



Tip of the Month December 2011

Communicating for Success with Pro Bono Clients

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Lawyers tend to be both results- and service-oriented. We work hard to make a concrete difference in our clients' lives which is why it can be frustrating when a client fails to heed our legal advice or follow through on recommended next steps. We might attribute the client's behavior to a lack of motivation, an intervening crisis, or even a failure to appreciate our services. However, another cause of our pro bono client's behavior might be that we used unfamiliar legal terms or abstract language that our client did not understand. To a large extent, our success with pro bono clients will depend on our ability to step out of our legal culture and speak plainly and concretely.

Using Plain English

After years of learning and using legal terms, we can forget that many of our pro bono clients have little exposure to words like "motion," "service," and "affidavit." Consider the below examples that your colleague would understand, but your pro bono client might not.

- If you don't draft an answer and serve it on the plaintiff within 20 days of the date he served you, he can get a default judgment.
- To unfreeze your bank account, complete the garnishment exemption form and sign it in front of a notary. Then, send a copy to your bank and the plaintiff.
- If you insist that I pursue a frivolous claim, I will need to withdraw.

The same concept in the last sentence might be communicated in plain English as follows:

- There are some rules I have to follow, as a lawyer, and I cannot disregard them for any client. One of the rules is to avoid asking the judge to make a decision on something that I think we have no chance of winning. If you insist that I do something against this rule, then I would need to stop being your attorney.

As important as clear communication is, it is difficult to catch ourselves using legal terms. Some lawyers ask their clients for help in letting them know if they're falling into legal terminology that the client does not understand.

Explaining Concretely

Compared to the general population, lawyers are especially practiced in abstract communication. Not only can we hold and analyze concepts in our head, but we can often hold many ideas in our heads at once. The below examples of advice do not have legalese, but still may be difficult for a non-lawyer to follow.

- Write a letter to your landlord explaining that he has three weeks to send back your security deposit, or in the alternative, to tell you why he is not returning your security deposit. If he doesn't do this, he might be ordered to pay you an amount of money equal to double your initial security deposit plus interest.

- To serve documents on a plaintiff, first make two copies. Put one of the copies into an envelope with sufficient postage, ensuring you have a correct address, and put it in the mail. Complete the affidavit of service in front of a notary public, and retain a copy in case you need to prove the mailing to the court.

To make communication more concrete, include sensory aids to assist understanding, such as specific examples, analogies, diagrams, flow charts, written instructions and body language. For example, consider how litigators prepare for a jury trial. Litigators and their prepared witnesses incorporate visuals, anecdotes, and analogies to aid the jury in understanding the case. They are careful to avoid long periods of testimony or argument without some concrete counterpart. (Similarly, effective presenters typically use handouts or Power Point presentations.)

Here are some ways to communicate more concretely:

- Provide your client with written step-by-step instructions (writing them as you say them), so the client does not have to try to keep track of the steps in his or her head.
- Consider creating a simple diagram that illustrates your recommendations in a step-by-step manner.
- Speak in short sentences. Avoid long uninterrupted monologues.
- Break up an explanation with questions (either questions from you to the client to check for understanding or questions from the client to you).
- Repeat instructions several times.

It is challenging to explain legal concepts without using abstract terms, but it will greatly increase many of your pro bono clients' understanding of your advice.

Focusing on Relationship

Linguists and advocates have identified at least two types of communication styles: print culture (in which attorneys are heavily immersed) and oral culture (more common among those in poverty and who have less exposure to reading and effective education). One leader in the field, Donna Beagle, Ph.D., came from generational poverty and has, for the past 19 years, worked nationally with educators, justice professionals, health care providers, social service agencies, and others who want to make a difference for those living in the crisis of poverty. She describes the two cultures¹ as follows:²

¹ See <http://www.combarriers.com/AudioEd>, last visited December 11, 2011. Walter Ong was the scholar who first linked, about 15 years ago, oral culture to poverty, and his research was conducted around the world.

² <http://www.combarriers.com/CommunicationStyles>. See also Walter Ong, *Orality and literacy: The Technologizing of the World* (London, Methuen & Co., Ltd. 1982). And Lynda Coates, *Breaking Barriers: Concrete Communication Tools for Working with People in Poverty* www.cvm.org/documents/CoatesHandout.pdf at 1 (last visited Oct. 10 2011) (claiming that people in poverty use “word of mouth” as their tool to gain information).

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.

Print culture (literacy) is a learned way of relating to the world where people learn to process and analyze 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 focus on a single idea), separation and disconnection, ability to delay gratification, ability to strategize and plan ahead, ability to set goals, ability to develop technology, ability to break things down into parts, and ability to organize efforts according to predetermined goals.

Those who are most effective in working with people in poverty know how to connect and communicate in ways important to oral culture. The following are the "Ten Commandments for Improving Communication and Relationships" from Dr. Donna Beagle.³

1. Develop relationships and trust based on identification.
2. Help the client see you as a real person by self-disclosing something that is not known to others.
3. Ensure that there is a communication feedback loop by paraphrasing, restating, and asking clarifying questions to best understand client needs.
4. End power dynamics, role conflicts, and stereotypes by sharing information that you know and following through on what you say you are going to do.
5. Do not expect those you are working with to know what may be obvious to you. Use your expertise to coach or mentor them to get their needs met.
6. Hearing and actively listening is not the same thing. Active listening requires putting yourself in the position of the person you are working with.
7. One solution does not fit everyone. Obtain enough information to customize your services to those you are working with.
8. Promote two-way communication (not just what you think would work for those you are working with, but what do they think would work best for them).
9. Use familiar words and examples that people you work with can relate to.
10. Ask open-ended questions to discover motives and passion. Try to stay away from questions that ask "why" because they can put people on the defense. Instead, use "I" statements that allow for other perspectives.

³ www.combarriers.com