Can Counselors Use Religious Beliefs As the Basis for Refusing to see a Homosexual Client?

www.counseling.org/kaplan/aces.aspx

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ACES Conference
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Mary, Michael and Barbara became involved in Ward vs. Wilbanks et al.

As experts in counseling ethics

To write expert reports on behalf of the EMU counseling program
ACA became involved

- Challenges the validity and enforceability of the non-discrimination clause of the *ACA Code of Ethics*.

Rights of individuals in same-sex relationships -

a polarizing socio-political issue since the 1990s

States that issue marriage licenses to same-sex couples, allow civil unions, or grant extensive rights to unmarried couples in domestic partnerships.....
States that have constitutional amendments banning same-sex unions...
COUNSELING CLIENTS REGARDING SAME-SEX RELATIONSHIP

Stance of professional associations and counselor educators:

Clients must be able to discuss same-sex relationship issues within a counseling relationship without concern that counselors will impose their values.

Stance of religious conservative organizations and religiously conservative counselors and students:

Counselors and counselors-in-training should be able to refuse to counsel clients regarding same-sex relationships when homosexuality conflicts with the counselor’s religious values.
**Bruff v. North Mississippi Health Services**
- Court upheld counselor’s termination for refusal to counsel a lesbian client on relationship issues

**Walden v. Centers for Disease Control**
- Counselor’s employment terminated after she referred client who sought counseling regarding same-sex relationship.
- ADF has filed appeal (2008)

**Ward v. Wilbanks et al (EMU):**
- on appeal.

**Keeton v. Anderson-Wiley et al (Augusta State University):**
- appeal filed by ADF 2010

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**Alliance Defense Fund**
Founded in 1964, “committed to protecting and preserving religious freedom on university campuses”

- The ADF website alleges:
  - “Julea Ward, a graduate student at Eastern Michigan University’s School of Counseling, was told to change her beliefs or leave the counseling program when she refused to counsel someone about his same-sex relationship.”
    - [http://www.alliancedefensefund.org/University](http://www.alliancedefensefund.org/University)

  - “Jennifer Keaton has been told...that she must change her beliefs in order to graduate from the [ASU] counseling program.”
    - [http://www.alliancedefensefund.org/News/PRDetail/4140](http://www.alliancedefensefund.org/News/PRDetail/4140)
Actions by State Legislatures

**Arizona**: graduate programs in counseling or social work cannot require students to counsel gay people in ways that are inconsistent with their values -- signed into law 2011.

**Michigan**: 3 bills have been introduced, one of which (S.B. 518) would prohibit public and private universities from disciplining a counseling, social work, or psychology student “because the student refuses to counsel or serve a client as to goals that conflict with a [student’s] sincerely held religious belief or moral conviction, if the student refers the client...”

Ward vs. Wilbanks et al.

The Basics
A practicum student referred rather than counsel a homosexual client.

After due process, the student was dismissed from the counseling program.

The student sued the university counseling faculty and officials alleging violation of her 1st & 14th amendment rights, including to practice her religious beliefs.

Legal Context of Ward Case

- Bruff
- Ward*
- Augusta State*
  * Involvement of Alliance Defense Fund

Bruff Case

An employee assistance counselor was fired for refusing to counsel a lesbian client on relationship issues because homosexuality conflicted with the counselor’s religious beliefs. The counselor filed a lawsuit claiming that her employer’s failure to allow her to refrain from counseling clients on issues inconsistent with her religious beliefs violated federal law. The court upheld the counselor’s job termination.

*Bruff v. Mississippi Health Services, Inc*, 244 F.3d 495 (5th Cir. 2001)*
Ward vs. Wilbanks et al.

Outcome

The Judge ruled against the student and for the EMU counseling program

ACA has posted the decision at:
www.counseling.org/kaplan/EMU.pdf

EMU Judge’s Opinion

University programs have the right to set standards.

There is a “rational basis” to adopt the ACA Code of Ethics into a counselor preparation program.

It is reasonable to use CACREP standards in a counselor preparation program.
6th circuit court of appeals hearing on 10/3

ACA submitted an amicus brief supporting the original ruling and the denial of the motion to appeal
http://www.counseling.org/resources/pdfs/EMUamicusbrief.pdf

EMU lawsuit issues

- When is a client a client?

- Boundaries of competence/cultural competence

- Is it permissible to deny counseling services to an LGBT client on the basis of the counselor's values?

- Can referral be made at any time a professional counselor wishes to do so?

When is a client a client?
ACA Testimony
The ACA published book *The Counselor and the Law* makes it clear that the definition of a client begins at the moment an individual requests assistance... This obligates professional counselors to respect the dignity and to promote the welfare of a client even if a session has not yet occurred. It is therefore clear that the individual assigned to Ms. Ward was her client.

Boundaries of competence/Cultural competence

ACA Code of Ethics
C.2.a. Boundaries of Competence
Counselors practice only within the boundaries of their competence... Counselors gain knowledge, personal awareness, sensitivity, and skills pertinent to working with a diverse client population.
In order to practice ethically, counselors must have a clear understanding of the cultural worldview of the client and match the intervention/approach that best supports client autonomy and beneficence.

Counselors continually assess their level of cross cultural competency in order to maintain a standard of care (e.g., workshops, reading of professional literature, professional consultation/cross cultural mentoring/shadowing).

[Bracketing] Theory

Bracketing - "a counselor's intentional practice of separating personal values from his/her professional values in order to provide an ethical standard of care to all clients, especially those whose worldviews, values, belief systems, and decisions differ significantly from those of the counselor."

Counselors are not expected to be value-free in their counseling practice, but are expected to ethically (bracket) their personal values and ensure they are not an imposing their values onto clients within the counseling relationship in a manner which is harmful or negligent.

Using supervision and consultation, ethical counselors recognize potential “buttons” with clients and work to rectify this struggle through further training and self exploration.
Cross culturally competent considerations for ethical practice
(adapted from Herlihy & Corey, 2006)

- Counselors must be willing to take on non-traditional roles and adopt various roles to different stages to meet the needs of diverse clients.
- Some therapeutic boundary crossing may be clinically necessary and culturally acceptable (seek out supervision and consultation).
- Counselors may need interventions that are unconventional but are in accordance with acceptable cross cultural standards.

ACA Code of Ethics
C.5. Nondiscrimination

Counselors do not condone or engage in discrimination based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital status/partnership, language preference, socioeconomic status, or any basis proscribed by law.

“A counselor cannot willfully violate the nondiscrimination provision and be professionally competent at the same time.”

ACA Amicus Curiae Brief, 2011, p. 8
American School Counselor Association

A comprehensive school counseling program “advocates for and affirms all students from diverse populations including: ethnic/racial identity, age, economic status, abilities/disabilities, language, immigration status, sexual orientation, gender, gender identity/expression, family type, religious/spiritual identity and appearance.”

*Ethical Standards for School Counselors* (Preamble, ASCA, 2010)

ACA Code of Ethics

A.4.b. Personal Values

Counselors are aware of their own values, attitudes, beliefs, and behaviors and avoid imposing values that are inconsistent with counseling goals. Counselors respect the diversity of clients, trainees, and research participants.

ASCA Position Statement “The Professional School Counselor and LGBTQ Youth”

“The professional school counselor works with all students through the stages of identity development and understands this development may be more difficult for LGBTQ youth. It is not the role of the school counselor to attempt to change the student’s sexual orientation/gender identity but instead to provide support to the LGBTQ students to promote student achievement and personal well-being.”
Factors That Influence Ethical Choice (Anderson & Handelsman, 2010)

- Our values and the match between our values and those of the profession.
- Our personal character or virtues.
- Moral reasoning.
- Our professional training in ethics.
- Our professional ethical identity.

Ethical Motivation and Competing Values (adapted from Anderson & Handelsman, 2010)

- What are my personal values and motivations in this situation?
- What are my professional obligations in this situation?
- If there is a conflict between my personal values and professional values, can I express my values and motivation in a different way?
- If there is a conflict, how can I reorganize or reprioritize my personal values?
- What core values (personal and professional) are being stretched?
- What core values (personal and professional) are being strengthened?
- How does this value conflict provide aid, support, assistance to my client or the stakeholders?

As Sommers-Flanagan and Sommers-Flanagan (2007) state, “The essence of professional ethical behavior centers on the welfare and betterment of the client from the client’s point of view” (p.91).

The imposition of our personal values onto a client’s experience is unethical and potentially harmful to the counseling relationship and the client.
Can referral be made at any time a professional counselor wishes to do so?

Referral

“Counselors do not abandon or neglect clients in counseling.” (ACA Code of Ethics, A.11.a.)

Referral

“Counselors practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience. Counselors gain knowledge, personal awareness, sensitivity, and skills pertinent to working with a diverse client population.” (ACA Code of Ethics, C.2.a.)
Referral
“Counselors are aware of their own values, attitudes, beliefs, and behaviors and avoid imposing values that are inconsistent with counseling goals. Counselors respect the diversity of clients, trainees, and research participants.” (ACA Code of Ethics, A.4.b.)

Referral
“Counselors recognize the need for continuing education to acquire and maintain a reasonable level of awareness of current scientific and professional information in their fields of activity. They take steps to maintain competence in the skills they use, are open to new procedures, and keep current with the diverse populations and specific populations with whom they work.” (ACA Code of Ethics, C.2.f.)

Judge’s opinion
“Regarding referrals... ACA Chief Professional Officer David Kaplan [states that] there is no statement in the ACA Code of Ethics that referral can be made on the basis of counselor values.”
Judge’s opinion

“Referrals are taught to be a last resort...EMU could not confer a counseling degree on a student who said she would categorically refer all clients who sought counseling on topics with which she had contrary moral convictions.”

Implications for Counselor Educators

- Counselor Educators are encouraged to design academic exercises, papers, journals, etc. that assist students and supervisees to ethically manage value differences that exist between themselves and future clients. (Example: counseling child sexual predators).

- Using a [bracketing] approach, counseling students can learn to not impose their values and identify ways to honor their own values without imposing them onto clients.
Ward vs. Wilbanks et al.

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