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Oregon State Bar

Bar Counsel**Cultural Competency*****Is There an Ethical Duty***

By Sylvia Stevens

"Cultural competency is one of the main ingredients in closing the disparities gap in health care. It's the way patients and doctors can come together and talk about health concerns without cultural differences hindering the conversation, but enhancing it. Quite simply, health care services that are respectful of and responsive to the health beliefs, practices and cultural and linguistic needs of diverse patients can help bring about positive health outcomes."¹

Cultural competency is an established part of modern health care education and training and recognized as a critical component of effective health practice. If you substitute "legal services" for "health care" in the above statement, it rings equally true, yet the legal profession has been much slower to recognize the importance of cultural competency within the profession.

What is Cultural Competency?

Cultural competency is more than embracing diversity and promoting inclusion. Cultural competency is the ability to adapt, work and manage successfully in new and unfamiliar cultural settings. Culturally competent people can "grasp, reason and behave effectively" when faced with culturally diverse situations, where assumptions, values and traditions differ from those to which they are accustomed. They recognize that culture may impact the way people from different backgrounds perceive the same facts. When several competing interpretations of a situation may be valid, they can place apparent contradictions in cultural contexts and deal with the ambiguity.²

Being culturally competent does not mean fully understanding the cultural norms and dynamics of every person with whom a lawyer interacts. It also isn't about adopting a particular set of beliefs. Rather, cultural competence is a way of approaching any new and different cultural situation. People who are culturally competent are aware of their own cultural backgrounds; they also recognize that culture influences behaviors, thoughts, ways of communicating, values, traditions and institutions. Culturally competent professionals know that the choices that people make are powerfully affected by culture and that every person is subject to may cultural influences.

Why is Cultural Competency Important to Lawyers?

If one step to cultural competency is understanding our own culture, it is worthwhile to recognize that the legal profession is a cultural institution. It is comprised predominantly of individuals who are privileged in American society: white, male, able-bodied and middle-class.³ We are thus not generally representative of the larger American society and may not share the life experiences of our clients who are women, minorities, gay, lesbian, poor, unemployed or disabled.

Some of the writing on cultural competency for lawyers focuses on the competitive edge a culturally competent law firm will have over those that are not.⁴ Other articles discuss it in the context of equal access to justice issues,⁵ while yet others focus on the importance of cultural competency in delivering high quality service to clients:

The challenge is for lawyers to properly read culturally relevant behavior and communication as a means of delivering the highest quality of service to clients. The failure to properly read and respond to cultural issues and difference can create serious problems in maintaining a successful relationship with a client.⁶

When cultural competency is viewed as a matter of justice or effective client representation, it is not a huge leap to think that there may be an ethical obligation to be culturally competent in order to meet our responsibilities as lawyers.

We need look only as far as the preamble to the ABA Model Rules for our obligation to promote access to justice and respect for the rule of law: "A lawyer, as a member of the legal profession, is ... a public citizen having special responsibility for the quality of justice.... (A) lawyer should further the public's ... confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to



maintain their authority..."⁷

Nothing in the Oregon Rules of Professional Conduct explicitly addresses cultural competency. Nevertheless, cultural incompetence might well implicate three inter-related rules:

The duty to provide competent representation

The duty to pursue the client's objectives

The duty to communicate

Oregon RPC 1.1 requires lawyers to provide competent representation to a client. "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Oregon RPC 1.2 requires a lawyer to abide by a client's decisions concerning the objectives of the representation and to consult with the client as to the means by which those objectives are to be pursued. These rules reflect the agency nature of the lawyer-client relationship in which the client is the principal and the lawyer is the agent. Oregon RPC 1.4(b) requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed choices about the representation.

A lawyer who doesn't recognize cultural differences may be insensitive to a client's cultural taboos, expectations, family norms or communication and conflict-resolution styles. The lawyer will be less effective in establishing a relationship of trust and confidence with clients from other cultures, and the failure to understand the significance of cultural differences and misinterpretation of client behavior may lead the lawyer to implement ineffective case strategies.

Reasonable communication between lawyer and client is necessary for the client to participate effectively in the representation. Inability to communicate effectively interferes with the lawyer's ability to understand and pursue the client's objectives. One of the greatest barriers to cultural competency among lawyers is our training as "problem-solvers." We think we know what needs to be done in a particular situation, and we want to get to it. We speak "legalese" and assume our clients understand it. This desire to be efficient sometimes gets in the way of listening to and communicating effectively with clients who do not share our cultural experience. It is compounded when we are oblivious to the fact that the client's cultural experience and values, as well as the approach to resolving issues, may differ from our own.

Cultural competency is not about conforming one's personal beliefs or opinions to a politically correct external standard. Rather, it is about actions. It means recognizing that our clients are not fungible and that every one of them brings to the representation a set of values, beliefs and other cultural norms that affect the client's view of their problems and how they should be addressed. Whether or not there is an ethical obligation of cultural competence, it is a practical necessity in modern law practice if we are committed to equal justice and high-quality client service.

Endnotes

1. U.S. Dept of Health & Human Services, Office of Minority Health (www.omhrc.gov).
2. Abbott, I., "Fostering Cultural Competence Is Necessary — And Profitable," *The Complete Lawyer*, Vol. 4, No. 6 (2008) citing Soon Ang et al., "Cultural Intelligence: Its Measurement and Effects on Cultural Judgment and Decision Making, Cultural Adaptation, and Task Performance," *Management and Organization Review*, November 2007.
3. In Oregon, 67 percent of OSB members are male and 49 percent identify as Caucasian. No statistics are available on disability or economic status.
4. Abbott, *supra*.
5. "Partner Courts: Diversity, The Superior Court of Arizona in Maricopa County, Phoenix, AZ," Center for Court Solutions (solutions.ncsconline.org).
6. Jatrine Bentsi-Enchill, Esq. (esqdevelopmentinstitute.blogspot.com).
7. ABA Model Rules of Professional Conduct, Preamble (1) & (6).

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