



Essential Skills and Knowledge for Counseling and Problem-Solving

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

This packet summarizes skills and strategies essential to effective counseling and problem solving. It starts with overall communication, trust-building and relationship-building skills. It also provides short summaries of individuals' contexts that might be different from ours, including poverty, race, immigrant status, and untreated mental illness. Better understanding context will alert us to how we might adapt strategies to ensure we are in fact understanding their goals, identifying barriers to the goals, and building on their strengths.

Without access to a lawyer, most in poverty have no effective remedy to the injustices that routinely occur in poverty: 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 counselor and problem solvers, we can have the satisfaction of protecting our clients' basic needs and promoting their well-being. We also have the opportunity to witness the strength and resilience of people in difficult circumstances and the privilege of learning more about the communities in which we live.

For more information, please see www.vlnmn.org or wpbc.wikispaces.org. Or you may call 612-752-6655 to be contacted to the appropriate staff member.

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Types of Poverty¹

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 in today’s society.

While we have these guidelines, we do not have a consensus on what “poverty” is, either at a federal policy level or among the general public. 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.

In addition to the faulty federal poverty guidelines, we get even more confused because there is no single “poverty” experience. 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
- Are highly mobile, often without a home and moving frequently looking for ways to make money
- Have high family illiteracy

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- 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 met and more
- 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.

Example: The ways that you bathe, eat, dress, talk, and laugh are all taught by the people you have meaningful relationships with.

Example: The way that you believe others should behave is based on your expectations from your own learned norms.

Example: The ways that you celebrate holidays, such as Christmas, Thanksgiving, or Halloween, all relate to your experiences in your context. You learned through communication from those around you how to “be” and what to “expect” on those days.

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.

Communication Techniques to Promote Client Success

Establishing rapport, putting your client at ease, building trust, and good communication skills are essential for successful representations. Below are concrete suggestions for how to do this effectively.

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.
- 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.
- 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 them 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

- Open-ended questions can be more useful at the beginning of the session because they better 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 "listening" to what someone is saying in their body language and tone. Steps of active listening include:

Step	Example
Reflect back: Paraphrase what you've heard and/or by seek clarification.	<ul style="list-style-type: none"> • <i>If I understand you correctly...</i> • <i>What I'm hearing you say is...</i> • <i>When you say..., do you mean...?</i>
Summarize back to the client what she or he has said throughout the session to be sure you and the client are on the same page. It will also leave the client feeling heard.	<ul style="list-style-type: none"> • <i>So the bottom line is that . . .</i> • <i>What you're most interested in accomplishing is . . .</i>
Clarify expectations and roles to avoid misconceptions and confusions	<ul style="list-style-type: none"> • <i>What I'll be doing for you is . . .</i> • <i>What I'll need from you is . . .</i>
Work with client through options and advice given	<ul style="list-style-type: none"> • <i>While the decision is ultimately yours, I can help you explore the different options in an effort to help you decide.</i>

Explore options. One way to do this is:

1. Ask the client how s/he foresees the situation being resolved. What does s/he think would be the best outcome? If that's not possible, what would be a close second?
2. Play out the scenarios through different "what if" hypotheticals.
3. 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.
4. 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.
5. Explore non-legal solutions as well. Sometimes, legal options are impractical for clients because of how many resources, including time, our justice system takes.

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, and ask if they would be open to having you writing it down for them (in addition to reviewing it orally).
- 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."*
- If you know, explain what s/he can expect from the referral process.

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The Five Main Causes of Communication Breakdown²

The five main causes of communication breakdown are:

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:

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- 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.
- 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 does not succeed, 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/WORLDBIEWS.

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. Understanding that your worldview/priorities may not match those of the people you are serving is a first step to improving communication.

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.

One of the best ways to overcome breakdowns in communication is by understanding the differences in two basic styles of communication: print- and oral-culture 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 from others (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.

Understanding the preferred communication and learning styles of our clients increases our chances to succeed in reaching out to them, establishing relationships, and learning about their strengths, assets, and resiliency characteristics. When legal professionals apply the skills and knowledge of oral and print communication traits in their work, they more effectively serve people in poverty and can empower them to navigate and succeed in middle-class systems.

Oral Culture. All human beings are born oral-culture communicators. It is our natural way to send and receive messages. We learn the middle-class print-culture style of communicating if we are surrounded by people who get their primary information from reading. The ways in which humans send and receive information shape their communication styles.

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. In order to fully understand oral culture, you have to 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.

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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.



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Print Culture

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- 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.



Communication
Across Barriers

Attorney Client Understanding

Please review this document orally at your first meeting to promote common understanding about your respective roles, as well as identify and address any invisible resource-related barriers your client may have to participating in the case.

You have qualified for free legal services through VLN. I am a volunteer attorney for VLN and I will not charge you fees for my legal services. I have a license to practice law in Minnesota.

I will be diligent in protecting your legal rights and achieving the goals we set for your case.

So you can make informed choices, I will explain the law, your rights, your responsibilities, your legal options, your other options, how those options might play out, and my recommendations.

If your case might require you to pay fees to the court or another agency, I will let you know in advance and discuss your options.

I will let you know of any updates to your case, including any settlement offers.

What you share with me about your case is confidential, per the Rules of Professional Conduct.

I will try to work around what is going on in your life when setting up meetings. Please note, however, that the courts are open only during normal business hours.

I will review with you a separate written agreement naming the issue I'm helping you with and telling you what I will do for you. I will answer any questions you have about this agreement, including reasons that would require any lawyer to stop representing someone.

These types of cases typically take _____, but your case may take longer or shorter depending on various circumstances, some of which are out of our control.

If I can't help you with something, I will do my best to connect you with someone who can.

Please note that no lawyer can guarantee that you'll win or meet your goals.

It will help me represent you if you could . . .

Overall

Tell me what you want to happen in your life related to your legal issue. If I know your goals, I can help you better.

Share all the facts with me - even facts that you think might be unimportant or may make you look bad. If you don't, the advice I give you and my plan to help you might not be best for your situation. It can make things a lot worse if the judge or others involved in the case find out facts that I don't know about.

If my recommended plan for meeting your goals seems like more than you can or want to do, please let me know. We can look at **other options**. Sometimes, the legal system can result in more work than benefits, and problems may be best solved in other ways.

Before you see me, think of questions you might have for me. Some people find it's helpful to write down questions ahead of time.

Let me know if you have a hard time getting the **paperwork** I need for your case. If that happens, I will try to help or find others who can. I'll attach a list of some of the paperwork I will need and where you can get it. You may mail it to me or fax it to me (see my business card).

Let me know if **other legal issues** come up as they may change how we work on this case. I will look for someone who can help you with the other legal issue(s), including VLN.

If I am ever not being clear, please ask me to explain it again or in another way. I also will write down my advice or instructions so you can look it over later or with a friend.

Please tell me: Are there any physical or mental disabilities you would like me to know about that may impact our work together? Are there any other legal or personal problems you'd like me to know about that may impact our work together?

Scheduling meetings

Please tell me: What hours do you work? Can you get time off during those hours? Do you have childcare? If yes, how would that impact your availability for meetings? Would it be difficult to get to my office by car or bus? Would there be a more convenient public location to meet? Is there anything else you'd like me to know about that will impact your ability to meet with me or attend a court hearing?

Please do your best to **arrive on time to our scheduled meetings**. If you will be late, please call me at _____. If you will be more than ____ minutes late, and I have another meeting scheduled after yours, I may need to reschedule our meeting to another day, to make sure we have enough time together.

If something comes up and you are unable to make a scheduled meeting at all, please call me as soon as you know so we may reschedule.

Staying in touch with each other

Please tell me: what are the best ways to reach you (such as phone, address, and email)? How would you prefer that I contact you? What are some alternate ways to reach you? What are some contingency ways to reach you (such as family or friends)? What are some emergency ways to reach you? Do you have easy access to a free fax machine? Do you have easy access to an email? (The more information I have, the more likely we'll be able to stay in touch).

If these change, please give me new information right away. The law might require me to notify others of any address/phone number changes within as little as five days.

If something happens in your case, such as: _____

_____, call or write me per my business card
(You may want to put my card in your wallet and phone so you have it with you.)

When I contact you, please get back to me as quickly as you can. Legal issues can move fast and I may need a decision from you.

I will return your phone calls as soon as I can. (If your call is urgent, please let me know.) If ____ days pass and I haven't returned your call, please call back again.

Tips for Breaking Poverty Barriers to Equal Justice³

Below is a list of specific skills and strategies to assist your work throughout the representation, including a checklist for maximizing the chances you're understanding and being understood.

1. **Watch for the human tendency to judge what is different or what we don't understand because judgment prevents connection and communication.** Understanding that it's human to judge when we see differences, be diligent about looking for cues of bias, such as frustration or other internal feelings of discomfort around differences. Unless we see this, we'll lose our ability to help someone different from us or to act on our values.
2. **To overcome judgment, become curious and seek more information.** While many attorneys have had experiences of "situational" poverty (or see how poverty is misportrayed in the media), many pro bono clients come from "generational," "working class" or "immigrant" poverty, with very different experiences and skills. Learn about the context of poverty to help understand your client's decisions, common logistical barriers to participating in legal processes, and ways he might communicate and organize organization differently. Unless we understand the context, we may make faulty assumptions about motives and be less wholehearted in our efforts.
3. **Build trust.** Be friendly and make sure your body language and nonverbal communication support your words as you start to get to know each other. 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, enjoy a certain sport? Identifying these will help you both get beyond stereotypes you might have about the other. And personal connection will show your client you're a real human being who cares about him or her.
4. **Build in a little extra time for meetings.** People in poverty may be late to meetings based on unexpected crises or lack of familiarity with the meeting place. Consider unilaterally giving your client a 15-20 minute grace period, as well as sending reminder emails or texts. It can also support trust and focus to let him know up front how much time you have for the meeting and provide an agenda of what you need to cover.
5. **Determine the specific circumstances of your client's life that may impact the ability to participate in the legal process.** To identify any logistical barriers, have a checklist of questions to ask, including numerous contact information, job hours, transportation issues, day care, etc. (See sample Attorney Client Understanding.)
6. **In communications, ensure you are understanding your client.** For example:
 - a. Use common active listening techniques. Suspend your thoughts about what you are doing 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 correctly and understanding the other's perspective, explanations and rationale.

³ 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. If a client is sharing information in a way that is more circular than linear, feel free to interrupt after a while to gently guide the conversation back. (The meeting agenda can help too.) But in the meantime, listening to the story can help you identify more ways to build identification with him.
- c. Ask open-ended questions and try to stay away from questions that ask “why,” 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. When determining the facts of the case, you might first put your pen down and ask your client to tell you what happened. (This also supports trust.) Next, ask her to repeat the story, while you take notes. Finally, repeat back the story to see if you have understood. (Even your notes were accurate and complete, you may find out additional information in this third step.)
- e. Ask clarifying questions.
- f. Do not expect people to know what may be obvious to you. Use your expertise to coach and navigate people through the legal process.

7. Ensure your client is understanding you. For example:

- a. Use multiple approaches until you are assured of shared meaning.
- b. Use visuals as much as possible (including drawing out next steps).
- c. Make sure your body language supports your verbal communication.
- d. Use stories as a way to explain (“Here is what worked for my client Julie.”).
- e. Summarize every so often.
- f. Ask her to summarize. “I’d like to make sure I’m being clear. Could you tell me what you are understanding the next steps are?”
- g. Use familiar words and examples that laypeople can relate to.
- h. Use a variety of examples to convey difficult points (trying to draw from the context of poverty rather than that of middle class).
- 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 and use a third grade 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.
- m. Follow up – poverty is constant crisis.

8. **Customize your services to what the client wants.** One solution does not fit everyone. Make sure you ask for your client's goal after you have provided your assessment of the case and the available options. Understand that she may not want to pursue legal action. (For example, if it's going to take five months to get the security deposit back, the case may take a lower priority in her life given other crises going on.)
9. **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 her feel more comfortable (such as sitting at a conference table rather than an imposing desk).
10. **Consider the difference between empowerment and overwhelm.** Clients whose basic needs are not met are not in a position to be empowered. For others, teaching them how to do things for themselves is a deep service. It's critical to know the difference.
11. **When giving instructions, give context (explain why), break them down into manageable steps, and ask whether the client is able to do them.** Because it's second nature for us to schedule and keep appointments, keep a calendar, plan for future events, and organize paperwork, it's hard not to assume that everyone has those skills. However, the skills it takes to succeed in middle class or wealth are quite different from the skills it takes to survive in poverty. Find out whether your client has the ability to follow the instructions, given skills and other things happening in his or her life. If appropriate, offer supports.

The Impact of Race on Pro Bono Services

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."⁴ Some data:

⁴ [Disparity Analysis: A review of disparities between White Minnesotans and other racial groups](#), Council on Black Minnesotans, 2013

- 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.
- **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 2012⁵ 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.⁶ 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.⁷

- **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 \$6,325.⁸*

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

⁵ [Minnesota Compass](#), Wilder Foundation

⁶ For more information and cites, see http://en.wikipedia.org/wiki/Housing_Segregation

⁷ For more information see Race, the Power of an Illusion DVD, one transcript at <http://newsreel.org/transcripts/race3.htm>

⁸ *Health Disparities: Impact on Minnesota, Impact on the future*, Minnesota Department of Health presentation on Jan. 17, 2012, at ??? citing Pew Center research.

mortgage crisis.⁹ 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 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.¹⁰ 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.¹¹ Mental health care professionals generally agree that people of color often carry unresolved historical trauma as a result 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.¹²

⁹ [Communities in Crisis: Race and Mortgage Lending in the Twin Cities](#), Institute on Race and Poverty, February 2009.

¹⁰ Minnesota Budget Project blog, “[Minnesota still a land of Inequality](#), Sept. 19, 2013”

¹¹ http://en.wikipedia.org/wiki/Historical_trauma

¹² <http://gainscenter.samhsa.gov/cms-assets/documents/93078-842830.historical-trauma.pdf>

Addressing the impact of race in our individual pro bono representations

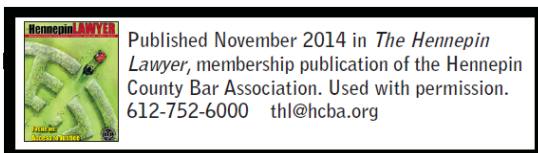
The Rules of Professional Conduct (RPC) require that we provide competent and effective representation and urge that we work for equal access to our system of justice for all. Below are some suggestions for how we can fulfill these in our individual representations of people of color from poverty.

- 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 in order 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.

Written by Martha Delaney, JD, Deputy Director of Volunteer Lawyers Network



Overcoming Misconceptions of our Justice System from an Immigrant Perspective

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 the purpose of 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 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 has to 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 is capable of doing 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 on a daily basis, 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.

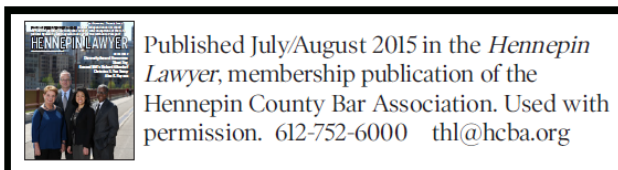
It is difficult to tell a litigant they cannot do what they want when pursuing justice. This task can be more difficult when the recipient is from a different culture. In these instances, it can be helpful to empathize with the immigrant litigant and acknowledge that sometimes there is no legal redress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

Written by Glen Drew, Resource Attorney, Volunteer Lawyers Network



Working with Interpreters

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 to the volunteer interpreter. Introduce 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:** In order to ensure that you, the client, and the interpreter have a shared understanding of the extent of the interpreter's professional services, we suggest that you communicate the following points at the beginning of a session involving an interpreter. Please make sure to include all three parties in the conversation (client, attorney, and interpreter).
 - "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 has to follow the same rules of confidentiality as I do which means s/he has to 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.”
- “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 have a tendency 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.

Resources:

- 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
- Volunteer Lawyers Network, www.vlnmn.org

Working with Clients with Mental Illness

The 25-year old American with Disabilities Act provides protections for the many among us with mental illness.¹³ 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.¹⁴ The following provide some guidance for providing legal services to clients with a mental illness (hereinafter referred to as just "clients").

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

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

¹³ 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.

¹⁴ Mental illness also increases vulnerability to physical and sexual abuse, as well as higher rates of substance abuse.

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

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

Offer an accommodation: At times, an accommodation will help a client work more effectively with you. Besides being good practice and customer service, reasonable accommodations are required by the ADA. Ask the person if they would like help and what would work for them. Consider, for example: encouraging them to ask questions, even if they may have already asked them; encouraging them to take notes; offering to provide a written summary of a meeting or instructions for later reference; taping meetings; modifying the time, length or location of meetings; etc. However, do not assume that they 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.¹⁵

¹⁵ 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).

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

Also review Rule 1.14, RPC and its 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.

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

Meeting Your Professional Responsibility When Providing Limited Scope Services

Brief services (limited scope legal services) for pro bono clients, including making a phone call, drafting a pleading, or writing a letter, provide access to justice to many struggling families and individuals in our community. Studies show that brief services can, with a limited amount of attorney time, provide clients with concrete outcomes to their legal matters. 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) and can genuinely advance the client's case.¹⁶

1. Keep an eye out for conflicts. The standard for pro bono limited scope services is "actual knowledge."¹⁷ If you *know* that you or someone in your firm represents the client's adverse party, do not give any legal advice to the client.
2. Assess the extent to which the client's issue is both legal and has merit.¹⁸ If not, consider other alternatives for problem solving, including moral, economic, and social factors that may be relevant to the client's situation.¹⁹ Consider litigation alternatives (neighborhood dispute resolution resources, mediation, informal requests for relief, etc.), if appropriate and likely to assist the client. If the client simply does not have a legitimate grievance or is unlikely to obtain any relief, you should be clear in advising the client that there is no merit to their position and you will not be assisting them.
3. 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 current effort would be greater than the potential future value of a judgment. VLN clients 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.
4. Communicate clearly to the client about the scope of your representation, including:²⁰
 - a. What services you will provide
 - b. What services you will not provide²¹.
 - c. What the client must accomplish on their own in order to achieve objectives.

At VLN clinics, (a) and (b) are handled in the Client Acknowledgement on the Clinic Data Sheet, 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.
5. Evaluate whether the circumstances for unbundled services are reasonable, including the following criteria:²²
 - a. Whether the client will be better off with limited services than without.

¹⁶16 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>.

¹⁷ Rule 6.5, MRPC. This applies to pro bono representation only.

¹⁸ Rule 3.1, MRPC.

¹⁹ Rule 2.1, MRPC.

²⁰ 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).

²¹ Rule 1.2, MRPC.

²² Rule 1.2, MRPC, only permits limiting the scope of representation if it is reasonable under the circumstances.

- b. The nature of the matter in substantive law²³ and complexity.²⁴ Cases with a high level of complexity are probably inappropriate for limited scope services.
 - c. 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.
 - d. Whether there is sufficient time to complete the brief services contemplated.
6. Ensure pleadings are brought in good faith, and have reasonable basis in both law and facts.²⁵ 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.
 7. If at LAP, use the “Assisted at VLN’s Legal Access Point Clinic” stamp on each pleading.²⁶ This gives transparency to the court about the circumstances of the drafting of the pleading, addressing potential concerns about ghostwriting.
 8. Keep a copy of what you have done. At LAP, ask a clinic assistant to scan a hard copy and/or save electronic copy on the VLN flashdrive.
 9. Maintain client confidentiality. Your obligation in limited scope services is the same as required in more traditional attorney-client relationships.²⁷

For questions regarding the MRPC, please call Pat Burns at the Office of Professional Responsibility at 651-296-3952. (*Written by VLN staff attorneys with guidance, Patrick R. Burns. First Assistant Director. Office of Lawyers Professional Responsibility*)

²³ *Id.*

²⁴ 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.

²⁵ Rules 3.1, 3.3, and 11.02, MRPC.

²⁶ The MRPC do not directly address ghostwriting pleadings and, around the country, there is split authority on the propriety of ghostwriting.

²⁷ Rule 1.6, MRPC.

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 may meet their community leadership responsibilities of promoting justice and making justice equally accessible to all people.

Support for Volunteer Attorneys

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
 - 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 Barb)
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