

Combatting Bias in Legal Services

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About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

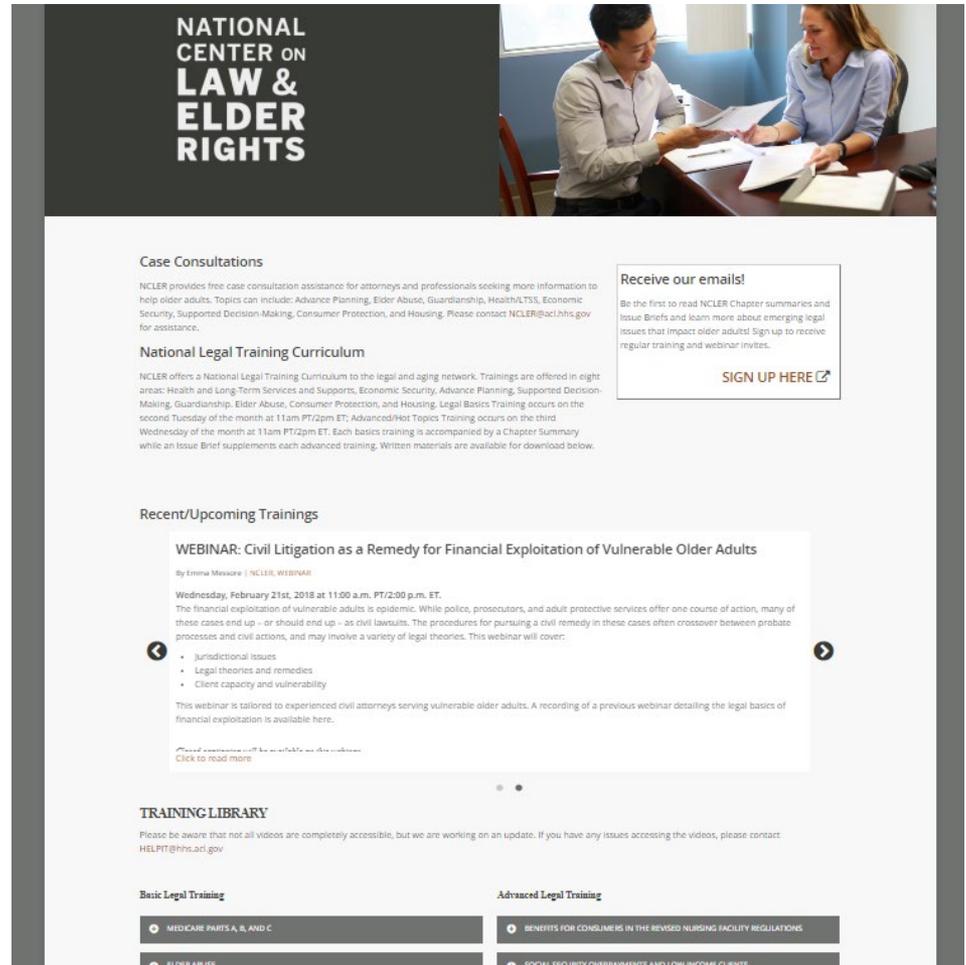
Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

To achieve Justice in Aging, we must:

- Acknowledge systemic racism and discrimination
- Address the enduring negative effects of racism and differential treatment
- Promote access and equity in economic security, health care, and the courts for our nation's low-income older adults
- Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, economic class

Visit Our Website: [NCLER.acl.gov](https://www.ncler.acl.gov)

- Learn about upcoming NCLER trainings
- Access all materials from past trainings, including webinar recordings
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NATIONAL CENTER ON LAW & ELDER RIGHTS

Case Consultations
NCLER provides free case consultation assistance for attorneys and professionals seeking more information to help older adults. Topics can include: Advance Planning, Elder Abuse, Guardianship, Health/LTSS, Economic Security, Supported Decision-Making, Consumer Protection, and Housing. Please contact NCLER@acl.hhs.gov for assistance.

National Legal Training Curriculum
NCLER offers a National Legal Training Curriculum to the legal and aging network. Trainings are offered in eight areas: Health and Long-Term Services and Supports, Economic Security, Advance Planning, Supported Decision-Making, Guardianship, Elder Abuse, Consumer Protection, and Housing. Legal Basics Training occurs on the second Tuesday of the month at 11 am PT/2pm ET; Advanced/Hot Topics Training occurs on the third Wednesday of the month at 11am PT/2pm ET. Each basics training is accompanied by a Chapter Summary while an Issue Brief supplements each advanced training. Written materials are available for download below.

Receive our emails!
Be the first to read NCLER Chapter summaries and Issue Briefs and learn more about emerging legal issues that impact older adults! Sign up to receive regular training and webinar invites.
[SIGN UP HERE](#)

Recent/Upcoming Trainings

WEBINAR: Civil Litigation as a Remedy for Financial Exploitation of Vulnerable Older Adults
By Emma Messore | NCLER WEBINAR
Wednesday, February 21st, 2018 at 11:00 a.m. PT/2:00 p.m. ET.
The financial exploitation of vulnerable adults is epidemic. While police, prosecutors, and adult protective services offer one course of action, many of these cases end up - or should end up - as civil lawsuits. The procedures for pursuing a civil remedy in these cases often crossover between probate processes and civil actions, and may involve a variety of legal theories. This webinar will cover:

- Jurisdictional issues
- Legal theories and remedies
- Client capacity and vulnerability

This webinar is tailored to experienced civil attorneys serving vulnerable older adults. A recording of a previous webinar detailing the legal basics of financial exploitation is available here.
[Click to read more](#)

TRAINING LIBRARY
Please be aware that not all videos are completely accessible, but we are working on an update. If you have any issues accessing the videos, please contact HELPT@hhs.acl.gov

Basic Legal Training

- MEDICARE PARTS A, B, AND C
- ELDER ABUSE

Advanced Legal Training

- BENEFITS FOR CONSUMERS IN THE REVISED NURSING FACILITY REGULATIONS
- SOCIAL SECURITY OVERPAYMENTS AND LOW-INCOME CLIENTS

Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.



Implicit Bias Overview

We must shift our “thinking of bias as something we decide to do out of animus, to something that exists within us, unless and until we decide to uproot it.

-Aubrey Gordon

What is Implicit Bias?

Implicit bias describes when we have attitudes towards people or associate stereotypes with them without our conscious knowledge.

Implicit vs. Explicit Bias

Implicit bias may run counter to our conscious beliefs.

E.g., it is possible to express liking of a social group, while still being biased against that group on an unconscious level.

Implicit biases can become explicit when you become aware the unconscious prejudices you possess and act on them.



Implicit Bias in Legal Services

Legal Services Attorneys Demographics (LSC, 2020)

- Gender: 75.5% of LSC staff identify as women, 24% identify as men, and 0.2% identify as neither men nor women
- Language: 83.4% of LSC staff are proficient in English, 21% are proficient in Spanish or Spanish Creole, and 5.2% are proficient in languages other than English or Spanish
- Race and Ethnicity: 56.6% of LSC staff are White, non Hispanic; 20% are Hispanic, 14.1% are African American non Hispanic; 3.1% are Asian or Pacific Islander; 1.1% are Native American
- Age: Median LSC Staff Age is 41. LSCs skew heavily towards younger age groups.

Attorneys Demographics (ABA, 2020)

- Gender: 63% identified as male, 37% identified as female
- Race and Ethnicity: 86% White, non-Hispanic; 5% African American, 5% Hispanic; 2% Asian; 0.4% Native American
 - The number of lawyers of color grew by 3% in the past 10 years
- Age: Median age was 47.5
- LGBTQ+: 2.99% of lawyers at law offices identified as LGTQ+
- Disability: 0.5% of lawyers at law firms reported having a disability

Poll Question: Who is your typical client?

Using the poll questions that follow, describe your typical client based on your own experience/observation.

Poll: What sex/gender is your typical client?

- Male
- Female
- Other

Poll: How old is your typical client?

- 18-40
- 40-50
- 50-65
- 65+

Poll: What race is your typical client?

- White, non Hispanic
- Black, non Hispanic
- Hispanic or Latino
- Other

Client Demographics (LSC, 2020)

- Gender: 71.7% clients identified as women
- Language: 88.4% of clients spoke English as their primary language, 8.3% Spanish or Spanish Creole, 1.1% Asian and Pacific Island languages
- Race and Ethnicity: 44.1% White, non-Hispanic; 28% African American, non-Hispanic; 17.6% Hispanic; 2.8% Asian or Pacific Islander; 2.1% Native American
- Age: 1.3% clients were 18 or younger; 34% were 18-35; 44.9% clients were 26-59; 19.6% were 60 or older

Client Demographics (Tenn.)

	Age	Sex	Race
TN	16% 65+	51% Female	78% White, 17% Black, 0.5% AINA, 2% Asian, 5.7% Hispanic
Davidson	12% 65+	52% Female	66% White, 27% Black, 0.5% AINA, 4% Asian, 10% Hispanic
Wayne	20% 65+	45% Female	91% White, 7% Black, 0.4% AINA, 0.3% Asian, 2% Hispanic
Coffee	17% 65+	51% Female	92 White, 4% Black, 0.5% AINA, 1.3% Asian, 5% Hispanic
Cumberland	31% 65+	51% Female	97% White, 0.7% Black, 0.5% AINA, 0.6% Asian, 3.1% Hispanic
Campbell	21% 65+	51% Female	97.4% White, 0.5% Black, 0.3% AINA, 0.4% Asian, 1.6% Hispanic
Macon	16% 65+	51% Female	96% White, 1.2% Black, 0.7% AINA, 0.8% Asian, 5.1% Hispanic

Equity Limitations of Demographic Data

- Demographic data organized by individual characteristics does not demonstrate the types and levels of intersectionality
- Demographic data does not necessarily correlate with need for services
- Limitations in data collection may skew results
 - E.g., self-reporting, over sampling, categorization and sub-categorization

Intersecting Disparities and Lifelong Inequities

- Intersectionality describes how individual characteristics, like race, gender, and income, overlap.
- The seeds of inequity that an individual faces at a young age compound over time
 - E.g., the gender wage gap translates to less income to save for retirement, fewer Social Security benefits, and less overall wealth

Trauma Stewardship

- Exposure to another person's trauma can lead to responses like compassionate fatigue (a/k/a vicarious or secondary trauma)
- Trauma stewardship is how we manage and navigate secondary trauma
 - Trauma stewardship is being fully present with others, their pain, trauma and suffering, without taking it on as our own

Vicarious Trauma

- Organizations that do not properly mitigate the effects of trauma, including vicarious trauma, are at risk of unsustainable coping mechanisms— including service rationing
 - “[B]ecause of multiple and conflicting objectives, insufficient resources, and other difficulties, organizations often ask employees and/or volunteers to perform demanding jobs without adequate support. As a result people are unable to do their jobs as well as they would like.”

–Burke & Lipsky, *Trauma Stewardship*

Service Rationing

- Service Rationing is a coping mechanism to handle work that has become overwhelming
 - Lipsky describes it as “the process that workers go through to bridge the everyday divide between the ideal of how they would work if they were free to function to the best of their ability and the reality of how they can work, given the numerous obstacles in their way.”

Recognizing Service Rationing

- “Service rationing occurs when a legal aid attorney is more sympathetic to a compliant client who seems willing to take direction than one who is belligerent.”
- Service rationing is not born out of malice, but rather a desire to continue doing important work and to “preserve a sense of satisfaction in our work”

Effects of Service Rationing

- Service rationing is not ethical legal work
 - Client populations that experience the most trauma and discrimination are more likely to be experience the negative effects of service rationing
 - Work environments that fail to support their workers are at risk of allowing implicit biases to direct the workers responses. For example, when an attorney leans on biases to determine who is more amenable” and “easier to work with” when managing an unmanageable workload/workplace



Combatting Bias in Legal Services

Where Does Bias Show Up?

- Bias exists at every step of client interactions
- Mitigating the influence of bias at every level of legal services requires all staff to think intently about the way they do their work

Outreach

- Who does your organization outreach to?
 - Do your outreach strategies match the communities you are tasked with serving?
 - Who do you serve? Have you surveyed clients?
 - Have you adjusted client outreach for community changes?
 - Who do you partner with?
 - Interrogate established partners
 - Do their target clients match with yours?
 - Are there new partners that might be a better fit?

Outreach Strategies

- Survey clients and compare to wider population in your community
 - Remembering limitations of demographic data
- Review partnerships and look for new partnerships
- Brainstorm on community changes and how those can influence outreach strategies

Intake and Case Choice

- Intake procedures
 - How accessible is your intake process?
 - Who is getting through intake
- Case Choice
 - How are cases chosen?
 - Who gets to trial?
 - How gets an appeal?

Intake and Case Choice Strategies

- Look at the data
 - Review case outcome data against race, language spoken etc.
 - Periodic review of case data
- Have clear parameters for what type of cases are taken
 - Create an appeal strategy
 - Create a trial strategy

Difficult Clients

- Service rationing impacts representation given to difficult clients
 - Service rationing increases chances that difficult clients will not be served in an equitable manner
 - Difficult clients can also be struggling with symptoms of trauma, mental illness or just overall stress of poverty or their legal problem
- Supervisors have an obligation to create a healthy work environment and shoulder burden of difficult clients

Difficult Client Hypothetical

- Mary has an eviction client, Harold, that is very difficult to work with. Harold often doesn't answer his phone or show up for meetings with Mary. When he does show up, he is very disrespectful and can 'fly off at the handle' at a moments notice. During one meeting at the office, Harold made Mary cry with his rude comments about her abilities as a lawyer. Harold is one of many clients Mary has but she has started to become very stressed anytime she has to meet with him.

Difficult Client Hypothetical (2)

- If you worked with Mary, what would be her options to deal with Harold?
 - Who would Mary go to with her complaints?
 - Is there a standard of conduct for clients?
 - Should Mary have to continue working with this client?

Difficult Client Strategies

- Integrate clear expectations for clients regarding staff in retainer agreements
- Create clear protocols for staff to report issues with clients
- Supervisors should make clear that they will handle difficult clients
 - Supervisor sits in on meetings with client
 - Supervisor supports staff in communications with client
 - Supervisor may take on case if client is particularly difficult

Staff and Hiring Practices

- Does your staff reflect the community you serve?
 - Support staff
 - Attorneys
 - Does your staff live in the community they serve?
- Does your staff speak the language of your community?
 - Are interpreters easily available
 - Remember deaf and hard of hearing clients

Moving Forward

- For your organization moving forward
 - What takeaways do you have?
 - Where do you think your organization does a good job in combatting bias?
 - Where do you think your organization can improve?
 - What would you like to see change?



Questions?

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