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Ethics / Professionalism:

Cultural Competency Training Re LGBTQ Clients & Colleagues©

There are no dumb questions, BUT if you'd rather ask your question "anonymously," text the moderator at (505) 322-8313.

ABA Young Lawyers Division
 Fall 2019 Meeting
 New Orleans, LA
 October 5, 2019

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Moderator

- Ms. Shasta N. Inman (she/her/hers)
 - Text "anonymous" questions to (505) 322-8313

Panelists

- Ms. Sheila M. Wilkinson (she/her/hers)
- Ms. Andrea L. Rubin (she/her/hers)
- Mr. Brandon H. Robb (he/him/his)
- Ms. Jada Willis (she/her/hers)

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Rule 1.1: Competence

- ABA Model Rules of Professional Conduct
- "A lawyer shall provide **competent** representation of a client."
- "**Competent** representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."
- Also includes *cultural competency*

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Rule 8.4: Misconduct

- ABA Model Rules of Professional Conduct
- "It is **professional misconduct** for a lawyer to:"
- "(g) engage in conduct that the lawyer knows or reasonably should know is **harassment or discrimination on the basis** of race, sex, religion, national origin, ethnicity, disability, age, **sexual orientation, gender identity**, marital status or socioeconomic status in conduct related to the practice of law."

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Rule 8.4: Misconduct

- *Official Comment*
- ¶ 3 "**Discrimination and harassment** by lawyers in violation of paragraph (g) undermines confidence in the legal profession and the legal system."
- "Such discrimination includes **harmful verbal** or physical **conduct that manifests bias or prejudice** toward others."

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Rule 8.4: Misconduct

- *Official Comment*
- ¶ 4 "Conduct related to the practice of law includes
 - representing clients;
 - interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law;
 - **operating or managing a law firm or practice;**
 - Participating in bar association, business or social activities in connection with the practice of law."

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Rule 8.4: Misconduct

- Official Comment
- § 4 " . . . Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations."

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Cultural Competency

- More than "embracing diversity and promoting inclusion."
- Requires "the ability to adapt, work and manage successfully in new and unfamiliar cultural settings...where assumptions, values and traditions differ from those to which [the person is] accustomed."
- Sylvia Stevens, *Cultural Competency: Is There an Ethical Duty* (2009), <https://www.osbar.org/publications/bulletin/09jan/barcounsel.html>

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Cultural Competency

- More than *not being outwardly hostile*.
- The GOAL is to avoid being *unconsciously oppressive and discriminatory*...
- And help others learn to do the same!
- Ongoing process (not an endpoint) that begins with **developing awareness** that we lack knowledge of a particular culture.
- OVERHAUL our current cultural perspectives.

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LGBTQ Cultural Competency

- Medical research: health disparities in the LGBTQ community
 - Linked to social stigma, discrimination, oppression, denial of civil & human rights, and misunderstandings of the unique health needs they face.
 - Different needs require different care.
- HealthyPeople.gov, Lesbian, Gay, Bisexual, & Transgender Health: Overview (2016). <https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health>

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LGBTQ Cultural Competency

- Legal disparities linked to the same causes (in addition to discrimination and oppression in the law themselves).
- Purnell Model of Cultural Competence
 - * Awareness * Desire * Knowledge *
 - * Encounters * Skills *
- Lary Purnell, *The Purnell Model for Cultural Competence* 11:2 Journal of Multicultural Nursing & Health 9 (2005).
- Josepha Campinha-Bacote, *The Process of Cultural Competence in the Delivery of Healthcare Services* (2015). <http://transculturalcare.net/the-process-of-cultural-competence-in-the-delivery-of-healthcare-services/>.

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AWARENESS

"Anonymous" questions: (505) 322-8313.

- Self-Examine biases, feelings, **assumptions**, and **stereotypes**.
- Realization that preconceived opinions hinder our abilities to effectively (and competently) coordinate with others & provide legal services.
- Campinha-Bacote; Chikita Brown Mann, *Cultural Competence and the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Patient* Feb./March 2017 CareManagement 31-32.
- "Implicit Bias" & "Microaggressions"

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"Anonymous" questions:
(505) 322-8313.

AWARENESS

- Racial Microaggressions: "brief and commonplace daily verbal, behavioral, or environmental indignities, **whether intentional or unintentional**, that communicate hostile, derogatory, or negative racial slights and insults toward people of color."
- Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice* 62:4 American Psychologist 271 (2007).

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"Anonymous" questions:
(505) 322-8313.

LGBTQ AWARENESS

- Implicit biases & microaggressions regarding sexual orientation & gender identity ("SOGI": soh-jee).
- Rooted in the way society views gender, sex, & intimate relationships.
- Using appropriate language is a large part of competent knowledge and skill!
- LGBTQ = acronym & generalized grouping

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"Anonymous" questions:
(505) 322-8313.

KNOWLEDGE - ongoing

- Consideration, needs, and **terminology** are constantly changing!
- Our awareness & knowledge must change with it.
- MAKE SPACE for *all* persons to **self-identify** their sexual orientations and gender identities **when necessary to provide competent legal services.**
- Assuming identities = microaggression & discrimination / oppression

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How it Looks In Practice "Anonymous" questions: (505) 322-8313.

- Use (and ask for) Personal Pronouns!
 - She/her/hers, he/him/his, they/them/their and others, too.
 - Greetings: Ms., Mr., Mx.
 - Form design & normalized use.
- Human resources considerations
- Specific legal issues facing the LGBTQ community
 - Delaney, Robb & Rubin
 - SMWPLC

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Avoiding Gendered Language "Anonymous" questions: (505) 322-8313.

Gendered Language	#BreakTheBinary
Boys/Girls/Ladies/Guys	Y'all, Folks, People, Guests
Ladies & Gentleman	Honored / Distinguished Guests (or Jurors!)
Girlfriend/Boyfriend	Partner, date, significant other
Brother/Sister & Niece/Nephew	Sibling & Nibling
Husband/Wife & Mom/Dad	Spouse/Partner & Parent
How can I help you, sir/ma'am/miss?	How can I help you?
Can you ask him if he's registered?	Can you ask if they've registered?
Thank you, dear/honey.	Thank you.

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Inter-Activity Scenarios "Anonymous" questions: (505) 322-8313.

- h/t: National LGBT Health Education Center, *Learning to Address Implicit Bias Towards LGBTQ Patients: Case Scenarios* (2018).

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Inter-Activity Scenarios "Anonymous" questions: (505) 322-8313.

- A prospective client, Alisa, arrives for an initial consultation regarding divorce.
- The front desk asks for name & pronouns (she/her/hers).
- During the consultation, the attorney asks the name of Alisa's "husband."

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Inter-Activity Scenarios "Anonymous" questions: (505) 322-8313.

- Clarissa (she/her/hers) arrives for an initial consultation re: business formation.
- The attorney notices the "Trans Pride" button on Clarissa's purse & says:
- "At first I thought you were a real woman. Do you take hormones? What surgery have you had?"

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Inter-Activity Scenarios "Anonymous" questions: (505) 322-8313.

- Germaine is meeting his pregnant wife Ingrid to begin drafting estate planning documents.
- Germaine is transgender FtM.
- The attorney greets Germaine as Ingrid's "sister."

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Inter-Activity Scenarios "Anonymous" questions:
(505) 322-8313.

- Kevin, who identifies as Latinx and bisexual, is reviewing a law firm website.
- He sees few people of color in the stock photos, and all couples are portrayed as heterosexual.

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Inter-Activity Scenarios "Anonymous" questions:
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- 2L Fallon, who identifies as non-binary, is a summer associate dreading their weekly review with the managing attorney.
- The managing attorney has made comments like: "How is 'they' singular? It's impossible to keep up with all this diversity stuff!"

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Inter-Activity Scenarios "Anonymous" questions:
(505) 322-8313.

- Davis is an openly gay client of a Big Law firm, and one of the attorneys handling his case objects to same-sex relationships.
- During a meeting, the attorney is polite but not friendly, & he avoids eye contact by looking at his computer most of the time.

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Say What?!

"Anonymous" questions:
(505) 322-8313.

- I'm sure you didn't mean to be hurtful, but when you use that term . . .
- I know you were just trying to be funny, but I found that joke offensive because . . .
- I know you want to have a respectful and inclusive law practice; those kinds of statements aren't consistent with that.
- I don't believe that's true. I have researched this topic and . . .
- My experience has been different. In my experience . . .
- I used to use those terms, too, but then I heard they can be offensive because . . .
- Better language I've learned is . . .
- All of our clients deserve to be treated fairly & with respect.
- That behavior could be considered discriminatory.

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Additional Resources

- LGBT Rights - <https://www.aclu.org/issues/lgbt-rights#current>
- Movement Advancement Project - <http://www.lgbtmap.org>
- Debra Chopp, *Addressing Cultural Bias in the Legal Profession* 41:3 NYU Rev. of L. and Soc. Change 367-406 (2017), <https://repository.law.umich.edu/articles/1874>
- Rebecca Klar, *Merriam-Webster Add "They" as Nonbinary Pronoun* (2019), <https://thehill.com/blogs/blog-briefing-room/news/461755-merriam-webster-adds-they-as-nonbinary-pronoun?fbclid=IwAR0LjUk1vQ8M4Cz4fjOmYzNfb4stGt88F1V7raD5tsAe8MaTmQQBuOs8>
- AC Dumlao, *100 Ways to Make the World Better for Non-Binary People: Respecting People's Pronouns, and 99 Other Easy Things* (2018), https://www.vice.com/en_us/article/evkwm4/how-to-be-an-ally-to-non-binary-gender-non-conforming-people-support?utm_campaign=sharebutton
- Bachul Koul, *An Inclusive Customer Experience for Non-Binary People is Necessary* (2019), <https://www.retaildive.com/news/an-inclusive-customer-experience-for-non-binary-people-is-necessary/558190/>
- Dara Hoffman-Fox, "Ma'am" and "Sir" in a Transgender World: Part One (2013), <http://darahoffmanfox.com/maam-and-sir-in-a-transgender-world-part-one/?fbclid=IwAR37GPxVid0818oSuXhm8SK-7AIPcQWdZubmCTbR-YWbm0y844wbP-QKt8>

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Additional Resources

- Eliana Dockterman, "A Doll for Everyone": Meet Mattel's Gender-Neutral Doll (2019), https://time.com/5684872/mattel-gender-neutral-doll/?fbclid=IwAR378C5s8Ks7UA3GrTbYnAidF0cV1q0SsdaxnrJ7S953W1V9D_DLnbtY
- Gwendolyn Smith, *Just One Supportive Adult Cuts the Chance an LGBTQ Youth Will Attempt Suicide by 40%* (2019), https://www.lgbtqnation.com/2019/07/just-one-supportive-adult-cuts-chance-lgbtq-youth-will-attempt-suicide-40/?fbclid=IwAR3L788ZSwRGUAid6Qw-Sne6wbN2LYRaGibca28PluFvc2Lo6qbtgPUH_XToex6fIKSQ_facebook
- Nick Duffy, *Trans Boy Sues School After Teacher Demands He 'Prove' He Should Be in Male Bathroom* (2019), <https://www.pinknews.co.uk/2019/09/01/trans-boy-sues-school-teacher-demands-prove-male-bathroom-lawsuit-west-virginia/?fbclid=IwAR248KmylRg1dUtoDPxgjkCPzGGY71UEKbv-3X0McF-3Ng6R-4Pa1Ao8>
- Vic Parsons, *Academic Says Pregnancy is 'Masculine' as It's Revealed 22 Transgender Men Gave Birth in Australia Last Year* (2019), <https://www.pinknews.co.uk/2019/08/15/22-transgender-men-gave-birth-in-australia-last-year-pregnancy/?fbclid=IwAR35yF1JyvCUlqveyHQ8SS3q-Fs60QF1r-NaTWGmeaZXuqK-HRkpTPWnc>
- Aimee Lewis, *Transgender Man Who Gave Birth Loses Court Battle to Be Registered as Father* (2019), <https://edition.cnn.com/2019/09/25/uk/transgender-man-high-court-gbr-int/index.html?fbclid=IwAR3wFTvInCpNfj1Ye41J01J3rqAWP7brRHb30vHYAwgdsu7QhUmpaHDA>

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