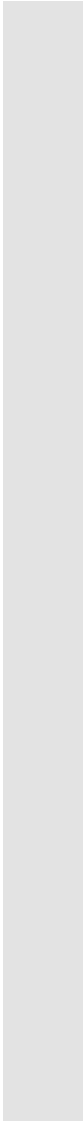
- aspects of both man and woman (bigender, pangender)
- neither man nor woman (genderless, agender)
- moving between genders (genderfluid)





MICROAGRESSIONS

The everyday verbal, nonverbal, and systemic insults and slights, whether intentional or unintentional, that communicate hostile, derogatory or negative messages targeting individuals based solely on their marginalized group membership.



QUEER

Generally used as an umbrella term to describe individuals who identify as non-straight or gender non-binary, and is sometimes used interchangeably with LGBTQ – “the queer community.”

- Queer was historically a derogatory term, and some may still find this term offensive. Always respect an individual’s own identity labels and definitions, and only use this term if the person/group has indicated the term first.

BEST PRACTICE

- Mind your pronouns and avoid misgendering
- Respect their identity and refrain from deadnaming
- Be appropriate and rein in your curiosity
- Be mindful of gender inclusivity
- If you make a mistake,
politely correct it and move forward!

GENERAL TIPS

- When talking or writing to or about your client, **use the language that your client has identified** as appropriate. Ask!
- If for some reason you genuinely cannot use the appropriate name, **talk to your client about it**.
- **Focus on what is truly relevant** to the case—not your client's medical history.
- If questions about medical history are necessary, **ask them politely and respectfully**.
- **Share information about your client's gender with the court** when it will be helpful to the case.

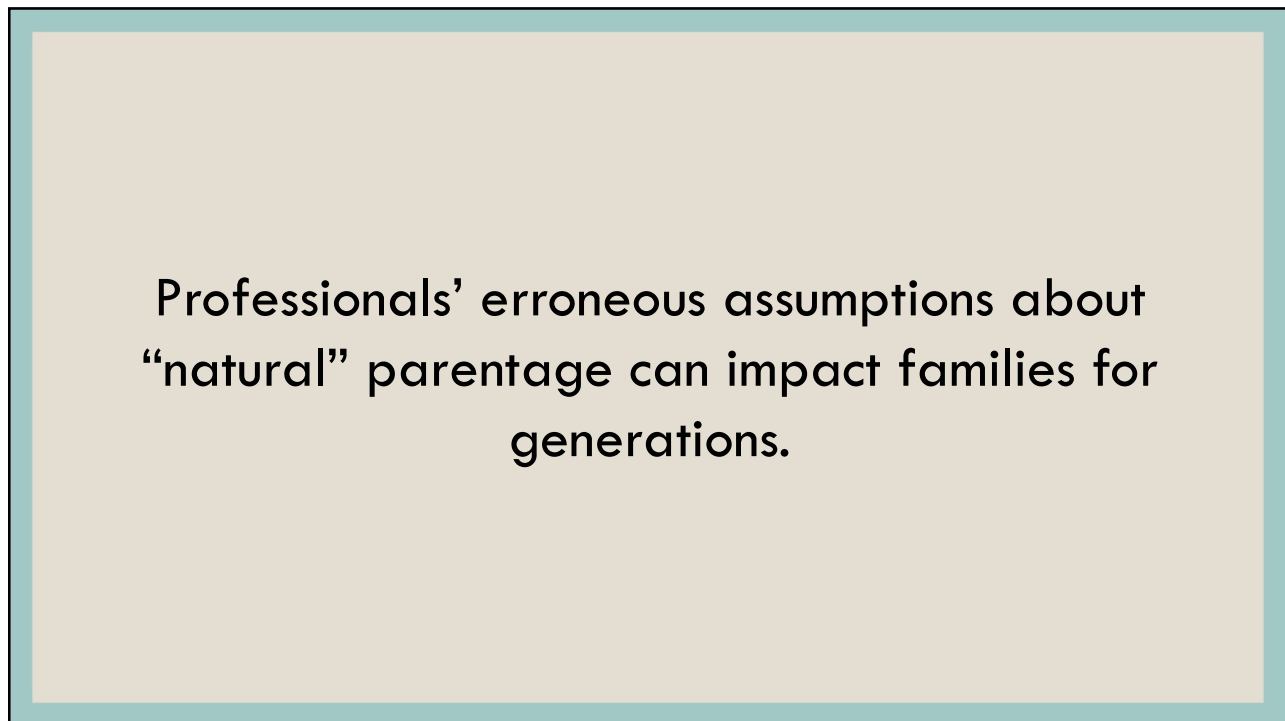
OFFICE IDEAS

What can I do in my office to promote a welcoming environment for LGBTQ+ clients?

- If appropriate, be sure to include materials showcasing diverse orientations and gender identities in the law
- Add pronouns to your signature line
- Make intake forms gender neutral
 - "Partner 1" and "Partner 2" instead of "Husband" and "Wife"
 - Children:
 - ☐ Male
 - ☐ Female
 - ☐ Gender non-binary



1



2

Diversity in family building affects parentage determination

Consider parent/child relationships in:

- Blended families
- Foster/adopt and open adoption families
- Single parent adoption + partner led families
- Intervivos and posthumous assisted reproduction
- Donor involved families
- LGBT, intersex and non-binary led families

3

Our personal stake in this subject



4

Parentage determines outcomes

In trust and estate drafting and administration

- Identifying heirs and beneficiaries
- Avoiding and resolving pretermitted heir contests
- Determining administrator priority
- Determining family allowance rights
- Construing instruments
- Standing and rights to notice (PC 48 interested persons)

Outside Probate

- Custody and support
- Reunification rights
- Wrongful death rights
- Citizenship and immigration rights (Dvash-Banks v. Pompeo)
- Social security survivorship benefit rights

5

Disposition begins with the legal parentage

- “Issue” of a person means all his or her lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent. (Prob Code § 50)
- “Child” means any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved. (Prob Code § 26)
- “Parent” means any individual entitled to take as a parent under this code by intestate succession from the child whose relationship is involved. (Prob Code § 54)
- “Heir” means any person entitled to take by intestate succession. (Prob Code 44)

6

Parent and Child Relationship in Probate

Probate Code 6450

A relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person in the following circumstances:

- (a) The relationship of parent and child exists between a person and the person's *natural parents*, regardless of the marital status of the *natural parents*.
- (b) The relationship of parent and child exists between an adopted person and the person's adopting parent or parents.

7

California's Default Natural Parent/Child Relationship Presumptions

8

Test Your Assumptions: True or False

- When a statute says “natural” child or parent, it means “biological.”
- DNA tests are admissible to prove heirship.
- A person subject to a court order to pay child support is a parent for heirship purposes.
- A child can have more than two “natural” parents.
- Children conceived posthumously by AI or IVF after a biological parent’s death may be excluded from the deceased parent’s line of succession.

9

California parentage laws are gender neutral

- In 2005, through a trilogy of cases involving lesbian led families, the California Supreme Court found that a child could have “two parents, both of whom are women.” (*Kristine H. v. Lisa R.* (2005) 37 Cal.4th 156, 166; *Elisa B. v. Superior Court* (2005) 37 Cal 4th 108, 119; See also *K.M. v. E.G.* (2005) 37 Cal 4th 130.)
 - In 2013, AB 1403 amendments first recognized possibility of more than two “natural” parents and gender-neutralized rebuttable parentage presumption language.
 - In 2018, AB 2684 extended the conclusive marital presumption to same-sex parents and gender-neutralized AI related genetic testing requirements.
- *Giving birth proves parentage absent gestational surrogacy agreement. (See Fam Code 7610 and 7962)

10

3 Paths to California Intestate Parentage

- Statutory “Natural” Parentage
- Adoption
- Equitable Adoption (limited/common law)

11

Section 6453: “the exclusive means for determining [parentage]” in intestacy proceedings, other than parentage by adoption. (*Estate of Chambers* (2009) 175 Cal.App.4th 891, 896)

12

Statutory “Natural” Parentage Probate Code § 6453

- A Family Code 7600 parentage presumption applies and is not rebutted. [PC 6453(a)]
- Posthumous conception complying with PC section 249.5 requirements. [PC 6453(c)]
- Absent a presumption a person can only establish parentage with:
 - (1) A court order entered during the parent's lifetime declaring parentage,
 - (2) clear and convincing evidence that the parent has openly held out the child as their own, or
 - (a) it was impossible for the parent to hold out the child as the parent's own and
 - (b) parentage is established by clear and convincing evidence.

(Ex. Biological father dies while child is in utero.
Cheyanna M. v. A.C. Nielsen Co. (1998) 66 Cal.App.4th 855, 877.)

[PC 6453(b)]

13

Can a DNA test prove heirship?

14

Genetic evidence is seldom relevant to prove or disprove heirship

After a putative parent's death, genetic evidence is only relevant to prove parentage when it was impossible for the parent to hold the child out as their own.

(See *Estate of Sanders* (1992) 2 Cal.App.4th 462, 477–478; see also *Estate of Britel* (2015) 236 Cal. App. 4th 127; Prob. Code § 6453)

15

Estate of Britel (2015) 236 Cal. App. 4th 127

- Biological parents are not, by definition, natural parents within the meaning of Probate Code section 6450(a).
- “Openly held out” requires a showing that “the father made an unconcealed affirmative representation of his paternity in open view.”
- The goal of intestacy is to effectuate Decedent's likely testamentary intent.

16

Child support orders demonstrate parentage in probate

- A court order entered during the parent's lifetime declaring parentage conclusively demonstrates parentage. (See PC 6453(b)(3)(1))
- A parent's failure to support a child or engage in any meaningful parent-child relationship is meaningless to their natural parent status when Section 6453(b)(1) applies. (*Estate of Shellenbarger* (2008) 169 Cal. App. 4th 894, 898-899.)
- But a parent who abandons their child during childhood and fails to provide support may lose their right to inherit through that child. (Prob. Code § 6452(a)(3).)

17

Family Code Section 7600 Definitions and Presumptions

18

Most Family Code section 7600 definitions are biology neutral

Fam Code § 7601. "Natural parent" and "parent and child relationship"

(a) "Natural parent" means a nonadoptive parent established under this part, **whether biologically related to the child or not.**

(c) This part **does not preclude a finding that a child has a parent and child relationship with more than two parents.**

19

Most parentage presumptions are marriage neutral

- The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents. (Fam Code § 7602)

20

Fam Code 7611 Natural Parent Presumptions

Parentage is presumed when:

- | | |
|--|--|
| <ol style="list-style-type: none"> 1) The section 7540 conclusive marital presumption or other marriage and attempted marriage presumption applies; 2) unmarried parent signed a section 7570 voluntary parentage declaration; 3) Marriage or attempted marriage + either <ol style="list-style-type: none"> a) birth certificate by consent, or b) Written or ordered support obligation; | <ol style="list-style-type: none"> 4) Section 249.5 applies; 5) orderly departure acknowledgement provisions apply; or 6) 7611(d) |
|--|--|

21

Donor Conceived Children FC 7613

- Donor conceived children are presumed children of a consenting intended non-biological parent;
- Both parents should consent in writing, but C&C evidence proves consent if the parents failed to make a writing;
- Donor to a licensed facility is not a natural parent, unless otherwise agreed by signed writing of donor and biological mother;
- Donor outside facility not a natural parent if agreed in writing before conception or C&C evidence of oral agreement;
- Donor and carrying woman can confirm donor's parentage by signed writing before conception;
- Egg donors can prove parentage by "satisfactory" evidence of intent to be a parent. (See FC 7962 re gestational surrogacy)

22

Section 7611(d) Relationship Presumption

The presumed parent receives the child into his or her home and openly holds out the child as his or her natural child.

23

Fundamentally, 'an individual who has demonstrated a commitment to the child and the child's welfare—regardless of whether he [or she] is biologically the [parent]—is entitled to the elevated status of presumed [parenthood].' (*In re T.R.*, (2005) 132 Cal.App.4th 1202, 1211–1212.)

24

What evidence rebuts a presumption?

25

Relational Presumption Rebuttal

- Family Code 7611 presumptions are rebuttable by clear and convincing evidence in appropriate actions. (Family Code § 7612(a))
- Appropriate has evolved
- An appropriate action is one when
 - the rebuttable parentage presumption of one conflicts with the parentage presumption of another, and
 - limiting a child to two parents would not be detrimental to the child. (Fam Code § 7612.)
- In that action, the presumption founded on “the weightier considerations of policy and logic” controls. (Fam Code §§ 7612(b) operative Jan 1, 2020 (2018 Cal AB 2684) and 7555.)
- Note: rebuttal is not based on genetic evidence.

26

Poly-parentage Now Recognized

- Court may find that more than two persons with a claim to parentage are parents if recognizing only two parents would be detrimental to the child.
- Detriment considerations:
 - the child's psychological needs for care and affection, and
 - who has assumed the role for a substantial period of time.
- “A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage.”
(Cal. Fam. Code § 7612(c))

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Poly-Parentage Example

- **C.A. v. C.P. (2018) 29 Cal. App. 5th 27**
 - Court found a child to have three statutory natural parents when husband knowingly accepted child born of wife's affair as his own.
 - The couple welcomed the biological child to form a relationship with the child, including overnight visits and accepting child support.
 - After conflict arose between the three parents the court found that all three shared a parental relationship with the child and all rights and responsibilities of the natural parent relationship.

28

Posthumous Conception

Probate Code 249.5

29

Conditions for heirship and beneficiary rights for children conceived posthumously

Child or representative must prove the following by clear and convincing evidence:

- a) The decedent specified in writing that his or her genetic material shall be used for the posthumous conception of a child
- b) Writing designates a person to control the use of the genetic material
- c) Designee issues notice within four months of death certification that the decedent's genetic material is available
- d) Embryo must be in utero within two years of the date of death certification
- e) No clones

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Remote Heirs and Standing

- Probate Code 11700 “any person claiming to be a beneficiary or otherwise entitled to distribution of a share of the estate” may file a Petition to Determine Persons Entitled to Distribution.
- Probate Code section 6453 does not incorporate the standing requirements of Family Code section 7630 that are required to determine a parent child relationship between living persons.

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Acknowledged biological grandchildren of absent fathers may be excludable from family lineage

- 7611(d) presumption does not include grandparent acknowledgements;
- Consider *Estate of Furia* (2002) 103 Cal. App. 4th 1
 - A putative grandparent's acknowledgment of a step-grandchild as her own grandchild, did not create inheritance rights based on equitable adoption doctrine.
- Default definitions of “issue” and “child” will not demonstrate entitlement. (Prob Code §§ 26 and 50)
- Prob Code 6453 (b)(3) may offer remedy in limited instances. (Parentage based on impossibility and clear and convincing evidence.)
- Drafting discovery priority

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Equitable Adoption

Statutory (Prob. Code 6454)

- Allows intestate succession through a stepparent or foster parent when
 - a) The relationship began during minority and continued throughout the joint lifetimes.
 - b) C&C evid that the stepparent would have adopted the person but for a legal barrier. (Prob. Code § 6454)
- Common law may apply if 6454 doesn't. (Prob. Code § 6455)

Common Law

- Elements:
 - Child was accepted and treated as a natural or adopted child,
 - Adoption was promised or contemplated but never performed
 - Decedent acted consistently with intent to adopt by forming a close and enduring and mutual familial relationship

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Does 7611(d) outdate equitable adoption?

- The doctrine of equitable adoption applies to those who, having filled the place of a natural born child, whom the decedent intended to but did not lawfully adopt. (*Estate of Ford* (2004) 32 Cal. 4th 160, 171.)
- Proof can include a decedent's representation to the claimant or to the community at large that the claimant was the decedent's natural or legally adopted child.
- No case law addresses whether Probate Code § 6454 precludes step parents as presumptive "natural" parents under § 6453.
- Unlike 7611(d), equitable adoption does not graft a child into the line of succession. (*Estate of Furia* (2002) 103 Cal. App. 4th 1)

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Practical Tips:

- Consider whether instrument is clear about inclusion or exclusion of biological and non-biological lineal descendants
 - Red flag “as defined in this instrument” language, as contrasted to statutory definitions.
 - Red flag “lineal descendant” language, as contrasted to “issue.”
 - Consider referencing Probate Code sections 26, 50, 54, 6450, 6453.
- If your client does not agree with California’s defaults, redefine all relevant terms in your instruments
 - “issue,” “child,” “children,” “parent,” “natural”
 - Clarify intention to substitute statutory defaults
- Use the redefined terms as intended throughout the document
- Identify recognized grandchildren and their issue
- Address ambiguities in pre-administration discovery and document review to avoid missing potential beneficiaries

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Does a PC 6453 parent child relationship exist?

PC 6453 Natural Child Options

Court order entered during lifetime

C&C Evid that parent openly held out child as own

Impossible to hold out and C&C evidence of parentage

FC 7600 presumption applies

FC 7600 Presumptions

Birth giver without surrogacy factors (FC 7610 and 7962)

Marriage and attempted marriage (FC 7540 and 7611)

Voluntary declaration of parentage (FC 7570; 7611)

Took child into home and openly held out as own (FC 7611(d))

Posthumous conception complying with PC 249.5 (FC 7611)

Donor conception complying with FC 7613

Orderly departure acknowledgment (FC 7611)

PC 6450 Adoption

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True or False

- When a statute says “natural” child or parent, it means “biological.” [False]
- DNA tests are admissible to prove heirship. [only if openly holding out was impossible]
- A person subject to a court order to pay child support is a parent for heirship purposes. [True, but deadbeat parents are excludable]
- A child can have more than two “natural” parents. [True]
- Children conceived posthumously by AI or IVF after a biological parent’s death may be excluded from the deceased parent’s line of succession. [True, PC 249.5 compliance is vital]

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