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Helping Lawyers Help Kids

OPENING DOORS

Article #3 in a series

Strong Relationship, Strong Advocacy: Tips for Building Relationships with LGBTQ Youth

by Andrea Houry

Knowing a youth's LGBTQ status is key to strong advocacy on behalf of LGBTQ youth in the child welfare system. As the child's lawyer, you won't know the youth's status unless you have built a solid relationship. The youth must trust you to share such personal information.

She won't make an appointment, come to your office, explain why she needs a lawyer, and provide supporting documents. You must forge a relationship with your client for trust to develop so that communication occurs. This article explains how to build solid relationships that lead to strong advocacy for LGBTQ youth.

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Q** Why does knowing a client's LGBTQ status matter for good representation?

I don't care who they are sleeping with, I'm just concerned with their safety and permanency.

I don't talk to my straight clients about their love life.¹

Sound familiar? Legal advocates may be reluctant to explore sexuality and gender identity. They aren't normally considered when representing youth in foster care and they may seem irrelevant to the court's focus on safety and permanency.

In some cases, a client's sexual orientation or gender identity will have

minimal impact on the lawyer's relationship with the child or advocacy. Consider a gay youth who has been out for a number of years and comes into foster care because his stepfather beat him with a belt because of his bad grades. His parents and extended family accept his sexuality. He attends a progressive school that has a policy against sexual orientation and gender identity discrimination. He is placed with supportive relatives and the family is working on reunification. Although the lawyer may want to ask a few questions to ensure his parents are supportive, the focus of the advocacy will be on reunification efforts such as parenting and anger management classes for the parents, and whether the youth feels safe returning to the home.

In most cases, however, the fact that a child has identified or thinks they may be LGBTQ will play a major role in their well-being. Consider a gay youth who is just beginning to experiment with his sexuality and comes into foster care because his mother beat him for hanging out with the wrong crowd. He is only out to some of his

close friends and he is scared of what his parents will think. He is placed in a group home where the other boys pick on him because they think he is gay. The social worker does not know of any LGBTQ friendly placements or counseling services. His grades are starting to fall because he can't concentrate in school. The youth's LGBTQ status impacts his placement, services the agency provides to him and his family for reunification, his school situation, and his over all well-being. A lawyer who does not establish a relationship where the youth is comfortable enough to talk about his

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About this Series

This article is the third in a four-part series prepared by the ABA's Opening Doors Project. This three-year project aims to increase the legal community's awareness of LGBTQ youth in foster care and the issues they face. It will provide advocacy tools to help lawyers successfully represent these youth and tools for judges to aid decision making. For more information about this project, visit www.abanet.org/child/lgbtq.shtml.

Topics addressed in this series are:

Understanding LGBTQ Youth Issues (July 2007)

Attitudes and Beliefs about LGBTQ Youth (September 2007)

Attorney-Client Relationships (this issue)

Representation Issues (February 2008 issue)

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sexuality can not zealously advocate for her client.

As stated in the first article in this series and demonstrated in this example, the child may have suffered discrimination, harassment, or confusion about why they differ from their friends. These issues and feelings impact the child's services, placement, and safety. Service providers, foster parents, social workers, and the legal community may have strong beliefs about sexual orientation and gender identity. Their feelings may impact the provision of services.

Lawyers are stronger advocates for their clients if they have essential information about their clients.

- Why is the court system involved?
- What happened in their home of origin?
- What negative school experi-

ences have they had?

- Where do they want to live?
- Who is important in their lives?
- Where is the best placement that will keep the youth safe?

For LGBTQ youth, sexual orientation and gender identity play a large role in answering these questions. The youth will be better protected and achieve permanency sooner if they share their LGBTQ status and any effects it has had on the youth's life with the lawyer. The way to get a youth to answer these questions, including those about sexual orientation and gender identity, is to be diligent, communicate effectively, keep confidences, advise properly, and advocate without bias.

FAQ Do I ask the youth straight out whether she is LGBT or Q?

In several listening forums for this project, professionals wanted to know how they would find out their client's LGBTQ status. Should they ask their client? Most youth responded that the lawyer needs to build a trusting relationship before raising the topic of sexual orientation and gender identity. Sometimes it is obvious and the child client is out and everyone knows. When that's not the case, lawyers must build the relationship and get the child to trust enough to disclose this potentially sensitive aspect of their life.

It's also important to realize that LGBTQ status may not define the child and other areas of the child's life should also take priority. Most LGBTQ youth in foster care just want to be treated like everyone else.

Relationship-Building Skills for Lawyers

The ABA Model Rules of Conduct discuss skills that lawyers must have when representing clients. These skills are especially important when the child is or may be LGBTQ.

Provide competent representation.² In addition to basic federal and state abuse and neglect laws, including the Adoption and Safe Families Act and the Foster Care Independence Act, lawyers who represent youth in the child welfare system should also be familiar with laws, regulations, and policies related to LGBTQ youth. For example, a child's lawyer should know:

- Whether a state has a law against discrimination or harassment on school property for sexual orientation or gender identity.³
- Whether a child welfare agency has a policy prohibiting discrimination by foster parents based on LGBTQ status of the youth.⁴
- Whether a child welfare agency has a specific policy on training social workers to address LGBTQ youth's needs.⁵
- If a child is going to be placed in a group setting, whether the setting has a nondiscrimination policy and whether they have restrictions on clothing or discussions about sexual orientation.
- If there are group care settings exclusively for LGBTQ youth.⁶

Beyond laws and regulations lawyers should know whether there are:

- Mental health services aimed at youth dealing with and disclosing their LGBTQ status.
- Service providers that are sensitive to LGBTQ youth.
- Foster homes that have a reputation for being open and sensitive to unique LGBTQ issues.
- Family counseling services that address reunification when the youth is LGBTQ.
- Parents and Friends of Lesbians and Gays (PFLAG) organizations for parents and friends.⁷

Having a solid knowledge base about issues likely to develop in the life of a child who is LGBTQ is key to developing a relationship with the LGBTQ child client.

Exercise diligence.⁸ For lawyers to adequately represent a client, the client has to trust the lawyer enough to share very personal information. A lawyer cannot represent someone he doesn't know well. Diligence and consistency helps establish that trust. A child will not initially trust the lawyer; the lawyer's job is gain that trust. One way to do that is to show commitment and dedication when advocating for the child regardless of sexual orientation or gender identity. When a child sees her lawyer working hard to give her a voice, the child is more likely to trust the lawyer.

An LGBTQ client is in a unique situation because she likely has not disclosed her LGBTQ status to her lawyer. Sometimes she will not have disclosed it to anyone. When the lawyer is aware of a client's LGBTQ status, trust is still important to learn whether her safety or well-being has been harmed by her LGBTQ status. This information may be embarrassing or difficult for a child client to disclose. If the child is in the process of coming out to her family, friends, and those around her, her situation may change and she may be able to discuss her options with her lawyer. Trust is essential.

Communicate with your client.⁹ Communication is also essential for a child to trust her lawyer. Lawyers must meet with every child to discuss the case in a safe, private environment, preferably not in the court hallway before a hearing. Meeting in a private place shows that the lawyer considers this case important and aids open communication.

Depending on the jurisdiction, the lawyer's initial meeting with a client may happen before or after the removal hearing. During the first meeting (and later meetings) the lawyer should show his openness by:

- Displaying materials or signs that signal it is safe to discuss LGBTQ issues (e.g., hate free zone sticker, LGBTQ pride flag, and LGBTQ ally button).

- Using neutral (nongender-specific) language when asking about the child's social life.
- Avoiding assumptions about LGBTQ status based on dress.
- If your client discloses LGBTQ status, assure her that you will keep her confidences (see next section) and thank her for trusting you with that information.

When a child sees her lawyer working hard to give her a voice, the child is more likely to trust the lawyer.

The lawyer should meet (or otherwise communicate) consistently with his client throughout the case. Most children who are not out are not likely to disclose their LGBTQ status after the first meeting. Ongoing contact and communication are essential in creating the trust necessary for a child to disclose her LGBTQ status. Even if the child doesn't explicitly come out to her lawyer, if there is continued contact and discussions about the child's life, school issues, weekend plans, social life, friends with whom she associates, the child may imply her LGBTQ status. Some lawyers may feel comfortable sharing a little about their own private life to demonstrate familiarity and build mutual trust.

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Q** **Where should you meet your client to build communication and trust?**

The *ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases* advise lawyers to meet with their clients in a safe environment that is most conducive to developing a good relationship.¹⁰ Most lawyers with high caseloads and little time choose to meet their clients in the courthouse, their offices, or a foster home. Although lawyers should engage their clients in these environments, estab-

lishing trust and a relationship is more likely if the meeting is in a location where the child can speak openly.

If your client is LGBTQ, investigate whether there is a LGBTQ-friendly environment to meet. Not only may this make your client comfortable but it shows you are comfortable discussing sexuality and gender identity with your client. Discuss this option

with your client and call the location in advance to ensure you can meet somewhere private. Some examples of places where LGBTQ youth congregate are:

- JASMYN¹¹
- Tennessee Youth Advisory Council Oasis Center¹²
- Seattle's LGBTQ Community Center¹³

There are places like these in most jurisdictions where youth will feel more comfortable discussing these sensitive issues.

Another way to pick a place to meet is to give your client options that include one LGBTQ friendly environment, one neutral place, and your office. This gives your client some control over where to meet and also shows your willingness to meet in an LGBTQ-friendly place.

Protect client confidentiality.¹⁴

Protecting your child client's confidences is one of the most important ways to establish trust. Youth often state that the lawyer should not disclose the youth's LGBTQ status without their permission.¹⁵ If you are the child's guardian ad litem, be clear about your role and whether your client can expect you to keep what she says confidential. If you are the child's lawyer, not only do you have an ethical duty to maintain your client's confi-

dences but your client will be more likely to give you information that will assist your advocacy if she trusts you to keep her confidences.

A child's LGBTQ status can be sensitive. Talk with your client about who you can talk to about her status. Do not disclose this status unless your client gives you permission. However, use your advisor role to help your client feel comfortable coming out if it would lead to a positive result in her case.

F A Q Do I disclose my client's LGBGQ status if it presents safety concerns?

If you have a traditional attorney-client relationship with your client you must adhere to Model Rule 1.6 and not disclose your client's status if she opposes absent several exceptions. Ideally, there are other ways to address the safety concerns.

- If your client is being harassed in her placement, you could talk to the social worker about a change of placement and not be specific about your concerns.
- If your client's peers at school are causing her harm, you could speak with the principal about the harassment.
- You could also ask the court to change your client's placement.

If alternative strategies do not rectify the safety concerns, the best course of action to maintain the integrity of your relationship with your client is to counsel her about consequences of not disclosing her status and what she may gain if she does disclose. Let her know that she may be able to change placements or get help at school if she shares her status and the negative treatment she is receiving. Discuss ways to limit the disclosure and allow your client to control how the information is disclosed.

If your client is unwilling to disclose and you feel strongly that she is at risk of physical harm, one exception

to maintaining confidentiality is to protect your client against substantial bodily harm. You should disclose this exception at the beginning of your representation so your client is aware of the possibility. You must make it clear to her why you are disclosing and attempt to minimize the number of people who know.

Serve as an advisor.¹⁶ Beyond advocating to a social worker or in a courtroom for a client, a lawyer representing a child must take on the role of advisor. The child lawyer's sole professional responsibility is to the child. The lawyer must provide advice on placement options, permanency plans, services, and visitation. The lawyer must base the advice on all the information and without bias (see next section).

For example, consider a 15-year-old girl is going to be placed in a home that is not accepting of lesbians. She tells her lawyer that she is attracted to girls in her class but she has not told anyone else. Her lawyer advises her that her she may have a chance to be placed with a family that accepts her sexual orientation if they tell the social worker. After fully discussing options, the lawyer receives the youth's permission to disclose her sexuality and she is placed with a more accepting family.

Sometimes what the child wants and what actually happens in the courtroom or with the social worker are not the same. It's the lawyer's job to make the child understand that although she should voice her opinion and share her experiences with her lawyer, she might not get exactly what she wants. For example, consider a teenager who comes out while in foster care. She wants to go home. Her mom, who physically abused her, has been taking parenting and anger management classes and also wants to have her daughter come home. But when she learns about her daughter's sexual orientation, she reacts with anger, and now isn't sure she wants her daughter home. The lawyer should

argue for return home but should tell his client that the judge may not order reunification if her mom isn't ready or until counseling is in place to ensure the child will be safe.

Avoid misconduct and prejudice.¹⁷ Comment three of the ABA Model Rules states that a lawyer violates the rules of professional conduct when, in the course of representation, he "knowingly manifests by words or conduct a prejudice based upon...sexual orientation...when such actions are prejudicial to the administration of justice."¹⁸

Lawyers are going to have their own prejudices (see "Exploring Attitudes about LGBTQ Youth in Foster Care," September 2007 *CLP*), however, in developing a relationship with a client who may be LGBTQ, a lawyer is restricted from allowing LGBTQ prejudice to impact that relationship. The lawyer should realize personal prejudices and ensure they do not interfere with developing relationships with clients.

Relationship-Building Skills for Judges

Unlike a lawyer, the judge has limited time and ability to develop a strong, personal relationship with a child. However, judges can take steps to promote a positive relationship between the court system and LGBTQ youth.

Ensure the best lawyer is appointed to represent the child.

One option is specialized lawyers. If the case involves a complex special education issue, the judge can appoint a lawyer who specializes or has knowledge of special education. If a child has a concurrent delinquency case, the judge can appoint a lawyer experienced in juvenile justice law. The same applies to LGBTQ clients. If the judge knows the child is LGBTQ, the judge should have a list of lawyers who have experience with LGBTQ clients and ask one of those lawyers to represent the child.

Establish a courtroom that is open and nonjudgmental. The judge should discuss sexual orientation and gender identity openly and know about placement and counseling options. If the child does not want everyone to know about her sexual orientation, the judge should respect that and not announce it in open court. The child will respect and like the judge if the judge respects her privacy and wishes. The judge sets the tone in the courtroom and should require everyone to respect the child and not allow bias to impact the outcome.

Conclusion

Establishing a relationship with a child client is the foundation for successful advocacy. LGBTQ clients may require more time and energy when establishing that relationship because of their past experiences. The child's lawyer must be willing to put in extra effort to relate to these youth and build trust so that they feel comfortable communicating. This improves the representation of LGBTQ clients.

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Endnotes

1. Opening Doors project listening forums, 2006; ABA Opening Doors National Attorney Survey, Fall 2006.
2. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. American Bar Association Model Rules of Professional Conduct Rule 1.1
3. For example, California passed the California Student Safety and Violence Prevention Act, A.B. 537, in 2000. This act protects students from harassment based on, among other things, sexual orientation and gender identity. S.B. 770, the Students Civil Rights Act, will become law on January 1, 2008. It standardizes all student discrimination protection laws in the California education system including discrimination based on sexual orientation and gender identity.

4. See, e.g., Cal. A.B. 458 § 1(f) (2003)(prohibiting foster parents from discriminating against children in their care on the basis of sexual orientation); Connecticut Department of Children and Families. "Ch. 30-9: Non-discrimination of LGBTQI Individuals." *Connecticut Policy Manual*, May 2004 (prohibiting discrimination against LGBTQ youth by foster parents).

5. See, e.g., Illinois Department of Children and Family Services. "Policy Guide 2003.02: Assessment and Treatment of Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Youths," February 3, 2003.

6. Green Chimneys in New York <www.greenchimneys.org>

7. Parents and Friends of Lesbians and Gays <www.pflag.org>

8. A lawyer shall act with reasonable diligence and promptness in representing a client. Model Rule 1.3. Reasonable care or attention to a matter <www.dictionary.law.com>

9. A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (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 or other law.

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Model Rule 1.4

10. Approved by the American Bar Association House of Delegates, February 5, 1996. <www.abanet.org/child/repstandwhole.pdf>

11. Jacksonville Area Sexual Minority Youth Network

12. Nashville, Tennessee

13. Pike Street, Seattle, Washington.

14 (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherances of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order. Model Rule 1.6

15. Youth opinions expressed at ABA Opening Doors project listening forums, 2006.

16. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Model Rule 2.1

17. It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. ABA Model Rule 8.4

18. Model Rule 8.4 Comment 3