

February 2, 2018

**ELECTRONIC MAIL**

John W. McConnell, Esq.  
Counsel  
Office of Court Administration  
25 Beaver Street  
11<sup>th</sup> Floor  
New York, New York 10004

Re: Proposed Amendment of Various Nondiscrimination Rules of  
the Unified Court System to Include Gender Identity and Expression

Dear Mr. McConnell:

Thank you for the opportunity to comment upon the Unified Court System's proposal to amend various nondiscrimination rules to add gender identity and expression as protected classes. I write in support of that proposal. In my role as Chair and Commissioner of the New York City Commission on Human Rights, I see firsthand the profound impact that discrimination has on the lives of transgender and gender non-conforming ("TGNC") people. I applaud the Uniform Court System for taking steps to protect TGNC people from discrimination in our state's judiciary, and urge that the proposed amendments be adopted.

The Commission on Human Rights is the New York City agency charged with enforcing the City's Human Rights Law, which broadly prohibits discrimination in housing, employment, and public accommodations because of race, religion or creed, color, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, pregnancy, marital and partnership status, and status as a veteran or active military service member. It provides additional protections in employment based on caregiver status, arrest or conviction record, status as a victim of domestic violence, stalking, or sex offenses, unemployment status, and credit history. It also prohibits employers from inquiring about job seekers' salary history during the hiring process. In housing, it protects individuals from discrimination based on lawful occupation, the presence of children, and lawful source of income. The Human Rights Law also bars bias-based profiling by law enforcement and discriminatory harassment. It specifically includes gender identity and expression within the scope of its protections against gender discrimination.

Discrimination is an insidious and pervasive problem that impacts all aspects of TGNC people's lives.<sup>1</sup> Too often, the discrimination that they experience in the world around them continues inside the courthouse. In one study, 66% of transgender women reported that their transgender identity was raised as an issue in court when it was not relevant.<sup>2</sup> Thirty-one percent of transgender women reported that their transgender identity was disclosed *against their will* during a court proceeding.<sup>3</sup> These actions are just examples of what often occurs without the intention of harming TGNC people, though they constitute invasions of privacy that deny TGNC people access to justice. TGNC people, fearful of these invasions of privacy, often fear coming to court. Much work remains to be done to ensure nondiscriminatory access to the court system for TGNC people, and the Unified Court System's proposal is a laudable step in the right direction.

New York City has been at the forefront of efforts to combat discrimination against transgender people. In 2002, recognizing the profoundly debilitating impact of gender-based discrimination and the need to protect populations affected by such discrimination, New York City passed a transgender rights bill.<sup>4</sup> The bill stated that the Human Rights Law's prohibition on gender discrimination includes a prohibition on discrimination based on gender identity and expression.<sup>5</sup> The City's intent in amending the law was to state explicitly that the law prohibits discrimination against transgender people.<sup>6</sup>

More than a decade has passed since that time, and while we saw increasing public awareness during that period about the unique challenges that transgender people face with respect to discrimination, we continued to receive inquiries from the public regarding protections under the Human Rights Law. TGNC people and their advocates asked for clarification about their rights, while entities with obligations under the law asked for concrete examples of how the legal protections manifested in everyday life. To address the need, the Commission published *Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression*.<sup>7</sup>

---

<sup>1</sup> M. Somjen Frazer & Erin E. Howe, Transgender health and economic insecurity: A report from the 2015 LGBT Health and Human Services Needs Assessment Survey (2015), available at <https://goo.gl/dYpy9h> (finding, in a survey of 878 transgender and gender-non conforming New Yorkers, that nearly one-third reported being fired and 42% reported not being hired because of their gender identity); S. E. James, J. L. Herman, S. Rankin, M. Keisling, L. Mottet, & M. Anafi, Report of the 2015 U.S. Transgender Survey (2016), available at <https://goo.gl/535Z0G> (finding that 23% of respondents had been refused a home or apartment or were evicted from their home because of their gender identity or expression; 30% of respondents who had a job in the prior year reported being fired, denied a promotion, or experiencing some other form of mistreatment related to their gender identity or expression; 24% reported being verbally harassed in a place of public accommodation, including hotels, restaurants, buses, airports and government agencies).

<sup>2</sup> Lambda Legal, Protected and Served?, Executive Summary (2015), available at <https://goo.gl/BWd2um>.

<sup>3</sup> *Id.*

<sup>4</sup> Report of the Governmental Affairs Division, Committee on General Welfare, Intro. No. 24, to amend the administrative code of the city of New York in relation to gender-based discrimination (April 24, 2002), available at <https://goo.gl/zVsJ47>.

<sup>5</sup> N.Y.C. Admin. Code § 8-102(23).

<sup>6</sup> *Supra* note 4.

<sup>7</sup> Available at <https://goo.gl/mrZJyn>.

The guidance was needed to clarify the range of actions and situations that may constitute discrimination based on gender identity or expression under the Human Rights Law. I raise this guidance and the Commission's experience in preparing it to convey to the Unified Court System that a nondiscrimination policy is only a first step. Eradicating discrimination against TGNC people in the court system will require ongoing education and training at all levels of the judiciary to help people recognize the range of actions – from intentional disclosure of their transgender status to invasive questions about their private life or anatomy – that cause TGNC people to be discriminated against in courts.

I close by noting that individuals who believe they have experienced discrimination based on gender identity or expression may file a complaint with the Commission on Human Rights, or they may commence a civil action seeking redress under the Human Rights Law in various courts. Those courts are part of the Unified Court System, which makes this proposal even more important. Simply put, individuals should be able to enforce their right to be free from discrimination in a court that bars that discrimination. I commend the Unified Court System for its proposal to amend its nondiscrimination rules to include gender identity and expression, and urge that the proposal be adopted.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Carmelyn P. Malalis', is written over a large, stylized blue scribble that extends across the signature line and slightly above and below it.

Carmelyn P. Malalis