



Implicit Bias and Cultural Humility – Working with Pro Bono Clients

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Training Logistics

- Stay on mute to avoid background noise
- Type questions in the chat
- Questions at the end
- Participate! We want to hear from you

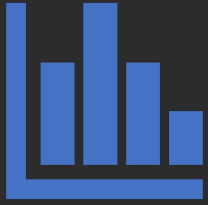


Goals for this session:

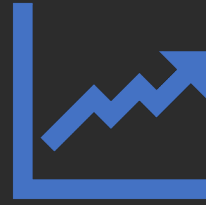
- To increase awareness and knowledge of how an individual's culture and experiences inform their interactions with other people, organizations, or the justice system.
- To increase awareness of the biases and cultural assumptions which you and/or your client may bring into your relationship
- To provide tools for improving communication with pro bono clients
- To address some common issues that may arise in pro bono representations

Topics to be covered:

- Culture
- Implicit bias
- Cultural Humility and Cultural Competency
- Trauma/mental health
- Working with clients experiencing poverty/ACEs
- “The Five Habits of Culturally Competent Lawyers”
- Self-evaluation tools and further readings



Poll #1



Poll #2

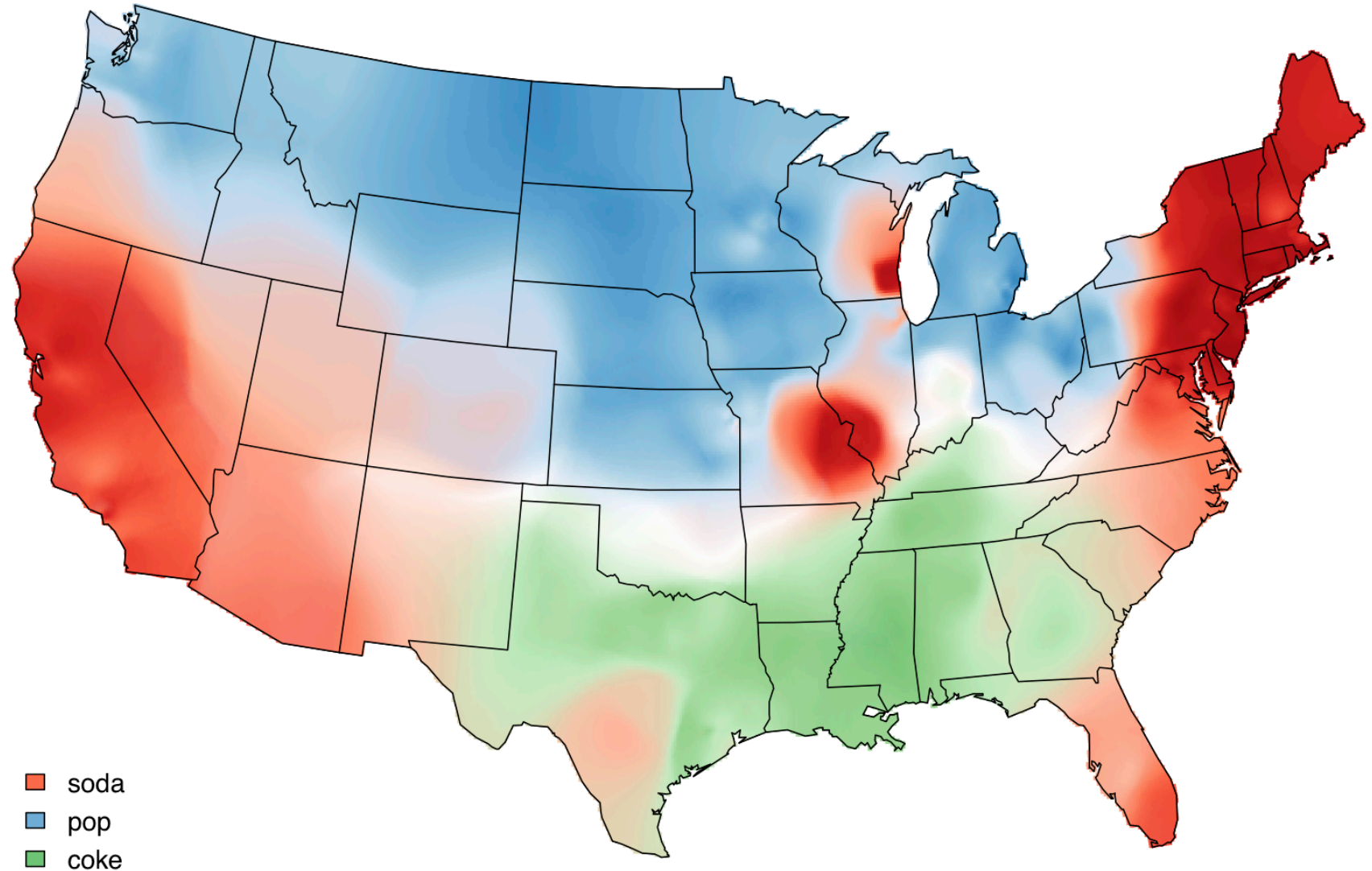


Poll #3

Let's get started!

What do
you prefer?

What is your generic term for a sweetened, carbonated beverage?



Map by Joshua Katz, Department of Statistics, NC State University

Based on survey data from Bert Vaux, Department of Linguistics, University of Cambridge

What is culture?

“Culture is like the air we breathe— it is largely invisible and yet we are dependent on it for our very being. Culture is the logic by which we give order to the world.” Raymond Carroll, *Cultural Misunderstandings: The French-American Experience* 2 (1988).

- Culture goes beyond race, ethnicity or national origin.
- Culture refers to a person's identity, gender, language, thoughts, communications, actions, customs, beliefs, values and institutions that can be (but are not always) specific to ethnic, racial, religious, geographic or social groups.
- Because culture provides the backdrop for our understanding of the world, it also affects our understanding of others. However, much of these value judgments occur without us being aware we are making a judgment. This is implicit bias.

What is implicit bias?

Implicit bias refers to the brain's automatic, instant association of stereotypes or attitudes toward particular groups, often without our conscious awareness.



We ALL have biases.

- We form these biases from our experiences, as well as exposure to external messaging like the media.
- Implicit bias is involuntarily and often occurs without an individual's awareness or control.
- Our implicit biases may be different or contrary to our stated views or beliefs.

Think of biases as “baggage.”

- You will come into your representation with preconceived notions about your client.
- Your client will come into the representation with their own preconceived notions about working with lawyers, the justice system and other relevant things.

Explicit v. Implicit

Explicit bias

Expressed directly

Aware of bias / operates
consciously

Example – Sign in the
window of an apartment
building – “whites only”

Implicit bias

Expressed indirectly

Unaware of bias / operates
sub-consciously

Example – a property
manager doing more
criminal background
checks on African
Americans than whites.

Graphic by NPH, the Non-Profit
Housing Association of Northern
California, available online at:
<https://twitter.com/NPHANC/status/1175115991614775296?s=20>.

What does this mean for us?

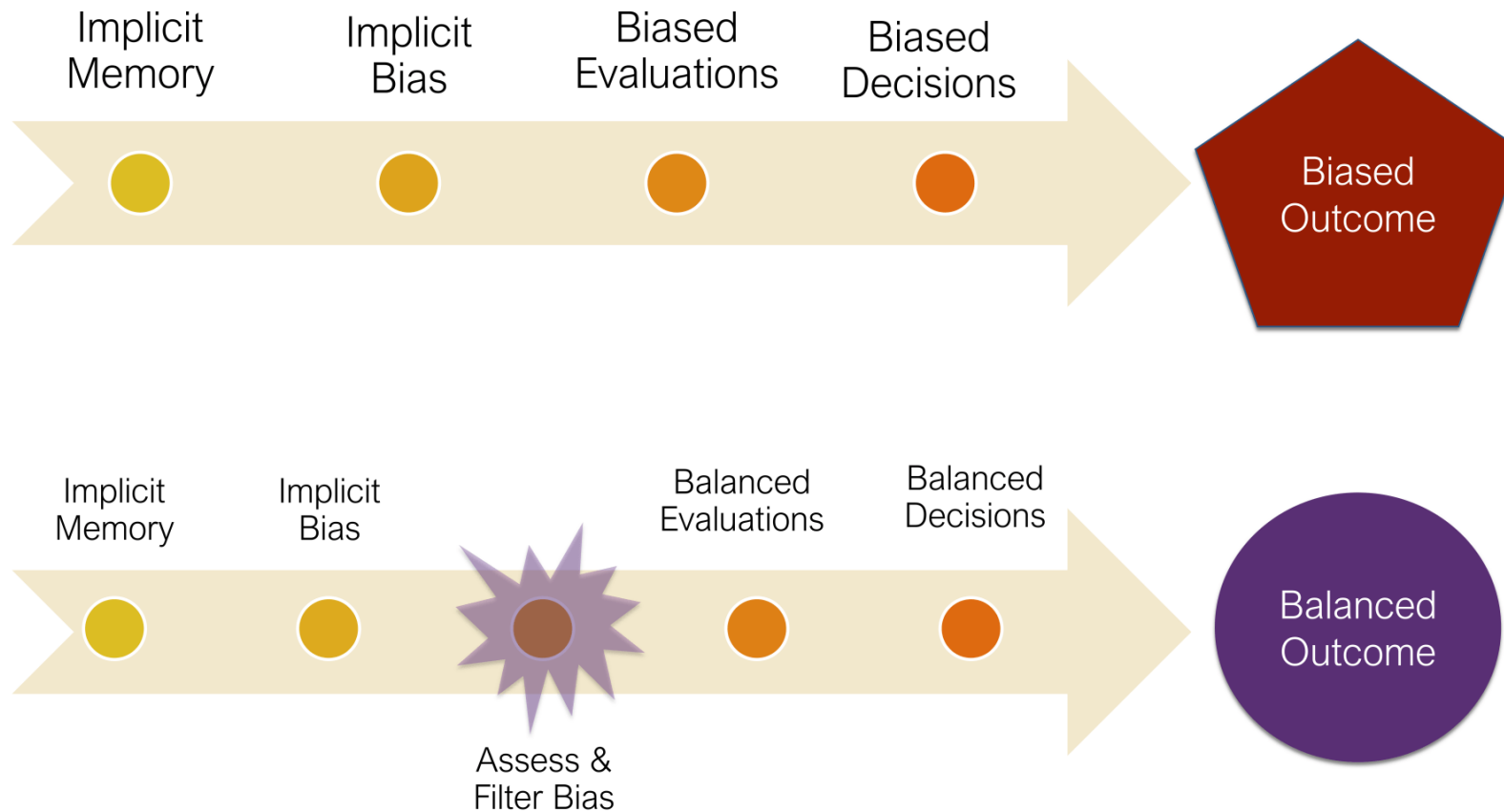
- Lots of ways bias can show up in legal work:
 - Who or what we find credible
 - How we define or pursue the goals of a case
 - What importance or meaning we ascribe to certain events
 - Which clients we serve
- Attorneys need to take steps to recognize, acknowledge, and minimize the impact of their own biases on the clients we serve.



WHAT CAN WE DO TO REDUCE THE IMPACT OF OUR BIASES

- Slow down.
 - Moving quickly and working under stressful conditions can increase reliance on our implicit biases.
 - Implicit bias and stereotypes are mental shortcuts. Consider your “gut reactions” and how you come to those decisions.
 - Take time to get to know your client and their lives.
- Practice “cultural humility.”
 - Cultural humility focuses more on ongoing self-evaluation and self-critique versus “becoming competent” through a training or another endpoint.
 - Self-assessment can be performed at the individual and organizational level.

Implicit Bias Remedies: Disrupt the Process



What is cultural competency?

Cultural competency is the ability to accurately understand, appreciate and interact with people from different cultures or backgrounds.¹

“The essential principles of cultural competence are (1) acknowledgement of the importance of culture in people's lives, (2) respect for cultural differences, and (3) minimization of any negative consequences of cultural differences.”²

1. Milton Bennett, *Becoming Interculturally Competent*, in TOWARD MULTICULTURALISM: A READER IN MULTICULTURAL EDUCATION 62, 72 (Jaime Wurzel ed., 2004).
2. Michael Paasche-Orlow, *The Ethics of Cultural Competence*. 79 J. Ass'n. Am. Med. Coll. 347-50 (1994).

Why does cultural competency matter?

To put it succinctly –

“The capacity to form trusting relationships, to evaluate credibility, to develop client centered case strategies and solutions, to gather information and to attribute the intended meaning from behavior and expressions are all affected by cultural experiences.”

Sue Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 40 (2001).



Is cultural humility an ethical obligation?

- In D.C.'s Rules of Professional Conduct, cultural humility is not explicitly addressed.
- However, cultural competency/humility skills may be required to fully meet other ethical duties to client.
 - D.C. Rule of Professional Conduct 1.1: Competence
 - D.C. Rule of Professional Conduct 1.4: Communication
 - D.C. Rule of Professional Conduct 2.1: Advisor

It is worth noting that other professions (including medicine, psychology, and social work) have recently changed their ethical rules to incorporate the duty of cultural competency/humility.

D.C. Rule of Professional Conduct 1.1: Competence

(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

(b) A lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters.

Positive client outcomes (versus “wins”) require not only legal knowledge, skill, and preparation but also a clear understanding of the client’s goals.

D.C. Rule of Professional Conduct 1.4: Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer who receives an offer of settlement in a civil case or proffered plea bargain in a criminal case shall inform the client promptly of the substance of the communication.

If you and your client are not communicating effectively, the client cannot make fully informed decisions. Also, you cannot provide competent representation if your client is unable or unwilling to share their goals.

D.C. Rule of Professional Conduct 2.1: Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation.

If you are unaware of the cultural differences between you and your client, you cannot fully advise on the client's situation.

Build the Five Habits of Culturally Competent Lawyers

- 1) Be mindful of the differences (and similarities) which exist between you and your client.
- 2) Analyze how those difference (and similarities) may impact the case.
- 3) Be open to alternate possibilities or explanations.
- 4) Pay attention to how you are communicating, including non-verbal forms of communication.
- 5) Recognize you view the world through your own cultural lens.

Habit 1. Be mindful of the differences (and similarities) which exist between your client, the legal system, and you.

Acknowledging areas of difference can help avoid misunderstandings, while drawing on similarities can build trust and connection with a client.

Habit 2. Analyze how those differences (and similarities) may impact the case.

Use your awareness to help achieve your client's desired outcome.



Serving Clients Experiencing Poverty

- Most clients represented by pro bono counsel or legal service providers are experiencing some degree of poverty/ACEs
 - The majority of legal service providers in D.C. set eligibility guidelines near 200% of the Federal Poverty Guidelines [“FPG”]
 - For 2021, 200% of FPG is \$25,760 for a household of one or \$53,000 for a household of four.
- Poverty can be situational, relative, or intergenerational.
 - Generational poverty is common in D.C.

Poverty in the District

- Nearly 1 in 6 DC residents, or 111,000 people live under the poverty line
 - Ward 7 and Ward 8
- 32,000 are children, or over 25% of children are living in poverty
 - In Ward 8, that number jumps to 50%

Relationship between poverty and civil legal needs

- Poverty makes it more likely that a person will have a civil legal problem
 - Poverty makes it more difficult for the individual to address the issue and recover from it
- Exacerbated when people have disabilities, language barriers, elderly, literacy rates, homelessness, survivors of domestic violence

Poverty and Mental Health

- Strong correlation between poverty and mental illness.
- Mental illness is made worse by poverty.
 - Individuals living in poverty have a higher rate of mental health hospitalizations.
- Experiencing mental illness increases financial stressors.
 - Higher health care costs;
 - Decreased productivity; and
 - Poor general health.
- One study found that the odds of a family experiencing food insecurity increased by 50 to 80% if the mother reported moderate to severe depression.

Link between Poverty and Trauma in Children

- Living in poverty as a child has lifelong impacts:
 - Children living in poverty are more likely to attend multiple schools and the schools they attend receive less funding.
 - Low-income parents have fewer financial resources to devote to their children and their education (i.e. educational books and toy, private schools, etc.), and the stress of living in poverty and struggling to meet daily can impact parenting.
 - Some evidence that cumulative exposure to adversity causes “toxic stress” which can impact development of impacted children’s brains.
- Increasing attention is being paid to adverse childhood experiences, also known as “ACEs.”

Adverse Childhood Experiences

Traumatic events that can have negative, lasting effects on health and wellbeing

Abuse

- Emotional abuse
- Physical abuse
- Sexual abuse

Household Challenges

- Domestic violence
- Substance abuse
- Mental illness
- Parental separation / divorce
- Incarcerated parent

Neglect

- Emotional neglect
- Physical neglect

People with 6+ ACEs can die

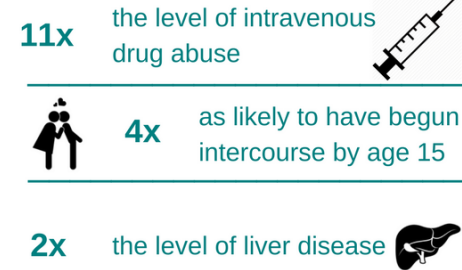
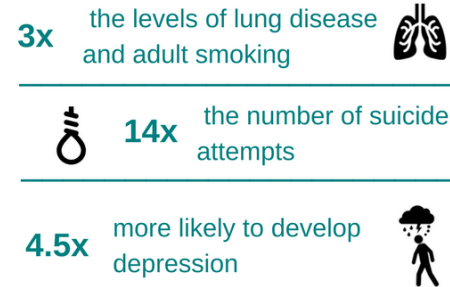
20 yrs

earlier than those who have none



1/8 of the population have more than 4 ACEs

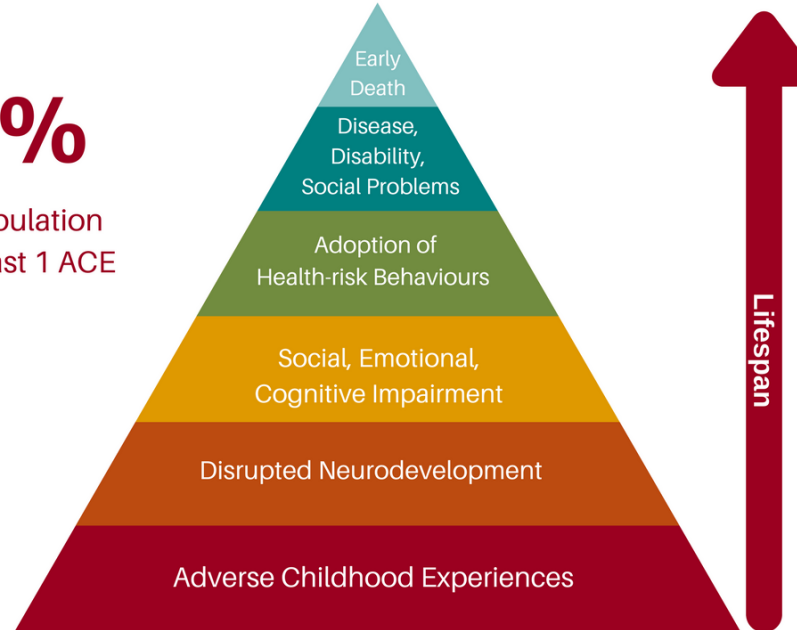
4 or more ACEs



“ Adverse childhood experiences are the single greatest unaddressed public health threat facing our nation today ”

Dr. Robert Block, the former President of the American Academy of Pediatrics

67%
of the population have at least 1 ACE



Infographic credit: 70/30 Campaign, online at <https://www.70-30.org.uk/>



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DC BAR
PRO BONO
CENTER

Childhood Trauma

An event that a child finds overwhelmingly distressing or emotionally painful, often resulting in lasting mental and physical effects.

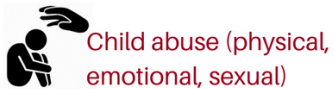
2x

more likely to develop
DEPRESSION

3x

more likely to develop
ANXIETY DISORDERS

Common causes:



Child abuse (physical, emotional, sexual)

Grief



Witness/victim of violence



War/Terrorism



Neglect



Medical trauma

Substance misuse



Mental illness



Bullying in school

Separation from loved ones



LONG-TERM IMPACTS:

Affects perception of reality



Takes away sense of safety



Wires brain to expect danger

Increases stress hormones flowing through the body



Triggers fight, fright or freeze response



Creates a sense of helplessness



Creates relationship problems

Results in serious behaviour problems



“The initial trauma of a young child may go underground but it will return to haunt us”
James Garbarino

PREFRONTAL CORTEX (PFC)
"Thinking Centre"

Underactivated

Difficulties concentrating & learning.

A traumatised brain is
"bottom heavy"

AMYGDALA
"Fear Centre"

Overactivated

Difficulty feeling safe, calming down, sleeping

ANTERIOR CINGULATE CORTEX (ACC)
"Emotion Regulation Centre"

Underactivated

Difficulties with managing emotions.

Complex Trauma: a result of repetitive, prolonged trauma



www.70-30.org.uk
@7030Campaign

Infographic credit: 70/30 Campaign, online at <https://www.70-30.org.uk/>

Ways that lived experiences impact representation:

- Trust
- Trauma
- Willingness to speak
- Attending meetings
- Communication
- Not responding
- Children
- Terminology
- Descriptions
- What is important information
- Actions
- Assumptions about the system
- Assumptions about each other
- Literacy
- Resources

Habit 3. Be open to alternate possibilities or explanations.

Avoid judging or making assumptions about your client.

Examples:

- Client continues to live with abuser.
- Client that refuses to explain what happened in detail.
- Client that does not want to go to court.



Alternate possibilities...

- *Another example:* Your new pro bono client is 60 minutes late for your appointment.
- Your initial instinct may be frustration that the client does not appreciate your busy schedule and value your pro bono representation enough to arrive promptly.
- Consider some other possibilities



POLL TIME!

*Let's put this
to practice*

Habit 4. Pay attention to how you are communicating, including non-verbal forms of communication.





Language Access – Why is it important?

- Access to services
- Respect
- Intakes
- Informed consent
- Logistics (calls, written documents, etc.)
- Proper translations
- Interpretations
- BEST PRACTICES

Tips for Effective Cross-Cultural Communication

- Discuss your expectations for communication with your client up front and consider including those expectations in the retainer agreement.
- When setting goals, ask open ended questions, i.e. “How can I help you?” or “What do you want to happen?”
- If you don’t understand, you can ask. (Start with more general inquiries and save trickier issues for when you get to know your client better.)
- Repeating your client’s statements can be a good way to check your comprehension: “What I am hearing you say is.....”
- Watch for red flags in your client.

More Tips for Effective Cross-Cultural Communication

- If you find your client struggles to remember details of your conversation or tasks, there are steps you can take to assist your client.
 - Summarize key details or next steps at the end of your meeting.
 - Take notes during the meeting and offer to provide them to your client.
 - Break down complex topics or decisions into multiple smaller meetings.
 - Be aware that stress, trauma, and mental health issues can impact cognition and memory.



Common issues experienced by *pro se* litigants - intakes

- Access to services
- Access to technology
- Language access
- Communication
- Phones

Common issues experienced by *pro se* litigants during COVID-19 public health crisis

- Access to the courts/services
- Financial barriers
- Increased DV/child abuse
- Communication/technology
- Remote hearings
- Access to evidence/witnesses





Steps to take
when serving
clients
remotely.

- Obtain multiple means of communication
- Brainstorm tech support with your client
- Take time to review documents line by line
- **See our Remote Legal Services Tip Sheet for more detailed suggestions.**

Habit 5. Recognize
that you view the
world through your
own cultural lens.



*Getting started –
resources to guide you
in this journey*



Questions?



Feel free to contact us



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