

# Ethical Implications of a Critical Legal Case for the Counseling Profession: *Ward v. Wilbanks*

David M. Kaplan

This article presents the official position of the American Counseling Association on a seminal legal case for professional counseling: *Ward v. Wilbanks*. The focus is on three key questions: Is it permissible to deny counseling services to a homosexual client on the basis of a counselor's values? Can referrals be made at any time a counselor wishes to do so? When is a client a client?

**Keywords:** ethics, law, Ward, Eastern Michigan University, American Counseling Association

*Ward v. Wilbanks* is one of the most important legal cases to have an impact on the counseling profession in the past quarter century. The lawsuit, filed by the Alliance Defense Fund (ADF) on behalf of former graduate student Julea Ward and against the counselor education program at Eastern Michigan University (EMU), has threatened to undermine the ability of the counseling profession to promote nondiscrimination against clients based on sexual orientation. (Note: After this article was accepted for publication, the Alliance Defense Fund changed its name to Alliance Defending Freedom.) *Ward v. Wilbanks* has broad implications regarding whether it is constitutional for the counseling profession to designate protected classes, such as race, ethnicity, gender, disability, age, and the aforementioned sexual orientation, through the nondiscrimination section (Standard C.5.) of the *ACA Code of Ethics* (American Counseling Association [ACA], 2005, p. 10). In addition, the case has significant implications for professional counselors who state that religious beliefs prohibit them from counseling clients with particular characteristics. Although *Ward v. Wilbanks* has not yet reached its final conclusion, because it is still under appeal, the district court ruling provides significant insight into these issues. In this article, we explore the ethical implications of *Ward v. Wilbanks* and present the positions of ACA. (Note. *Homosexual* is used throughout this article because it is the term used in all legal documents relating to *Ward v. Wilbanks*.) Three questions are addressed:

- Is it permissible to deny counseling services to a homosexual client on the basis of a counselor's values?
- Can counselors make referrals at any time they wish to do so?
- When is a client a client?

## Background

Julea Ward entered the graduate counseling program at EMU in May 2006, with the goal of becoming a school counselor. In

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**Editorial Note.** This article is based on the American Counseling Association (ACA) expert testimony written by Dr. Kaplan for *Ward v. Wilbanks*, No. 09-11237 (E.D. Mich., 2010) and represents the official position of ACA.

the spring term of 2009, Ms. Ward enrolled in a practicum at the in-house clinic that was operated by the EMU counseling program. She was subsequently assigned a client who stated on the intake form that he wanted help with feelings of depression and issues related to a same-sex relationship. Instead of conducting an initial session, Ms. Ward sought to refer the client to another practicum student. She did so because

Based on Biblical teachings, Ms. Ward believes that God ordained sexual relationships between men and women, not between persons of the same sex. As such, Ms. Ward believes that homosexual conduct is immoral sexual behavior. Ms. Ward also believes, based on her sincere religious beliefs, that individuals are capable of refraining from engaging in homosexual conduct. (*Ward v. Wilbanks*, 2009, Compl. at 3-4)

The EMU counseling program informed Ms. Ward that refusing to see a client on the basis of sexual orientation was a violation of the ethics code for the counseling profession (the *ACA Code of Ethics*; ACA, 2005) and was therefore not acceptable. Ms. Ward was offered remediation to help her counsel clients whose values differed from her own, but she refused because she was "unwilling to violate her beliefs by affirming homosexual conduct within the context of a counseling relationship." (*Ward v. Wilbanks*, 2009, Compl. at 8)

After due process hearings, EMU dismissed Julea Ward from the counseling program. ADF subsequently filed a lawsuit in U.S. district court on her behalf claiming that the EMU counseling program "violate[ed] Ms. Ward's constitutional rights to free speech, free exercise of religion, freedom from retaliation for exercising First Amendment Rights, equal protection of the laws, due process, and freedom from establishment of religion" (*Ward v. Wilbanks*, 2009, Compl. at 9).

ACA provided expert testimony for the district court (Ex. at Sep. 30, 2009) and an amicus brief for the Sixth Circuit

Court of Appeals. (*Ward v. Wilbanks*, 2011). The amicus brief is available on the ACA website (<http://www.counseling.org/resources/pdfs/EMUamicusbrief.pdf>). ACA became involved for two reasons. The first was to support a counselor education program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) as well as the CACREP accreditation standards (CACREP, 2009), which require adherence to the *ACA Code of Ethics* (ACA, 2005). The second reason focused on the fact that *Ward v. Wilbanks* directly challenged the validity and enforceability of the nondiscrimination section (Standard C.5.) of the *ACA Code of Ethics* (ACA, 2005, p. 10). Ms. Ward's complaint argued that ACA's statement of nondiscrimination is "vague, overbroad, and allows for unbridled discretion in determining what protected expression and conduct fall under [its] prohibition . . . [and] thereby limits constitutionally-protected speech and conduct" (*Ward v. Wilbanks*, 2009, Compl. at 195-196). If Ms. Ward prevailed, courts could use the case as precedence for preventing the *ACA Code of Ethics* from prohibiting nondiscrimination on the basis of sexual orientation (and perhaps other areas).

In July 2010, Judge George Steeh from the Eastern District Court of Michigan ruled on the case (*Ward v. Wilbanks*). Judge Steeh found in favor of the defendant (EMU) and against the plaintiff (Julea Ward). As stated earlier, the case is being appealed and is currently being reviewed by the Sixth Circuit Court. (Note: After this article was accepted for publication, *Ward v. Wilbanks* was settled out of court.)

## ■ Is It Permissible to Deny Counseling Services to a Homosexual on the Basis of a Counselor's Values?

The unequivocal answer to this question is no. Refusing to counsel someone based on his or her sexual orientation is a clear and major violation of the 2005 *ACA Code of Ethics*.

### Sexual Orientation as a Protected Class in the *ACA Code of Ethics*

The nondiscrimination section of the *ACA Code of Ethics* (ACA, 2005) makes it clear that the counseling profession identifies sexual orientation as a protected class. Standard C.5. states, "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" (p. 10). As such, Julea Ward did not have the prerogative to refuse to counsel an assigned client on the basis of her discomfort with—or objections to—homosexuality. This was a clear and major violation of the *ACA Code of Ethics* as it also would have been if Ms. Ward had refused to counsel an assigned African American client who wanted help with a multiracial relationship on the basis that her values did not allow her to accept mixed-race couples.

Refusing to provide services to a protected class listed in the nondiscrimination section of the *ACA Code of Ethics* (ACA,

2005) on the basis of the counselor's religious beliefs also constitutes a major violation of the *ACA Code of Ethics* section focusing on avoiding harm by the nonimposition of personal values. Standard A.4.b. states, "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" (pp. 4–5). As a practicum student, Ms. Ward's refusal to provide counseling services to an assigned client who wanted help with same-sex relationship issues is a clear imposition of values, which is inconsistent with the counseling goal of nondiscrimination on the basis of sexual orientation.

Ms. Ward's refusal to counsel a homosexual client who wanted assistance with a same-sex relationship is also a clear violation of the *ACA Code of Ethics* (Standard A.4.b.; ACA, 2005) mandate that counseling students and professional counselors value the diversity of clients across sexual orientation, age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, marital status/partnership, language preference, and socioeconomic status. Standard A.4.b. of the *ACA Code of Ethics* prohibits professional counselors and counselors-in-training from refusing to counsel a client on the basis of negative values that the counselor possesses about homosexuality.

In a seminal article focusing on the legal implications of refusing to counsel homosexual clients published in the ACA flagship journal, *Journal of Counseling & Development*, Mary Hermann and Barbara Herlihy (both of whom have served on the ACA Ethics Committee and are considered leading authorities on counselor ethics) stated that refusing to counsel clients on the basis of issues related to sexual orientation can result in ethical sanctions, licensing sanctions, and lawsuits accusing the student or counselor of malpractice (Hermann & Herlihy, 2006). Hermann and Herlihy concluded that, "Counselors need to remain cognizant that they are ethically obligated to seek the knowledge, skills, and sensitivity to effectively counsel a diverse client population. Counselors who engage in discrimination based on sexual orientation are violating ethical mandates" (p. 418).

Because Ms. Ward was in training to be a school counselor, it should also be pointed out that the ACA division focusing on school counseling, the American School Counselor Association (ASCA), has adopted a position very much in keeping with Standard A.4.b. of the *ACA Code of Ethics*. The ASCA position states, "The professional school counselor is committed to the inclusion and affirmation of youths of all sexual orientation" (Stone, 2005, p. 275).

### Diversity as a Core Value of the Counseling Profession

Expert testimony provided by Julea Ward's defense team (Ex. at Sep. 1, 2009) supported Ms. Ward, in part, by noting that the initial ethics code of ACA promulgated in 1961 (American Personnel and Guidance Association, 1961) included a statement that counselors may decline to initiate counseling on the

basis of personal limitations. What the expert testimony did not note is that, over the past 5 decades since the publication of that initial ethics code, the counseling profession has evolved and shifted from a focus on the counselor to a focus on the client, with an emphasis on attending to multiculturalism and diversity. As such, the current 2005 edition of the *ACA Code of Ethics* contains a very different imperative than the outdated one provided by the plaintiff's expert testimony. The current statement is so central to the values of the counseling profession that it is written in the preamble:

Professional values are an important way of living out an ethical commitment. Values inform principles. Inherently held values that guide our behaviors or exceed prescribed behaviors are deeply ingrained in the counselor and developed out of personal dedication, rather than the mandatory requirement of an external organization. (p. 3)

The preamble to the *ACA Code of Ethics* (ACA, 2005) provides a focus of these inherently held professional values for counselors: multiculturalism and diversity. The preamble states, "Association members recognize diversity and embrace a cross-cultural approach in support of the worth, dignity, potential and uniqueness of people within their social and cultural contexts" (p. 3). These statements in the preamble of the current *ACA Code of Ethics* make it clear that it is contrary to the core values of professional counseling to refuse to see clients with same-sex issues on the basis of personal values about homosexuality and that professional counselors and counselors-in-training are obligated to work within the sexual orientation framework of their clients because that is a major component of diversity.

### The District Court Ruling on Counseling Values and Sexual Orientation

In his summary judgment, Judge Steeh agreed with the ACA stance on counseling values and homosexuality. Specifically, Judge Steeh wrote:

The ACA Code of Ethics is the industry standard in the field of counseling. . . . A counselor who cannot keep their [sic] personal values out of the interaction has great potential to harm her client. . . . The ACA Chief Professional Officer, Dr. Kaplan, explained in his expert report that plaintiff's request to refer clients based on their protected status (sexual orientation) "was a clear and major violation of the ACA Code of ethics as it would have been if she had refused to counsel an assigned African American on the basis that her values would not allow her to provide services to people of color." (*Ward v. Wilbanks* at 22-26)

## Can Counselors Make Referrals at Any Time They Wish to Do So?

Ms. Ward claimed in her lawsuit that referral is "an accepted practice within the counseling profession, including, but not

limited to, those circumstances where there is a clash between a counselor's values and a client's values/goals" (*Ward v. Wilbanks*, 2009, Compl. at 7). Because Ms. Ward felt strongly that homosexuality is immoral, her counsel argued that it was perfectly appropriate for her to make a referral after reviewing the intake information, which stated that the client wanted to talk about same-sex issues.

The plaintiff also referenced the first sentence of the *ACA Code of Ethics* (Standard A.11.b.; ACA, 2005) in support of her decision to refer: "If counselors determine an inability to be of professional assistance to clients, they avoid entering or continuing counseling relationships" (ACA, 2005, p. 6). Ms. Ward claimed that she was not able to be of professional assistance to this client because of "the irreconcilable differences between her religious views regarding homosexual behavior and [the client's] desire for counseling regarding his homosexual relationship" (*Ward v. Wilbanks*, 2009, Compl. at 139). Therefore, she also claimed that Standard A.11.b. of the *ACA Code of Ethics* obligated her to ask the clinic staff to reassign the client to a different practicum counselor-in-training.

Finally, Ms. Ward argued that her action was acceptable because the *ACA Code of Ethics* (ACA, 2005) permits the use of personal and moral values when deciding whether to refer clients (*Ward v. Wilbanks*, 2009, Compl. at 135). Specifically, Ms. Ward's complaint referenced Standard A.9.b., End of Life Care for Terminally Ill Clients (ACA, 2005, p. 5). This section allows personal and moral values to be a factor in deciding whether a counselor will choose to work with terminally ill clients who wish to explore end-of-life options such as physician-assisted suicide.

### Referral Criterion in the *ACA Code of Ethics*

*Competency.* Ms. Ward implied that counselors may make a referral on the simple basis that a counselor is uncomfortable with a client's values. Other than the one instance noted in the Values Exception section later in this article, there is no statement in the *ACA Code of Ethics* (ACA, 2005) indicating that referral can be made on the basis of counselor values. The section that speaks to both termination and referral (Standard A.11.) focuses on the "inability" rather than the "unwillingness" of a counselor as the criteria for referral (ACA, 2005, p. 6). As such, the focus of appropriate referral revolves around skills. Counselors should refer if they do not have specific expertise needed by a client (e.g., treatment for an eating disorder), not when they are uncomfortable with a client's characteristics. In other words, the focus of referral is on the needs of the client, not the values of the counselor. Counselors and counselors-in-training who experience a clash between their personal values and client characteristics, such as Ms. Ward, should obtain the appropriate supervision that will allow them to continue with the client (and similar clients in the future) and provide quality services.

*Referral as a last resort.* The *ACA Code of Ethics* (ACA, 2005) does not treat referral lightly because it can lead to



perceived abandonment. Standard A.11.a., Abandonment Prohibited, clearly states, “Counselors do not abandon or neglect clients in counseling” (ACA, 2005, p. 6). The ACA amicus brief filed with the Sixth Circuit Court of Appeals stated,

A counselor who drops a client whenever potential values-based conflicts arise . . . violates [the prohibition against abandonment]. The Code recognizes that a client may suffer harm if the counselor turns away at the very moment that the client’s most sensitive issues arise. Because of this risk, termination and/or referral are matters of last resort, to be handled on a case-by-case basis with sensitivity to the facts specific to the client in question. (*Ward v. Wilbanks*, 2011, Ex. at 15-16)

The *ACA Code of Ethics* (ACA, 2005) permits counselors to terminate a counseling relationship under three conditions: “When it becomes reasonably apparent that the client no longer needs assistance, is not likely to benefit, or is being harmed by continued counseling” (Section A.11.c.). Ms. Ward did not provide evidence that any of these three conditions had occurred. Therefore, her refusal to see her client solely on the basis of the client’s sexual orientation issues was a major violation of the Termination and Referral section of the *ACA Code of Ethics* (p. 6) and constituted abandonment.

*The values exception.* The complaint filed by ADF accurately summarized the *ACA Code of Ethics* (ACA, 2005) section on end-of-life care for terminally ill clients (Standard A.9.b.):

Provision A.9.b. of the ACA Code of Ethics recognizes that personal and moral beliefs may prevent a counselor from being able to provide services to a client who is interested in evaluating his end of life options, and states that if such a conflict arises an “appropriate referral” should be made. (*Ward v. Wilbanks*, 2009, Compl. at 135)

Section A.9.b. does indeed give permission for counselors to refrain from working with terminally ill clients who wish to explore options for hastening their death if doing so would violate the personal values of the counselor.

It should be noted that this is the exception that proves the rule. The ACA Ethics Revision Task Force, which promulgated the 2005 *ACA Code of Ethics*, was very much aware of the code’s prohibition on using personal values as a criterion for referral or termination. The task force was also aware that the new section of the Code, giving counselors permission to assist terminally ill clients in thinking through the hastening of their death, would likely violate deeply held personal and moral tenets of some counselors. Therefore, this section was written in such a way as to give counselors the option, on the basis of their values, of working or not working with terminally ill clients who wish to explore the hastening of their death. The ACA Ethics Revision Task Force gave permission in this one specific situation because

using the counselor’s personal values as the basis for refraining from assisting a terminally ill client to explore options for hastening death would otherwise be prohibited by the *ACA Code of Ethics*.

### The District Court Ruling on Referral

As with his ruling on counseling values and sexual orientation, Judge Steeh agreed with the ACA position on referrals. The summary judgment stated,

Regarding referrals, the ACA recommends that “[i]f counselors determine an inability to be of professional assistance to clients, they avoid entering or continuing counseling relationships.” This excerpt is consistent with the opinion of Chief Professional Officer David Kaplan that “[t]here is no statement in the *ACA Code of Ethics* that referral can be made on the basis of counselor values” unless they are counseling ‘terminally ill’ clients who wish to explore options for hastening their death.” Additionally, Dr. Kaplan explained that the provision in the *ACA Code of Ethics* allowing referrals of clients seeking end-of-life counseling is “the exception that proves the rule” that values-base referrals based on a client’s protected status are not appropriate. That is because the Code of Ethics permits *all* counselors, regardless of religious faith, to refer clients seeking counseling for end-of-life issues. (*Ward v. Wilbanks*, at 7 & 31).

## When Is a Client a Client?

One of the more unique claims made in Ms. Ward’s legal documents was that an ethical violation did not occur in her situation because the individual assigned to her was not yet a client. Her complaint stated, “Ms. Ward did not in fact impose her religious views regarding homosexual behavior on the client because she never met with him” (*Ward v. Wilbanks*, 2009, Compl. at 118). A subsequent filing by Ms. Ward’s legal team expanded on this idea.

Ms. Ward never met the potential Practicum client. Thus, she could not have imposed her values on the client. In fact, the individual assigned to her was not even her client, since at EMU’s clinic the counselor–client relationship begins “[a]t the first meeting,” not before. (Br. At 10, Feb. 26, 2010)

ACA responded by pointing out that the book *The Counselor and the Law* (Wheeler & Bertram, 2008), published by ACA, makes it clear that the definition of a client begins at the moment an individual requests assistance. (*Note.* A subsequent edition of *The Counselor and the Law* has been published since the filing of ACA’s expert testimony.)

The simple and safe answer to this question [of who is a client] is, “Anyone who seeks advice or counseling.” Therefore, it is prudent, whenever you are in your professional role, to meet the standards and fulfill your duty whenever you are interacting with a person who may become a client. (p. 13)

The fact that we have ethical responsibilities to those who have requested assistance obligates professional counselors to respect the dignity and promote the welfare of those who contact us, even if a session has not yet occurred. For example, the office of a counselor in private practice may receive a telephone call requesting an appointment from an individual who wants to use insurance that is not accepted by the counselor. Because the individual is now defined as a client, due to initial contact, the counselor has an obligation to assist the individual to find an appropriate mental health professional who does accept the insurance. It is, therefore, clear that the individual assigned to Ms. Ward was her client and that all statements and imperatives in the *ACA Code of Ethics* (ACA, 2005) pertaining to clients applied in her case.

## Conclusion

It was the unequivocal position of ACA that Ms. Julea Ward committed major and serious violations of the *ACA Code of Ethics* (ACA, 2005) during her counseling practicum at EMU. The ensuing legal case allowed ACA to successfully present its official position on a number of important ethical issues:

- Professional counselors may not deny counseling services to a homosexual person (or an individual belonging to any other protected class of clients) on the basis of the counselor's values.
- Referrals are to be made on the basis of skill-based competency, not values.

- To avoid abandonment, referral is an option of last resort.
- The counselor's ethical obligations to an individual starts at first contact or assignment, not at the first session.

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## Resolution of EMU case confirms ACA Code of Ethics, counseling profession's stance against client discrimination

By Heather Rudow

January 9, 201

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[https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/2804682712\\_4ff79076c1/](https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/2804682712_4ff79076c1/)

(Photo:Flickr/krossbow)

In December, after years of litigation, the court case *Julea Ward v. Board of Regents of Eastern Michigan University* was resolved. The resolution upheld the university counseling program's policies and confirmed the *ACA Code of Ethics* as the guide for defining ethical behavior for professional counselors. The case also reiterated that equal rights and social justice remain key pillars of the counseling profession.

"The resolution of the lawsuit leaves the university's policies, programs and curricular requirements intact," said Walter Kraft, vice president for communications at Eastern Michigan University (EMU), in a [press release](http://www.emich.edu/univcomm/releases/release.php?id=1355161741). "The faculty retains its right to establish, in its learned judgment, the curriculum and program requirements for the counseling program at Eastern Michigan University. EMU has made the decision that it is in the best interest of its students and the taxpayers of the state of Michigan to resolve the litigation rather than continue to spend money on a costly trial. The matter has been resolved in the amount of \$75,000. The university's insurance company, M.U.S.I.C. (Michigan Universities Self-Insurance Corporation), will pay the cost of the settlement."

The case began in 2009, when then-student Ward began her practicum at EMU. Upon reading the file of a client to which she was assigned and finding he had previously been counseled about his same-sex relationship, Ward, a conservative Christian, notified her supervisor that, in accordance with her religious beliefs, she would not be able to counsel the client and needed to refer him to someone else.

Ward's supervisor canceled the counseling session and scheduled an informal review, during which EMU faculty members explained to Ward that she needed to abide by the university counseling program's policies and curricular requirements, which adhere to the *ACA Code of Ethics*. The *ACA Code of Ethics* states that "counselors may not discriminate against clients on the basis of 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." This meant Ward was required to set aside her personal beliefs and values when working with clients

during practicum.

Given the choice of completing a remediation program, leaving the EMU counseling program or requesting a formal hearing, Ward chose the hearing. As a result of the formal hearing, she was dismissed from the program for violating the *ACA Code of Ethics*:

Ward sued EMU for her dismissal with the backing of the Alliance Defending Freedom (ADF) — formerly the Alliance Defense Fund — an organization of Christian lawyers that also assisted in another counseling student's case at [Augusta State University](https://ct.counseling.org/2012/06/judge-throws-out-counseling-students-suit-against-augusta-state/) that revolved around counseling clients who are lesbian, gay, bisexual or transgender (LGBT).

According to the EMU press release, "The ADF lawsuit sought to stop [EMU] from enforcing its policies prohibiting discrimination and requiring the students in its counseling program to counsel students in conformance with the code of ethics of the American Counseling Association."

ACA provided expert testimony for the case, which the judge quoted when granting the summary judgment in the decision.

On July 27, 2010, the U.S. District Court for the Eastern District of Michigan granted summary judgment in favor of EMU, which Ward appealed. She made her oral arguments on Oct. 4, 2011, and on Jan. 27, 2012, the 6th Circuit Court of Appeals sent the case [back to district court](https://ct.counseling.org/2012/02/appellate-court-sends-ward-v-wilbanks-back-to-district-court/) for a jury trial. ACA Chief Professional Officer David Kaplan spent a morning being deposed for the scheduled trial.

In December, Ward officially left the program.

"Personally and as a department, we are pleased that the lawsuit is settled," says Perry Francis, counseling professor and counseling clinic coordinator at EMU. "It has taken a great deal of time and energy to defend ourselves, and now we can continue to focus on educating our students to become excellent clinicians in the mental health profession."

Francis believes implications from the court case are clear, showing that counseling is "best accomplished by entering into the world of the client, valuing that client as a worthwhile individual who deserves [our] nonjudgmental care and concern. That has been what we teach to our students; it drives our policies and is a reflection of the professional values and ethics of the counseling profession. To accomplish this, we teach our students how first to become aware of their own values and issues, how to bracket off those values and issues that would interfere with client care and then to enter into the client's world to help him or her develop into the best person he or she can be."

**Kaplan echoed those sentiments. "ACA is pleased that the settlement leaves intact the district court ruling that fully supported Eastern Michigan University's gatekeeping function in dismissing a student who refused to counsel an [LGBT] client, the right for CACREP to require adherence to the ACA Code of Ethics and the nondiscrimination statement within the ACA Code of Ethics," Kaplan says.**

Pete Finnerty, president of the Association for Lesbian, Gay, Bisexual and Transgender Issues in Counseling, a division of ACA, says the case was especially relevant for LGBT individuals, who are often marginalized and discriminated against.

"Eastern Michigan stood strong for nondiscrimination and should be applauded for doing so," Finnerty says. "When Julea Ward refused to counsel a gay man, she was discriminating against an individual for religious reasons. This not only shows a refusal to move past her own values but also creates an environment where it is impossible for all persons to have equitable treatment under policies long in effect at university and community levels."

Because of the lawsuit, EMU has also come under fire from Michigan legislators, Finnerty adds.

"Two bills within the last few years, including the recently shelved SB 975 ... sought to make it illegal for Eastern Michigan and all other educational institutions in the state to enforce its nondiscrimination policies by allowing medical and mental health professionals to refuse service based upon 'conscience,'" he says. "This bill nearly made it to the governor's desk but was not voted on in the House before the end of the legislative session. There was specific language in this bill that targeted educational institutions [that] utilize a nondiscrimination policy. The language noted penalties and fines for enforcing nondiscrimination clauses."

Finnerty notes the likelihood exists that similar legislation could still come about, however, because other [freedom of conscience](http://www.legislature.mi.gov/documents/2011-2012/billengrossed/House/htm/2011-HEBH-5040.htm) bills were passed into law in states such as Arizona.

In 2011, Arizona passed HB 2565, which prohibits schools from disciplining a student in a counseling, social work or psychology program if the student refuses to counsel a client about goals that conflict with the student's "sincerely held religious belief." In 2012, the state passed SB 1365, prohibiting the denial, suspension or revocation of a person's counseling license or certification for "declining to provide any service that violates the person's sincerely held religious beliefs, expressing sincerely held religious beliefs in any context, as long as services provided otherwise meet the current standard of care or practice for the profession, providing faith-based services that otherwise meet the current standard of care or practice for the profession, making business-related decisions in accordance with sincerely held religious beliefs, including employment decisions, client selection decisions and financial decisions."

**In Michigan, SR 66, a resolution to enact legislation protecting the rights of conscience of students seeking counseling degrees and licensed professional counselors, calls out ACA directly: "Whereas, the American Counseling Association, a private organization that promulgates a code of ethics widely used by university counseling programs and state licensure boards in training for and regulating the counseling profession, has publicly supported universities that have punished or dismissed students for adhering to their sincere religious convictions."**

**However, says Finnerty, "The conclusion to [Julea Ward v. Board of Regents of Eastern Michigan University] is a win for the LGBTQQIA community, as those who serve this population were activated to defeat the legislation and not allow anti-gay groups to press their agenda upon the counseling profession that holds equitable and fair treatment as paramount to counseling. LGBTQQIA clients can be sure that counselors will continue to be trained through a multicultural lens where nondiscrimination and personal growth, not a counselor's personal values, is pertinent to the counseling relationship. For counselors and educators, this shows that believing in a world that values nondiscrimination and diversity is still very much a plausible reality and must be continually strived for."**

Says Francis, "We as a profession must continue to teach these professional values to our students so they can have a positive impact not only on our clients' lives but on the society as a whole."

To learn more about the case, visit [emich.edu/aca\\_case](http://www.emich.edu/aca_case/)

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[9 COMMENTS \(HTTPS://CT.COUNSELING.ORG/2013/01/RESOLUTION-OF-EMU-CASE-CONFIRMS-ACA-CODE-OF-ETHICS-COUNSELING-PROFESSIONS-STANCE-AGAINST-CLIENT-DISCRIMINATION/#COMMENTS\)](https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/#comments)

Dennis Darby  
January 31, 2013 at 4:30 pm

(<https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/#comment-86301>)

This is a very interesting article. It seems to take the view that the secular policies of EMU are in full alignment with the social justice policies of the ACA. Unfortunately too many organizations that do professional advocacy like the ACA (yes you did receive my student dues over the last 3 years, and yes you did give me professional liability insurance) base the whole of their ethical standards on the bottom line of litigation and lawsuits and not on true principles of social justice. We do have these principles of social justice as old as mankind. We call this natural law. But like other secular institutions paid for by taxpayers, the EMU seems satisfied with the culture of death, the suppression of fair media coverage, the abortion, planned parenthood anti-family values rhetoric.

Bren  
April 16, 2013 at 3:57 pm

(<https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/#comment-199386>)

The title of this article is enormously misleading, considering how the Sixth District Court ruled last year. You should read the 22-page opinion that Judge Sutton published regarding this case, in which he defended Ms. Ward's request for referral using several sections of the ACA Code of Ethics. Namely, he considered A.4.b. and allowed that her referral had fit within those guidelines. She was "acutely aware of her values" and attempted to avoid imposing them on the client by requesting a referral. Moreover, "the referral request not only respected the diversity of practicum clients, but it also conveyed her willingness to counsel gay and lesbian clients about other issues—all but relationship issues." He followed by defending her actions using C.5. (saying she was willing to work with all clients, including homosexual clients, just not on topics that conflicted with her values), A.11.b. (defending that the code of ethics allowed for referrals), and A.9.b. (pointing out that the ethical code specifically recognizes and allows for one situation in which personal and moral values inhibit the counselor's ability to competently assist the client).

The court decision did NOT confirm EMU's ACA Code of Ethics or the counseling profession's stance against client discrimination. In fact, it did the exact opposite.

I think the portion found in the Purpose section of the ACA is applicable in considering Ms. Ward's position... "When counselors are faced with ethical dilemmas that are difficult to resolve, they are expected to engage in a carefully considered ethical decision-making process. Reasonable differences of opinion can and do exist among counselors with respect to the ways in which values, ethical principles, and ethical standards would be applied when they conflict. While there is no specific ethical decision-making model that is most effective, counselors are expected to be familiar with a credible model of decision making that can bear public scrutiny and its application." Ms. Ward, in choosing not to counsel clients on an issue as controversial and sensitive as homosexuality, is putting herself in a perpetual firestorm. Flat refusal to engage an entire population of people is not something intended by any counseling code of ethics, and her actions do not represent a "credible model of decision making that can bear public scrutiny." Unless Michigan passes a Freedom of Consciousness bill, she will soon find herself on the receiving end of a costly lawsuit.

David  
March 25, 2016 at 8:42 pm

(<https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/#comment-809372>)

I concur with Bren's opinion that the above report does not accurately reflect the outcome of this litigation. For other readers, note the link to the judge's statement: <http://www.ca6.uscourts.gov/opinions.pdf/12a0024p-06.pdf> (<http://www.ca6.uscourts.gov/opinions.pdf/12a0024p-06.pdf>).

Having been a mental practitioner and educator for over 35 years, I know there are always going to be cases where a counselor's convictions will conflict with those of the client in such a way as to be incompatible with therapeutic success. You might have a client who wants to learn to be more assertive about professing their beliefs, such as that non-heterosexual unions are immoral or that women should not go to college or hold a job. Having worked in rural settings, I have found such beliefs to be fairly common. Those convictions may be sincerely held, and I find it challenging to be effective in working with individuals whose belief systems are so much at odds with mine. This is not to say that there is always a simple solution to this dilemma, but, as the Judge Sutton said, "Tolerance is a two-way street. Otherwise, the rule mandates orthodoxy, not anti-discrimination."

Timothy  
March 30, 2014 at 6:51 pm

(<https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/#comment-322833>)

OK, so let me get this correct we are to respect everyone's beliefs, except for that of Christians. Sorry but a counselor should have the right to refer another counselor that can properly give the services that the client is recommending. It is idiotic to believe a counselor can set aside their personal opinion, as it is impossible to do. So if a person has a true religious belief, then they should be allowed to refer the client to someone who could truly help them. What the ACA is promoting is reverse discrimination. It is pushing an idea that we believe agree with this controversial topic, and thus you must tell everyone that it is ok. This same thing can go with a client who is thinking about having an abortion. IF the counselor feels it is murder, as it is ending a person's life, should the counselor be forced to talk the client into the abortion; or should they not have the right to say look I am going to counsel you that their is value in every life. Would it not be more ethical to refer the client to a counselor that has his or her beliefs; after all that would not only provide the best counseling for the client, but also preserve the religious beliefs of the counselor. After all it is not like there are not options in the counseling field. But I cause the ACA believes it is more important to push an agenda, then to truly determine what is right for the clients and its members.

Counselor  
October 7, 2017 at 10:36 am

(<https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/#comment-810284>)

This is such a slippery slope. First off, you said: "should the counselor be forced to talk the client into the abortion". Since when it is our job to "talk the client into" anything? That is not our role. Our role is to listen, have unconditional positive regard for our clients, and help them process feelings. We don't give advice, and we keep our values on hold—why don't we give advice?: because then our values shine through, and that is not what the therapy session is about. It's not about us, it's about them. If we can start referring clients whose values aren't inline with ours, where does it end? "i am working with a poor, unemployed man. I fully value work ethic; therefore I believe my client should get off his butt and get a job. Shoot! Our values aren't aligned, I better refer out!" Where does it end? I can use any excuse to "get rid of a client" that I don't agree with. If you think it only relates to religious beliefs, then that's not right—if I'm not religious, does that mean I don't get a say and my beliefs don't matter? It's a great discussion to have, but I want to bring up how much a slippery slope it can be.

Fr. Paul Moore (<http://www.clientfocused.org>)  
October 6, 2014 at 7:36 pm

(<https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/#comment-550499>)

The concern of value based referrals extends beyond religious concerns. Counselors who work in agency or correctional settings (offenders, court ordered, etc) where law enforcement or courts are involved often "impose" the values, beliefs, and worldviews that conflict with the client's. Should counselors support or affirm lifestyles and worldviews that support violence and bullying, even if the clients were from other countries or cultures, or our own?

Social Justice & equality is rooted in values. And if social justice & equality is rooted in values then the very practice of social justice & promoting equality is in itself the promotion of values.

So, each counselor has to navigate through their own value system and determine how effective they can be and if their conscience allows them to proceed.

Currently, the values based approach being advocated might mean:

Feminist counselors would have to affirm clients who support oppression of women and abusive behaviors (not necessarily illegal) violating their conscience.

Christian counselor would have to affirm clients who support behaviors contrary to deeply held beliefs that make up their core beliefs.

Social Justice oriented counselors would have to affirm clients who support bullying of minorities.

What about the counselor's ability to be authentic and genuine?

The standardization and streamlining of the counseling practice/profession and coercive power based intimidation by her leadership to create cookie cutter counselors/approaches is unsettling.

Also, what is overlooked is the appellate courts response that was never implemented because it was settled before. The language used, had the case moved forward, was very negative towards the school's treatment of the student.

Sarah C  
November 29, 2015 at 12:51 pm

(<https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/#comment-808159>)

Had Ward embraced the values listed in the ACA's Code of ethics; autonomy, nonmaleficence, beneficence, justice, fidelity and veracity she would not have had such a problem with the university. She would have treated the client's she was seeing with justice and also recognized and appreciated the client's autonomy. Had her beliefs not been discriminatory in nature, her veracity (genuineness) would have never conflicted with the client population she served.

Marcus G

April 17, 2016 at 10:04 am

(<https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/#comment-809410>)

Bren, thank you for your well-thought response and insight referencing the 22 page Judges decision. David, thank you for adding the link to his comment and your quote, "tolerance is a two-way street".

Matthew R.

December 27, 2017 at 1:47 am

(<https://ct.counseling.org/2013/01/resolution-of-emu-case-confirms-aca-code-of-ethics-counseling-professions-stance-against-client-discrimination/#comment-810358>)

There is great hypocrisy in these counseling programs. How can these counseling programs be so ethical (moral) when they sanction immoral mental health practitioners who promote abortion (murder), divorce, homosexuality, witchcraft and other perversions? JESUS talked about hypocrisy and would say to these counseling program leaders:

"So you...outwardly appear righteous to men, but inwardly you are full of hypocrisy and lawlessness." Matthew 23:28 (NASB)

"You hypocrite, first take the log out of your own eye, and then you will see clearly to take the speck out of your brother's eye." Matthew 7:5 (NASB).

It is important to note that for Idaho at least, there is an exemption in law for faith based counselors. Here is the link below to that law (the exemption appears in the third paragraph from the bottom of the following web site):

<http://legislature.idaho.gov/statutesrules/idstat/Title54/T54CH34/SECT54-3402/> (<http://legislature.idaho.gov/statutesrules/idstat/Title54/T54CH34/SECT54-3402/>)

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## CASES

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## WARD V. POLITE



## DETAILS

Institution: Eastern Michigan University

Location: Belleville, MI

Topic: Compelled Speech of Belief

Intervention: Litigation

Outcome: Victory

## SUMMARY

Julea Ward was a student in Eastern Michigan University's masters program for counseling, but she was expelled from the program in 2009 when she referred a potential client who wanted advice on his same-sex relationship to another counselor. ADF filed a lawsuit on Julea's behalf. The Sixth Circuit ruled in Julea's favor, stating "tolerance is a two way street." The University then settled the case by paying her a sum and removing the expulsion from her record.

## LINKS

<http://www.adflegal.org/detailspages/client-stories-details/julea-ward>

<http://www.adflegal.org/detailspages/case-details/ward-v.-polite>

<http://www.adflegal.org/detailspages/faith-and-justice-details/updates-volume-iii-issue-3>

<http://www.adflegal.org/detailspages/faith-and-justice-details/updates-volume-iii-issue-2>

<http://www.adflegal.org/detailspages/blog-details/allianceedge/2011/11/21/accommodation-of-conscience-an-american-tradition>

<http://www.adflegal.org/detailspages/faith-and-justice-details/updates-volume-v-issue-2>

<http://www.adflegal.org/detailspages/blog-details/allianceedge/2016/08/25/tbt-why-one-university-student-stuck-to-her-beliefs-no-matter-what>

<http://www.adflegal.org/detailspages/blog-details/allianceedge/2012/12/17/a-resounding-and-lasting-victory-for-religious-liberty-on-college-campuses>

<http://www.adflegal.org/detailspages/blog-details/allianceedge/2010/07/27/a-disappointing-ruling-in-michigan>

<http://www.adflegal.org/detailspages/blog-details/allianceedge/2012/01/31/emu-learns-that-tolerance-is-a-two-way-street-victory-in-ypsilanti>

<http://www.adflegal.org/detailspages/press-release-details/will-university-s-expulsion-of-christian-grad-student-stand->

<http://www.adflegal.org/detailspages/press-release-details/6th-circuit-to-emu---tolerance-is-a-two-way-street->

<http://www.adflegal.org/detailspages/press-release-details/emu-student-achieves-final-victory-after-court-rules--tolerance-is-a-two-way-street->

<http://www.adflegal.org/detailspages/press-release-details/will-emu-get-away-with-expelling-student-who-wouldn-t-violate-her-beliefs-to-get-a-degree->

<http://www.adflegal.org/detailspages/press-release-details/adf-to-appeal-ruling-that-allows-eastern-michigan-u--to-expel-christian-students-for-holding-to-beliefs>

<http://www.adflegal.org/detailspages/faith-and-justice-details/price-of-values>

<http://www.adflegal.org/detailspages/press-release-details/e--mich--univ--ousts-student-for-not-affirming-homosexual-behavior>

<http://www.adflegal.org/detailspages/blog-details/allianceedge/2013/08/03/forcing-tolerance-thought-reform-at-eastern-michigan-university>

<http://www.becketlaw.org/case/ward-v-wilbanks/>

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STORY



Julea Ward

When Julea Ward walked into the room of professors from the counseling department, she hoped to find more tolerance than she'd received from her counseling supervisor at Eastern Michigan University. She was wrong.

Her counseling supervisor had already conducted an informal review of Julea, and now she had to endure another interrogation of her Christian faith from a review board of other faculty. Her offense? She referred a potential client who wanted advice on his same-sex relationship to another fellow counselor. Although she was willing to work with all clients, she could not affirm a relationship that was contrary to her faith.



(https://www.youtube.com/watch?v=aNhizwbIm91)

Unanimously, the school review board decided to expel her from the counseling program. Julea appealed, but her dismissal was upheld. Julea then contacted Alliance Defending Freedom, who helped her take legal action against the school.

This time, the court ruled in Julea's favor, stating "Ward was willing to work with all clients and to respect the school's affirmation directives in doing so. That is why she asked to refer gay and lesbian clients (and some heterosexual clients) if the conversation required her to affirm their sexual practices. What more could the [non-discrimination] rule require? Surely, for example, the ban on discrimination against clients based on their religion does not require a Muslim counselor to tell a Jewish client that his religious beliefs are correct if the conversation takes a turn in that direction and does not require an atheist counselor to tell a person of faith that there is a God if the client is wrestling with faith-based issues. Tolerance is a two-way street."

Eastern Michigan University paid a settlement to Julea and removed the expulsion from her record.

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