CULTURAL COMPETENCY: WORKING WITH LGBTQ CLIENTS

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1:30 – 3:00 p.m.

CLE Credit:

1.0 Professional Practice; 0.5 Ethics
(Transitional and Non-transitional)

I. Introduction (5 minutes)
II. Poverty in LGBTQ communities (10 minutes)
III. LGBT Terminology Basics? (15 minutes)
IV. Working with Clients- Culturally Competent Interviewing Skills (20 minutes)
V. Capturing LGBTQ Clients – TIME (5 minutes)
VI. Unique Legal Issues for LGBTQ Community Members (20 minutes)
VII. Barriers to Accessing Court Systems for LGBT people (5 minutes)
VII. Questions and Answers (10 minutes)
CULTURAL COMPETENCY: Working with your LGBT Clients

COORDINATING ATTORNEY

LGBT LAW PROJECT JUNE 26, 2014

LEGAL ISSUES AFFECTING LGBTQ COMMUNITIES

• What will be covered today?
  • LGBTQ Terminology Basics
  • Poverty in LGBTQ Communities
  • Unique Legal Issues for LGBTQ Community Members
  • Interviewing techniques for your LGBT clients and beyond...
  • Barriers to Court access
  • TIME, capturing the number of LGBT clients and intakes

WHAT IS “CULTURAL COMPETENCY?”

• The integration and transformation of knowledge about individuals and groups of people into specific standards, policies, practices, and attitudes used in appropriate cultural settings to increase the quality of services and representation, thereby producing better outcomes for our clients.
• The ability to think, feel, and act in ways that acknowledge, respect, and build upon
• ethnic, socio-cultural, and linguistic diversity
**COMPETENCE & ETHICS: NEW YORK RULES OF PROFESSIONAL CONDUCT**

- **Competence:**
  1. A lawyer should provide competent representation to a client...
  2. A lawyer shall not intentionally: 
     1. Fail to seek the objectives of the client through reasonably available means permitted by law and these Rules; or
     2. Prejudice or damage the client during the course of the representation except as permitted or required by these Rules. **Rule 1.1**

- **Misconduct:**
  “A lawyer or law firm shall not... unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, sex, disability, marital status or sexual orientation.” **Rule 8.4**

**Cultural Identity:**

- Intersecting identities:
  - Mother
  - POC
  - Woman
  - Transgender
  - Catholic
  - Puerto Rican
  - Bisexual
  - LGBTQ
  - POC
  - Catholic

**LGBTQ CULTURAL COMPETENCY**
LEGAL ISSUES AFFECTING LGBTQ COMMUNITIES

- What will be covered today?
  - LGBTQ Terminology Basics
  - Poverty in LGBTQ Communities
  - Some unique Legal Issues for LGBTQ Community Members
  - Interviewing techniques for your LGBT clients and beyond…
  - Barriers to Court access
  - TIME, capturing the number of LGBT clients and intakes

LGBTQ TERMINOLOGY BASICS

- L = Lesbian
- G = Gay
- B = Bisexual
- T = Transgender
- Q = Queer or Questioning
- GNC = Gender Non Conforming
- I = Intersex
- SOGI = Sexual Orientation and Gender Identity

Sexual Orientation
- Affectional and/or sexual attraction to another person. It can be considered as ranging along a continuum from same-sex attraction only at one end of the continuum to opposite-sex attraction only at the other end.
**LGBT TERMINOLOGY BASICS**

**Gender Identity** - The gendered self, i.e., one's internal view of one's gender. One's identity can be one of the two institutionally recognized sexes (male, female) or something else entirely. Scientific consensus increasingly recognizes that gender identity is a component of sex.

**Gender expression** - Outward presentation that communicates gender to others. Includes clothing, body language, behavior.

We all have a gender identity and expression. Both of which may or may not be consistent with the sex we were assigned at birth.

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**LGBT TERMINOLOGY BASICS**

• **Transgender** - An umbrella term for anyone whose gender identity and/or expression is different from the sex that person was assigned at birth.

• Transgender can encompass many different identities. A few examples - transsexuals, cross-dressers, FTM, MTF.

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**LGBT TERMINOLOGY BASICS**

**Transwoman**

• Assigned sex at birth was male, but identifies as female.

• Refer to as woman, use female pronouns and client's chosen name.

**Transman**

• Assigned sex at birth was female, but identifies as male.

• Refer to as male, use male pronouns and client's chosen name.
LGBT TERMINOLOGY BASICS: GENDER & SEX

Many Factors Constitute an Individual's Sex
- SELF IDENTIFIED SEX (aka GENDER IDENTITY)
- Chromosomes
- Gonads
- Internal Morphology
- External Morphology
- Hormones
- Phenotype
- Sex assigned at birth/ rearing

Source: Greenberg, Julie A., The Road Less Traveled: The Problem with Binary Sex Categories

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LGBT TERMINOLOGY BASICS

- **Intersex**: Anyone with non-congruent sex factors.
- **Example**, someone who has XXY chromosomes.
**LGBT TERMINOLOGY BASICS**

- **Outdated / Offensive Terminology**
  - “Sexual Preference” – old terminology, implies there is a choice in who you are attracted to.
  - “Tranny” – derogatory term for transgender person.
  - “Transgendered” – transgender is appropriate (no ‘ed’).
  - “Queer” – reclaimed by many in the LGBTQ communities; do not use unless client uses the term. Often refers to youth who are questioning their SOGI.
  - “Homosexual” – old terminology used in the DSM when being attracted to the same sex was considered a mental illness.
  - “He-she” – an offensive way to identify someone whose gender is not known; an offensive term to describe a transgender person.
  - “Hermaphrodite” – Clinical use only, use “intersex.”

**POVERTY IN THE LGBTQ COMMUNITIES**

- **Myths about LGBTQ People**
  - All same sex couples are wealthy and educated.
  - LGBT people do not have kids.
  - Gay people are not affected by homelessness.
  - Gay people fit into stereotypes we see in the media.
  - All transgender people are sex workers.
  - All transgender people have a mental illness.
  - Bisexual people cannot be monogamous.
  - LGBT people are not religious.
  - LGBT people live in urban areas and not county, rural, or suburban settings.

**NEW YORK DEMOGRAPHICS: 2000 CENSUS DATA**

- Estimated 50,854 same-sex couples
- 32% non-white
- 592,337 GLB individuals
- Live in every county of the state
- Constitute 1.3% of coupled households and 0.7% of all households statewide.
- 20% of same-sex couples are raising children under 18
- Same-sex parents have fewer financial resources to support children than married parents
- 40% own their home (vs. 68% of married parents)
POVERTY IN THE LGBT COMMUNITIES

• **Williams Institute Reports** on poverty in the lesbian, gay and bisexual communities
  - LGB people are more vulnerable to poverty than heterosexual people.
  - Children living in same-sex households are almost twice as likely to be in poverty than children in married opposite-sex households.
  - Up to 40% of homeless youth are LGBT.

• **Welfare Warriors Research Collaborative, Queens For Economic Justice**
  - 35% of LGBT adults surveyed reported living in homeless shelters, and 7% on the street.

DISCRIMINATION = POVERTY

• **Cumulative Discrimination**
  Sixty-three percent (63%) National Transgender Discrimination Survey participants had experienced a serious act of discrimination — events that would have a major impact on a person’s quality of life and ability to sustain themselves financially or emotionally. Almost one quarter (23%) of respondents had experienced at least three such events. These events included the following:
  - Lost job due to bias
  - Eviction due to bias
  - School bullying/harassment so severe the respondent had to drop out
  - Teacher bullying
  - Physical assault due to bias
  - Sexual assault due to bias
  - Homelessness because of gender identity/expression
  - Lost relationship with partner or children due to gender identity/expression
  - Denial of medical service due to bias
  - Incarceration due to gender identity/expression

INACCESSIBLE SYSTEMS, for example:
  - Lack of relationship recognition excludes same-sex couples from tangible economic benefits.
  - Inability to obtain government ID that matches lived gender and name.
  - Medicaid and Health Insurance exclusions of transgender care.

WORKING WITH YOUR CLIENTS:

INTERVIEWING SKILLS
GENDER NEUTRAL LANGUAGE

- Do not assume someone’s sexual orientation or gender identity.
  - “Who lives in your household?”
  - “What is your spouse’s name?”
  - “What is your preferred gender pronoun?”

- Substitute a person’s name for the pronouns he/she and him/her.
  - “Where does Robin live?” (instead of “Where does she live?”)

WHAT TERMS SHOULD I USE?

- Mirror your client’s language

- If it is not clear, or your client uses terms you do not understand – ask for clarification:
  - “Would you prefer I use ‘he’ or ‘she’?”
  - “Would you prefer I call you by your preferred/chosen name ‘Susan’ instead of ‘Paul’?”
  - “What does ‘A.G.’ mean?”

- If you make a mistake, apologize and more on

SAFETY DISCUSSION

- Do others know about your client’s sexual orientation or their gender identity?

- Do not “out” your client if they have not given you permission, either to people in your office or in court proceedings.

- Create a safe space for your clients to ‘come out’ to you.

- Explain safety concerns if your client decides to come out and do safety planning. For example, in court explain that you may have to ‘educate the court’ on transgender issues, or that the judge may not use the correct gender pronoun, etc.)
TIME

- **Name** –
  - Legal /Preferred “client A.K.A.”
- **Sex**
  - Use the gender pronoun used by the client
  - “Which gender pronoun do you use?”
- **Marital Status** –
  - Married, Domestic Partner, Civil Union.
- **“Is Gay”**
  - check if caller/client is LG or B
- **“Transgender”**
  - check if caller/client identifies as transgender
- **REMINDER:** SO and GI are two different categories!
DOMA

LEGAL ISSUES:
RELATIONSHIP RECOGNITION

  - Prevents federal legal recognition of same sex marriages, or other same sex marriage type relationships.
  - Allows states to avoid full faith and credit, states are NOT required to recognize out of state marriages, etc.

• **Mini-DOMA**’s
  - Over 30 states have amended their State Constitutions to exclude same sex couples from marriage or marriage recognition.
  - 10 states have passed legislation excluding same sex couples from marriage.

DEFENSE OF MARRIAGE ACT

• What Changes?
  • Federal Recognition of all valid marriages:
    - Place of Residency v Place of Celebration
  • Marriage is now allowed in California, b/c the lower Court’s decision that Proposition 8 was affirmed.
  • MORE litigation:
    -
LEGAL ISSUES: HOUSING

- Housing
  - Definition of “family has expanded”
  - NYCHuman Rights Law Title 8, protects against discrimination based on sexual orientation, and gender identity.

- Homeless Same-Sex Families
  - DHS policy defining “Family”
  - DHS policy on gender identity in shelter placement (in handout materials)

LEGAL ISSUES: HOUSING DISCRIMINATION

- New York City Human Rights law explicitly prohibits housing discrimination based on Gender Identity.
- U.S. Department of Housing and Urban Development
  - Regulation clarifying that definition of family includes LGBT families. See 77 Fed. Reg. 5662 (Feb., 2012).
- N.Y.C. Shelter Policy allows transgender guests to stay in shelter consistent with their Gender Identity.

LEGAL ISSUES: EMPLOYMENT LAW

- Family Medical Leave Act (FMLA)
  - Federal law – up to 12 weeks of unpaid, job-protected leave per year to care for certain family members
  - Workers can take leave to care for child of same sex spouse so long as in loco parentis

- Employment Discrimination Based on Sexual Orientation
  - State and City Human Rights Laws explicitly prohibits.
  - Federal Law Does not.

- Employment Discrimination Based on Gender Identity
  - N.Y.C. Human rights law explicitly prohibits.
  - As do ordinances in Albany, Binghamton, Buffalo, Ithaca, New York City, Rochester, Syracuse, Albany, Schenectady, Suffolk, Tompkins, & Westchester Counties.
  - New York State Human Rights Law & Title VII, the federal employment discrimination law implicitly prohibits. See e.g., Macy v. Holder, Appeal No. 0120120821, Agency No. ATF-2011-00751.
LEGAL ISSUES
PUBLIC ASSISTANCE

• HRA Procedure
• Outlines NYC Human Rights Law
• Temporary Assistance Sourcebook 2/13/08, Civil Rights, Section O
  • http://www.otda.state.ny.us/main/programs/temporary-assistance/tasb.pdf
• SONDA (Sexual Orientation Non Discrimination Act)
• GENDA (Gender Expression Non-Discrimination Act) – has not passed.
• 10 NY jurisdictions have statutes that protects against discrimination based on gender identity and/or expression:
  • Albany, Binghamton, Buffalo, Utica, Rochester, Syracuse, New York City, Counties: Suffolk, Tompkins, Westchester

BARRIERS TO ACCESSING COURT SYSTEMS

• Transphobia
  • Can include a fear of harassment, discrimination against, or disapproval and refusal to accept transgender people.
  • General safety concerns.
• Homophobia
  • Includes fear of harassment, discrimination against, or disapproval and refusal to accept people who identify as gay, lesbian or bisexual.
  • Fear of being "outed" as transgender, gay or lesbian
  • Many people in the LGBTQ communities have been victims of hate crimes and do not feel comfortable disclosing their identities in open court.
• Fear of being "outed" as transgender, gay or lesbian
  • Court personnel and judges not using a transgender person's preferred name or gender pronoun.
• Use of court systems by abuser to further abuse/intimidate victim
  • Outing a transgender person, humiliating them or getting them arrested.
  • Fear of encountering discrimination with choice of bathroom where there is not non-gendered bathroom access.
• Bathroom Access
  • Fear of encountering discrimination with choice of bathroom where there is not non-gendered bathroom access.

HANDLING BIAS FROM JUDGE, COURT PERSONNEL OR OPPOSING COUNSEL

Rules of the Chief Administrator of the Courts, 22 NYCRR §100.3

• A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.
• A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy which is based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, or other similar factors as issues in the proceeding.
STAYING INFORMED

- LeGaL: LGBT Bar Association of Greater New York
  - www.le-gal.org
- National Gay and Lesbian Task Force
  - www.thetaskforce.org
- NYS LGBT Listserv for legal services/services providers
  - http://service.wnyc.com/email.signup?email=signup
- Lambda Legal
  - www.lambdalegal.org
- Transgender Legal Defense & Education Fund
  - www.tldf.org
- National Center for Lesbian Rights
  - www.nclrights.org
- Queers for Economic Justice
  - www.qfej.org
- Sylvia Rivera Law Project
  - www.srlp.org

THANK YOU!

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Glossary of LGBTQ Terms:

✓ Ally: is someone who advocates for and supports members of a community other than their own.

✓ Birth Sex or sex assigned at birth: the sex, male or female, that is noted on an individual’s birth certificate issued at birth.

✓ Bisexual: refers to a person who is attracted to, and may form sexual and romantic relationships with men or women.

✓ Cis Gender: refers to a person whose gender identity matches the sex assigned to them at birth.

✓ Gay: refers to a person who is emotionally, romantically, and sexually attracted to people of the same gender. Sometimes, it may be used to refer to gay men only but in some contexts it is still used as a general term for gay men and lesbians. It is usually preferred over the term “homosexual.”

✓ Gender: The set of meanings assigned by a culture or society to someone’s perceived biological sex. Gender is not static and can shift over time.

✓ Gender Identity: is an individual’s internal view of their gender; one’s own innermost sense of being male or female. This will often influence name and pronoun preference for an individual.

✓ Gender Identity Disorder (GID): is a diagnosis listed in the DSM-IV where an individual has a strong persistent cross-gender identification, which is the desire to be, or the insistence that one is, of the opposite sex of that assigned at birth. In addition, the individual must be evidencing clinically significant distress or impairment in social, occupational, or other important areas of functioning. GID is a controversial term as many transgender people do not believe they have a “mental disorder.” This is similar to when “homosexuality” was included in the DSM as a mental disorder – it was finally removed in 1986 in the DSM-III.

✓ Gender Expression: refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior speech, etc. A person’s gender expression may vary from the norms traditionally associated with his or her assigned sex at birth. Gender expression is a separate concept from sexual orientation and gender identity.

✓ Gender Non-conforming: having or being perceived to have gender characteristics and/or behaviors that do not conform to traditional or societal expectations. Gender non-conforming people may or may not identify as LGB or T.

✓ Genderqueer: is a term of self-identification for people who do not identity with the binary terms that have traditionally described gender identity (for instance, male or female only). Also see gender non-conforming, queer and transgender.
✓ **Heterosexism**: is the assumption that all people are or should be heterosexual. Heterosexism excludes the needs, concerns, and life experiences of lesbian, gay and bisexual people, while it gives advantages to heterosexual people. It is often a subtle form of oppression which reinforces realities of silence and invisibility.

✓ **Heterosexuality**: is a sexual orientation in which a person feels physically and emotionally attracted to people of the “opposite” sex.

✓ **Homophobia**: is the irrational hatred and fear of homosexuals or homosexuality. Homophobia includes prejudice, discrimination, harassment, and acts of violence brought on by fear and hatred. It occurs on personal, institutional and societal levels.

✓ **Internalized Homophobia**: is the fear and self-hatred of one’s own homosexuality that occurs for many individuals who have learned negative ideas about homosexuality throughout childhood. One form of internalized oppression is the acceptance of the myths and stereotypes applied to the oppressed group.

✓ **Intersex**: Intersexuality is a set of medical conditions that feature congenital anomaly of the reproductive and sexual system. That is, intersex people are born with "sex chromosomes," external genitalia, or internal reproductive systems that are not considered "standard" for either male or female.

✓ **LGBTQ**: is an acronym commonly used to refer to lesbian, gay, bisexual, transgender, and either queer or questioning.

✓ **Lesbian**: refers to a woman who is emotionally, romantically, and sexually attracted to other women.

✓ **Preferred Gender Pronouns**: are the way people refer to themselves and how they prefer to be referred in terms of gender. If it is unclear which pronoun to use, simply ask “which pronoun do you prefer,” and consistently use that pronoun.

✓ **Questioning**: refers to a person, often an adolescent, who is exploring or questioning issues of their own sexual orientation or gender identity or expression.

✓ **Queer**: is a historically derogatory term for a gay man, lesbian, or gender non-conforming person. The term has been widely reclaimed, especially by younger LGBTQ people, as a positive social and political identity. Some LGBTQ community members still find queer an offensive or problematic term.

✓ **Sexual Orientation**: refers to a person’s emotional, romantic, and sexual attraction to person’s of same and/or different gender.

✓ **Straight**: is a person (or adjective to describe a person) whose primary sexual and affectional orientation is toward people of the opposite gender.

✓ **Transgender**: may be used as an umbrella term to include all persons whose gender identity or gender expression do not match society’s expectations of how an individual of that gender should behave in relation to his or her gender.
✓ **Transsexual**: is a term for someone who transitions from one physical sex to another in order to bring their body more in line with their innate sense of their gender identity. Transsexual people have the same range of gender identities and gender expression as cis-gendered people. Many transsexual people refer to themselves as transgender.

✓ **Transgender Woman**: is a person who was assigned the sex of male at birth and who now identifies as female.

✓ **Transgender Man**: is a person who was assigned the sex of female at birth, and who how identifies as male.

✓ **Transition**: is an individualized process by which a transgender person starts living as the gender she or he identifies as. A transition does not have to include medical or surgical operations.

✓ **Transphobia**: is a reaction of fear, loathing and discriminatory treatment of people whose identity or gender presentation (actual or perceived) does not ‘match,’ in the societally accepted way, the sex they were assigned at birth.