

What is Cultural Competence?

Cultural Competence is the practice of “embrace[ing] the principles of equal access and non-discriminatory practices in service delivery.”¹ Cultural competence does not require a practitioner to be an expert in every culture they encounter. It is simply the ability to adapt your individual practice, legal or otherwise, to culturally diverse situations, rejecting cultural assumptions or stereotypes, and recognizing the way that different cultures may impact the delivery of services. Cultural competence has been integrated in the health care context for many years, “recognized as a critical component of effective health care practice.”² In the context of legal services, cultural competence serves as an important tool to enhance the quality of legal representation and fulfill the ethical obligations attorneys have towards their clients. Cultural competence is especially important when serving clients that are victims of elder mistreatment. Ensuring that cultural considerations do not impede representation protects victims and ensures that clients receive the best legal outcomes possible.

Culture encompasses many different identities. Culture is the way by which we see the world; it colors our interactions and provides intentions behind actions. Through culture we “make judgments about people based on what they are doing and saying...we are constantly attaching culturally based meaning to what we see and hear, often without being aware that we are doing so.”³ Cultural grouping can be based “on ethnicity, race, gender, nationality, age, economic status, social status, language, sexual orientation, physical characteristics” and many other factors.⁴ When two people from differing cultures communicate, there can be total misunderstanding, despite speaking the same language. For example, nodding can mean agreement with the speaker’s words or “simply indicate[] that the listener is hearing the speaker.”⁵ A culturally competent lawyer takes these different cultural characteristics as an opportunity to achieve greater understanding of their clients, not as an impediment to representation.

Cultural Competence, Diversity, and the Legal Community

While nationally our population becomes more diverse, the legal profession is woefully stagnant. Bureau of Labor Statistics data shows that Black, Hispanic, and Asian lawyers make up only 4.6%, 3.8%, and 2.9% of lawyers in the U.S., respectively.⁶ Only 34.4% of attorneys in the U.S. are women.⁷ In contrast, according to Legal Services Corporation (LSC) over 70% of their grantees clients nationwide are women.⁸ Nearly 20% of the clients served are over the age of 60,⁹ and over half of all clients served by LSC grantees were people of color.¹⁰

1 American Bar Association (ABA), “Cultural Competency and the Practice of Law in the 21st Century” by Aastha Madaan, available at: americanbar.org/groups/real_property_trust_estate/publications/probate-property-magazine/2016/march-april-2016/2016_aba_rpte_pp_v30_2_article_madaan_cultural_competency_and_the_practice_of_law_in_the_21st_century/.

2 Oregon State Bar Bulletin, January 2009, “Cultural Competency, Is There an Ethical Duty” by Sylvia Stevens, available here: osbar.org/publications/bulletin/09jan/barcounsel.html.

3 Race, Culture, Psychology, & Law, 2005 Sue Bryant & Jean Koh Peters, “Five Habits For Cross-Cultural Lawyering,” p. 48 mcgeorge.edu/Documents/Conferences/5_Habits_for_Cross_Cultural_Lawyering_Bryant_and_Peters.pdf.

4 *Id.*

5 *Id.* at 49.

6 American Bar Association (ABA), Legal Profession Statistics 2019, available at: americanbar.org/about_the_aba/profession_statistics/ and americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/cpsaat11.pdf.

7 *Id.*

8 Women make up 71.6% of LSC Clients nationwide, Legal Services Corporation “Grantee Client Demographics, 2018” available here: lsc.gov/state-data-grantee-client-characteristics.

9 *Id.*

10 *Id.* 52.3% of clients were Black, Hispanic, Asian or Native American.

Considering these statistics, it is highly likely that a legal services attorney will be interacting with a client of a different cultural background.

Implicit and Explicit Bias

Integral to the practice of cultural competence is acknowledging and addressing implicit bias. Bias exist where “rather than being neutral, we have a preference for (or aversion to) a person or group of people.”¹¹ Explicit bias is obvious. These biases are readily cognizant beliefs we hold. Explicit biases can be harmful but are easy to address as they are readily apparent.

Implicit biases are more nefarious as we are not readily aware of them. Implicit thoughts are those that “we are unaware of [] or [are] mistaken about their nature.”¹² Implicit cognition is marked by “traces of past experience [that] affect some performance, even though the influential earlier experience is not remembered in the usual sense—that is, it is unavailable [for] self-report[ing] or introspection.”¹³ Therefore, implicit biases are feelings or attitudes towards groups of people and stereotypes lodged deep within our minds which affect our reasoning without our conscious knowledge.¹⁴

These thoughts are especially dangerous because our “implicit biases often predict how we’ll behave more accurately than our conscious values.”¹⁵ When stereotypes of race, gender, and sexuality become implicit biases, despite insistence of neutrality, a lawyer can act in ways that reflect stereotypes, affecting the type of representation that can be given. For example, implicit biases regarding Black people, i.e. “[B]lack people are more likely to be welfare recipients” can effect an attorney’s representation of their Black clients even if they consciously do not believe this stereotype.

Implicit biases affect everyone. They are buried within the minds of us all, and the first step in addressing them is acknowledging that we all have them. One of the best ways to acknowledge this is taking an implicit bias test. [Harvard University’s Project Implicit](#) has various Implicit Association Tests where individuals are shown various words and pictures that they must group as fast as possible. The test shows the implicit biases that you have, with tests on weight, race, disability, sex, age, and various other categories.¹⁶ The second step in addressing implicit biases is to develop strategies to identify possible biases and the ways they may impede representation. Lawyers have developed several strategies to achieve this goal and put them into practice.

Cultural Competence in Practice

Civil legal aid attorneys can use many different techniques to integrate culturally competent practices into their work. Lawyers Sue Bryant and Jean Koh Peters outlined several strategies in their influential essay “Five Habits for Cross-Cultural Lawyering”.¹⁷ Bryant and Koh outline five habits to effectively implement culturally competent lawyering: (1) Identifying cultural similarities and differences between lawyer and client; (2) identifying how the cultural differences and similarities influence interactions with the client; (3) exploring different interpretations of client behavior; (4) identifying tasks that may bring up difficult cross-cultural communications and possible communication problems, and (5) identifying places where the lawyer-client relationship could derail and brainstorming corrective actions if derailment occurs.¹⁸

11 “Introduction to Implicit Bias”, National Implicit Bias Network, implicitbias.net/implicitbias.

12 *Id.*

13 *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, Greenwald and Banaji, 102 Psychol. Rev. 4, 5 (1995) faculty.washington.edu/agg/pdf/Greenwald_Banaji_PsychRev_1995.OCR.pdf.

14 “Introduction to Implicit Bias”, National Implicit Bias Network, implicitbias.net/implicitbias.

15 *Id.*

16 Harvard University Project Implicit, implicit.harvard.edu/implicit/takeatest.html.

17 Race, Culture, Psychology, & Law, 2005 Sue Bryant & Jean Koh Peters, “Five Habits For Cross-Cultural Lawyering,” p. 48 mcgeorge.edu/Documents/Conferences/5_Habits_for_Cross_Cultural_Lawyering_Bryant_and_Peters.pdf.

18 *See generally Id.*

These strategies highlight the multifaceted nature of culturally competent work. A lawyer can benefit from practicing any of the habits, but of distinct importance are habits one and two; identifying cultural differences and how they influence interactions with the client. These practices directly address implicit biases. When a lawyer is able to perceive a client, not as a cultural monolith, but as a person, they can connect and understand them on a deeper level. This level of insight brings down cultural walls, allowing a lawyer to take a deeper dive into the way culture may impede understanding between the two parties, enhancing representation.

Bryant and Peters encourage attorneys to first brainstorm similarities and differences between the lawyer and client including race, ethnicity, language, age, physical characteristics, role in family, and marital status.¹⁹ Listing differences “help(s) the lawyer make conscious the less obvious similarities and differences that may enhance or interfere with understanding” and “allows lawyers to see clients as individuals with personal, cultural, and social experiences that shape the clients’ behavior and communications.”²⁰ After creating the list, the lawyer can then analyze how these differences influence how information will be perceived in the case (by the lawyer, client, opposing counsel, and the court).²¹ These strategies bring implicit biases to the forefront while also providing the opportunity to face them and mitigate their impact.

Ethical Considerations

Further, lawyers arguably have an ethical obligation to perform their practice in a culturally competent manner. The [American Bar Association’s Model Rules of Professional Conduct](#) require a lawyer to provide competent representation to clients and “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”²²⁻²³ Without a full consideration of the way culture may restrict understanding between lawyer and client, a lawyer cannot provide competent representation.

Additional Resources

There are many resources available to legal services attorneys to enhance their cultural competency. A selection of the most useful is provided below:

- National Council on Aging Webinar: [Approaching Clients with Cultural Humility](#)
- [Five Habits for Cross-Cultural Lawyering](#)
- [PSJD, Cultural Competency Resources](#)
- [National Implicit Bias Network](#)
- [Harvard University Project Implicit, Implicit Bias Tests](#)

Please contact ConsultNCLER@acl.hhs.gov for free case consultation assistance. Sign up for our email list and access more resources at [NCLER.acl.gov](https://www.ncler.acl.gov).

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19 *Id.* at 52.

20 *Id.*

21 *Id.* at 54.

22 See ABA Model Rules of Professional Conduct 1.1 and 1.4, available here: [americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/).

23 While every state bar association adopts their own Rule of Professional Conduct, many states use the ABA rules as a template for their own rules.