

### Diversity Considerations in Supervision

A growing body of literature has emphasized the importance of recognizing and appreciating cultural diversity in supervision (Bernard & Goodyear, 2004; Leong & Wagner, 1994; Williams & Halgin, 1995). If supervisors are not attuned to diversity issues in supervision, they are likely to inadvertently reinforce the biased attitudes and behaviors of their supervisees. Supervisors must remain aware that their worldviews are likely to influence the therapeutic choices made by their supervisees (Brown & Landrum-Brown, 1995). Effective cross-cultural supervisors are aware of and address the role of multiculturalism/diversity in the client-supervisee and supervisor-supervisee relationships (ACA *Code of Ethics*, 2005, Section F.2.b.).

Research has shown that the cultural variables of race or ethnicity (e.g., Cook & Helms, 1988; McRoy, Freeman, Logan, & Blackmon, 1986; VanderKolk, 1974) and gender (e.g., Behling, Curtis, & Foster, 1988; Nelson & Holloway, 1990; Rigaxio-DiGilio, Anderson, & Kunkler, 1995) have an impact on the supervision process and supervisory relationship. There is consensus that it is the responsibility of supervisors to initiate discussions of cultural differences with their supervisees (Bernard & Goodyear, 2004; Campbell, 2000; Haynes et al., 2003). If the supervisor is silent on this issue, the supervisee will get the message that cultural diversity is a taboo subject in supervision.

It is likely that you will become a supervisor to at least one counselor or counselor trainee during your career. It is also likely that your supervisee will be culturally different from you in some ways. Although you may feel uncomfortable about broaching the issue of cultural differences with your supervisee out of fear of saying the wrong thing or seeming ill-informed, it is necessary to break the taboo about talking about racial, gender, or cultural differences (Haynes et al., 2003). It may be difficult to discern whether supervisors fail to discuss race because they lack awareness of cultural issues in the supervisory relationship or because they are uncomfortable with the topic. However, the result is the same when racial, gender, or cultural differences are present in a supervisory relationship and negatively affect it, yet are not talked about. When you become a supervisor, it will be your responsibility to be aware of the complex ways that culture and gender interact between client, counselor, and supervisor and present multiple challenges to communication and understanding (Nelson et al., 2006). Your initial supervisory sessions with your supervisees present opportunities to establish an open dialogue regarding multicultural issues.

Once the supervisory alliance is established, you can promote multicultural competence in your supervisees by incorporating multicultural case conceptualization into supervision (Haynes et al., 2003). You can do this by helping your supervisees analyze the impact of their client's race or ethnicity, gender role socialization, social class, sexual orientation, and other salient cultural variables on the client's problems. It is also important that you promote culturally appropriate interventions, which may include teaching supervisees how to advocate for their clients.

A cultural variable that is often overlooked is that mental health professionals of different disciplines (including psychology, social work, marriage and family therapy, and psychiatry) often supervise someone with a different background, training, and theoretical orientation to practice. These differences must also be addressed at the outset of the supervisory relationship to avoid misunderstandings and conflicts (Campbell, 2000).

### CONSULTATION

Counselors must assume a variety of roles as they perform their work responsibilities, and each role demands different perspectives, attitudes, and behaviors. The professional role that counselors engage in at any given moment determines their behavior and, in many instances, their responsibilities to the individual with whom they are interacting. Consultant and consultee are two roles that counselors take on regularly.

Counselors regularly consult with others for the benefit of their clients and to further their knowledge of a particular area of counseling. Counselors use the following consultants: other mental health professionals when making clinical or ethical judgments; other professionals, such as physicians, social workers, nurses, and psychologists, who are also treating their client; family members and friends, for the benefit of clients; administrators in their employment setting, regarding their job responsibilities or when seeking direction in difficult situations; and attorneys, when they have legal questions. The very best step a counselor can take when faced with a difficult ethical decision or with a legal question is to consult (Gottlieb, 2006; Knapp & VandeCreek, 2006). Consulting with peers and other mental health professionals is best for ethical dilemmas. Consulting with supervisors and attorneys is necessary for legal problems.

Counselors also find themselves in the role of consultant in a number of situations. A fellow counselor may be having difficulty making a clinical or ethical decision. Another professional who is treating one of their clients may request a consultation. Or, a client's family member or friend (or teacher in the case of a child client in a school setting) might ask for information about a client. In all of these examples, the consultation takes place between two individuals (a consultant and a consultee) for the benefit of a third person (a client). These consultation relationships are not formalized and generally are limited to a single discussion or a brief series of discussions. We will refer to this type of consultation as *peer consultation*. By contrast, counselors sometimes function as consultants to organizations such as businesses, agencies, or schools. These consultation relationships are usually more long term and are formalized in some manner, often through a contract. This type of consultation is known as *organizational consultation*. Both peer and organizational consultations are primarily aimed at work-related concerns as opposed to the consultee's personal problems.

### Accountability

Generally, a consultant does not have power and control over the person who is the recipient of the consultant's advice. Exceptions exist when a consultant is a counselor's administrative or clinical supervisor. As explained earlier in the chapter, a supervisor who has control over a counselor's actions probably has some degree of legal liability for the negligence of the counselor. Counselors who are asked to consult with colleagues sometimes are concerned about whether they might be held responsible for advice they give as consultants. This is the case with Allison in the following scenario.

## 14-2 The Case of Allison

Raymond, a counselor in a mental health center, approaches Allison, another counselor at the center who has no administrative authority over him, and asks her to consult with him regarding a client with whom he is having some difficulty. As Raymond describes his work with the client, Allison has a hunch that the client may have borderline personality traits that Raymond has not recognized. She is hesitant to enter into a consultation with him, however, because she knows that clients diagnosed with borderline personality disorder can be difficult to counsel. Allison wonders to herself, "What if Raymond doesn't do an adequate job in working with this client? If I give him advice, can I be held accountable?"

- What do you think Allison should do?
- If Allison does agree to consult with Raymond, how can she be helpful to him in working with his client?

**Discussion:** Allison should realize that Raymond will make the final decisions regarding how to counsel his client, and he will be responsible for his actions. A consultant who has no administrative authority over another counselor cannot be held accountable for what the counselor/consultee ultimately does. Allison should listen carefully to Raymond's concerns, and she might choose to give him her best advice depending on how she understands the situation. She will need to set boundaries to maintain her consultant role. She should not meet with the client herself to evaluate the client, and to avoid taking on a supervisory role, she should not meet regularly with Raymond regarding his counseling of the client.

In most situations, consultants do not have control and authority over the person who is receiving the benefit of their consultation. Consultants essentially are giving advice. Once individuals receive advice from a consultant, they are free to accept or ignore the advice they have been given. When consultants have no control over the actions taken by individuals who have received their advice, they cannot be held accountable legally for an individual's negligence even if they give inaccurate or wrong information or give bad advice. It is possible, however, that an individual who retains a consultant may have a legal cause of action based on contract principles against a consultant who gives wrong or poor advice that the consultee relies on.



**Note:** Go to MyHelpingLab, and select the Ethical, Legal, and Professional Issues module from the Video Lab. Then select Module 11, and view the video clip entitled, "A Request for Consultation," which depicts a challenging situation for a consultant.

After you have begun your counseling practice and you need to consult, you should choose consultants carefully with the understanding that you, as the individual who is seeking advice, will be held accountable. You should choose consultants who are knowledgeable, trustworthy, and reputable.

### Consultation Contracts

In organizational consulting and in some other situations, consultants enter into long-term agreements with others to provide advice in a particular manner. A clinical supervisor who provides supervision over a 2-year period for a counselor who is gathering experience for licensure or certification is also a consultant. Just as a supervision agreement is recommended for supervisory relationships, a written contract is recommended for counselors who consult.

The following recommendations have been offered for contracts that are prepared by consultants:

- Clearly specify the work to be completed by the consultant.
- Describe in detail any work products expected from the consultant.
- Establish a time frame for the completion of the work.
- Establish lines of authority and the person to whom the consultant is responsible.
- Describe the compensation plan for the consultant and the method of payment.
- Specify any special agreements or contingency plans agreed on by the parties (Remley, 1993).

Counselors who take on consulting roles need to understand the legal principles involved in accountability and contracts and to fulfill those roles in an ethical manner. Unlike counselors who function as supervisors (who have the ACES ethical guidelines [1993] to assist them), consultants

are at somewhat of a disadvantage. There is no code of ethics specifically for consultants, and the *ACA Code of Ethics* (2005) contains few standards (Standards B.8a.-c., and D.2.a.-d.) that address consultation directly. This paucity of ethical standards, along with the fact that not all counselors are adequately trained in consultation (Brown, 1993; Newman, 1993), raises some cause for concern that counselors may not be well prepared to resolve the ethical dilemmas they encounter when they are functioning as consultants. Writers in the field of consultation (Dougherty, 2009; Newman, 1993) have identified several ethical issues that consultants frequently face. These include (a) consultant competence; (b) consultee rights, including due process and confidentiality; (c) the consulting relationship; and (d) the influence of culture and values on the consulting process.

### Consultant Competence

Competence to provide services is an important ethical issue in consultation, just as it is in counseling and supervision. Before counselors agree to enter into a consultation relationship, they must assess whether their personal and professional competence is adequate for the task (Dougherty, 2009). When you become an experienced counselor and are asked to consult with peers, you should ask for a description of the potential consultee's problem and then determine whether you possess the expertise needed to be of assistance. For example, if you have worked for several years in a clinic that specializes in treating individuals with eating disorders, you will probably feel confident that you can serve as a consultant to a high school counselor who is wondering whether one of her student clients suffers from anorexia. By contrast, assume that you are approached by another counselor in the clinic where you work. She tells you that she needs a consultation because she is concerned that one of her teenage clients' parents might sue her for malpractice. This colleague has a legal problem, and you should refer her to the clinic supervisor. Being asked to consult is always a compliment, but you should not always agree to such a request. Gottlieb (2006) has suggested several questions that counselors might ask themselves before making a decision whether to consult, including: Am I qualified? Can I be objective with this colleague? Are there any potential conflicts of interest? Do I have the time to give this request the attention it deserves?

When counselors are asked to perform organizational consultation, they should present their professional qualifications clearly to avoid misrepresenting themselves. Prior to entering into an agreement to provide services, they should ensure that they have the resources and competencies to provide the needed assistance (*ACA Code of Ethics*, 2005, Standard D.2.a.). It is essential that consultants know their own limitations, and they should make an appropriate referral when they are unable to provide the requested services (Standard D.2.a.). The ability to carefully self-monitor one's own boundaries of competence is particularly critical because so few counselors have received formal training in consultation.

Welfel (2006) has stated that counselors tend to make the same mistake regarding competence to consult as they make regarding competence to supervise—they assume that counseling skills are sufficient. She cautions counselors that when they present themselves as skilled consultants, they must be prepared to demonstrate the sources of their knowledge and to be ethically responsible for any harm their interventions might cause. Without a contract, consultants may not be legally responsible for the outcomes of interventions they suggest, but they do have a professional and ethical obligation to carefully consider the implications of actions that may be taken based on their advice.

### Safeguarding Consultee and Client Rights

Due to the triadic nature of consultation, the client does not employ the consultant or sometimes even know that a consultant is involved. Welfel (2006) reminds counselors who consult to be attuned to the ramifications of their work for these rather invisible participants. Newman (1993) has

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raised a similar caution, noting that consultants must be sensitive to the effects of their work on all parties involved and to avoid situations in which their work could be used to the detriment of clients or client systems. The following scenario illustrates such an event.

### 14-3 The Case of Jerry

Jerry was hired by an administrator in a large organization to conduct a series of conflict resolution workshops with an employee group. Part of the agreement was that Jerry would conduct a pre- and postassessment of the participants' conflict resolution skills to assess what they had learned. Jerry included the results of these assessments in his final report to the administrator. Later, the administrator used this information as one basis for determining which of the employees would be let go when the organization downsized.

- How did Jerry err as a consultant? How did the organization administrator err?
- What do you think Jerry can do to ensure that such problems do not occur again in his work as a consultant?

**Discussion:** Jerry violated the privacy of the employees when he provided the administrator with their specific scores. It appears that he failed to clarify with the administrator exactly what his role as consultant would entail and what would be contained in the report. The administrator erred by using the information Jerry inappropriately gave him to make management decisions. He violated the trust of his employees by using that information. In the future, Jerry should develop a clear and detailed contract with any organization before he agrees to serve as a consultant to that organization.

The scenario above raises two crucial ethical issues—informed consent and confidentiality. Obviously, Jerry failed to negotiate how his report would be used by the administrator who hired him. The unfortunate outcome could have been avoided if Jerry had adhered to his ethical obligation to develop with his consultee “a clear understanding of problem definition, goals for change, and predicted consequences of interventions selected” (*ACA Code of Ethics*, 2005, Standard D.2.b.).

Informed consent is an important consultee right that also extends to clients and client systems involved. In peer consultation, informed consent is a relatively straightforward matter. As we have suggested in earlier chapters, it is sound ethical practice for counselors to inform a client that they plan to consult about the client's case, explain their rationale, and obtain consent to proceed. Standard D.2.d. of the *ACA Code of Ethics* (2005) advises counselors functioning as consultants to review, both verbally and in writing, “the rights and responsibilities of both counselors and consultees.” They should use clear language in informing all parties involved about the purpose of the consultation, costs, potential risks and benefits, and limits of confidentiality (D.2.d.).

Informed consent is much more complicated in organizational consulting. Oftentimes, administrators or executives hire consultants and make decisions about the work they want the consultant to do. Employee-clients may have little or no input into this decision, and the consultation process will be negatively affected if they feel coerced to participate. Therefore, consultants must be sensitive to the hierarchical nature of organizations and work skillfully with all the parties involved to

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make consent as informed and voluntary as possible (Welfel, 2006). Consultants must discuss the goals and purposes of the consultation, potential benefits and risks, and desired outcomes with those who will be affected by the consultation. Dougherty (2009) suggests that consultants should mentally put themselves in the consultees' position and ask themselves what they would like to know at the outset. Consultants must also remember that informed consent is an ongoing process, so these issues may need to be revisited periodically.

The ACA *Code of Ethics* (2005) offers these guidelines for protecting confidentiality in consultation: (a) agreement is sought among all parties regarding each individual's rights to confidentiality, each individual's obligation to preserve the confidentiality of information, and the limits of confidentiality; (b) information is discussed for professional purposes only with persons clearly concerned with the case; (c) reports present data that are germane to the purposes of the consultation; (d) every effort is made to protect client identity and avoid undue invasion of privacy; and (e) counselors do not identify a client, other person, or organization unless they have obtained prior consent or the disclosure cannot be avoided (Standards B.8.a., B.8.b. and B.8.c.). In peer consultations, confidentiality issues are not particularly difficult to manage. It is usually possible for a counselor to consult without revealing the identity of the client who is the subject of the consultation. Even if the consultant were to ascertain the client's identity, the consultant understands the professional obligation to keep information confidential.

In organizational consulting, it is important that those who participate in the process have a clear understanding of the limits of confidentiality. Corey et al. (2007) described a situation in which a consultant would have to break confidentiality. In their example, a consultant working in a residential care facility for the elderly is ethically required to report certain incidents in order to protect the residents from abuse. It is hoped that the consultant would have established the limits of confidentiality during contract negotiations.

Managing confidentiality is particularly complicated when consultation is aimed at organizational change (Newman, 1993). If disgruntled employees share information about their boss with the consultant, will the consultant keep their disclosures confidential? Dougherty (2009) has suggested that employing the concept of anonymity—sharing the information but protecting its source—might be a useful strategy in such situations. He also suggests that complex questions about confidentiality should be posed at the outset of consultation, consensus on the answers reached, and the consensus publicized.

### The Consultation Relationship

Because the consultant–consultee–client relationship is very complex, consultants must be particularly careful to maintain appropriate boundaries. Because counseling, supervision, and consultation are alike in several ways and there is some role overlap, it can be easy for counselors to confuse these activities with each other. Similarities and differences are outlined below.

*Consultation* and *counseling* are similar in that both usually are voluntary in nature and each is a temporary process aimed at assisting the help seeker to function independently, without the helper, in the future. Both counseling and consultation are collaborative relationships, but they are not relationships between equals. In each relationship one participant is assumed to have greater expertise that can be brought to bear on the problem. Consultation and counseling are different in that counseling is a dyadic relationship in which a direct service is provided to a client, whereas consultation involves a triadic relationship in which an indirect service is provided to someone who works directly with a client. Counseling generally focuses on personal problems, while consultation focuses on work-related problems.

*Consultation* and *supervision* are similar in that both relationships are tripartite; the person who provides assistance to the client does so indirectly through a third party (the consultee or the supervisee). In both relationships, the goal is to increase the help seeker's skills and ability to function independently. They are different in that supervision is not always voluntary, and in a supervisory relationship the person in the help seeker role may not be free to decline the helper's advice or recommendations without penalty. Supervision is a hierarchical relationship, whereas consultation is a collaborative relationship: consultants have no direct authority over the help seeker. Also, supervision is generally ongoing or long-term, while peer consultation is usually temporary and of brief duration.

The focus of the consultation relationship should be on work-related problems, not on the personal problems of the consultee. As is the case in supervisory relationships, there is a fine line to be drawn, and it can be difficult to distinguish between professional concerns and personal issues. For example, assume you are a school counselor who has been approached by a teacher who wants help in dealing with a difficult student. During the consultation, the teacher says, "You're helping me see that the student's behavior isn't all that much out of line. If I weren't in the midst of a painful divorce, he wouldn't be getting under my skin this way." You must be careful to avoid converting the consultation into a counseling relationship that centers on the teacher's personal problems.

Dual relationships in consultation create conflicts of interest as well as role conflicts. The two most common dual roles in consultation are combining the role of consultant with that of counselor or supervisor (Dougherty, 2009). The blurring of boundaries that leads consultants into the counselor role often occurs when a consultant determines that the basis for a work-related concern resides more in the consultee than in the client. In these instances, the consultant should refer the consultee for assistance.

When a consultant has supervisory or administrative experience, it can be easy to incorporate supervision into a consulting relationship. This is inappropriate because consultation is essentially a peer relationship, whereas supervision involves evaluation and a power differential. Dougherty (2009) has noted that the use of supervision in consultation allows the consultant to build an illegitimate power base, creates potential conflicts of interest, and violates the consultation contract. Dual relationships in consultation should be avoided.

Freedom of choice is the final important relationship issue to consider in consultation. Consultees should feel comfortable that they have the freedom to do whatever they choose to do with the consultant's recommendations. Freedom of choice is diminished when a dependency on the consultant is created. Standard D.2c. of the ACA *Code of Ethics* (2005) states that "the consulting relationship is one in which consultee adaptability and growth toward self-direction are consistently encouraged and cultivated." Consultants must avoid coercing, pressuring, or manipulating consultees into taking actions that the consultant might advocate. Having a clear understanding at the outset about the parameters of the relationship can help prevent later problems caused by blurred boundaries.

### **The Role of Values and Diversity in Consultation**

Consultants, like counselors, must be aware of the ways in which their values and worldviews influence the process and outcomes of their work. As Newman (1993) has stated, "To ignore or deny the central role of values in the practice of consultation is naive at best, and from an ethical perspective, dangerous" (p. 151). The consultant, consultee, and client or members of the client system all have values formed by their life experiences, and these values will have a mutual influence in the consulting process. Therefore, consultants must possess a reflective understanding of their values and how they influence the process of consultation and make a commitment not to impose them on consultees (Dougherty, 2009). Additionally, consultants must understand diverse worldviews and be aware

of differences in reasoning and communication patterns. They must be aware of how their own culture and gender affect their work as consultants.

Value conflicts may be inevitable in organizational consulting, because the process involves multiple parties who have diverse and often competing interests and priorities. Conflicts can occur in peer consultations as well, particularly when the consultant and consultee have differing worldviews. For example, Pete, a Native American counselor, has asked Judy, a traditionally trained Anglo counselor, to consult with him regarding a client with whom he is working. Pete believes that the client would be well served by bringing members of the client's family into the counseling process. Judy disagrees, believing that this would diminish the client's autonomy and violate the client's confidentiality. In this case, the consultant and consultee have very different ideas, formed by their worldviews, regarding how the client can best be helped. Judy is operating from Euro-American notions of individualism and autonomy. For Pete, including the client's family would be consistent with the tradition of honoring the wisdom of tribal elders, which is part of his cultural background. Consultants must be honest with themselves in determining whether they can be objective enough to work with a consultee whose values or worldviews differ significantly from their own.

### Summary and Key Points

Supervision and consultation are two types of tripartite relationships that involve complex ethical considerations. Legal issues in supervision and consultation have to do primarily with fair evaluation, accountability, and contracts. Supervision is an intervention that an experienced member of a profession provides to a novice member of that profession. Consultation is a process in which a counselor assists a consultee with a work-related problem related to a client or client system.

Key points regarding supervision include the following:

- There are two types of supervision—administrative and clinical—that differ in the amount of control or authority that the supervisor has over the supervisee.
- Supervisors must be sensitive to the due process rights of their supervisees, especially with respect to the obligation to provide ongoing feedback and evaluation of supervisee performance.
- Informed consent for supervision must be obtained from both the client and the supervisee.
- Points that should be discussed between a supervisor and a supervisee before they enter into a working relationship include the purposes

of supervision; the logistics of supervision; information about the supervisor's qualifications and supervisory style; the expectations, roles, and responsibilities of both parties; evaluation; and ethical and legal practice.

- Written supervision agreements are recommended in order to avoid misunderstandings and to articulate the nature of the supervisory relationship.
- The major components of supervisor competence have been described in the *ACES Standards for Counseling Supervisors* (1990). Supervisors must possess the competencies described in this document, to be aware of the need for continuing education in supervision, to develop cross-cultural supervision skills, and to self-monitor the boundaries of their competence.
- The requirements to keep client information confidential in counseling relationships apply equally to supervision relationships.
- Boundaries in the supervisory relationship must be managed carefully. Supervisors should not engage in close personal or social relationships with their supervisees, nor should they enter into business relationships with them or establish a counseling relationship as

a substitute for supervision. Of course, sexual intimacies between supervisors and supervisees are unethical.

- Supervisors have a large scope of responsibility and a number of parties to whom they are accountable. Under the legal principle of *vicarious liability*, to the extent that supervisors have direct control and authority over their supervisees, they may be held liable for their negligence.
- Both the supervisor and the supervisee have certain rights and responsibilities in the relationship. It is crucial that both parties understand these rights and responsibilities in order for supervision to work in facilitating supervisee growth while protecting client welfare.

Counselors frequently take on the roles of consultant and consultee. Two types of consultation discussed in this chapter are peer consultation and organizational consultation. Key points regarding consultation include the following:

- Because consultants generally do not have direct control and authority over those who receive their services, they cannot be held

accountable legally for the negligence of the consultee.

- When counselors enter into long-term agreements to provide consultation services, they should negotiate a written contract for the services.
- Consultants must be aware of the ways in which their values and their cultural backgrounds influence the consulting process and outcomes.
- Counselors must ensure that they have the needed competencies before they agree to take on a consulting role with a peer or with an organization.
- Consultants must take care to safeguard the informed consent and confidentiality rights of consultees and clients.
- Consultation focuses on work-related problems, not on the personal problems of the consultee. Maintaining this work-related focus, avoiding the dual relationship problems that are created by blending consultation with counseling or supervision, and ensuring consultee freedom of choice are all important consultant obligations.

THIRD EDITION

# ETHICAL, LEGAL, AND PROFESSIONAL ISSUES IN COUNSELING

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