



Tip of the Month – December 2015

Representing Clients who have a Mental Illness

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The 25-year old American with Disabilities Act provides protections for the many among us with mental illness.¹ Mental illnesses are medical conditions that may disrupt a person's thinking, feeling, mood, ability to relate to others, and daily functioning. Because individuals with mental illnesses have higher rates of poverty (their illness can be so debilitating as to prevent them from working), most pro bono attorneys will eventually be helping clients with mental illness.² The following provide some guidance for providing legal services to clients with a mental illness (hereinafter referred to as just "clients").

Communication: be aware of your language: As with any client, effective communication is fundamental to providing good service. Communication starts with being intentional with language:

- Out of respect, use "people first" language when referring to your client. (Say, **My client, who has a mental illness**, or **Do you have a mental health diagnosis?** not *My mentally ill client* or *Are you mentally ill?*) Avoid conflating the person with the diagnosis. (Do not say, *She's a schizophrenic* or *Depressives react like that.*)
- Never use pejorative or slang terms for mental illness, even in jest.
- Work to avoid more subtle, pathological characterizations of a client that reinforce negative stereotypes. (Say **My client is afraid**, not *My client is paranoid.*)
- Do not ask personal questions or questions related to a person's disability unless they are relevant to the legal services being provided. If that information is necessary or is offered by the client, educate yourself about the particular diagnosis.

In all interactions, remember that the goal is not to provide therapy, but to increase the lawyer's comfort and ability to work effectively with the client in a professional yet supportive manner.

Communication: moderate your style as needed: Be attentive to the client's style of interaction and adjust communication accordingly. For example, a person who has a diagnosis of anxiety may be agitated and talk quickly and disjointedly. Other people may have memory loss or be uncertain of information needed. Individuals with a mental illness that includes mania may experience expansive mood, feel invulnerable, and have racing thoughts. In any of these instances, consider asking simple questions to help the person focus and move the process forward. Repeat information or questions as needed while remaining patient. Consider asking whether the person would like to take a break in order to calm down, collect their thoughts, or process the information that they have gotten so far. Also consider whether the environment is suitably calm and quiet for the interaction.

Offer an accommodation: At times, an accommodation will help a client work more effectively with you. Besides being good practice and customer service, reasonable accommodations are required by the ADA. Ask the person if they would like help and what would work for them. Consider, for example: encouraging them to ask questions, even if they may have already asked them; encouraging them to take notes; offering to provide a written summary of a meeting or instructions for later reference; taping meetings; modifying the time, length or location of meetings; etc. However, do not assume that they

¹ Approximately 26% of adults in Minnesota have a diagnosable mental health condition over a 12-month period and about six percent live with a serious mental illness such as schizophrenia, major depression, bipolar disorder, anxiety disorder, or posttraumatic stress disorder.

² Mental illness also increases vulnerability to physical and sexual abuse, as well as higher rates of substance abuse.

want extra assistance and remember that they cannot be forced to accept an accommodation even you think it would be helpful. Many common accommodations are mentioned throughout this article

Personal care attendants/support people: Some clients may bring a non-disabled individual (personal care attendant, a friend, or a family member, etc.) to help them or to provide emotional support. Be courteous to this individual, but talk directly to the client, not to the companion about the client. See Rule of Professional Conduct 1.14, Comment 3. Ask to talk with the client alone you have concerns regarding the effect on communication of having the third party present.

Service animals: Clients may be accompanied by a service dog that provides a service related to their disability. (For example, a person with an anxiety disorder may have a service dog trained to sense onset of anxiety and to direct the individual away from a situation that is causing an anxiety reaction.) In these cases, per the ADA, the animal should be allowed into the office and treated as a working animal regardless of “no-animal” building rules. A simple inquiry as to whether the animal is a service animal related to the individual’s disabilities is permissible but the client is not required to provide proof via a certificate of training or licensure. Because the service animal is working, instruct staff not to pat or otherwise distract the animal. The client is responsible to keep it under control at all times and to arrange for it to go out when necessary.

Attorney obligations under the Rules of Professional Conduct (RPC): A client is presumed competent and to have the capacity to act on his or her own behalf. There is a common law presumption of capacity, and relevant state law follows suit.³

However, when a client’s capacity to make adequately considered decisions in connection with a representation *is* diminished, you are required to “as far as reasonably possible, maintain a normal client-lawyer relationship with the client.” Rule 1.14, RPC. The rule permits you to take action when you believe the client has diminished capacity, is at risk of harm, and cannot adequately act in his/her own interest. In such cases, you may take protective action, including consulting with persons who may be able to protect the client, and where appropriate, seeking appointment of a *guardian ad litem*, conservator or guardian. When taking protective action, you may reveal information about the client as necessary, subject to Rule 1.6 of the RPC.

Also review Rule 1.14, RPC and its the ten comments for detailed guidance on: the nature of diminished capacity (Comment 1); the importance of maintaining respect and communication (Comment 2); the propriety of including family members and others in discussions while leaving decision-making up to the client (Comment 3); the role of guardians (Comment 4); possible measures to protect the client from harm (Comment 5); how to determine the extent of the client’s diminished capacity (Comment 6); whether to seek appointment of a legal representative (Comment 7); limits on disclosure of the client’s diminished capacity (Comment 8); emergency legal assistance where threat of irreparable harm to client (Comment 9); and duties related to emergency legal assistance (Comment 10).

Conclusion: In almost any *pro bono* representation, you are protecting the basic needs of the most vulnerable among us, who have restricted access to the legal system. When you are representing a client with mental illness, by adopting these simple practices for communicating clearly, being respectful, and offering accommodations when needed, you will not only be a more effective attorney overall, but will make our communities more just and thriving for everyone.

Note: Attorneys with specific questions regarding working with clients with mental illness or the ADA may contact Pamela Hoopes directly at phoop@mylegalaid.org.

³ For example, civil commitment for treatment is not a judicial determination of legal incompetence. Minn. Stat. Section 253B.23, subdiv. 2. The health care directive statute contains a specific presumption of capacity that can be overcome only by clear and convincing evidence. Minn. Stat. Section 145C.10(a).