



The Essential Skills for Counseling and Problem Solving at Clinics

Above all, we lawyers are counselors and problem solvers. As such, in every legal service we provide, we need to deeply understand our client's goals and capabilities, issue spot as well as problem solve, and be familiar with logistical barriers they may face. Only then can we provide the service most useful to them – in both our paid and volunteer work.

Without access to a lawyer, most in poverty have no effective remedy to the routine injustices they experience, such as unsafe housing, unpaid wages, failure to return security deposit, abusive phone calls from debt collectors, unfair lawsuits, and more. When we fully utilize our skills as advocate, counselor and problem solver, we can protect our clients' basic needs and promote their stability and well-being. (We also witness the strength and resilience of those living in difficult circumstances and learn more about the communities in which we live.)

Volunteering at clinics tends to be more challenging because of the time constraints. For that reason, many clinics have an experience requirement of their volunteers. And, to help attorneys new to clinics learn the ropes, VLN staff attorneys have interviewed the most effective clinics attorneys and compiled a list of the skills and practices that they regularly utilize. This list serves as the table of contents for a resource manual with three sections: 1) preparatory work; 2) legal clinic-specific and 3) information about VLN clients in general. Clinics attorneys are asked to review, learn, and use these skills.

To see the most recent version of this manual, visit the section *Essential Skills and Knowledge for Counseling and Problem Solving at Clinics* on www.vlnmn.org/volunteer-resources.

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Essential Preparatory Work Before the Clinics Shift

1. Find out the Top Issues at The Clinic and Learn the Law

To help each client as much as possible in the fast-paced environment of clinics, spend a few hours preparing *in advance* of your clinic shift. Ask your resource attorney or clinics coordinator for the most common issues at that clinic and whether there is a resource manual with applicable laws, forms, and templates. If there is, consider making a copy for yourself.

Also familiarize yourself with the below sites so that you know where to find information if you need it during the clinic.

- www.lawhelpmn.org
- <http://vlncc.wikispaces.com>
- <https://vlc.wikispaces.com/> (password protected)¹
- www.projusticemn.org (password protected)

2. Review Communication Tips

Below are skills and strategies as they relate to communicating with your client at a clinic.

1. **Watch for the human tendency to judge what is different or what we don't understand (judgment prevents connection and communication).** Be diligent about looking for cues of bias, such as frustration or other internal feelings of discomfort around differences. As soon as we're aware of our biases (including those which are generally unconscious), we may interrupt them. This skill ensures you give high quality services to all clients, not just those who are similar to you.
2. **Learn about various forms of poverty.** Many pro bono clients come from generational, working class or immigrant poverty, with very different experiences and skills from those from middle class or from situational poverty. Many attorneys do not know about the various types of poverty, other than how they are (inaccurately) portrayed in the media. Learning about the various forms of poverty can help you understand their decisions, common logistical barriers to their participating in legal processes, and ways they might communicate and organize organization differently from you. Without the context, it's easy to confuse resource issues with investment issues, make faulty assumptions about motives, and be less wholehearted in your efforts.
3. **Foster trust.** If there's time, build common ground by identifying and sharing some things you might have in common. Do you both have children a certain age, have a pet,

¹ Contact your case coordinator at VLN to find out how to access these valuable resources.

enjoy a certain sport? Identifying these will help you connect with each other and get beyond stereotypes you might have about the other.

4. Ensure you are understanding your client, including their goals and capabilities.

- a. Use common active listening techniques. Suspend your thoughts about what you are going to say; jot them down if it would help you remember. Avoid focusing on non-related subjects. Repeat back every so often what you hear to make sure you are understanding them correctly.
- b. If a client is sharing information in a way that is more circular than linear, feel free to gently interrupt after a while to guide the conversation back. Reminding them of the time limitations can help.
- c. Ask open-ended questions and try to stay away from “why” questions (which can put people on the defense). Instead, use statements such as, “Help me understand,” or “Tell me a little more about...” If a question seems invasive, preface it by letting your client know why you are asking it.
- d. Ask clarifying questions as needed.

5. Ensure your client is understanding you.

- a. Use words and examples that laypeople can relate to.
- b. Use multiple approaches until you are assured of a shared understanding.
- c. Use visuals as much as possible, including drawing out next steps.
- d. Make sure your body language is friendly, open, congruent with your words.
- e. Use stories to explain (“Here is what worked for my client Julie.”).
- f. Summarize every so often.
- g. Ask the client to summarize. “I’d like to make sure I’m being clear. Could you tell me what you are understanding the next steps are?”
- h. Use a variety of examples to convey difficult points, if needed.
- i. Minimize the chance of losing your client through legalese, e.g., “I’m used to being around lawyers all day and can sometimes forget how to talk in plain English. If I slip up and use words you’re not sure about, please let me know.” This phrasing owns our responsibility as the professional to be clear, rather than asking clients to let us know if “they don’t understand.”
- j. Review written communication orally. Use a third-grade reading level and clearly organized bullet points and graphs (whether or not your client is literate).
- k. Repeat information that is new.
- l. Break information into smaller, doable steps.

6. **Be aware of the power differential.** Many pro bono clients feel intimidated or shame around lawyers. Pay attention to ways in which you can make them feel more comfortable (such as sitting kitty-corner rather than across an imposing desk).
7. **Consider the difference between empowering and overwhelming.** Clients whose basic needs are not met cannot be “empowered.” For others, teaching them how to do things for themselves is a deep service. It’s critical to know the difference.
8. **When giving instructions, give context (explain why), break them into manageable steps, and assess whether the client needs more details.** Skills needed to succeed in middle class or wealth are quite different from the skills needed to survive in poverty. Sometimes, clients don’t know how to schedule and keep appointments, keep a calendar, mail a letter, make copies, plan for future events, file a petition, complete service of process, and organize paperwork). Determine what level of detail your client needs to follow your instructions, given their skills and other circumstances. If appropriate, offer supports or more detailed instructions.

3. Prepare for Language, Cultural and Capacity Differences

The final section of this resource lists ways in which clients from poverty may be different from paying clients. Review these resources in advance to be as adept as possible in meeting the client on their terms. You may also watch one of our many on-demand CLEs regarding poverty, race and other relevant information at: <http://wpbc.wikispaces.com/Introduction>.

4. Spend a Few Shifts Shadowing a VLN Resource Attorney or VLN Mentor Attorney

VLN asks that attorneys new to a clinic first have an onsite orientation and then spend a few shifts shadowing an experienced attorney with the skills list in hand, to focus on how to apply these skills effectively in the clinic setting.

Skills Used During Clinic Shifts

1. Introduce Yourself and Build Rapport

The introduction to the client may be brief, but doing it well is an essential step in building rapport and establishing yourself as competent and caring. Tips include:

- Greet the person in a friendly manner, including standing out of respect and, if wished, a handshake. (Be aware that some people will prefer to not shake hands, so if the person does not respond with their hand, accept their greeting without taking it personally.)
- Introduce yourself, first and last name, years of practice or at the clinic (if you wish), and that you are the volunteer attorney for the shift. Tell them that you are going to do your best to get them some help for their problem.
- If you are unsure of how to pronounce the client's name, ask them and work to get it right. Not doing so indicates indifference and is offensive.
- Be mindful of your body language and make sure it conveys interest and openness.
- Before taking notes, ask the client if they mind as a sign of respect.
- For more information, see the section on *Creating Rapport and Engaging the Client's Strengths* (below).

2. Set Expectations, Start the Session, and Keep on Track

Here are the tasks and sample scripts in rough order of how many attorneys do them.

Task	Sample Script
Introduction and time parameters	<i>Hi Mr. Kennedy, it is nice to meet you. I'm xxx and have been practicing at this clinic for xx years. I'll do my best to help you with your issue in the 20 minutes we have together.</i>
Keep an eye out for conflicts.	(The standard for pro bono limited scope services is "actual knowledge." ² If you <i>know</i> that you or someone in your firm represents the client's adverse party, do not proceed.)

² Rule 6.5, MRPC. This applies to pro bono representation only.

Task	Sample Script
Review the limited scope of the relationship ³	<i>I also see that you signed the Client Agreement⁴ and, before we start, just want to make sure that you understand that I will be helping you at this clinic, but I will not be able to provide any follow up help. Do you have any questions about that?</i>
If applicable, review the limits of the confidentiality ⁵ that you owe the client.	<i>If you ask me to help you to commit fraud or if I think it's necessary to prevent death or injury, I am not obligated to keep confidential that information.</i>
If applicable, cover privilege and third parties ⁶	<i>Is it okay to have [our clinic assistant, your friend, etc.] sit in with us? (To the extent you think there might be a court hearing in which your session with the client would be subpoenaed): In the unlikely event there is a court hearing about this matter, having anyone else in the session may mean that I could be required to testify about what we talk about today. That's never happened, to my knowledge, but I need to let you know of the possibility. How would you like to proceed?)</i>
Ask open-ended questions to identify the client's goal, regardless of how the client initially frames the problem.	<i>What can I do for you today?</i> ⁷ <i>What would you like to happen?</i>

³ When providing limited scope services, we must make sure the client understands what we will be doing, what we will not be doing, and what will remain to be done by the client after the lawyer's service.

⁴ See sample Clinic Data Sheet at end of materials.

⁵ With limited exceptions, everything the client tells you is confidential. Per Rule 6.5, this holds even if you later realize that your firm is representing the client's opponent. And, your duty of confidentiality is not impacted by the presence of a third party. See sample Clinic Data Sheet, below, for the explanation the client sees.

⁶ Attorney/client privilege is an evidentiary rule regarding what is admissible in a court proceeding. In short, an attorney cannot be compelled to disclose communications between an attorney and client that were for the purpose of giving or receiving legal advice. The presence of interpreters does not constitute a waiver of privilege if the interpreter is necessary to facilitate communication.

⁷ Ask even if you have a clinic assistant and/or clinic data sheet identifying the issue.

Task	Sample Script
Engage in down-to-earth problem solving, as well as legal issue spotting, and consider practical options outside the legal system. ⁸	<i>Here are some ways you could bring a legal action. That would take xxxx. Another option could be to [e.g., have me make a phone call to that person].</i>
Ask (typically) more directive questions to identify the course of action to best help this client achieve their goal.	<i>Based on what you would like to have happen, I need to ask you some specific questions. (See section immediately below Identify and Prioritize the Issues.)</i>
Be clear about what you can and can't do for them (including what you can help them do for themselves and what is undoable).	<i>Given the time constraints, here is what I think we can accomplish today. Would you like to proceed? (Also see Identify and Prioritize the Issues, below.)</i>
Respectfully keep the conversation on track	<i>I'm sorry, that sounds really hard. And in the time we have, I need to focus on xxx to meet your goal.</i>

⁸ For example, a man asks for an ex parte order to stop a funeral home from cremating the remains of his former partner until he has had the chance to pay his respects. The funeral home has denied access because the man is not one of the types of relations that is permitted to see the remains. *Solution:* Make a friendly call to the funeral home to explain the situation and explore options. Result: They suggest he go with his (and his former partner's) daughter, who is happy to take him. Another example: a woman asks for help with a termination of parental rights. Why? Her drivers' license has been suspended for failure to pay child support. *Solution:* Call the child support office and work out a payment plan.

3. Identify and Prioritize the Issues

At clinics, one must efficiently identify and prioritize the issues. Different attorneys may do this differently, but below is one framework by which you may assess a situation.

Compare the information you need with the information you have. Is there anything else you need to properly assess the situation? What can the client obtain (and would it be better to tell the client how to obtain the information and have them return to the clinic later)? Is there anything you can do with the information available?

Determine whether the client has a legal issue. If no (or if the legal issue does not have merit⁹), consider other ways to solve the underlying problem, including making a phone call on behalf of the client, calling 2-1-1 for social services and other options, or referring to community mediation services. See section 6, below, for more ideas.

Assess whether the legal issue is best solved by the courts. If not, consider a phone call, letter or other brief services. (See section 4, below, for more information.)

Assess whether this clinic is the best place to resolve the problem. If not, refer to the place better suited to resolve the problem. For example, sometimes, clients who come to the Conciliation Court Clinic might be better helped at the Housing Court Project. And vice versa.

Determine whether the person is able or willing to do the next steps. What are some of the challenges that might prohibit them from accomplishing their goals? Can you help them meet those challenges or would they be overwhelming and nullify your efforts today?

Determine how to best communicate with them to effectuate the solution they need.

If they are responding to a court action:

1. What is the specific legal issue?
2. Do they have any defenses and, if yes, what are they?
3. How can you help them tell their story to get their desired result?
4. How can you help them filter out the parts of their story that won't be helpful to the judge or their case? Sample language: *I understand that you're frustrated now, that the other person has done something wrong. And, for you to succeed, here are the most important things for the judge to know and in this order. This is not your day in court in front of Judge Judy. Not all of this is helpful to say in court, and it could actually cloud the issues. Here, what you need to focus on is why you here and what the other person did that violates the law.*

⁹ Rule 3.1, MRPC.

4. Provide Brief Services Whenever Appropriate

If the client has a legal issue with merit, brief services¹⁰ can often provide clients with better outcomes than legal advice alone. However, they are not right for every situation. Below is a checklist to ensure that a given limited scope service complies with the Minnesota Rules of Professional Conduct (MRPC).¹¹

1. **Evaluate whether the circumstances for unbundled services are reasonable**, including the following criteria:¹²
 - Whether the client will be better off with limited services than without.
 - The nature of the matter in substantive law¹³ and complexity.¹⁴ Cases with a high level of complexity are probably inappropriate for limited scope services.
 - The sophistication and abilities of the client to continue pro se. For example, assess whether the client can understand what is being asked for in the pleading, whether the client could represent herself at a hearing on this matter and answer questions stemming from the pleading. The client does not need to have the same depth of understanding as a lawyer might, but should be able to understand and articulate the basic arguments.
 - Whether there is sufficient time to complete the brief services contemplated.
2. **Check whether the client wishes to proceed with brief services.** Even with a meritorious claim, a client may prefer to not pursue an action because the effort would be greater than the benefit. VLN clients typically have fewer resources to fully participate in the court system as it is currently designed, such as jobs that allow time off, available child care, transportation and access to a computer/printer.

¹⁰ Such as writing a letter on behalf of a client, making a phone call on behalf of a client, drafting a court pleading.

¹¹ This information is compiled from the webinar *Unbundled Legal Services – Professional Responsibilities* presented by Patrick R. Burns, First Assistant Director, Office of Lawyers Professional Responsibility. This webinar may be viewed at: <http://www.projusticemn.org/civillaw/library/attachment.183075>.

¹² Rule 1.2, MRPC, only permits limiting the scope of representation if it is reasonable under the circumstances.

¹³ *Id.*

¹⁴ Rules 1.2, MRPC, Comment [2]: If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. See also Rule 6.5, MRPC.

3. **Communicate clearly to the client about the scope of your representation**, including:¹⁵ what services you will provide; what services you will not provide;¹⁶ and what the client must accomplish on their own to achieve their objectives.

At VLN clinics, (a) and (b) are handled in the Client Agreement on the Clinic Data Sheet,¹⁷ although it may be necessary to also orally tell the client that you will not be representing them in court or help them on an ongoing basis. (C) is best provided on the Attorney Suggestion Form. (See section 5, below.)

4. **Regarding written brief services:**

- **Ensure pleadings are brought in good faith, and have reasonable basis in both law and facts.**¹⁸ The obligation to the client and the court to investigate whether the pleadings are well founded in law and facts requires a reasonable inquiry under the circumstances and is not substantially less than in full representation. One practical suggestion to prevent frivolous claims is to discuss potential allegations and counsel the client to not sign the pleadings until and unless he or she can gather more factual support for a particular allegation.
- **When drafting pleadings, you may, if wished, use the “Assisted at VLN Clinic” stamp on each pleading.**¹⁹ This gives transparency to the court about the circumstances of the drafting of the pleading, addressing potential concerns about ghostwriting. If you’re at a clinic without a stamp, you may handwrite it.
- **Keep a copy of what you have done.** Ask a clinic assistant to make a copy for you, scan a hard copy, take a photo with your phone, and/or save electronic copy on a flash drive.

5. **Regarding phone calls on behalf of clients:**

- When making a phone call (such as to obtain more information or to negotiate), identify yourself as an attorney helping [client’s name] regarding the issue of [issue].
- If you’re speaking with an attorney for an opposing party, clarify whether your service to the client will be ongoing or limited.²⁰ If the latter, a possible script is, “I’m

¹⁵ Rule 1.2(c), MRPC: A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent. If it is reasonably foreseeable that the person receiving the advice will rely on the advice, an attorney-client relationship is formed. *Pine Island Farmers Coop v. Erstad & Riemer*, 694 N.W.2d 444, 448 (Minn. 2002), *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686, 693 (Minn. 1980).

¹⁶ Rule 1.2, MRPC.

¹⁷ See sample data sheet at end of materials.

¹⁸ Rules 3.1, 3.3, and 11.02, MRPC.

¹⁹ The MRPC do not directly address ghostwriting pleadings and, around the country, there is split authority on the propriety of ghostwriting.

²⁰ See Rule 4.2 MRPC. The disclosure of limited scope is not required by this rule, but disclosure does assist opposing counsel in compliance with the rule.

6. Tell Clients When No Legal Issue or Merit or When the Cost Might Outweigh the Benefit

It's often hard to tell a client that they do not have a meritorious claim or defense, or that the difficulties of the legal process outweigh the potential benefits. However, when applicable, this advice is essential; it enables a client to leave with relative peace of mind, after a caring advocate has carefully reviewed their situation with them, rather than with false hopes. It also avoids wasting the client's time and resources and can prevent sanctions.

Below are some tips.

- **Acknowledge unfairness.** Many clients appreciate an acknowledgement that their situation seems unfair and that the legal system does not adequately address all problems. Sometimes bad things happen to good people.
- **Listen deeply and empathize with the client's situation.** Sometimes fully listening and empathizing ("I would likely feel the same way if I were in your situation.") can give enormous relief.
- **Consider writing a letter or making a phone call on behalf of the client.** Sometimes, this can resolve a situation. Often an "opposing party" may be unable to negotiate directly with the client or may be more motivated to do so with you. It can help to paint the client in a sympathetic light and how the other can save the client needless financial, emotional, or mental hardship. Just be sure not to threaten legal action.
- **Explain the logistical of the court's enforcement power.** Many believe that getting a judgment will result in immediate payment. Explain that enforcing a favorable judgment requires more paperwork and effort (and that some people are judgment proof).
- **Explain the difficulties of proceeding pro se.** Most lay people are mystified by the rules of court/evidence or even the difference between evidence and argument.
- **Explain the difficulties of obtaining evidence.** Clients may assume they can obtain certain essential evidence, such as security camera footage or phone records.
- **Unless the client asks for more details, keep explanations simple.** Certainly, be clear as to why they don't have a case, given their facts and the law. But also be down-to-earth, avoiding legalese and jargon.
- **Consider a social services or other referral.** To find options, call United Way 2-1-1 (or 651-291-0211 from a cell phone). United Way 2-1-1 provides free and confidential health and human services information for people in Minnesota. They are open 24 hours a day, 7 days a week to connect people with the resources and information they need. You can also check VLN's clinics wiki: <http://vlnc.wikispaces.com/Social+Services>.

- **Consider a consumer complaint with the Minnesota Attorney General's consumer complaint division.** You could help the client complete and submit a one-page form downloadable from <http://www.ag.state.mn.us/Office/Complaint.asp>. Upon receipt, the AG's office will send the client a confirmation letter and send the other party a letter with the complaint and ask for a response. Large corporations and legitimate businesses often take these complaints seriously and try to resolve the issue. However, the AG's office will not represent the client or taken any action directly on behalf of the client should the dispute not be resolved.
- **Listen to your instincts if you are not feeling safe.** If you have safety concerns while giving a client bad news, excuse yourself from the room and go to a more public setting.

7. Leverage Time Through Clinic Assistants

Many clinics have onsite clinic assistants to help leverage the attorney's time in serving the clients. An attorney with a good clinic assistant can often accomplish twice as much! Some specific ways in which the clinic assistants are typically trained to help attorneys are listed below. When beginning a shift with a clinic assistant, review the below list together to establish how the clinic assistant will help.

Tasks that Clinic Assistants May Perform at Clinics

- Set up the space, such as turning on a computer and/or printer, getting out the clinic data sheets, putting up signs.
- Put out a sign in sheet to facilitate clients being seen in order.
- Complete the Clinic Data Form with the client, including:
 - Ensuring the client is income-eligible for the clinic
 - Helping the client identify the question he/she would like to ask the attorney (although attorneys should take this only as a starting point, because clients often don't correctly identify their legal issue).
 - Helping clients organize paperwork.
- Complete (for attorney review) the IFP form if it is likely the client would be filing paperwork with the court and the client is financially eligible.
- Based on the client's issue, gather information from onsite or online resources to give to the attorney and/or client.
- Sit in on the attorney-client consultation (with permission from the client after the attorney has reviewed the implications on privilege) to assist the attorney:

- Writing notes for the client on the “Attorney Suggestion Form.” (Attorneys should review the notes to ensure they are accurate and complete.)
- Obtaining other resources, sometimes from VLN resources or the internet.
- Offering to, under the attorney’s supervision, provide additional services to the client while the attorney sees another client, such as:
 - Completing a boilerplate letter or form
 - Making a phone call to obtain more information
- If applicable, giving the attorney the “Assisted at a VLN Clinic” stamp. (We use this only if the attorney writes the last draft.)
- Letting the attorney know whether others are waiting
- Help the client start following the attorney’s instructions after the clinic, such as giving an address, helping with stamps, or escorting the client to a follow up counter.
- Close the clinic site at the end of the shift.

On their own, without the supervision of an attorney, clinic assistants may:

- Provide forms and instructions (including brochures, court websites, lawhelpmn.org).
- Instruct generally as to:
 - How to complete a form, *as long as avoid suggesting specific language or parties.*
 - Applicable filing deadlines, *as long as do not compute the deadline and give a specific date.*
- Refer to available resources, such as relevant rules/statutes or specific courts (housing, conciliation, family, etc.).
- Refer to other agencies, *as long as make it clear that the referral is based on the client’s statement of the legal issue, not an independent assessment of the legal issue.*
- Give definitions of terms/jargon.

Clinic assistants may *not* ever:

- Suggest specific language to be used in filling out court forms.
- Recommend particular actions, pleadings or arguments.
- Opine as to the merits of a proposed court action.
- Apply law to particular facts.
- Represent persons in court.
- Perform specific legal research.
- Recommend one legal option over another.
- Recommend legal strategy.

8. Use Onsite Resources

Community clinics generally have onsite resources related to the most common legal issues seen at that clinic. Familiarize yourself with those resources ahead of time so you may use them efficiently while seeing clients during your shift.

9. When Wrapping Up, Remind the Client of the Limited Scope of the Relationship

To fulfill ethical responsibilities, and ensure the client doesn't expect that you will be helping them further, remind the client of the limited scope of your relationship. Sample language: *So just to review, I'm advising you to xxx by taking these xxx steps. It will be your responsibility to take those steps; I will not be assisting you further with this matter. If you need additional assistance, you may come back to this clinic for help with next steps, but there will likely be another attorney working here that day). Do you have any questions about that?*

10. Use Free Time to Learn More

Take advantage of any down time at clinics to familiarize yourself more with the law, with onsite resources, with the VLN Volunteer Philosophy (below) and with VLN resources (www.vlnmn.org/volunteer-resources). Or you may watch one of our pertinent on-demand CLEs at: wpbc.wikispaces.com/introduction.

Universally Helpful Knowledge

1. Create Rapport and Engage the Client's Strengths

Establishing rapport, putting your client at ease, building trust, and good communication skills are essential for successful representations. Below are some suggestions.

In general

- Make the client comfortable. Introduce yourself, uncross your arms/legs (open body language), talk slowly, address them by their name, avoid legalese, etc.
- Communicate the amount of time that you and the client have together.
- Let the client know if you'll be taking notes. Explain that it helps you to remember important facts. Consider offering the client pen and paper as well.
- Acknowledge how the client feels, even if you disagree. (*I might feel the same way if that happened to me.*)
- When taking time to think about possible solutions, let the client know. Prolonged silence can be unsettling.
- When asking personal questions, let the client know the reason you are asking them (to make the questions seem less intrusive).
- Watch the tendency of simultaneously thinking of solutions or counter-arguments while listening! This type of listening can lead us to jump to conclusions and/or miss important information.
- Consider listening to the client's full story before determining the best course of action. Avoid making assumptions about the client's situation or abilities.
- Consider adopting a strengths-based perspective, by focusing on what the client has done correctly as opposed to what they could have done better or differently.

Appropriate Question Structure

- At clinics, start with a question to quickly focus the discussions. (*What do you want an attorney to do for you today?*)
- After that, open-ended questions can be useful to evoke the complexities of each factual scenario, as well as reveal the client's underlying logic and priorities.
- Close-ended questions are more useful only after you have a sense of the client's story. They should serve to clarify information and/or pursue particular solutions in light of the client's story. Keep in mind that these types of questions can feel like interrogation and may be alienating.

Active listening. Active listening improves understanding. It includes paying attention not only to words but to body language and tone. Steps of active listening include:

- Reflect back: Paraphrase what you've heard and/or by seek clarification.
 - *If I understand you correctly...*
 - *What I'm hearing you say is...*
 - *When you say..., do you mean...?*
- Summarize back throughout the session.
 - *So the bottom line is that*
 - *What you're most interested in accomplishing is*
- Clarify expectations and roles to avoid misconceptions and confusions
 - *What I'll be doing for you is*
 - *What I'll need from you is*
- Work with client through options and advice given
 - *While the decision is ultimately yours, I can help you explore the different options to help you decide.*

Explore options. One way to do this is:

- Ask the client what they are hoping to accomplish. If that's not possible, what would be a close second?
- Play out the scenarios through different "what if" hypotheticals.
- Discuss how certain choices might affect other areas of the client's life and how the client's circumstances might make it difficult to achieve certain outcomes.
- Consider using scales (from 1 to 10) to gauge the client's ability to complete tasks. Discuss the client's support system, both formal and informal, as a resource for accomplishing tasks.
- Explore non-legal solutions as well. Sometimes, legal options are impractical for clients because of how many resources, including time, our justice system takes. For more information, see below section to "Consider Options External to the Legal System."
- Be prepared to give bad news. Acknowledge that sometimes bad things happen to good people and there is not always a legal remedy for a problem.

Write down/read back advice given and steps to follow:

- Explain to the client that some of the legal steps you'll be discussing can be difficult to understand or remember. Let them know that you'll be providing them a list of next steps for what to do to help them accomplish their goal and that you'll be reviewing it at the end of the session.
- At the end of the session, read it back to the client.

- Ask if the client understands, and answer any questions. Consider asking the client to put in his or her own words what the next steps are.

Make referrals when appropriate

- For example: *“You mentioned that you were also having housing issues. While I am not able to help you with that, I can refer you to a place that could, if you’d like.”*
- Tell the client to call the VLN client line 612-752-6677 if they would like to request additional services.
- If a social services referral might be appropriate, call 2-1-1 (or 651-291-0211 on a cell phone) on behalf of the client and direct them accordingly.
- If you know, explain what s/he can expect from the referral process.

2. Understand and Avoid Five Common Communication Breakdowns²²

When communicating with someone from generational poverty (or anyone who might be different from us), there is greater potential for communication breakdown based on:

1. Subconscious bias
2. Distrust of outsiders/ fear of professionals
3. Differences in priorities/worldviews
4. Differences in vocabulary and examples
5. Differences in basic communication styles (print- versus oral-culture styles).

These areas are explored more below.

1) SUBCONSCIOUS BIAS.

Professionals and those from the upper and middle classes have often formed subconscious biases about people in poverty that are often difficult to recognize and overcome. People in poverty also hold biases about people who are not in poverty. These subconscious biases can keep us from understanding each other and hamper efforts to provide legal services.

The three main sources of bias about people in poverty come from:

- A. Segregation and isolation.** Most middle-class people spend time with other people who are middle class. People in poverty tend to be surrounded by others who are in similar situations. This segregation by social class only exposes us to one way of life and does not allow us to understand the circumstances in which other people live.

²² Excerpt from the *Breaking Poverty Barriers to Equal Justice* ©, a collaboration among Volunteer Lawyers Network, Lindquist & Vennum LLP, Target, and Communication Across Barriers. For more information: www.lindquist.com/probono. Reprinted with permission.

- B. The media.** The number-one teacher of poverty in America is the media—which often dramatizes, sensationalizes, and provides extremes that perpetuate stereotypes and myths.
- C. The myth of the land of opportunity.** The United States has been called “the land of opportunity.” People are taught that everyone starts out the same and has the same chances—that every U.S. citizen can achieve success through ability and hard work. Conversely, we are taught that if someone fails, it’s her or his fault. We learn that only people who lack ambition, are lazy, or have personal flaws experience poverty in our wealthy country.

2) DISTRUST OF OUTSIDERS/FEAR OF PROFESSIONALS.

People in poverty may have limited exposure to people they can trust from other socio-economic classes and helping professions (including those within the legal system). Their experiences may include overworked and burned-out service providers or government employees who are unable to provide them what they need and who often do not have the communication skills for relating effectively with their clients. Prior experiences in the legal system may have left them feeling afraid, ashamed, judged, and inadequate. If communication with a previous attorney broke down, they may have been punished or judged for not following instructions that they did not understand or did not know how to follow. If they themselves have not had a bad experience, they likely have known someone who has and may feel uneasy and struggle to trust their attorney.

3) DIFFERENCES IN PRIORITIES/WORLDVIEWS.

We all have driving forces behind the decisions we make. The daily life experiences of people living in the crisis of poverty are different from those living in more affluent classes. In poverty, decisions are often made based on survival, relationships, and getting temporary relief from the war zone of poverty. In the upper and middle classes, decisions are often based on family, career success, and material security. What seems possible in the middle-class context may seem impossible in the context of poverty.

4) DIFFERENCES IN VOCABULARY/EXAMPLES.

Legal professionals can often derail communication by speaking in legalese or providing examples from middle-class lifestyles that clients from poverty can’t relate to. Without common vocabulary and examples, the information does not make sense, which often leaves the client with little understanding of what she or he is supposed to do next and often no capacity to follow through with attorney instructions.

5) DIFFERENCES IN BASIC COMMUNICATION STYLES.

Walter Ong, the first to identify the impact of poverty and privilege on communication styles, observed that all people are born into oral culture. Over time, they learn to be print culture if they grow up around adults who rely on reading more than talking for gathering and sharing information. Oral culture does not mean that people cannot read; it means that they prefer to seek information for living their lives through verbal means, not print. One communication style is not inherently better than the other. But, in America, most of our systems, including the legal system, are set up to serve and value those who communicate and relate in a more print culture style.

Oral Culture. Orality is a natural state in which we are highly attuned to our senses (touch, smell, sight, sound, and taste) and devote a great deal of attention to sensory information. Orality emphasizes our interconnection with the environment and the people in it. Some characteristics of orality are spontaneity, connectedness, present orientation, comfort with emotions, ability to see “the big picture,” and holistic point of view. In oral culture (orality), individuals seek information for living their lives by asking others they know and trust. They trust people—not paper—for gaining information. They highly value people with whom they personally identify. There is an unspoken loyalty, and relationships are placed above tasks or objects.

Example: Imagine that you are having a conversation with someone about planning your future. A beautiful bird lands just a short distance from you. You see the bird and start discussing the color of its feathers, the way it cocks its beak, etc. You have forgotten all about the conversation that was going on. That is orality. That is being present oriented. That is being in the “here and now.” If your conversation happens to be with a person who is also from oral culture, that person will understand your changing the subject. If your conversation is with a middle- or upper-class person who is more conditioned by print, she or he may get upset or be uncomfortable with your changing the subject. Oral-culture people are into what is happening at the time. They are highly sensitive to what is going on around them at all times. They are elemental, hypersensitive, and hyperaware of their environment. They must be to survive.

In oral culture, the vast majority of the important information forming an individual’s worldview comes from speech (storytelling, conversations, etc.). People tend to learn by doing or experiencing through someone else’s experiences. You can remain in touch with your natural orality by listening to and trusting your feelings. To fully understand oral culture, you should consider it in comparison with print culture.

Ong’s research showed that people living in poverty, regardless of race or sex, overwhelmingly displayed oral-culture characteristics. Ong discovered that the conditions of poverty created a need for people to communicate using oral skills. For example, in poverty one might acquire material items, but those items are often lost, stolen, repossessed, or taken away. Poverty teaches that people are all you have, which elevates the importance of relationships.

Poverty is also unpredictable and chaotic, and people in poverty are constantly addressing one crisis after another. This poverty experience programs people to be flexible and to go with the flow. The spontaneity of oral culture is compatible with the crisis nature of poverty.

Oral Culture

- You seek information through relationships.
- You are spontaneous and skilled at having multiple conversations at once.
- Interrupting is okay.
- Repetition and telling the same stories over and over helps in your understanding.
- Sharing personal experiences and stories is your way of connecting with others.
- It is normal to show emotions/feelings.
- You are very physical and expect physical responses.

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Print Culture. A print-culture style of communicating and learning comes from reading. If children are surrounded by adults who read for their primary information, they will likely gain the skills of print culture. Print culture is a learned communication style gained through reading as a primary source of information. Print culture (literacy) is a learned way of relating to the world where people learn to process and analyze (breaking things down according to parts) information collected through sight, sound, hearing, touch, and smell according to categories, classifications, and styles of reasoning developed by reading. Some characteristics of print culture are: self-discipline (ability to not pay attention to everything that is going on around you, but rather to focus on a single idea), separation and disconnection, ability to develop technology, ability to break things down into parts, and ability to organize efforts according to predetermined goals.

When you learn to read, you must shut out sense data. You cannot pay attention to other sights, sounds, smells, etc., or you will not understand what you are reading. Reading teaches you to not pay attention to what is going on around you. When you read, you must be focused on what you are reading or you will not understand it. Because letters have no meanings in themselves, the meaning of what we read comes from the ways in which many interchangeable parts (letters) are organized.

Therefore, people who are more literate (print oriented) are better at thinking about things according to the parts that make up the whole and at organizing parts into new combinations. You can gain the skills of print culture through reading, making lists, and outlining what you have read.

Example: Imagine again that you are having a conversation with someone about a legal issue. A beautiful bird lands just a short distance from the window in your office. You see the bird and notice that it is very interesting. But, it is not the subject at hand. So you don't think about the bird anymore. Instead, you continue to focus on the legal issue. This is self-discipline. If your conversation is with a person who is from oral culture, that person may feel hurt and/or rejection that you are so focused on the task and not into relating with them, sharing, and hearing about the bird. If you are talking with someone who is also print-culture oriented, that person will appreciate your ability to stay on task.

Print Culture

- You are a linear thinker and you like things in order...first this, then this, etc.
- You are most comfortable focusing on one idea at a time.
- You believe a plan is essential and your goal is to stay on task.
- It is important to think abstractly about situations and analyze them carefully.
- You approach tasks by breaking them into parts.
- You sort and categorize information.
- Time is crucial and you are rigid about it.
- You do not show emotions or physical affection unless you know someone really well, and you do not share personal stories.
- When you need information, you look for a book or article on the subject.

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3. Partner with Social Supports When Possible

As more legal services clinics are located at social services agencies, attorneys have more opportunities to collaborate with onsite social workers to better meet their client's goals. When appropriate, such collaborations can result in much broader and more lasting benefits to the client. Below are some benefits of such collaborations, specific examples of when such collaborations are particularly helpful, limitations and potential pitfalls of such collaborations, and how they might be overcome.

BENEFITS OF ATTORNEY-SOCIAL WORKER COLLABORATION

The average user of a walk-in clinic is a low-income client who faces many barriers in life. And frequently, the legal issue presented by the client on that particular day is just one small part of the overall problems the client faces every day. For example, the legal issue may be child custody, but substance abuse, homelessness, lack of education and/or ability to keep a steady job may all play into the client's inability to maintain a shared custody relationship with their child. The underlying problems here, while resulting in legal issues, are more appropriate to address with a social worker. Some benefits of working with social workers include:

- They are more broadly trained in understanding global patterns that destabilize clients, how to work with individuals experiencing mental illness, and how to work in a collaborative setting.
- Their input can lead to more effective interviewing of a client and the overall interaction with clients.
- They can bring clarity to evaluating a client's legal issue and help to determine whether crisis intervention and/or referral to appropriate agencies are warranted.
- They can assist in developing a more holistic approach to addressing the legal issue presented, including non-legal aspects of the problem, and assistance in developing a plan that is achievable.
- They are trained in making good referrals and have greater knowledge of the services available to clients and when such services are warranted.

ATTORNEY-SOCIAL WORKER COLLABORATION IS HELPFUL WHEN:

- **The client is operating under reduced mental capacity or illness.** Social workers can assist in understanding and working with clients experiencing mental illness. They can help a client with follow-up steps. If a social worker has an established relationship with the client, that social worker might be able to offer invaluable insight into the client's relevant history and capacity to resolve legal issues.
- **The client's problems are complex and multi-faceted, including varying underlying non-legal problems,** such as the example provided above regarding child custody. Often, the client is overloaded with "helpers," having to go from provider to provider. Social workers and case managers are more experienced in helping clients cope with

working through different systems, assessing when a client is reaching critical “shut down” overload, and working with clients to obtain ancillary services needed to successfully resolve legal and underlying non-legal issues.

- **The client needs assistance in obtaining records and documents or another follow-up.** School social workers are particularly adept at working within school data privacy requirements. Assisting clients in obtaining documents or applications generally falls outside the service provided by a volunteer attorney in a brief legal services clinic; however, such assistance may be needed with clients facing what appear to be daunting tasks to resolve their legal issues

CONCERNS RAISED BY THE ATTORNEY-SOCIAL WORKER COLLABORATION

Most issues that arise in attorney-social worker collaboration revolve around either: confidentiality/information sharing or the ethical and legal limitations under which each professional operates.

1) Confidentiality

Per the MN Rules of Professional Conduct, attorneys are prohibited from revealing privileged client information unless the client gives informed consent. MRPC 1.6(b). Thus, it is imperative to have the client sign an Authorization to Release Information before any discussion of the client’s legal issues with a social worker. An example of such a form follows.

Two caveats: First, the attorney must ensure that the client understands the nature of the informed consent and that the consent is voluntary. MRPC 1.4, which states “a lawyer shall promptly inform the client of any decision or circumstance with respect to which the client’s informed consent ... is required by these rules,” appears to require such disclosure. Second, it is appropriate to ask to speak to the client alone to assure that the client understands the Authorization to Release Information.

Such a form may also address how social workers’ mandated reporting issues would be handled. Social workers are mandated reporters of child and vulnerable adult abuse. Social workers may also be obligated to report certain facts back to the organization for which they work (e.g., some organizations require that their clients remain free of any alcohol or drug use while participating in the program). The attorney does not want to make the client choose between withholding pertinent facts from the attorney or risking being reported by their social worker. The resolution, though sticky, is in the hands of the attorney. It is necessary to make sure the impact of such disclosures, if made in front of the social worker, is clear to the client. And, if reporting by a social worker is unavoidable, make sure the client has the opportunity to privately disclose additional relevant information outside of the social worker’s knowledge, if appropriate.

2) Ethical obligations:

There is a critical distinction between the ethical obligations of attorneys and social workers. Attorneys are ethically obligated to serve a client's *stated wishes* while social workers are ethically obligated to serve a client's *best interests*. These are quite different standards.

For example, a client meets with a volunteer attorney at a brief legal services clinic. During this brief consultation, the attorney notes that the client appears to have mental health issues. The client can live on his own, but it also appears that adult children may be taking advantage of the client or, at a minimum, that the client is in a neglectful home environment and is not receiving social services due to an unwillingness to seek help. The client does not see any of these issues and is not interested in being referred to a social service provider. Should the attorney contact the county in the interests of the client's welfare? Herein lies the distinction between attorneys and social workers: the client is not interested in intervention, and the attorney must accede to the client's wishes absent the belief that disclosure of the client's perceived disability is necessary to prevent a reasonably certain death or substantial bodily harm. MRPC 1.6(b)(6). And even then, in Minnesota, disclosure is simply permitted, but not required. A social worker, by contrast, would likely be obligated to intervene.

This last limitation highlights both the pros and cons of attorney-social worker collaboration when working with a client at a legal services clinic. On the one hand, the social worker may be able to take action that would serve the best interests of the client and, ultimately, provide more and/or better life services. On the other hand, the attorney cannot divulge or allow such information to be divulged without client consent.

To the extent practicable, the limitations noted above should be discussed between attorney and social worker prior to meeting with the client, or at least prior to the client discussing his or her legal issues with the social worker present. Taking precautions designed to meet the requirements of the attorney/client relationship as well as meet the needs of the client relative to services provided by both an attorney and social worker can result in a win-win situation for all parties involved, and particularly the client. Social workers can provide invaluable services to the volunteer attorney's clients and, as feasible and appropriate, should be included to most successfully resolve a client's legal and related issues.

Consent for Release of Information from Attorney to Social Services Advocate

I give permission to (name of attorney(s)) _____ to share pertinent information about the legal problems we discussed, as necessary to assess or provide services to me, with (person or agency) _____

The attorney has explained to me that (please check below boxes)

- ☐ Social workers and many other professionals are mandated reporters of child and vulnerable adult abuse (unlike attorneys).
- ☐ Certain social services professionals are required to report certain facts to their agency (such as if a client has broken a rule prohibiting drug or alcohol use when participating in a program).
- ☐ The attorney cannot prevent re-disclosure of information released per this consent.
- ☐ I may cancel this consent in writing at any time prior to the information being released and that in any event this consent form expires automatically one year after signing.

Signature of client: _____ Date: _____

Printed name of client: _____

Consent for Release of Information from Social Services Advocate to Attorney

I give permission to (name of advocate) _____ to share pertinent information about me and the services I am receiving from him/her and his/her agency, as necessary to assess or provide services to me, with (person or agency): _____
_____. I understand that:

- ☐ My records are protected under state and federal privacy regulations and cannot be disclosed without my written consent unless otherwise provided by law.
- ☐ I may cancel this consent in writing at any time prior to the information being released and that in any event this consent form expires automatically one year after signing.
- ☐ Any information released to the above social services advocate and agency will be shared only with staff and/or others who need this information to assess and/or provide services to me.

Signature of client: _____ Date: _____

Printed name of client: _____

Last Updated 2-25-16

4. Learn About Different Types of Poverty ²³

To begin to understand experiences of people in poverty, we must start with an explanation of what that word means! One of the most common usages of the word “poverty” comes from the federal government’s poverty guidelines. These guidelines determine who is eligible for government services such as legal aid and food stamps. Today, the federal poverty guidelines for a family of four are \$24,250. Do a quick back-of-the-envelope calculation of rent, utilities, health care, food, clothes, school supplies, and other basics and you will see the difficulty of surviving on that income.

The formula used to calculate what a family of four needs in 2015 is based on a 1960s cost of living. It does not include childcare, transportation, or health care as family needs. The Economic Policy Institute added in cost of childcare, transportation, and health care and determined a family of four would need a minimum of \$48,000 just to cover basic human needs today.

In addition to the faulty federal poverty guidelines, we get even more confused because there is no single “poverty” experience. For instance, people experiencing generations of homelessness, illiteracy, and hunger can carry the same “poverty” label as someone who grew up with safe housing, a good education, and a stable family who slips into poverty because of a health crisis or divorce. Both situations are called “poverty,” but people in situational poverty have some critical assets. They often have a family safety net and are in a much better position to navigate the courts, which are set up for people who can read and write and have a basic understanding of the legal system. People from generational poverty are less likely to trust the system or know how to navigate it.

Some people you serve may be experiencing generational poverty, while others may be experiencing working-class poverty, immigrant poverty, situational poverty, or mixed-class poverty. Each of these life experiences is different and shapes our expectations, knowledge, confidence, and opportunities. Understanding the different types of poverty can empower you to better understand and meet your clients where they are. This will improve communication and client follow-through. Below are some characteristics of four lived experiences of poverty.

Generational Poverty

- Are typically workers of the land, as opposed to owners of the land
- May never have connected meaningfully with anyone who benefited from education
- Have not known anyone who was promoted or was respected in a job

²³ Excerpt from the *Breaking Poverty Barriers to Equal Justice* ©, a collaboration among Volunteer Lawyers Network, Lindquist & Vennum LLP, Target, and Communication Across Barriers. For more information: www.lindquist.com/probono. Reprinted with permission.

- Are highly mobile, often without a home and moving frequently looking for ways to make money
- Have high family illiteracy
- Subconsciously have come to believe that something is wrong with them and that is why they are in poverty
- Learn not to trust professionals or people with titles
- Have likely had negative experiences in trying to access the legal system
- Focus on making it through the day

Working-Class Poverty

- Work, but are barely able to pay for basic needs (no money for any extras)
- Are typically renters as opposed to homeowners
- Often live paycheck to paycheck
- Rarely have health care coverage
- Focus on making it two weeks or through the month
- Learn not to trust people who are making it
- View poverty as personal deficiency

Immigrant Poverty

- Have few or no resources
- Face language and culture barriers
- Seem to have a stronger sense of self than those in working-class and generational poverty
- Often do better than those born into poverty in America
- View poverty as a system problem

Situational Poverty

- Grew up in stable environments and had their basic needs (and more) met
- Attended school regularly; had health care, family vacations, etc.
- Were surrounded by educated people with living-wage jobs
- Do not recognize advantages of growing up middle class
- Have had a crisis (health, divorce, etc.) and had income and savings drop

- Became isolated (or isolated themselves) from middle-class friends during their poverty crisis
- Are embarrassed by their situation
- Have likely had positive experiences with accessing legal services, but once in poverty, face barriers to equal justice
- Have not internalized poverty as personal deficiency
- Are more likely to make it back into the middle class

Again, the key point here is that the word “poverty” is used to describe many lived experiences, not a monolithic one. This knowledge will empower you to listen to your clients better and gain insight to better address individual barriers that might prevent them from receiving equal access to justice.

These four general types of poverty give a context to your clients’ worldviews, expectations, motivations, and communication. And to make things a bit more complicated, there are many more poverty contexts than these four. For instance, a client may be from a mixed-class experience, such as growing up with one parent from the lower middle class and the other from a working-class background, or having one parent from immigrant poverty and the other from situational poverty. These mixed-class experiences influence people’s lives in ways that are different from having two parents from a middle-class context.

We learn about our world and develop attitudes, beliefs, and values from our daily life experiences. If your family struggles with hunger, your daily life experiences will be shaped by that. If your family owns their home, your daily life experiences will be impacted by that. If you watch people you love do without their basic needs, you will be affected by that. Every adult who comes into the life of a child is handing that child a description of the world. People can only teach and model what they have been exposed to in a relevant and meaningful way.

The worldview taught by poverty

People living in poverty internalize the messages sent their way by society. Families living in the crisis of poverty receive societal messages that they do not belong and they are the cause of their own poverty. Many people come to believe that something is wrong with them. Poverty steals their hope and self-confidence.

Here are some of the messages that people experiencing generational, working-class, and immigrant poverty absorb from society:

- Everyone else is smarter than I am.
- People who are not in poverty are better than I am.
- People who are making it do not care about me.

- I/we don't belong anywhere.
- People like us do not get educated.
- We don't have what we need to break out of poverty.
- There is no one to help.

5. Understand the Impact of Race on Pro Bono Services²⁴

Minnesotans coming from generations of poverty often have had negative experiences dealing with public institutions, including the legal system. Even while requesting pro bono assistance from the Volunteer Lawyers Network (VLN), they may be skeptical about our good faith efforts and/or ability to avail them of the protections of the law. In short, their distrust of the system we represent often extends to us. This is particularly true for people of color because of the added issues of institutional racism and racial disparities, as more fully described below.

Understanding the racial disparities that exist in our state provides critical context when working with pro bono clients. This article provides this background, as well as practical suggestions for lawyers in addressing this inherent subtext in providing pro bono services.

People of color have disproportionately negative experiences with the criminal justice system

According to a 2013 report by the Council on Black Minnesotans, people of African descent view “criminal justice problems as systemically discriminating, entrenched, and supported by main stream power brokers.”²⁵ Some data:

- People of color are more likely to be in prison than white people. For instance, although Blacks are 5.2 percent of the state's population, they represent 37 percent of the prison population. American Indians are 1.2 percent of the population and yet represent 9 percent of the prison population. Latinos are 4.7 percent of the population and make up 8 percent of the prison population.
- On any given day in Minnesota, a black person is more than 20 times more likely to be stopped for a traffic offense than a white person. Even though whites stopped during traffic searches were found to carry contraband at higher rates than people of color, resulting arrests and prosecutions were ten times higher for blacks than whites.

²⁴ Published November 2014 in *The Hennepin Lawyer*, membership publication of the Hennepin County Bar Association. Used with permission. 612-752-6000. thl@hcba.org

²⁵ [Disparity Analysis: A review of disparities between White Minnesotans and other racial groups](#), Council on Black Minnesotans, 2013

- **Impact:** *This disparity impacts every aspect of people's lives. Because most landlords and employers routinely do background checks, disparities in the criminal justice records create additional barriers for people of color. A criminal record affects their ability to find living wage jobs and/or decent housing.*

People of color face institutional barriers to acquiring wealth

Buying a home is one important way to accumulate wealth. Minnesotans of color are less likely to own homes than white Minnesotans. The homeownership gap between white people and people of color in Minnesota led the nation in 2012²⁶ 76 percent of white Minnesotans owned homes compared to 39 percent people of color.

Some of this disparity is the legacy of our past national appraisal system that assessed homes at a lower value simply because a person of color lived there. People of color were systematically denied access to federal housing lending programs and subjected to redlining.²⁷ One result of these practices: Between 1934 and 1962, the federal government underwrote 120 billion dollars in new housing. Less than 2% went to people of color.²⁸

- **Impact:** *Since homeownership is a key way that families accumulate and pass on wealth, people of color continue to endure the effects of this economic racism. In 2009, the national median net worth of white households was \$113,149. For black households, it was \$5,677 and for Hispanics it was \$6,325.²⁹*

Mortgage lending disparities continue today

Nationally, people of color continue to receive home loans on less favorable terms and at a higher cost than similarly situated white borrowers; people who live in segregated communities of color receive a disproportionate rate of subprime loans and foreclosures, thereby bearing the brunt of the mortgage crisis.³⁰ Among the findings specific to the Twin Cities, a report from the Institute on Race and Poverty found that:

“Denial rates [for home mortgages] are higher for black, Hispanic and Asian applicants than for whites, regardless of income. Very high-income black, Hispanic and Asian applicants (applicants with incomes more than \$157,000 per year) show denial rates higher than whites in the lowest-income category (less than \$39,250 per year). Disparities are greatest

²⁶ [Minnesota Compass](#), Wilder Foundation

²⁷ For more information and cites, see http://en.wikipedia.org/wiki/Housing_Segregation

²⁸ For more information see Race, the Power of an Illusion DVD, one transcript at <http://newsreel.org/transcripts/race3.htm>

²⁹ *Health Disparities: Impact on Minnesota, Impact on the future*, Minnesota Department of Health presentation on Jan. 17, 2012, at ??? citing Pew Center research.

³⁰ [Communities in Crisis: Race and Mortgage Lending in the Twin Cities](#), Institute on Race and Poverty, February 2009.

for black borrowers. The denial rate for blacks with incomes above \$157,000 was 25%, while it was just 11% for whites making less than \$39,250.”

- **Impact:** *The housing crisis resulted from historic and systemic government policies that denied access to people of color (see above), poor government oversight of predatory financial institutions, and unreasonable risks taken by financial institutions. People of color bore a disproportionate burden of the resulting foreclosure crisis, again affecting their ability to accumulate wealth and pass it on.*

People of color make less money than whites

According to U.S. Census data for 2012, Minnesotans who are black or Native American each make about half of the median income of white Minnesotans.³¹ The median income for white non-Hispanic Minnesotans that year was \$61,667 compared to \$32,153 for Native Americans and \$28,136 for black Minnesotans. Black Minnesotans and Native Americans also have higher unemployment rates.

Impact: *All the above factors have a significant impact across generations, creating a negative momentum that is hard to overcome. Some liken it to trying to go up a down escalator. Whatever the interconnecting causes that lead to these disparities, one result is that people of color are disproportionately in poverty.*

Many persons of color are scarred by historical trauma

Historical trauma refers to cumulative emotional and psychological wounding that extends across generations. For example, the emotional effects from maternal abandonment of a young child of any race might be seen across three generations.³² Mental health care professionals generally agree that people of color often carry unresolved historical trauma because of generations of discrimination, segregation, racism, and “micro-aggressions.” Micro-aggressions refer to brief, daily hassles and slights experienced by people of color, such as frequent media portrayal of people of color as tokens or criminals, frequent denials by the dominant culture that systemic racism and oppression continue to exist, insensitive remarks or demeaning practices such as being followed by security in a department store.³³

Addressing the impact of race in our individual pro bono representations

The Rules of Professional Conduct (RPC) require that we provide competent and effective representation and urge that we work for equal access to our system of justice for all. Below

³¹ Minnesota Budget Project blog, “[Minnesota still a land of Inequality](#), Sept. 19, 2013”

³² http://en.wikipedia.org/wiki/Historical_trauma

³³ <http://gainscenter.samhsa.gov/cms-assets/documents/93078-842830.historical-trauma.pdf>

are some suggestions for how we can fulfill these in our individual representations of people of color from poverty.

- Take a little more time with clients to give them a context to our volunteer work – that we have a professional interest (and responsibility) to make sure the justice system works well . . . for everyone, and so we are volunteering our services.
- Reassure clients that “volunteer” doesn’t equal second best. We will be just as zealous in their representation as we are with paying clients.
- Watch for indications of mistrust of authority or institutions and take time to acknowledge them. For example, “I can imagine that you may not have had good experiences of the legal system, and yet for me to help you as best as I can, I need you to come to the court hearings with me.”
- Anticipate that some clients will be hesitant to fully answer our questions, especially those that may seem personal and/or invasive. It helps to explain the reason we need to ask certain questions, and acknowledge that they may be personal.
- Remember and acknowledge that racism is a reality for our clients of color—and they are the experts on their life experiences. If clients bring up racism as part of their case, we can take some time to listen. If a client’s claim of racism is not legally relevant to the case, we can take a moment to explain why while taking care to not minimize the possible racism and its emotional impact on the client. For example, if a client says that the landlord did not give him extra time to pay the rent because he is black, we can acknowledge that that is unfair, but it is not relevant to the unlawful detainer based on not paying rent.
- After hearing our advice and/or explanation about remedies, our clients may decide that the legal system will not address their problem enough to justify their and your efforts. They may decide not to pursue their case, a decision we need to respect as making sense to them based on their prior experiences.

Providing excellent representation and access to justice for all—including those from different backgrounds—is an ongoing professional issue for all attorneys. In recognition of this, VLN offers practical help for volunteers serving in cultural settings that are often quite different from their own.

For information regarding serving people living in poverty, see www.wpbc.wikispaces.com.

6. Overcome Misconceptions of our Justice System from an Immigrant Perspective³⁴

Whether you are taking on a new client or a court employee interacting with the public, a significant amount of an attorney's time is spent correcting people's misconceptions about how the judicial system works. This challenge is compounded when you are helping an immigrant who might have little or no background about the American judicial system. The term "immigrant" is used in this article solely for efficiency with the recognition that the term itself is rather simplistic and cannot accurately represent the depth and breadth of experiences that members of ethnic and/or linguistic groups who originated outside of Hennepin County have brought with them to the United States. It is often hard for someone to separate his or her prior experiences from a present set of facts, even if those prior experiences are no longer directly applicable to the facts at hand because that person has moved from one place to another. If home truly is where the heart is, home is also the place that the mind instinctively reverts to in a time of crisis. It is only natural that people born and raised in countries and into cultures outside of the United States may have misconceptions about the American judicial system that are based upon previous experiences in their countries of origin.

Sources of Misconceptions: Culture of Origin and U.S. Pop Culture

Many new immigrants may ask friends, relatives, or acquaintances from their country or culture of origin about legal issues or the judicial system. These personal contacts are often trusted sources of information used to navigate life in the United States. This may be especially true of members of cultures where oral transmission of information, not written transmission, is the norm. As anyone who has ever lived in a small town probably already knows, the information shared amongst members of a small, tight-knit community is not always accurately transmitted. When interacting with someone who has immigrated to the United States, one should not downplay the impact of television courtroom dramas and how they portray the American judicial system. Rarely do members of the Hennepin County bench or bar have the occasion to speak with the bravado and self-righteous conviction portrayed by fictitious television judges or lawyers. Doing a little reality checking of expectations prior to a hearing or trial is one way to make sure that an immigrant client does not visibly convey disappointment to the judge over what could seem like a less than dramatic performance in a real courtroom.

Minnesota courts have been engaged in ongoing efforts to improve the availability of accurate legal information to immigrant communities. The Minnesota Judicial Branch Self Help website, www.mncourts.gov/selfhelp/, and other websites such as www.lawhelpmn.org, provide valuable information for *pro se* parties in several languages, yet such information may still be inaccessible to immigrants due to illiteracy, lack of basic computer skills, or access to the

³⁴ Published July/August 2015 in *The Hennepin Lawyer*, membership publication of the Hennepin County Bar Association. Used with permission. 612-752-6000. thl@hcba.org

Internet. To overcome these barriers, attorneys or court staff may need to go over educational information and boilerplate forms with a litigant. This can also include the assistance of a translator, who may need to ask the litigant about information relevant to their case and to reiterate or explain what the attorney or court staff said in the immigrant's own words or language.

Misconceptions Regarding Corruption in the Judicial System

Immigrants appearing in U.S. courts need to understand that corruption is neither commonplace nor tolerated in the American judicial system. Unfortunately, corruption within a judicial system can be an unpleasant fact of life, or part of the ordinary cost of doing business, in many countries across the globe. According to Micaela Schuneman, an attorney and Director of Refugee Services at the International Institute of Minnesota, "It is a challenge for many of our refugee and immigrant clients to access the judicial system in the U.S. Many of our clients come from countries where they could not trust their governmental entities, so it is extremely important for a lawyer who is working with our clients to explain how the U.S. System works. For example, that judges must be neutral and that it is illegal to bribe judges."

When working with immigrant litigants, it may be necessary to explain explicitly that the fact that a judge presiding over a lawsuit may have previously ruled in favor of the opposing party, such as a credit card company in a consumer debt lawsuit, does not mean that the judge's hand is in their pocket. Similarly, a judge previously ruling in favor of the State of Minnesota in a criminal proceeding does not mean the judge is constrained and will rule against an immigrant defendant as a matter of course without giving the case at hand fair and impartial consideration.

It is also important for immigrant parties and witnesses to understand the preeminent weight that U.S. courts place on honesty, which has civil and/or criminal consequences for perjury. The telling of half-truths, omitting important information, or refusing to answer the question as asked can all lead to a litigant or witnesses losing credibility in the fact finder's eyes, even if the addressing the subject matter of relevance to the legal matter would be considered impolite or inappropriate within the litigant's or witness's culture of origin.

Misconceptions Regarding the Role of a Judge and Judicial Proceedings

At perhaps the most basic level, the work of a judge is the issuing of court orders and following proper judicial procedures. It is important to explain to an immigrant party that a judge must follow rules and procedures. Some immigrants may be surprised to learn that following rules of civil procedure, evidence, and general rules of practice can take a very long time. As Micaela Schuneman explains, "It is also important to explain how long the judicial process might take. Some clients think that their issue will be resolved quickly, when in fact it might take a long

time for their lawyer to gather necessary evidence that can be submitted in court." A judge cannot always immediately right a perceived wrong on the spot without motion practice. This may confuse an immigrant litigant who may expect immediate vindication from an American court.

Misconceptions Regarding a Multiplicity of Courts

The number of courthouses located within the Fourth Judicial District and Hennepin County can overwhelm someone who is trying to get their foot through an American courthouse door for the first time. The Fourth Judicial District Court has locations in Brooklyn Center, Edina, Minneapolis, and Minnetonka. Minneapolis alone has state courts located at the Hennepin County Government Center, the Hennepin County Public Safety Facility (Jail), the Family Justice Center, the Conciliation Court at Minneapolis City Hall, and the Juvenile Justice Center. Explaining basic concepts like where to venue a case, personal jurisdiction, subject matter jurisdiction, or how to commence and file a lawsuit, is almost always required when working with immigrant litigants.

Misconceptions Regarding the Appropriate and Inappropriate Participants in the American Judicial System

Having legal standing to sue is a concept that can be unfamiliar to many immigrants. U.S. courts typically will not allow an individual to pursue a claim on behalf of another adult family member who can do so on his or her own. This may be confusing to a member of a culture where it is commonplace for family members to act interchangeably on behalf of one another. For example, an immigrant mother may not understand why she cannot petition the District Court to expunge her adult son's criminal records. In other instances, an immigrant witness might not understand that the Rules of Evidence strictly limit what types of testimony a witness may give and that arguing on behalf of an immigrant litigant is not an appropriate role for a witness.

It is important for immigrants to understand that only a licensed attorney can represent another person in a Minnesota court proceeding. The concept of attorney representation as the only alternative to self-representation may seem limiting to immigrants from Latin American countries. In this part of the world, it is common for parties in legal proceedings to seek assistance from a *notario publico*. Unlike the function of a notary public in the United States, a *notario publico* in Latin American countries can have a significant function in legal proceedings. Micaela Schuneman explains, "in some Latin American countries, the word '*notario*' means the same thing as '*abogado*' (lawyer). There is often confusion regarding the difference between a 'notary' and a 'lawyer.'" When working or interacting with our diverse immigrant community, it is important to explain the difference and avoid issues concerning unauthorized practice of law.

Misconceptions Regarding a Civil Right to Counsel

While America is the land of the free and home of the brave, it is important for immigrants to understand that the U.S. is also a place where many types of activities that may seem dishonest, unfair, or just plain wrong to someone from a different culture are nonetheless legal activities. Concepts that most attorneys take for granted such as default interest rates, payment acceleration clauses, and attorney's fees provisions may be foreign concepts to someone who never executed a written contractual agreement prior to arriving in the U.S. To immigrants who are less familiar with the complexities that the average U.S. consumer faces daily, the invisible hand of the free market may feel rather icy upon first grasp. An immigrant who feels especially taken advantage of or disrespected may mistakenly confuse a civil dispute with a criminal matter. Police usually refuse to take a report related to a "civil matter" though the meaning and implications of the use of the term can easily be lost on someone with limited understanding of the judicial system let alone on someone who may have limited English language skills.

In the realm of civil litigation, an immigrant litigant must be told that there is no equivalent of a prosecutor or public defender. An immigrant hoping to commence or defend a civil action should understand that the free legal resources available are often in scarce supply and in high demand. If free legal help is unavailable, an immigrant litigant will have to represent him or herself *pro se* if funds to hire an attorney are lacking. In the absence of a right to civil counsel, often the only help available is self-help.

Misconceptions Regarding Limitations on What a Court Can or Will Do

Many immigrant litigants may not understand that although a court can issue an order, it is often left up to a party to seek enforcement of that order. Many immigrant plaintiffs who win a judgment in Conciliation Court are disappointed to learn that winning is one thing and collecting is another. A potential immigrant plaintiff should be told that a court is not a collection agency so they should consider the likelihood of promptly being paid when weighing the potential costs and benefits of whether to engage in litigation. Litigating is often an unrealistic way to get money in the short-term. If an immigrant employee wants to sue a former employer for unpaid wages in hopes of paying rent by the first of the month, it is important for that person to understand that suing is often a much less likely way of coming up with quick cash than pursuing other options like borrowing money from friends or family, applying for unemployment insurance benefits, or finding a new job.

If going to court makes sense from a practical standpoint, commencing a court case may still be pointless if there is no legal authority bestowing the relief sought. For example, filing a criminal expungement petition is pointless if the conviction an immigrant petitioner would like expunged is one that is not statutorily eligible for expungement. Commencing a lawsuit is pointless if an immigrant litigant lacks a cause of action or legal theory to sue upon. Some

immigrant litigants may not realize that simply because a court procedure or court form exists, the existence of that procedure or form alone does not guarantee the litigant success.

Immigrants new to the judicial system can also have a hard time understanding that in some instances there is no point in pursuing a court action that will turn out to be a losing battle. When working with these litigants, it is important to advise them that there can be serious negative consequences for needlessly commencing or prolonging litigation. An example of this often arises in actions brought by credit card companies who demand attorney's fees as part of their claim. There may be no point in answering the complaint if no factual or affirmative defenses are available. Serving an answer will only drive up the cost of the plaintiff's attorney's fees if the suit is lost on summary judgment. When it comes to litigating, there is often a real risk of making a bad situation worse. The concepts of attorney's fees and sanctions may be unfamiliar to an immigrant litigant and always merit a discussion to prevent a first step from being taken down a wrong path.

It is difficult to tell a litigant they cannot do what they want when pursuing justice. This task can be more difficult when the recipient is from a different culture. In these instances, it can be helpful to empathize with the immigrant litigant and acknowledge that sometimes there is no legal redress to right a wrong.

No One Solution for Overcoming Misconceptions

Exactly how a person, or group of people, confronts a challenging set of facts in trying times will always be subject to variation. The possible misconceptions and strategies for overcoming them mentioned here are only a fraction of those that attorneys and court staff may encounter or use in their day-to-day work. The immigrant population who currently makes Hennepin County its home is not a homogenous one. Strategies that may be helpful explaining legal concepts to one cultural group may not be appropriate or applicable to another. Hennepin County is truly rich in the diversity of its residents, and opportunities abound for all of us to learn more about our shared human condition by sharing our own unique perspectives when working together, both in and out of the courtroom.

7. Work Effectively with Interpreters³⁵

Many of our clients speak multiple languages, but English may not be their first language, so we need help to communicate important legal processes and concepts. Here are some tips on working with interpreters to help you as you communicate with your multilingual clients.

1. **Introductions:** Introduce yourself and the client to the volunteer interpreter.
2. **Seating:** Position the interpreter appropriately. Ask the client and the interpreter about seating arrangements. It is usual for the interpreter to be seated next to the attorney so that the client can observe both the interpreter and the attorney simultaneously.
3. **Set Expectations:** To ensure that you, the client, and the interpreter have a shared expectation of the interpreter's services, communicate the following (through the interpreter) to the client and interpreter points before starting.
 - *This is a conversation between you [the client] and me [the lawyer]. But we need help to communicate, so we are going to communicate through an interpreter.*
 - *The interpreter will interpret everything you say into English and everything I say into ____ [client's preferred language].*
 - *The interpreter cannot participate in the conversation, share his/her opinion, or give advice. The interpreter's only job is to interpret what each of us says.*
 - *The interpreter must follow the same rules of confidentiality as I do which means s/he must keep whatever we say in this meeting a secret and cannot tell anyone else what we say.*
 - *If you do not understand something, ask me [the lawyer], not the interpreter. Please talk to me [the lawyer], not to the interpreter. I will do the same.*
 - *If I need to clarify something with the interpreter about the interpreting, I will ask the interpreter to tell you what I said to the interpreter. If you have a long question or a long answer, please pause frequently so that the interpreter can interpret everything accurately. I will do the same.*
 - *Please speak loud enough and pronounce your words clearly so the interpreter can hear you easily. I will do the same.*

³⁵ See also: MN Judicial Branch Court Interpreter Program Resources for Attorneys and Judges: <http://www.mncourts.gov/Help-Topics/Court-Interpreter-Program.aspx>; AYUDA, Working with Interpreters: https://secure.migrationpolicy.org/images/2008.12.17_Webinar_Guide_for_Legal_Services.pdf

- *It may take longer to say everything through an interpreter. Please say everything you need to say. I will do the same.*
- *If you have any difficulty hearing the interpreter or understanding me during the conversation, please tell me. I will do the same.*
- *Are you able to hear and understand the interpreter? Are you ready to proceed? Can you hear and understand everyone adequately? Would you like pen and paper to assist you?*

4. The Interpreter's Role:

- The interpreter is neutral and not that of "cultural broker." Ethical codes prohibit interpreters from giving opinions about the legal matter for which they are interpreting. Interpreters are ethically obligated to interpret everything that the client would have understood if he/she had understood (spoken) English, so do not make comments you do not want interpreted.
- When the interpreter is related to the client, which is not an ideal situation, please keep a few things in mind:
 - Treat the family member as you would any professional interpreter; remind them they are bound by the ethics and confidentiality rules.
 - Consider any conflicts of interest that may arise in using a family member as an interpreter. If you have questions, do not proceed with the meeting until your questions have been answered.
 - Take extra care in communicating and clarifying. Although the family member speaks both languages, he/she may not fully grasp the complexities of interpreting in a legal matter.
 - If you do not feel comfortable, do not proceed with the meeting.

5. **Interpreter Styles:** Some interpreters' style may be to "over-speak" what you say about the same time you say it (simultaneous). Others may interpret consecutively (see below), which means they will interpret what is said in its entirety in the pauses between phrases or sentences. Others may use a hybrid approach. Different situations may require different approaches.

6. The Lawyer's Role:

- Speak clearly and at your usual pace and volume. The interpreter should tell you if it is necessary to change your rate. Give extra time for the client to answer any questions you have asked, as there may be lag time as the interpreter interprets

from spoken English into a different language. This is especially important during group discussions. When the interpretation is consecutive – that is, the interpreter will not begin interpreting until you have finished speaking – speak in short ‘chunks’ so that the interpreter can more easily remember what is said.

- Speak directly to the client as you would to any client. For example, say, “What is your legal issue?” rather than “What is his legal issue?” We tend to speak to the interpreter and not the client. Try to act as if the interpreter is not there, and speak directly to the client, in the first person, allowing time for the interpretation to occur. [Note: the interpreter should also use the first person.]
- Be as clear and specific as possible, and avoid using lingo, while allowing for follow-up questions to make sure all parties are clear on the meaning of the question and the answer. It can be helpful to explain legal concepts and to explain the “why” behind a legal concept or requirement.
- Make sure that the client and the interpreter will understand each other. Some languages have different dialects, and understanding can be difficult.
- If possible, provide the interpreter in advance with the documents you will use in the meeting. This will allow the interpreter to become familiar with the information and ask questions if he/she does not understand something.
- Do not leave client and interpreter alone. Clients often feel an affinity with the interpreter, which can interfere with the attorney-client relationship, jeopardize attorney-client privilege, or lead to the interpreter’s unauthorized practice of law.
- Do not allow side conversation. The interpreter is required to interpret everything that is said. Please stop the client and/or interpreter if side conversations occur. As the attorney, please do not have side conversations with the interpreter. If you need to clarify a point, ask the interpreter to explain what you are doing to the client. The client must feel secure that the interpreter is a neutral person.
- Using culturally-neutral humor can help build rapport. But you are speaking to someone that has a different culture and understanding of what is funny and how sarcasm is used. It may be best to avoid sarcasm and certain humor.
- End the meeting and reschedule with a different interpreter if you think what you want communicated is not being communicated.
- After the meeting and the client has left, take time to debrief with the interpreter. Talk about things that went well and what could have been done better. Thank the interpreter for his/her time and attention. Remind the interpreter that all the information is strictly confidential and cannot be revealed to anyone else.

8. Work Effectively with Clients with Mental Illness³⁶

The 25-year old American with Disabilities Act provides protections for the many among us with mental illness.³⁷ 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.³⁸ 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 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 according. 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

³⁶ Submitted by Pamela Hoopes, Deputy Director/Legal Director, Mid-Minnesota Legal Aid/Minnesota Disability Law Center

³⁷ 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.

³⁸ Mental illness also increases vulnerability to physical and sexual abuse, as well as higher rates of substance abuse.

whether the person would like to take a break 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 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.³⁹

However, when a client’s capacity to make adequately considered decisions about 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 act when you believe the client has diminished capacity, is at risk of harm, and cannot adequately

³⁹ 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).

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 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 phoopes@mylegalaid.org.

9. VLN Clinic Standards

VLN legal clinics serve an important function in VLN's overall delivery of legal services. Clinics are an efficient and timely way to connect client and attorney in situations in which:

- A client needs immediate assistance
- A client needs advice as to whether or not there is a legal issue
- The clinic may provide brief legal services
- The client does not income qualify for full representation services (Clinics go up to 300% FPG)
- The client does not qualify for other VLN services

VLN clinics may be categorized as either walk-in or scheduled. Walk-in clinics serve clients on a first-come first-served basis to clients who come within the clinic hours. At scheduled clinics, clients are scheduled in advance with a specific attorney whose pro bono practice focuses on the client's issue. Most clinics are administered directly by VLN, although some clinics are run by partner law firms and partnering social services agencies.

Per its current strategic plan, VLN asks all VLN legal clinic attorneys to do the following to increase the client's chance of having a successful outcome.

- Provide written information to clients concerning their legal problem, such as legal aid fact sheets.
- Write down the advice that the attorney is providing, including, when appropriate, the legal and factual analysis of their matter and next steps the client should take.
- Provide more concrete brief service where appropriate, such as making phone calls, writing letters, getting information from agencies, assisting in filling out forms, and other limited tasks which may help solve the client's legal problem.

The standards discussed below are used to evaluate current clinics and to apply to potential new legal advice clinics as they affiliate with VLN. The goal is to provide a safe and confidential setting for clients to discuss their legal concerns with volunteer lawyers, where lawyers can maximize their service to individuals who cannot afford to hire an attorney.

VLN Resources Provided to Clinics

VLN affiliated clinics can rely on VLN for a variety of support services. These include:

- Support from experience professional staff with many years of serving legal needs of economically disadvantaged clients
- Malpractice insurance for volunteer attorneys
- Help recruiting volunteer attorneys
- Orientation of new volunteers to the clinic
- CLEs on substantive legal issues relevant to the client base

- Trainings regarding how to be an effective clinic attorney
- Resources on the law, on referrals, and on client-relationships (e.g., working with mentally ill clients)
- Reviews of clinic performance and suggestions to best serve clients
- Signage (“Volunteer Lawyers Network Legal Clinic”) to identify services when the clinic is active, and to promote awareness of VLN and its other services
- Clinic records/data maintenance, including types of issues and services provided
- Training resources for Clinic Assistants
- Access to VLN-developed resources
 - Clinic Resource Handbook
 - Attorney Suggestion and Referral Form
 - VLC Wiki (<https://vlc.wikispaces.com/>)
 - Community Clinics wiki www.vlncc.wikispaces.com

Site Requirements for a VLN Clinics:⁴⁰

Facilities are most often provided for legal advice clinics by other organizations, including the courts, community centers, churches, etc. The organization providing facilities should provide:

- An on-site contact person to coordinate with VLN
- Site accessible by target population, including those who are handicapped
- Appropriate setup to allow confidential consultations
- Space where clients may complete the VLN clinic data form in privacy
- Physical security for attorneys and for clients
- Access to a telephone (so attorneys may make calls on behalf of clients or to obtain further information)
- Access to the Internet for online legal research
- Secure location for completed clinic data forms until they are sent to VLN
- Sufficient clients to keep the volunteer attorney relatively busy
- VLN processes must be agreed to and in place to provide consistent services and to meet requirements of VLN funders. These processes include:
 - Attorney volunteers must have a volunteer member form on file with VLN.
 - A process must be in place to collect service data in the form required by VLN and to forward completed clinic data forms to VLN
 - A process must be in place to screen clients for financial eligibility (at or below 300% of FPG)

⁴⁰ Questions regarding site requirement may be directed to VLN’s executive director.

- A process must be in place to prioritize waiting clients (e.g., a schedule created in advance with client reminders provided the day before the appointment by email, phone or mail; a sign-up list for walk-ins; or a combination of both)

Security Policy

Safety of volunteers is a priority at VLN. Therefore, each clinic should be set up in a manner that promotes safety, to prevent incidents when possible and to allow quick reaction to incidents that do occur, including:

- A mechanism in place for calling for help (e.g., a security button, a personal attack alarm, a speed dial to security on the phone, or other plan for how to quickly be able to call for help)
- Scheduling two people (such as a volunteer attorney and a clinic assistant) to be present at the clinic as often as possible. At the courthouse clinics, attorneys will be notified in advance if there is no second person scheduled in case the attorney would like to bring someone else from his or her office
- Notice to clients that the clinic reserves the right to refuse service to anyone. This notice can be in a posted sign, on the clinic data sheet and/or on the clinic sign-in sheet
- Access to the list of clients who have been banned from VLN clinics. To receive access to this document, email vlm@vlmn.org. The list of banned clients will be posted at the courthouse clinics and clinic assistants shall review this list before clients speak with the volunteer attorneys

Clinic volunteers (attorneys and clinic assistants) are asked to take the following steps to promote safety:

- Know the clinic's procedure for calling for help (e.g., a security button, a personal attack alarm, a speed dial to security on the phone, or other plan for how to quickly be able to call for help)
- Ensure other people (e.g., clinic assistant, community center staff person, etc.) are nearby
- If meeting in an enclosed room, keep the door open during attorney/client consultations when practical and position the attorney and clinic assistants closer to the door than the client
- Call for help earlier rather than later to stop a situation from escalating. If at a courthouse, and if for any reason the attorney does not feel safe, he/she may be excused to ask for a deputy to be posted outside the conference area
- If a client is becoming abusive, consider a warning, such as: "I would really like to help you, but I will need to stop the session unless you [stop raising your voice with me]"

- Terminate any session in which a client does not immediately respond to such cues, as attacks are often preceded by such behavior
- Attorneys should follow their instincts and decline to assist a client they have any safety concerns. They may refer to the VLN Clinic Data Sheet for their authority to decline

<h2>10. VLN Support for Volunteer Attorneys</h2>
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1. Client Screening: We offer you clients who have the legal issue in which you are interested in helping, as well as screening cases for merit and obtaining legally relevant information.
2. Legal resources and trainings
 - a. Low-cost CLEs (<https://www.vlnmn.org/events/>)
 - b. Written resources, many of which are online, including
 - i. <https://vlc.wikispaces.com/> (password required)
 - ii. www.lawhelpmn.org
 - c. Tips of the month: <https://www.vlnmn.org/volunteer-resources/tip-of-the-month/>
3. Personalized coaching (applying what you've learned to the specific case situation)
 - a. Mentor attorneys
 - b. Resource attorneys
4. Resources on how poverty and race impact your pro bono representation
 - a. <http://wpbc.wikispaces.com/>
 - b. On-demand CLEs
 - c. Written resources
5. CLE credit for pro bono (1.0 credit for 3.0 hours, up to six in a reporting period)
6. Malpractice insurance (if you're in our database and helping a client in our database)
7. Interpreting assistance (contact VLN)
8. Administrative support (conference rooms, help in obtaining IFP orders, etc.)
9. Financial coaching assistance for your clients
10. In select cases, case coordinator support for clients to follow your advice
11. Partnerships with community agencies

11. VLN Volunteer Guiding Philosophy

Volunteer Lawyers Network is based on the core founding principle that private attorneys must dedicate some time to representing clients in poverty because:

- Pro bono services increase overall access to the legal services necessary for stability and well-being in our communities.
- All attorneys, not just legal aid attorneys and public defenders, share the profound professional responsibility to ensure that the rule of law extends to everyone in our communities.
- Those in poverty, who otherwise may experience the law as arbitrary and predatory, have more experience of the law's protections and fairness, leading to greater community-wide respect for the system and engagement.
- Lawyers who provide pro bono legal services benefit in that they:
 - Get the satisfaction of helping vulnerable individuals and families in our communities and directly contribute to their well-being.
 - Gain communication and other skills that improve their services to paying clients.
 - Participate in an enterprise which crosses over social barriers.
 - Connect on a human level with those who may be quite different from them, which may dispel stereotypes and increase curiosity and empathy.
 - Gain first-hand knowledge about the experience of those living in poverty and the resilience and resources of people who survive in poverty.
 - Contribute more knowledgeably to discussions about community-wide issues in various aspects of their lives.
 - Make more informed philanthropic and policy choices.
 - Promote a more efficient court system.
- The community as a whole is enriched as:
 - People form relationships across social barriers, is a necessary ingredient of any successful and positive social change.
 - More people of influence become advocates for those whom the legal system has otherwise not served.
 - More people are freed up to meet their human potential and participate more fully in our social and economic systems

- Increased knowledge leads to policy decisions that are more effective in promoting safety, well-being and dignity for all.

To this end, Volunteer Lawyers Network serves the community by bringing private attorneys to meaningful pro bono work that is responsive to the needs in the community by:

- Designing programs that respond to the emerging and immediate needs of those in poverty.
- Leveraging attorney hours by screening clients for financial and merit eligibility, providing write-ups of their issue, providing case coordination assistance, and more.
- Educating attorneys about the laws that impact those living in poverty.
- Creating form templates, manuals, CLE resources and access to on-staff resource attorneys to help lawyers meet their professional responsibility to provide competent and diligent services.
- Having mentor attorneys on hand to answer specific legal questions from volunteer attorneys.
- Maintaining and providing expertise in various legal issues through on-staff resource attorneys.
- Providing attorneys with elimination of bias trainings essential to help them understand the barriers those in poverty face when trying to access the justice system, understand client behavior in the context of the poverty rather than that of middle class, increase the quality of services provided, increase client outcomes, and increase volunteer satisfaction.
- Providing structured and supported ways for attorneys to meet their community leadership responsibilities of promoting justice and making justice equally accessible to all people.

12. VLN Clinic Data Sheet

See next pages.

Name: _____

Street Address: _____ Date of birth: _____

City/State/Zip: _____

Phone number: _____ Email: _____

May we contact you about the services you receive today? Yes No Best time to call: _____

Where did you hear about this clinic? _____

<u>U.S. Citizen:</u> Yes No <u>Gender:</u> M F _____ <u>Marital Status:</u> Single Married Divorced Other: _____ <u>How many adults live in your household?</u> _____ <u>Children (under 18)?</u> _____ <u>What is your first language?</u> English Spanish Somali Other _____ <u>Need interpreter?</u> Yes No Language: _____	<u>What is your monthly household income before taxes, including from all persons living with you?</u> Employment \$ _____ Unemployment Comp. \$ _____ Child Support \$ _____ Spouse's Income \$ _____ General Assistance \$ _____ MFIP (cash portion) \$ _____ SSI/Social Sec. Disability \$ _____ Food Support \$ _____ Social Sec. Retirement \$ _____ Pension \$ _____ Other (specify) \$ _____ Other (specify) \$ _____	<u>What is your race/ethnicity?</u> <input type="checkbox"/> American Indian <input type="checkbox"/> Asian-Hmong <input type="checkbox"/> Asian-Vietnamese <input type="checkbox"/> Asian-Other <input type="checkbox"/> African American <input type="checkbox"/> African-Somali/Oromo <input type="checkbox"/> African-other: _____ <input type="checkbox"/> Caucasian <input type="checkbox"/> Latino-Mexican <input type="checkbox"/> Latino-other: _____ <input type="checkbox"/> Middle Eastern <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other (specify): _____
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Have you sought assistance for this problem elsewhere? ☐ Yes (If yes, answer question below) ☐ No ☐ I don't know or wouldn't say

Where have you sought help before? (check all that apply)

☐ A social services organization ☐ The courts ☐ A government office ☐ Other (please specific): _____

Legal Clinic Service to Clients: We can provide a short meeting with an attorney, **free of charge**, to talk about a legal matter. The attorney can provide information on most legal matters along with advice or brief service about the next steps you may wish to take. The attorney may be helped by non-attorney volunteers under his/her supervision. *This clinic does not provide ongoing services to clients or ongoing legal coaching with respect to a certain matter.* Priority is given to those who have not been seen at this clinic before. LRIS/VLN reserve(s) the right to decline services. Audio or visual recording of attorney-client sessions is prohibited. VLN does not assist businesses or sole proprietors of businesses with business litigation.

Client Agreement: I understand and agree to the following: The attorney I meet with today can provide only legal information, advice and/or brief service on my legal issue. With the possible exception of brief follow up services that the attorney tells me he or she will do, the attorney will not provide ongoing legal service beyond that provided onsite today. I am still responsible for pursuing my legal matter and for taking any post-clinic follow up actions recommended by the attorney (e.g., serving other parties, filing paperwork in court, preparing other paperwork, and appearing in court). While the other party may be represented by this attorney's law firm now or in the future, what I tell the attorney today is confidential. I give my informed consent for my information to be shared between LRIS & VLN and with others as needed. I am not now represented by another attorney regarding the matter that I am seeking help with today.

Client signature _____

Date _____

Description of 1) client's question or legal concern and 2) client's goal:

Opposing Party Name: _____ Talked with an attorney about this matter? ☐ Yes ☐ No

Amount at Issue: _____ County of venue of legal action: ☐ Hennepin ☐ Other: _____

Area of Law (check the ONE area that best describes):

<input type="checkbox"/> Housing (Tenant)	<input type="checkbox"/> Employment	<input type="checkbox"/> H.R.O./O.F.P.	<input type="checkbox"/> Negligence/P.I./Other Tort
<input type="checkbox"/> Housing (Landlord)	<input type="checkbox"/> Unemployment Ben.	<input type="checkbox"/> Wills or Probate	<input type="checkbox"/> Consumer Debt Dispute
<input type="checkbox"/> Security Deposit Claim	<input type="checkbox"/> Wage Claim	<input type="checkbox"/> Guardianship/Conserv	<input type="checkbox"/> Garnishment Exemption Claim
<input type="checkbox"/> Eviction Expungement	<input type="checkbox"/> Crim Expungement	<input type="checkbox"/> Car Title	<input type="checkbox"/> Contract Dispute
<input type="checkbox"/> Real Estate	<input type="checkbox"/> Civil Rights/Discrim	<input type="checkbox"/> Driver's License	<input type="checkbox"/> Bankruptcy
<input type="checkbox"/> Foreclosure	<input type="checkbox"/> Public Benefits	<input type="checkbox"/> Conciliation Court	<input type="checkbox"/> Collecting on Judgment
<input type="checkbox"/> Family Law Issue	<input type="checkbox"/> Criminal/Traffic	<input type="checkbox"/> Concil. Court Appeal	<input type="checkbox"/> No Legal Issue
<input type="checkbox"/> Child Protection	<input type="checkbox"/> Juvenile Delinquency	<input type="checkbox"/> Civil Lawsuit	<input type="checkbox"/> Other _____

Who Provided the Service

Attorney (Pls print full name):

Clinic Assistant:

Language Information (if applicable)

If client spoke other language, who interpreted: ☐ Family member ☐ VLN volunteer: _____
☐ Meeting was conducted in English ☐ Language Line/OPI ☐ Other: _____

Service Provided

<input type="checkbox"/> Made phone call	<input type="checkbox"/> Wrote draft language to insert on form	<input type="checkbox"/> Legal advice
<input type="checkbox"/> Negotiated w/creditor	<input type="checkbox"/> Assisted with drafting Pleading or Court Form	<input type="checkbox"/> Advised not a legal issue
<input type="checkbox"/> Drafted/sent letter/docs	(e.g., Answer, Complaint, IFP, Garnishment Exemption)	<input type="checkbox"/> Advised no merit to issue
<input type="checkbox"/> Served legal docs	Specify: _____	<input type="checkbox"/> Referral

Details of Service Provided:

Time Spent with Client: _____

Will you or a colleague provide any follow up service? ☐ Yes ☐ No ☐ Summer Associate

If yes, please provide details

Referral to:

<input type="checkbox"/> VLN – 612-752-6677	<input type="checkbox"/> Self Help Center	<input type="checkbox"/> LRIS - 612-752-6666	<input type="checkbox"/> Legal Rights Center
<input type="checkbox"/> Legal Aid	<input type="checkbox"/> Family Self-Help Center	<input type="checkbox"/> Low Fee Family Law Program	<input type="checkbox"/> Conciliation Court Clinic
<input type="checkbox"/> HOME Line	<input type="checkbox"/> Housing Ct. Project	<input type="checkbox"/> Misdemeanor Defense Proj.	<input type="checkbox"/> Other (specify):

☐ Follow up call by VLN staff recommended

For datasheets from 1/9/2017-1/23/2017, check whether the LSAC survey was completed: ☐ online at LAP or ☐ on paper at LAP