Ethical Issues for Legal Professionals

AFCC ASSOCIATION OF FAMILY AND CONCILIATION COURTS

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Maryland Rules: Attorneys

MD Attorneys' Rules of Professional Conduct Rule 8.4(e)

"It is professional misconduct for an attorney to: knowingly manifest by words or conduct when acting in a professional capacity bias or prejudice based upon race, **sex**, religion, national origin, disability, age, **sexual orientation** or socioeconomic status when such action is prejudicial to the administration of justice, provided, however, that legitimate advocacy is not a violation of this section."

Comment: "Section (e) of this Rule reflects the premise that a commitment to equal justice under the law lies at the very heart of the legal system. As a result, even when not otherwise unlawful, an attorney who, while acting in a professional capacity, engages in the conduct described in section (e) of this Rule and by so doing prejudices the administration of justice commits a particularly egregious type of discrimination. Such conduct manifests a lack of character required of members of the legal profession."

See also Bostock v. Clayton Cty., 140 S. Ct. 1731 (2020)

Maryland Rules: Jurists

MD Code of Judicial Conduct Rule 2.3(b)

"A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias, prejudice, or harassment based upon race, **sex**, **gender**, religion, national origin, ethnicity, disability, age, **sexual orientation**, marital status, socioeconomic status, or political affiliation. A judge shall require lawyers in proceedings before the court, court staff, court officials, and others subject to the judge's direction and control to refrain from similar conduct."

See also Bostock v. Clayton Cty., 140 S. Ct. 1731 (2020)

Maryland Rules: Ancillary Professionals

Social Workers

Md. Code Regs. 10.42.03.03(B)(5)

"The licensee may not: Practice, condone, facilitate, or collaborate with discrimination on the basis of race, **gender**, **sexual orientation**, age, religion, national origin, socioeconomic status, disability, or any other basis proscribed by law."

Mediators

MD Handbook of Standards for Mediators

Standard II (A)(2)

"A mediator shall not favor or disfavor any participant for any reason, such as the participant's race, age, **sex**, **gender identity**, **sexual orientation**, disability, appearance, personal characteristics, background, values, beliefs, or actions or behavior during or outside the mediation process."

Forensic evaluators

Md. Code Regs. 10.58.03.05(A)(2)(b):

"A counselor may not: Condone or engage in discrimination based on age, color, culture, disability, ethnic group, **gender**, race, religion, **sexual orientation**, marital status, or socioeconomic status"

Guardians *ad litem*

See, e.g. *Handbook for Guardians of Minors*, pp. 7-8 ("Medical Decisions")

Raising the Bar by Setting the Stage

The Parent Trap:
Talking Ethics with Clients

Be upfront

- Clearly communicate what you can/cannot do

Be specific

- Review the applicable rule(s) with the client*

Be curious

- What underlies the client's request?

Be creative

- How can you ethically convey the client's position?

https://www.uclalawreview.org/misgendering-as-misconduct/

Nobody Likes a Tattletale: Addressing Ethical Violations

Any questions?

Hypothetical #1

- In 1995 John and Jane were married. In 2008 their first child Cara was born. In 2010 their second child, Chester was born. In 2023, John explains to Jane that they are transgender, and will be transitioning to living full time as Jennifer, that her pronouns were she/her/hers, and that she still loves Jane and wants the family to remain intact. Jane asks for some time to come to terms with this and for the children not to be involved just yet. Jennifer agrees to wait a year, which causes her some emotional as well as physical harm. Jennifer explains that it has been a year, and she will be transitioning, and wants to speak with the children together about this. Jane is not ready.
- Question1: Jane has hired you as her attorney. Jane wants all pleadings to list her spouse's name as John because "that's who I married and that is our children's father and that is her spouse's legal name." Jane also wants full custody of Cara and Chester because she wants to insulate them from their other parent's transition. Jane has stated that other than this, in her opinion, her spouse is a great parent. How can/do you proceed and what ethical issues are implicated?
- Question 2: You are a mental health professional. Jane's legal team has reached out to you to evaluate the children. They have explained that they need evidence that John's transition to Jennifer will be harmful to Cara and Chester and that the children need to be protected from this transition. How can/do you proceed and what ethical issues are implicated?
- Question 3: You are the Judge and during the first hearing on this matter, Jane and her attorney continue to refer to Jennifer as John and continue to use male pronouns for Jennifer. What, if anything, do you do about that issue and what ethical issues are implicated?

Hypothetical #2

- Scott and Sara have had a turbulent marriage. They have one child, Connor. Connor has always been unique. He prefers to play with dolls and to play dress up. Scott always takes Connor outside to hunt and forces him to play football. Sara has always allowed Connor to play with dolls and wear dresses during playtime, but only alone and in the house. Connor is now 8 years old and has told Sara that they are a girl. Connor wants to grow out their hair and wear dresses and has asked teachers and friends to call her Carrie. Sara is terrified that Scott will hurt their child when he finds out.
- Question 1: You are an attorney and Sara is in your office. She thinks she may need to file for custody of her child so that she can get Carrie the pediatric medical attention she needs. She reveals that Scott occasionally hits Carrie to make her more of a man. She is very concerned how Scott will take this. How can/do you proceed? What ethical concerns are involved?
- Question 2: You are a child therapist. Scott is in your office. Scott is horrified that Sara is trying to "turn Connor into a girl." Scott needs you to "Fix Connor and make him understand he is a boy." How can/do you proceed? What ethical concerns are involved? Is there any mandated reporting required?
- Question 3: You are a BIA and Carrie explains that Mommy lets Carrie wear dresses and play with dolls and will call her Carrie. When you ask about Scott, Carrie won't speak at all. How do you proceed? What ethical concerns are involved?
- Question 4: You are a teacher/school guidance counselor. Connor tells you their name is Carrie and that they are a girl. How do you proceed? What ethical concerns are involved?