



# LGBTQ Competency

Removing Closet Doors  
For Clients & Colleagues©

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of ABA YLD Affiliates  
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## Presenters

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Self-Intros



## Today's Take-aways

- ▶ Personal Education & Out-Group Contact (a.k.a. cultural competency)
- ▶ Intentionality around Intersectionality
- ▶ Understanding “Transgender” as an Umbrella Term
- ▶ Communication Equity (pronouns, non-gendered language, etc.)
- ▶ Being an Excellent Bystander

Shasta:

This presentation includes a lot of extra slides, as it has been reduced from a longer panel. The “Notes” version of the slides will be in your materials, which you can review on your own for more information.

Ryann: But there are 5 main Take-aways for Today [list].



## 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*

Shasta:

This slide show will be in the Materials, so you can refer back – we’re not going to go through in detail all of the relevant Rules of Professional Conduct today, but briefly, the Rules require competent representation (which arguably includes cultural competency), and the Rules outline how harassment & discrimination constitute professional misconduct.



## 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.”

[click through]



## 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.”

[click through]



## 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.”

[click through]



## 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.”

[click through]





## Personal Education & Out-Group Contact

- What is “Out-Group Contact”?
- How is this different or evolved from “cultural competency”?

Ryann:

Personal Education & Out-Group Contact.

What is “Out-Group Contact”? [discuss]

How is this different / evolved from “cultural competency”? [discuss]



## Competency / Personal Education

- ▶ 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>

[Ryann]



## Competency / Personal Education

- 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.

[Ryann]



## Competency / Personal Education

- ▶ 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>

Shasta:

While “cultural competency” has been around in the legal field for a while, there hasn’t been a huge push on LGBTQ-specific competency. These programs saw their earliest traction in the medical field within just the last ten years, as health care professionals realized health disparities among the LGBTQ patient population and knew they needed to begin caring for these patients a different way.



## Competency / Personal Education

- 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 \*
- Larry 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/>.

Shasta:

There are similar disparities related to the *legal* experiences of LGBTQ clients: linked to the same causes.

I suggest you review the next few slides on your own, as well as the provided 3-page article, after this webinar.

[notes only]

\*Legal professionals can adapt the health care field's *Purnell Model of Cultural Competence* to better understand how to (1) become **aware** of our cultural assumptions and lack of knowledge, (2) create a **desire** to learn information about cultures that are not our own, (3) actually learn that cultural **knowledge**, (4) appropriately and skillfully use that knowledge in specific interventions and interactions (or **encounters**), and (5) develop a level of comfort with the knowledge and **skills** so that we actually bring providing culturally competent legal services unconsciously and automatically.



## Awareness: Intentionality around Intersectionality

- ▶ 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”

Ryann:

You might have heard the term “implicit bias” through Harvard University’s *Project Implicit*. You might have also heard the term “microaggressions” before.

Confronting our implicit biases challenges us to self-assess unconscious assumptions about people based on their varying attributes. Our biases (both conscious and unconscious) can lead to oppression, discrimination, and unethical and unprofessional treatment of our clients and colleagues.



## Awareness: Intentionality around Intersectionality

- ▶ 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).

Shasta:

Implicit biases and microaggressions is frequently discussed in the context of race and ethnicity.

- Microaggressions as regarding sexual orientation and gender identity also exist. Personal Education & Out-Group Contact helps combat it!

Ryann:

It's important to think about all of this through an intentionally intersectional lens. Intersectionality is [define & discuss]

## Education on “LGBTQ”

- 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
- “Transgender” also an Umbrella Term

Shasta:

For example, LGBTQ is an acronym. It has morphed over time – with letters (and symbols!) being added and removed, and what the letters stand for being changed. The way used for this presentation: “LGBTQ” (stands for “lesbian, gay, bisexual, transgender, and queer/questioning”). The acronym has particular connotations meant to signal diversity, inclusivity, and acceptance. At the same time, it is also a generalized grouping of sexual orientations and gender identities that must be regarded separately and discretely in order to provide adequate (and competent) legal services to all individual members of the “LGBTQ” community.

Ryann:

“LGBTQ” does not even include every sexual orientation and gender identity – it’s an umbrella term that encompasses all persons who identify in a way that is not “heterosexual/straight,” “cisgender,” or within the “gender binary.”  
“Transgender” itself is also an Umbrella Term [further discussion]



## Personal Education & Intentionality

- 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

Shasta:

Common scenarios *without* cultural competency, personal education, and intentional intersectionality: assuming a person is a man or a woman based on how the person dresses, or assuming a woman client wearing a wedding ring has a husband. These are harmful microaggressions that hinder our ability to provide competent representation to our clients.



## How it Looks In Practice: Communication Equity

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

Ryann:

Personal pronouns include she/her/hers, he/him/his, and the gender-nonbinary and non-gendered “they/them/their,” as well as additional pronouns you might not have heard of before, such as ze/zir/zirs.

There’s also “rolling pronouns,” where someone uses alternating pronouns. For example, the singer Halsey uses rolling pronouns, wanting articles about her to go back and forth between “she” and “they” pronouns, to better reflect their fluid gender identity.

Shasta:

The point is that we should not rely on our own implicit biases and assumptions based on how a person looks, dresses, or acts (their “gender presentation”) by assigning them personal pronouns before they tell us which ones they use.

Instead, design intake and registration forms that allow people to designate their own personal pronouns. Forms can also permit selection of preferred greetings (like Ms., Mr., and the non-gendered Mx.).

To normalize informed use of correct personal pronouns, we encourage you to include your own pronouns in email signatures, name badges, and other materials.

Shasta:

NOTE OF CAUTION (and this is a new consideration I only recently learned): *requiring* disclosure of pronouns can be traumatic for individuals who are struggling with those closet doors, and who may not be ready to disclose pronouns. Forcing them to disclose pronouns may result in them self-identifying incorrect pronouns, causing further stress & anxiety about their identities.

## Avoiding Gendered Language

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.

Ryann:

It's difficult to #breakthebinary and use gender neutral language. Particularly for individuals who grew up in the South (where "Yes sir / no ma'am." has been frequently reiterated as polite & mandatory); the habits also are ingrained with military backgrounds.

If you find yourself automatically saying "Thank you, ma'am" – try replacing it with a "thank you – thank you" to start.

Shasta:

I want to take just a second to particularly want to point out some Policy points that the ABA YLD and ABA at large have recently passed. The policies and resolutions are in your materials. The ABA YLD & the ABA have in the last two years amended their Constitution & Bylaws to reflect only gender-nonbinary language, subbing all he/him & she/her pronouns for they/them. And the YLD has passed policy encouraging all Division entities and all affiliates to avoid gendered language in their materials as well.



## Be An Excellent Bystander: Inter-Activity Scenarios

- The next few slides outline common scenarios you may encounter in your practice, including issues around Communication Equity.
- Review the scenarios for tips on Being An Excellent Bystander.
- h/t: National LGBT Health Education Center, *Learning to Address Implicit Bias Towards LGBTQ Patients: Case Scenarios* (2018).

Shasta:

The next few slides, which will be in your materials, outline some common scenarios that you may encounter in your practice. We won't be going over these in detail, but we encourage you to review these slides, scenarios, and ways to Be an Excellent Bystander.

[Notes Only]

Hat tip to the National LGBT Health Education Center, as the following inter-activity scenarios were adjusted for the legal realm from the Center's training materials in the health care field.



## Inter-Activity Scenarios (1)

- 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."

The attorney's question assumes that Alisa is married to (and divorcing) a man. The attorney has shown implicit bias and reinforced a cultural stereotype that all people are heterosexual. It's incompetent legal representation because it could erase the client's experience and make her feel that the attorney might discriminate against her or not be aware of LGBTQ-specific issues in handling the case.

\*Rather than asking the client's "husband's" name, ask the name (and pronouns) of the client's "spouse."

[Note that marital status of a client is only relevant \*sometimes\* -- like when the client is seeking a divorce. For other types of legal matters, "are you married?" is not an appropriate question. Instead, ask for the person's honorific: Ms. Mrs. Mr. Mx., etc. – because that's all that's going to matter.]



## Inter-Activity Scenarios (2)

- 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?"

Clarissa came to the firm regarding the formation of her business. Except to the extent that the firm should know which pronouns Clarissa uses, her gender identity is irrelevant. Questions about hormones & surgery come from the attorney's curiosity rather than a need related to providing legal services. Also, by implying that Clarissa is a not a "real" woman, the attorney communicates to the client the view that she is "abnormal." This is offensive and discriminatory behavior.

\* Categorizing people by perceived gender is ingrained into our society and many people have confusion and curiosity. But we must avoid asking questions that are not relevant to providing legal services. Best practice is to be honest with the client about a lack of familiarity (to the extent relevant), while expressing a desire to work together and a willingness to learn.

[Note: Nobody is perfect and we all makes mistakes. Just apologize: "I am sorry for my mistake; I didn't mean to offend you." – and MOVE ON. Don't make it about you.

\*Also try asking the client upfront to let you know if you upset or offend them, so that you can apologize (and mean it!)]



## Inter-Activity Scenarios (3)

- 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."

The attorney assumed Germaine was Ingrid's sister based on Germaine's gender presentation (how he looked, compared to society's expectation of gender roles & stereotypes), and because society is heteronormative (meaning that heterosexual relationships are the "normal"). The encounter also dismisses reproductive technology options.

Unconsciously, the attorney equated Germaine's looks to be female, noted that Ingrid was pregnant, and assumed that Germaine was Ingrid's sister, not spouse.

The implicit biases were hurtful to the couple, and made Germaine feel invisible and unwelcome.

\* Don't make assumptions about the relationship between clients and the people they bring with them to appointments! Instead, "Hello, what is your name and what is your relationship to Germaine?"





## Inter-Activity Scenarios (4)

- 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!”

The managing attorney’s remarks send a message (intentionally or unintentionally) that Fallon’s gender identity is not to be taken seriously. The comments can be viewed as a rejection of their identity, which greatly diminishes any professional relationship between the summer associate and the managing attorney. The dismissiveness also reflects that the firm lacks appropriate training in LGBTQ client issues.

[Note: People have used the singular “they” for a long time when someone’s gender is unknown. 1881, Emily Dickinson: “Almost anyone under the circumstances would have doubted if [the letter] were theirs, or indeed if they were themselves.” In 2019, Merriam-Webster added the nonbinary definition of “they” to its dictionary; “they” is used to refer to “a single person whose gender identity is nonbinary” (not male or female). Merriam-Webster also declared the “singular they” its 2019 Word of the Year; the American Psychological Association endorsed the “singular they” as proper in scholarly writing; and the American Dialect Society honored the “singular they” as its Word of the Decade!]



## Inter-Activity Scenarios (5)

- 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.

When firm websites (or reading material in the lobby!) fail to reflect a variety of gender identities, sexual orientations, ages, races, ethnicities, and abilities, it can make clients feel invisible and unwelcome.

\* Firms can also make their offices more welcoming to LGBTQ persons by offering *at least* one all-gender restroom. [Every one of us has an all-gender restroom at our house!]



## Inter-Activity Scenarios (6)

- 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.

The attorney may feel proud of himself for agreeing to work on Davis's case "despite" Davis's sexual orientation, and for not saying anything to Davis that could be considered offensive or judgmental. BUT the attorney's tone and body language communicate disapproval, making Davis feel rejected. It's a microaggression that is discriminatory & oppressive.

\* LGBTQ cultural competency training is imperative. For this situation, the attorney needs to go beyond basic education and skills: he needs to self-reflect and become aware. Exercises in perspective might help him learn compassion: how would he feel if he was being represented and the attorney avoided eye contact with him because the attorney disliked people of x characteristic (that he has).



## Be an Excellent Bystander: Say What?!

- 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.

Ryann:

How to step in when you observe microaggressions, implicit bias, & discrimination.



## 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=IwAR0Y-JMdV0l8MCaz4ffjOmxZNZb6jstGt8BF1V7raD5tsAe8MaTmQQBuOs8>
- ▶ 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](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=IwAR37GPxVld081BoSuXxhmRSK-7AiPcQWdZubmCTbR-YWbm0yB64wbP-OKT8>



## Additional Resources

- ▶ Eliana Dockterman, 'A Doll for Everyone': Meet Mattel's Gender-Neutral Doll (2019), [https://time.com/5684822/mattel-gender-neutral-doll/?fbclid=IwAR378C5sBKs7UA3GrTbYdNAidPi0cVTkj0SsdaxnrJ7S953W1V9D\\_DLnbTY](https://time.com/5684822/mattel-gender-neutral-doll/?fbclid=IwAR378C5sBKs7UA3GrTbYdNAidPi0cVTkj0SsdaxnrJ7S953W1V9D_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=IwAR3ZL788ZSwRGUAid6Qw-Sne6wZbN2LYRaGilba6zi8PluFvc2Lo6qbtgPU#.XTtoex6fTKSQ.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=IwAR24BKmvLRg1dUTodPMxgJkCPlzGGYZfUEKBv-3X0McF-3Ng6R-f4Pa1Ao8>
- ▶ 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=IwAR3SyF1JyvCLiaveyHQBS53q-Fsf60OF1r-NaTWGmeaZXuqrK-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-intl/index.html?fbclid=IwAR3wFtVInCpNFj1Ye41J01j3rqAWP7brRHb30vHYAwgdsu7QhUmtpaH0AI>



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