

Understanding Barriers to Equal Access to Justice from the Unrepresented Litigant's Perspective

June 13, 2025, 3:45-4:45 p.m.

Individuals with low incomes often face barriers when trying to navigate the legal system without representation. Things like lack of access to technology, limited English proficiency, and financial constraints make it hard for people to accomplish their goals. Using hypotheticals based upon real experiences, this interactive program will explore common barriers to the courts and legal representation for people with very low incomes. The program will also discuss access to justice implications of the Pennsylvania Rules of Professional Conduct.

1-hour Ethics Credit

Presenters/Facilitators:

Kristine Bergstrom, Esq., *Executive Director, Neighborhood Legal Services*

Barbara Griffin, Esq., *Director, Pro Bono Center*

Hon. Nicola Henry-Taylor, *Allegheny County Court of Common Pleas*

Olivia Hilborn, Esq., *Staff Attorney, Pro Bono Center*

Katy McKee, Esq., *Supervising Attorney, Pennsylvania Health Law Project*

Agenda:

- I. Introduction, Overview, and Instructions
- II. Navigating barriers – an interactive exercise
- III. Professional ethics considerations and tips for attorneys
- IV. Conclusion

Presenters/Facilitators:

Kristine Bergstrom, Esq., *Executive Director, Neighborhood Legal Services*

Kris Bergstrom began her tenure as Executive Director of Neighborhood Legal Services in January 2022 becoming the fifth chief executive in the organization's 57 year history and its first female leader. Kris is responsible for overseeing the administration, programs, fund development and strategic planning of the organization. Prior to being named NLS Executive Director, Kris practiced Elder and Consumer Law in NLS's Pittsburgh Office since 2018. Before joining NLS, Kris was the Directing Attorney for the Las Vegas Branch of Nevada Legal Services. While working for Nevada Legal Services, Kris started a Criminal Record Sealing Program that assisted thousands of Nevadans in sealing their criminal records in order to obtain better employment and housing. Kris also created and taught a series of Community Legal Education Classes and Self-Help Clinics throughout Southern Nevada in order to help pro se litigants navigate through the legal system. Kris also worked at the Disabilities Rights Center in New Hampshire from 2004-2007. Kris earned her J.D. from Cornell Law School in 2004. She was the winner of the 2004 Stanley E. Gould Prize for Public Interest Law and the 2006 winner of the Sarah Betsey Fuller Social Justice Award. She received a Bachelor of Arts in English from the University of Puget Sound in 1998.

Barbara Griffin, Esq., *Director, Pro Bono Center*

Barbara Griffin is an attorney and Director of the Pro Bono Center of the Allegheny County Bar Foundation, where she creates, manages, and supports programs that provide free legal services to individuals and families with low incomes facing legal issues that threaten their basic human needs. Although she began her career in private practice at both large and small law firms, Ms. Griffin has mostly been a public interest lawyer. She served as an Assistant Attorney General for the State of Texas, where she provided general counsel to the agency and wrote advisory opinions on a wide range of issues. She worked for the Texas House of Representatives writing reports and summaries of legislative developments on public policy issues for state legislators. She served as a law clerk to the Honorable Eugene Strassburger in the Civil Division of the Allegheny County Court of Common Pleas. Ms. Griffin was also an Associate Clinical Professor at Duquesne University School of Law, teaching the Civil Rights Clinic.

Hon. Nicola Henry-Taylor, *Allegheny County Court of Common Pleas*

Nicola Henry-Taylor is a judge in the Family Division of the Allegheny County Court of Common Pleas. She is an active member of the Pennsylvania Bar Association, volunteers with Pennsylvanians for Modern Courts and collaborates with the Pittsburgh Legal Diversity and Inclusion Coalition. She has served the Allegheny County Bar Association as its Secretary, and as Chair of the Women in the Law Division, Chair of the Diversity Collaborative, and Chair of the Judiciary Committee. She is an active member of the Homer S. Brown Division.

Olivia Hilborn, Esq., *Staff Attorney, Pro Bono Center*

Olivia Hilborn is a Pro Bono Center Staff Attorney at the Allegheny County Bar Foundation, where she provides free legal services to individuals with low incomes and promotes pro bono initiatives throughout Allegheny County. Ms. Hilborn's primary responsibility is managing the Pittsburgh Pardons Project, which assists individuals with low incomes in preparing gubernatorial pardon applications. Ms. Hilborn also represents clients in free, uncontested divorces through the Divorce Law Project, monitors calls on the Pro Bono Center's legal helpline, plans and participates in community legal clinics, and takes on Protection From Abuse cases through Neighborhood Legal Services' PFA Pro Bono Project.

Katy McKee, Esq., *Supervising Attorney, Pennsylvania Health Law Project*

Katy McKee is a Supervising Attorney in PHLP's Pittsburgh office. Prior to coming to PHLP, Katy worked for Neighborhood Legal Services, working with seniors and people with disabilities. She is a past recipient of the ACBA YLD Outstanding Young Lawyer Award, the ACBF Lorraine M. Bittner Public Interest Attorney Award, the ACBF Law Student Pro Bono Award, and the PBF Civil Legal Aid Attorney of the Year Award. Katy is a graduate of the College of Wooster and the University of Pittsburgh School of Law. Katy believes that access to health care is a human right, and wants to ensure that PHLP's clients are able to access the health care services and supports they need to live their lives to the fullest.

ELIGIBILITY GUIDELINES FOR
FREE AND REDUCED-FEE LEGAL SERVICES 2025
(Effective Jan. 15, 2025)

These guidelines are based upon the 2025 federal poverty guidelines set by U.S. Department of Health and Human Services. Guidelines are based upon amount of gross yearly or monthly income.

Household size	100% Poverty		125% poverty ¹		187.5% Poverty ²		200% Poverty		250% Poverty ³	
	Monthly	Yearly	Monthly	Yearly	Monthly	Yearly	Monthly	Yearly	Monthly	Yearly
1	\$1,304	\$15,650	\$1,630	\$19,563	\$2,445	\$29,344	\$2,608	\$31,300	\$3,260	\$39,125
2	\$1,763	\$21,150	\$2,203	\$26,438	\$3,305	\$39,656	\$3,525	\$42,300	\$4,406	\$52,875
3	\$2,221	\$26,650	\$2,776	\$33,313	\$4,164	\$49,969	\$4,442	\$53,300	\$5,552	\$66,625
4	\$2,679	\$32,150	\$3,349	\$40,188	\$5,023	\$60,281	\$5,358	\$64,300	\$6,698	\$80,375
5	\$3,138	\$37,650	\$3,922	\$47,063	\$5,883	\$70,594	\$6,275	\$75,300	\$7,844	\$94,125
6	\$3,596	\$43,150	\$4,495	\$53,938	\$6,742	\$80,906	\$7,192	\$86,300	\$8,990	\$107,875
7	\$4,054	\$48,650	\$5,068	\$60,813	\$7,602	\$91,219	\$8,108	\$97,300	\$10,135	\$121,625
8	\$4,513	\$54,150	\$5,641	\$67,688	\$8,461	\$101,531	\$9,025	\$108,300	\$11,281	\$135,375

*If you notice any errors in this chart, please contact Olivia Hilborn at 412-402-6641 or ohilborn@acba.org.

¹ Neighborhood Legal Services limit for most cases. Divorce Law Project limit.

² IOLTA-funded program limit.

³ Limit for Pro Bono Center and Pittsburgh Pro Bono Partnership programs. Some programs have lower eligibility limits.

The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans

April 2022

Low-income Americans do not get any or enough legal help for **92% of their substantial civil legal problems.**



Low-income America

About 50 million Americans have household incomes below 125% of the poverty threshold – including more than 15 million children and nearly 8 million seniors.*



Civil legal needs

Civil legal needs typically involve securing and protecting basic needs, such as housing, education, health care, income, and safety.



The justice gap

The justice gap is the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.

*Data source: U.S. Census Bureau's Current Population Survey, 2021 Annual Social and Economic (ASEC) Supplement.

The 2022 Justice Gap Study

The Legal Services Corporation (LSC) is pleased to share findings from its 2022 Justice Gap Study. This study provides a fresh assessment of low-income Americans' civil legal needs and the extent to which their legal needs are met. Additionally, its timing allows an examination of the justice gap in the context of the COVID-19 pandemic, which has had disproportionate effects on this population. The study leverages LSC's "intake census" conducted among LSC-funded legal aid organizations as well as a nationally representative survey of more than 5,000 adults conducted by NORC at the University of Chicago using its AmeriSpeak® Panel.

The Prevalence of Civil Legal Problems

Most low-income households have dealt with at least one civil legal problem in the past year – and many of these problems have had substantial impacts on people's lives.



3 in 4 (74%) low-income households experienced 1+ civil legal problems in the past year.

2 in 5 (39%) experienced 5+ problems, and 1 in 5 (20%) experienced 10+ problems.

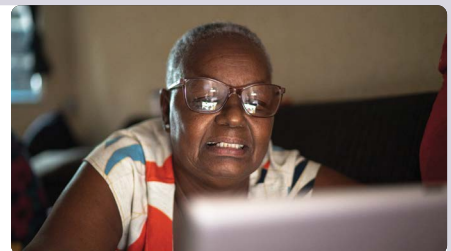
Most common types of problems: consumer issues, health care, housing, income maintenance.

1 in 2 (55%) low-income Americans who personally experienced a problem say these problems substantially impacted their lives – with the consequences affecting their finances, mental health, physical health and safety, and relationships.

Data source: 2021 Justice Gap Measurement Survey.

Seeking and Receiving Legal Help

Most low-income Americans do not get any or enough legal help for their civil legal problems – and the cost of legal help stands out as an important barrier.



1 in 4 problems: They seek legal help for only 1 out of every 4 (25%) civil legal problems that impact them substantially.

1 in 2 (46%) of those who did not seek legal help for one or more problems cite concerns about cost as a reason why.

1 in 2 (53%) does not know if they could find and afford a lawyer if they needed one.

92% = survey-based justice gap: They do not get any or enough legal help for 92% of the problems that have had a substantial impact on them.

Data source: 2021 Justice Gap Measurement Survey.

Comparing Income Groups

Compared to low-income Americans, those with higher incomes have fewer barriers to getting legal help.*



They seek help more often: People with higher incomes are more likely to seek legal help for problems with substantial impact (32% vs. 25% of problems).

Their justice gap is smaller: They are less likely to go without any or enough legal help for problems with substantial impact (78% vs. 92% of problems).

They have better access: They are more likely to be confident that they could find and afford a lawyer if they needed one (73% vs. 45%).

They believe in the system: They are more likely to believe that they can use the civil legal system to protect and enforce their rights (59% vs. 39%).

*These statements compare people at or above 400% of FPL with people at or below 125% of FPL.
Data source: 2021 Justice Gap Measurement Survey.

Reports from the Field

LSC-funded organizations do not have enough resources to meet the current demand for civil legal aid in the communities they serve.*



1.9 million requests for help: Low-income individuals approach LSC-funded organizations for help with an estimated 1.9 million civil legal problems in a year.

1 in 2 requests turned away: These organizations must turn away 1 out of every 2 (49%) requests they receive due to limited resources.

1 in 2 problems fully resolved: Even when they can provide some assistance, these organizations have the resources to fully resolve only 1 out of every 2 (56%) problems.

1.4 million problems = intake-based justice gap. All in all, LSC-funded organizations are unable to provide any or enough legal help for an estimated 1.4 million civil legal problems (or 71% of problems) that are brought to their doors in a year.

*These statements are only about problems that are eligible for legal assistance from LSC-funded organizations.
Data source: LSC's 2021 Intake Census.

Geographic Focus

● West

11.1 million people below 125% of poverty.
72% of households had 1+ civil legal problems in the past year.

▨ Midwest

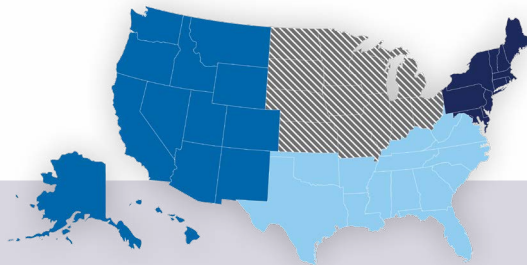
9.2 million people below 125% of poverty.
75% of households had 1+ civil legal problems in the past year.

● Northeast

7.4 million people below 125% of poverty.
74% of households had 1+ civil legal problems in the past year.

● South

22.2 million people below 125% of poverty.
75% of households had 1+ civil legal problems in the past year.



Data sources: 2021 Justice Gap Measurement Survey and the U.S. Census Bureau's Current Population Survey, 2021 Annual Social and Economic (ASEC) Supplement.

Special Focus

65+ Seniors

7.6 million seniors below 125% of poverty.
70% of senior households had 1+ problems in the past year.

Veterans

1.6 million veterans below 125% of poverty.
76% of veteran households had 1+ problems in the past year.

Children (<18 yrs)

15.2 million children below 125% of poverty.
83% of households with children had 1+ problems in the past year.

People in Rural Areas

8 million people below 125% of poverty in rural areas.
77% of rural households had 1+ problems in the past year.

People with High Housing Costs

15 million households with high housing costs have annual incomes below \$25,000.
84% of households with high housing costs had 1+ problems in the past year.

Survivors of Domestic Violence

98% of households with recent domestic violence had 1+ problems in the past year (in addition to their problems involving domestic violence).

Data sources: 2021 Justice Gap Measurement Survey and various other sources (see Section Two in full report).

Impact of the COVID-19 Pandemic

33% of low-income Americans experienced at least one civil legal problem linked to the COVID-19 pandemic in the past year.

The types of civil legal problems most likely to be attributed to the COVID-19 pandemic are those involving income maintenance, education, and housing.



Income maintenance

32% of income maintenance problems are pandemic-related.

Examples: difficulty accessing unemployment insurance or receiving COVID stimulus payments.



Education

31% of education problems are pandemic-related.

Examples: difficulty attending school or accessing technology to participate in virtual learning.



Housing

27% of housing problems are pandemic-related.

Examples: problems involving foreclosure, eviction, and safe living environments.

Additionally, the data suggest that income disparities in the justice gap between low- and higher-income Americans are exacerbated for pandemic-related civil legal problems. See Section Five in the full report for a fuller discussion of this noteworthy finding.

Data source: 2021 Justice Gap Measurement Survey.

About the Legal Services Corporation

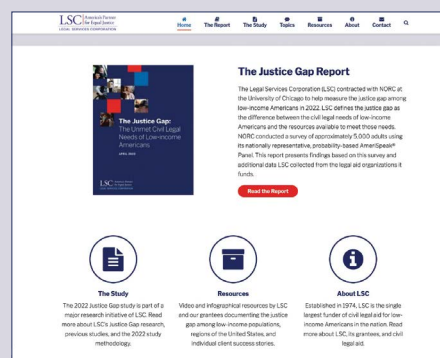
The Legal Services Corporation (LSC) was established by Congress in 1974 to promote equal access to justice. LSC operates as an independent 501(c)(3) non-profit corporation and currently serves as the nation's single largest funder of civil legal aid for low-income individuals. More than 90% of LSC's total funding is currently distributed to 132 independent non-profit legal aid programs with 877 offices across the country. LSC's mission is to help provide high-quality civil legal aid to low-income people. To learn more about LSC, please visit www.lsc.gov.

Acknowledgments

LSC acknowledges the generous support of the William and Flora Hewlett Foundation, the John D. and Catherine T. MacArthur Foundation, the Andrew W. Mellon Foundation, and the Reynolds Family Foundation for funding for this study. Funders do not determine the research findings of LSC research projects. LSC would also like to acknowledge NORC at the University of Chicago for conducting the 2021 Justice Gap Measurement Survey using its probability-based AmeriSpeak® Panel. Finally, LSC acknowledges Sarah John of SJ Democracy for her contributions as project management and data analyst; Mary C. Slosar of Slosar Research, LLC for her contributions as writer and research consultant; and Dino Stoneking of Stoneking Studios for his contributions to report design.

Visit justicegap.lsc.gov

Visit LSC's justice gap study website to download and print the report, see videos about the justice gap and the impact of civil legal aid, learn more about the study's methodology, and access additional summaries of study findings related to the pandemic, U.S. regions, subpopulations of interest, and other topics.



PUBLIC SERVICE

6.1 Voluntary Pro Bono Publico Service

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

Comment:

[1] The ABA House of Delegates has formally acknowledged “the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services” without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This Rule expresses that policy but is not intended to be enforced through disciplinary process.

[2] The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

[3] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.

[4] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

6.5 Nonprofit and Court Appointed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Comment:

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rule 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not

preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

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(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

Comments

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Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.



Cultural Competency in the Practice of Law

A monolingual Spanish-speaking single mother. A young professional who recently emigrated from India. A victim of domestic violence seeking help at a pro bono clinic. These are just a few clients I have assisted over the last few months. In an increasingly diverse society, cultural competency is becoming imperative to the practice of law.

The legal industry is primarily a service-based industry, and the foundation of the practice of law is communication with clients. Understanding the needs of clients and the cultural differences that may arise during communications with clients can make delivering legal services more effective.

With the American Bar Association's mandate to improve access to lawyers and legal services for those of moderate incomes, cultural competency will continue to play an important role in the future of the legal profession, both for attorneys and for clients. With these guiding principles in mind, below are some practices and policies that every lawyer can learn and implement in an effort to become culturally competent.

“Cultural competency is achieved by identifying and understanding the needs and behaviors of individuals seeking help.”

Learn what “culture” means.

According to the [National Center for Cultural Competence](#) (NCCC), cultural competence “embraces the principles of equal access and nondiscriminatory practices in service delivery.” Cultural competency is achieved by identifying and understanding the needs and behaviors of individuals seeking help. More importantly, the practice of cultural competency is driven in service delivery systems by a client's preferred choices, not by culturally blind or culturally free interventions.

In order to be mindful of the cultural differences and similarities in clients, it is important to be cognizant of the characteristics that can

define different cultures. Culture is

[often described](#) as the combination of a body of knowledge, a body of belief and a body of behavior. Culture not only refers to a person's superficial features, such as their appearance, but also to a person's identity, language, thoughts, communications, actions, customs, beliefs, values and institutions that are often specific to ethnic, racial, religious, geographic or social groups.

Although appearances and linguistic differences are clear indicators of the need to be culturally competent, other characteristics such as personal identification can be difficult to ascertain. One example of this is simply the way that we refer to people. If a client introduces herself in a specific way or using a certain name, keep that in mind. Be mindful of the way a client refers to himself or herself, and if you are unsure of how to refer to him or her, ask. Do not assume.

Recently, in a seminar that I attended about providing legal counsel to homeless youth, one of the speakers mentioned that in her nonprofit practice, she found that young homeless clients are more likely to feel comfortable if they are sitting closer to the exit than the attorney. Due to past experiences, she said, homeless youth are likely to distrust authority and are less likely to have open conversations in uncomfortable environments — environments that are too ostentatious or too restrictive.

In learning what “culture” means, it is best to learn what it means in the context of the community that you serve.



Value diversity.

Diversity is a catch-all word for the notable characteristics in a person. Diversity has many avatars and learning how to convey information to diverse clients can be a career-defining action. A little bit of research and understanding can go a long way. Conveying information to clients so that it is easily understood is an invaluable skill, whether talking to someone with limited English proficiency or literacy skills, an individual with disabilities or someone who has never before dealt with an attorney.

Similarly, valuing diversity within the legal profession is just as important. We can learn important lessons in cultural competency through each of our colleagues, whether they are disabled, ethnically diverse or bring a different perspective to the table. Making the effort to attend events for diverse bar associations can be the first step in learning cultural competency in the legal profession. LGBT bar associations, ethnic bar associations such as the [National Bar Association](#) and the [National Asian Pacific American Bar Association](#) and religious bar associations such as [J. Reuben Clark Law Society](#) are some of many safe places to ask questions about certain diverse groups in order to increase cultural competency.

Build and nurture relationships.

While speaking with colleagues about cultural competency recently, I found that one of my colleagues was in favor of learning about a client's culture or values beforehand and making it a topic of conversation in the first meeting to build a rapport.



Aastha Madaan

About the Author

Aastha Madaan, founder of [Madaan Law, P.C.](#), practices estate planning and business law, with a focus on franchise law. She is a proud ARAG Network Attorney. Aastha earned her Juris Doctor at Whittier Law School and earned her Bachelor of Arts from University of California, Irvine.

Aastha enjoys traveling, cooking, art and community work. She holds several leadership positions in the American Bar Association. Aastha's roots are in India, and she speaks fluent Hindi and Punjabi.

Another colleague disagreed and said that she would proceed the same way with any client and not make a client conscious of the differences in his or her background.

I believe the right answer is to set boundaries in conversation, along with a personable tone, and then assess each client's reaction and comfort level before asking questions that could be perceived as personal, such as country of origin, family background, education, etc. In certain situations, such as discovery during litigation, questions about background may be inevitable. In other legal services, such as contract review or negotiations, the same questions can be irrelevant and intrusive. This can lead to distrust, especially from clients who come from backgrounds where law enforcement and legal counsel are seen as more intimidating than helpful.

Engaging and staying attuned to each client's boundaries and comfort level can provide a solid foundation to build and nurture relationships based on trust and mutual respect.

Conclusion.

The field of medicine encourages and often requires professional training in cultural competency prior to communicating with patients because culturally competent communications foster effective and honest relationships and trust. Delivering legal services, whether litigation or transactional, requires the same level of respect and competence in an increasingly diverse world.

Once we acknowledge the importance of cultural competency, and the fact that cultural competence is a developmental process that evolves over an extended period, we can begin to learn and improve the way that we interact with clients.



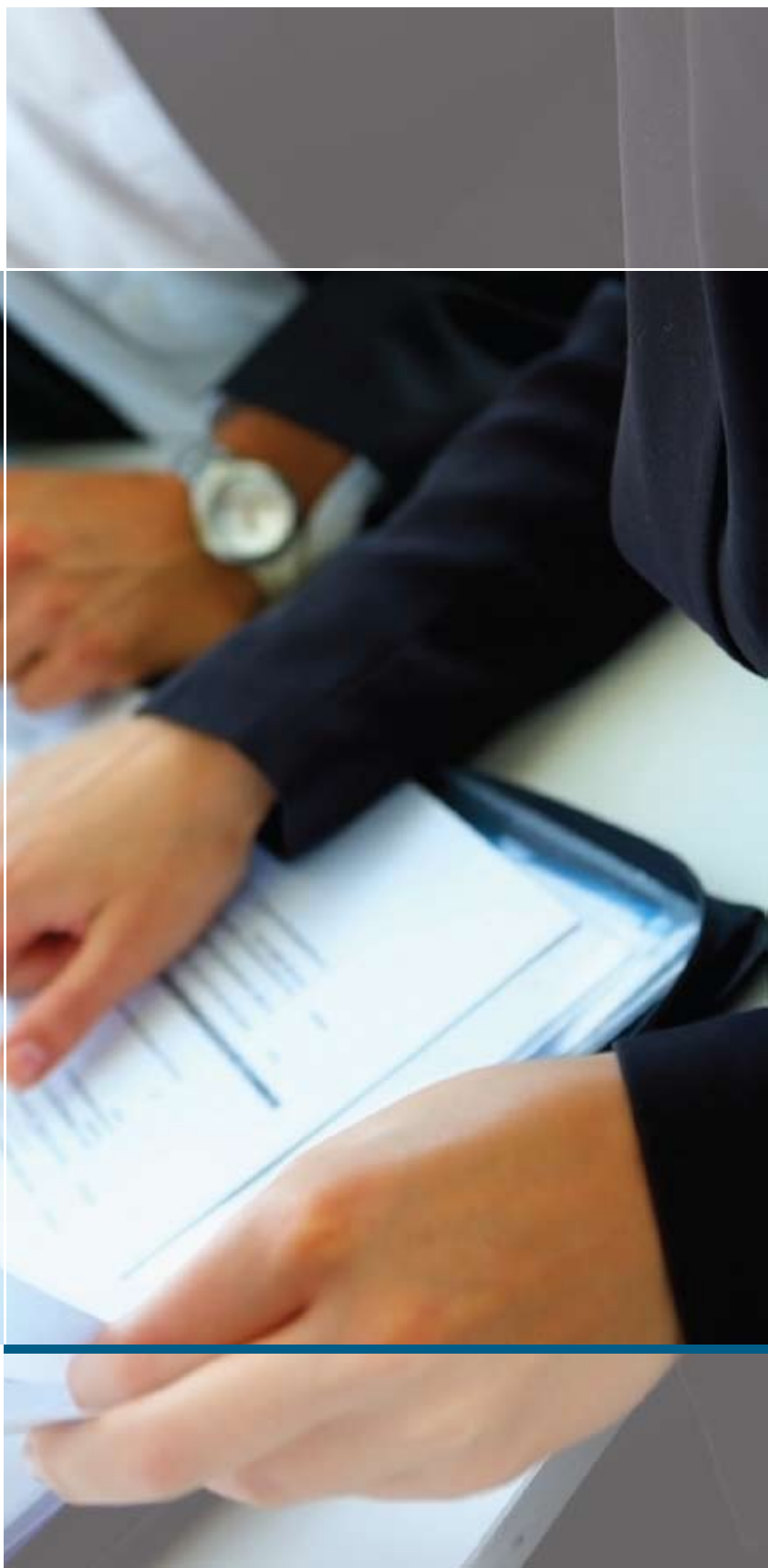
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BEYOND BIAS— CULTURAL COMPETENCE AS A LAWYER SKILL

By Nelson P. Miller



FAST FACTS:

A lawyer's cultural competence goes beyond avoiding bias. To serve diverse clients, lawyers should have special communication and interpersonal skills. Those skills can be taught and learned.

American popular culture judges in terms of “bias” the quality of relationships between cultures and classes. A good person is defined to be one who is free of cultural, ethnic, and class bias. A bad person exhibits bias—perhaps a Don Imus against African Americans or an Al Sharpton or Mel Gibson against Jews (to take celebrated recent examples).

The problem for lawyers is that the bias model is one of purity, not performance. The litmus test of bias allows us to draw comfort from simply not saying the wrong thing. It has nothing to do with how we actually perform as professionals in complex interactions with individuals of diverse cultures and classes. The comfort we draw in not exhibiting bias is an obstacle to real lawyer skill. It tells us that as long as we have not said anything wrong, we are acceptably professional. In truth, good lawyers—culturally sensitive and aware lawyers—employ considerable skill. Cultural competencies can be taught. Indeed, they are taught to educators, translators, social workers, nurses, missionaries, and a host of others who deal with diverse populations. By and large, they are not taught to lawyers.

Cultural competencies cover a wide range of areas. Communication is primary. It is important how we speak and listen. Communication varies. What is understood and appreciated in one household will not be understood and may instead be offensive in another household. And it is not only communication that varies. So, too, do individual cognition, individual and family resources, cultural references, and relationships.

Lawyers should possess cultural competencies in at least those five areas. Lawyers who possess and exercise these skills are able to meaningfully serve diverse populations. They can serve black and white, rich and poor, educated and uneducated, helping each to draw on their available skills and resources without mistakenly misjudging any to be uncommunicative or unintelligent. Lawyers who do not possess and exercise these skills cannot serve diverse populations effectively.

Take as an example the different language registers clients of different cultures may employ. A language “register” is the form or level of language (intimate, casual, consultative, formal, or frozen) that a speaker uses, indirectly indicating preferences in the way the speaker wishes to treat the relationship with the listener. Lawyers ordinarily speak in a consultative register, but many clients do not. An effective lawyer adjusts to the client’s register, not the other way around, because register is closely connected to hidden rules and cognitive practices within various cultures.

Thus, in some pro bono work at a local Hispanic center, the lawyer spoke only English. The client was a shy Guatemalan

woman whose first language was a dialect, but who also spoke just enough Spanish to communicate in that second language. The translator was a pert Mexican Spanish-speaker who spoke English as a second language, but did not speak the Guatemalan dialect. Although he could not understand the Guatemalan client’s Spanish, the lawyer quickly discerned from her hesitancy and tearfulness that she was probably communicating only in an intimate (child to parent) or at best casual (close friend to close friend) register. The lawyer quickly adjusted accordingly, speaking much more like a parent or friend than the lawyer would have when using the typical consultative register with which all lawyers are familiar. Lawyers typically render legal advice in a consultative, not intimate or casual, register.

The problem was that the Mexican translator had not recognized the shift in registers, or if she had recognized it, was unwilling to accommodate the shy Guatemalan client. This much the lawyer could tell from the client’s confusion and the air of superiority the translator was exhibiting. The translator was (as the observing translator-trainer explained it later) dressing up the lawyer’s words into flowery and important-sounding messages that the client was unable to grasp and process. The observing translator-trainer had to intervene and employ the appropriate intimate and casual register to successfully salvage the consultation. Competence in cultural communication, of course, does not mean being able to work with translators. The incident simply shows how important language register is and how roles and expectations can interfere with sensitive communication.

Take another example from the area of cultural reference. The narrator of the *Planet Earth* television series makes an important cultural reference when she intones (in that dry seriousness typical of the genre) that it is a matter of “luck” that the Sun/Earth relationship has remained so stable over billions of years. A lawyer making a similar comment about the “luck” involved in some event would already have appeared foolish and insensitive to what some low-income clients would more reasonably regard as extremely improbable but clearly providential events.

Thus, listen carefully to a client’s answer to the greeting, “How are you?” The response “I am blessed” is a low-income, minority client’s clearly intentional deviation from the majority culture’s standard answer of “fine” or “good.” It is a hint to the finely attuned ear, or in some cases a declaration against the obstinate dominant culture, that the client is a person not of fate but of faith. It would be insensitive for the lawyer to think the response weird or unintelligent, when instead it is a reflection of a highly developed ethic having potentially important consequences to the consultation.

Is it indeed significant that we notice these differences about our clients? It was significant to one. The lawyer met the pro bono client in a cubicle off the soup kitchen’s day room, where patrons could get identification, a locker, a haircut, and mail, shower, and use a washer-dryer. The homeless client, a middle-aged and quite weary African-American male,

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nonetheless responded to the lawyer's greeting with "I'm blessed. How are you?" The consultation then ensued about child support that had accumulated while the client was incarcerated for better than a decade. At its conclusion, the client rose appreciatively but wearily, saying that, in the end, he was concerned about the drugs and prostitutes tempting him on the streets. It was not a complaint, but an almost-silent plea without expectation of response.

But the lawyer then remembered the client's faith expressed in the greeting. So as the client turned to leave, the lawyer said simply: "Ah. There is no temptation except that which...." The client stopped, turned back, brightened noticeably, and completed the verse, saying he had not thought of it (powerful advice for anyone in the client's situation) since his release from prison 10 weeks before. There now seemed little doubt that the client would stay sober another night—a greater victory for the client and community, perhaps, than anything else the lawyer and client might have accomplished that day.

Here, then, are some tips on cultural competence. Although the examples have been in pro bono settings and with elderly clients, these competencies can be just as important in law-firm settings with paying clients. Please keep in mind, though, that if you are serving a client who is from a culture different from your own, you have already demonstrated the first cultural competency, which is willingness. Consider the following recommendations to increase your cultural competency:

- **Introduce yourself** in a manner that puts the client at ease. Always say your name. Anonymity appears aloof, insular, uncaring, and arrogant. Make eye contact, unless the client studiously avoids eye contact, and smile. If the client appears ready to offer a handshake, offer a handshake first. If the client is reluctant to offer a handshake, do not embarrass the client with an extended hand. Accept that there are hidden rules of interaction you do not know.
- **Understand intimate and casual register** and communicate accordingly. Not all clients share your verbal skills and interests. They may speak in indirect and generalized fashion and using frequent nonverbal assists. Participate with frequent verbal acknowledgments ("mm-hmm," "yeah, I know," etc.), behavioral prompts (nodding, smiling, etc.), and emotional responses (shared interest, sorrow, satisfaction, etc.). Do not force a client to say something the client wishes to avoid saying. Respect the circular nature of casual register. Avoid power struggles over language. Use calm, nonjudgmental, adult voice, never commanding or scolding in parent voice, and never defensive or emotional in child voice. Appreciate the client's humor. Use metaphor and story as a guide. Draw diagrams. Recognize cultural references. Accept and employ them to contextualize and communicate solutions.
- **Ask why the client is here** before making any assumptions. Ask open-ended questions, like "What worries you?" or "What do you want to happen?" Respect the client's freedom and personality. Be wary of assuming that the client has purely legal goals. Legal goals may be enmeshed in social, political, moral, financial, familial, ethical, personal, and spiritual goals, or legal goals may be absent. Assist with more than purely legal goals when your life experience enables you. Refer the client for other help with nonlegal goals. Think in terms of broad, team solutions while helping the client avoid negative influences. Legal solutions are not the only solutions.
- **Listen to the client** rather than your own judgment about what is important. Let the client decide. Do not dismiss the client's hopes, goals, expectations, and objectives, even when you would choose different objectives. Active pursuit of an unrealistic but safe goal can serve the client by indirectly achieving more useful objectives. Listen for words that seem out of place to you. They may be clues to a resource, habit, or understanding on which the client can draw for solutions. Develop a context for the client's situation—whether personal, medical, legal, family, or social.

Be prepared to pick up on a small parting comment and to address new legal issues at what you thought was the conclusion of the session.



Develop factual content when you see a legal issue that you can help address. Clients may express emotions and opinions, leaving it to you to prompt for relevant facts.

- **Watch the client** with an eye sensitive to the client's reactions. Summarize the client's goals and your advice on how to achieve them. If the client does not share your confidence in the solution you proposed, you may not have understood the client properly, or you may have assumed that the client has capabilities and resources that the client does not have. Continue to listen, ask, summarize, suggest, and generate other options until the client appears satisfied with your advice. What seems to you to be readily achievable may in fact not be for reasons only the client can appreciate. Suggest and teach coping strategies. Gently let the client know that you are offering bridges out of negative situations.
- **Break down steps** into manageable components. Think of each step that a larger task requires and then explain those steps for the client. Clients of poverty may lack the ability to break larger tasks down into manageable components. Help the client do so. When the steps become too many, stop, return to the first step that the client can understand and follow, and then plan another consultation for the rest of the steps. Watch for signs that the client is overwhelmed or frustrated. Assign to the client only those tasks that the client believes are clearly manageable. Model self-talking through procedures, but also propose role models. Clients of poverty can benefit more through mentors and relationships than through systems and actions. Be a coach, not a commander, judge, or taskmaster. Speak about choices and consequences. Help the client identify cause and effect (impulse and consequence) relationships.
- **Confirm the plan** that you have developed. Ask the client if the client would like you to write it down. If you do write it down, print in a clearly legible handwriting and number the steps. Clients may lack the planning and initiating skills that you possess. Help them prioritize and plan. Then help them record the plan in a manner that they can understand and use. Help them confirm that the plan will lead them toward their objective. Ensure throughout that they believe that they have the resources available to follow the plan. Do not plan anything for which the client lacks the resources. Solutions are not systems. They are relationships leading to small steps in the right direction. But also limit your responsibility. Be responsible *to* them for the steps you accept that you will perform. Make it clear to them what you are and are not going to do for them. But do not be responsible *for* them.
- **Express hope and optimism** about the client's situation, no matter how dire it may seem to you. Building and maintaining hope is essential for clients who have few resources.

You may indeed have a client whose legal situation cannot be addressed. But through your discussion of it and your continuing relationship with the client, the client may develop other objectives that are achievable. Be frank in your advice, but do not destroy the client's confidence. Stress the client's internal assets—perhaps the client's perseverance and tenacity, or the client's knowledge of truth, or the client's faith and ethics.

- **Listen for a parting request** from the client. The consultation does not end until the client has left. Just because you think it is over does not mean it is over. Some clients will use the consultation time simply to develop trust and understanding and only introduce the important matter when you think the consultation is over. It is not always about what you think it is about. Be prepared to pick up on a small parting comment and to address new legal issues at what you thought was the conclusion of the session. Be sure to elicit any lingering concerns with a question like, "Is there anything else we should talk about?"
- **Tell the client when you are next available** for further consultation, especially if time did not permit you to answer all of the client's questions and address all of the client's legal issues. To clients with limited resources, the relationship with you is more important than the service you rendered. Clients get out of poverty not through service, but through relationship. Letting the client know that you value the relationship may contribute more to the client's situation than any legal service you are able to provide. If you cannot be a mentor, then think of and offer one. ■

Sources and Suggested Reading: Payne & Krabill, *Hidden Rules of Class at Work* (Aha Process, Inc, 2002); Payne, *Understanding Learning: The How, the Why, the What* (Aha Process, Inc, 2001); Payne, DeVol & Smith, *Bridges Out of Poverty: Strategies for Professionals and Communities* (Aha Process, Inc, 2001); Payne, *A Framework: Understanding and Working with Students and Adults from Poverty* (Texas: RFT Pub, 1995); Bryant, *The five habits: Building cross-cultural competence in lawyers*, 8 Clin L R 33 (2001); *Initial Interview Protocol*, Thomas M. Cooley Law School Clinics.



Nelson Miller, associate dean and associate professor at Thomas M. Cooley Law School, is the 2005 winner of the State Bar John W. Cumiskey Award for pro bono service. The above article draws on his pro bono experience, service on the State Bar Equal Access Initiative Committee, service as president of the Grand Rapids Bar Association's Legal Assistance Center, and instruction and mentoring at Cooley Law School.

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ABOUT THE ACBF & THE PRO BONO CENTER

WHAT IS THE ALLEGHENY COUNTY BAR FOUNDATION?

The Allegheny County Bar Foundation, known as the heart of Pittsburgh's legal community, promotes justice for all through public service law-related programs. The Foundation raises, manages, and distributes funds, encourages and assists lawyers to provide pro bono legal services, and develops and supports public information initiatives.

WHAT IS THE PRO BONO CENTER?

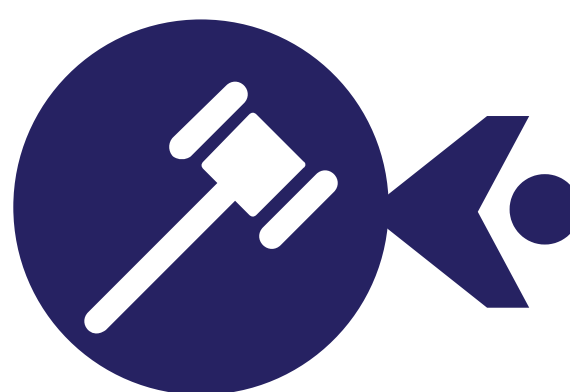
The Pro Bono Center is a program of the Allegheny County Bar Foundation and implements its mission by providing legal services to individuals with low incomes and by creating, managing, and supporting programs that match volunteers with thousands of individuals in need of free legal help. Its efforts are guided by Rule 6.1 of the Pennsylvania Rules of Professional Conduct, which says: "A lawyer should render public interest legal service."

PRO BONO PROJECTS



DIVORCE LAW PROJECT

Provides assistance in simple, uncontested divorces to low-income Allegheny County residents



PITTSBURGH PARDONS PROJECT

- Assists those with low incomes in drafting gubernatorial pardon applications to clear old, nonviolent records hindering housing, employment, and education
- Conducts community clinics throughout the year
- Has volunteer opportunities for all-level law students



LEGAL HELPLINE

Pro Bono Center legal staff responds daily to callers seeking legal advice with civil legal issues

PRO BONO CENTER PARTNER ORGANIZATIONS

- Allies for Health + Well Being
- Casa San Jose
- Christian Immigration Advocacy Center
- Christian Legal Aid
- Education Law Center
- Greater Pittsburgh Council
- Jewish Family & Community Services
- KidsVoice
- Neighborhood Legal Services
- North Hills Community Outreach
- Thomas R. Kline School of Law of Duquesne University
- University of Pittsburgh School of Law



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BAR FOUNDATION**

The heart of Pittsburgh's Legal Community



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THE IMPORTANCE OF PRO BONO SERVICE

What does “pro bono publico” mean?

“for the public good”

There is no right to an attorney in civil cases, one can only have counsel if they can afford it

·204 Pa. Code Rule 6.1 “A lawyer should render public interest legal service.”

·ABA Model Rule 6.1 “Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.”

Can include any uncompensated work that an attorney does for the public good

Narrowly, it refers to the legal representation of individuals with low incomes or organizations that serve them

Justice Gap Statistics:

In 2022,

74%

of low-income households experienced at least one civil legal issue in the last year

2 in 5 low-income households



in 2022 experienced **more than 5** civil legal issues in the past year

55% of those who experienced a civil legal issue in the last year said that the legal issue “Substantially impacted their lives”

People with low incomes do not receive



help with over 92% of their civil legal problems according to a 2022 study.

Nearly

38 MILLION

Americans live in poverty; 11.5% of the population in 2022.

Can I do pro bono work as a law student?

YES!

- Pro bono work as a law student can offer you valuable, hands-on experience in different areas of law that you wouldn't otherwise experience in the classroom
- Both Pitt Law and the Thomas R. Kline School of Law have Pro Bono Recognition Programs for students who engage in pro bono work as law students

1:6,415

is the ratio of public interest attorneys available to the number of Americans who need legal representation and cannot afford it