



Tip of the Month March 2011

Avoiding Harmful Consequences When Representing Low-Income Clients

Submitted by Laura Melnick and Jon Geffen

Legal representation can provide significant benefits to low-income clients. However, the result can sometimes have unintended consequences. Here are some tips to avoid harm to your client.

1. FINANCIAL SETTLEMENTS CAN RESULT IN LOSS OF GOVERNMENT ASSISTANCE

Many struggling individuals and families receive some form of need-based government assistance, including cash assistance programs (e.g., MFIP (formerly AFDC), GA, and SSI) and health care coverage (e.g., Medical Assistance and MinnesotaCare). These programs are available to individuals and families that meet the individual program's strict income and asset guidelines. While low, the benefits often keep families together and in housing. The loss of such benefits can be devastating.

Example A: Natalie is a mother of three children who works a full-time job but also receives reduced MFIP benefits to make ends meet, as well as child care assistance. Without MFIP and child care assistance, she could not afford to pay rent, feed her children, and meet all of her other basic needs. She needs child care to keep her job. If, for example, Natalie were to receive a \$10,000 cash settlement for pain and suffering in a tort case (which she would need to report to the county), she would lose her MFIP benefits, including child care assistance, because her assets would exceed the \$5,000 limit.

TIP: To avoid the loss of her benefits, consider other ways to structure a settlement. Since in-kind income would not affect Natalie's MFIP, food benefit, or child care grants, one way to avoid detrimental consequences would be to have the settlement money go directly to a third party, such as Natalie's landlord, for prepayment of her rent.

Example B: Martin and Sally have two children. Martin suffers from epilepsy stemming from a medical procedure. He is on SSI, and Sally works part time at a low-paying job. The entire family receives MA to cover its medical bills, and Food Stamps to help supplement the household's income. If an attorney were to obtain a \$10,000 settlement in a civil case for Martin, the family would lose MA and Food Stamps and Martin would lose his SSI benefits. If Martin were then hospitalized for a seizure, the family would have to pay a large portion of the medical bills out of pocket.

TIP: To avoid the loss of benefits, consider creating a Special Needs Trust for Martin.

As evidenced by these scenarios, these issues should be discussed with your clients to ensure that they receive the maximum benefit from any settlement or judgment.

2. A CRIMINAL OR JUVENILE CASE OUTCOME CAN CRIPPLE FUTURE EMPLOYABILITY

Many low-income people work in health services as nursing assistants, nurses' aides, foster care providers, and child care providers. By law, the DHS must conduct criminal and juvenile case background studies on any person hired in these job areas.

TIP: if possible, avoid a guilty plea or not contesting a juvenile court charge; otherwise, your client may lose her ability to work in an area for which she is qualified or has spent years training.

Disqualifying offenses include crimes, findings of “maltreatment,” and even involuntary terminations of parental rights. If DHS determines that an individual is “disqualified,” the employee is prohibited from working in a licensed facility.

Depending on the nature of the disqualifying event, an individual may be disqualified from working in a licensed facility for 7, 10, or 15 years, or even permanently. See Minn. Stat. Ch. 245C.15. Generally, the disqualification is based on the severity of the crime.

- 7 years = mostly misdemeanor level crimes and findings of maltreatment
- 10 years = gross misdemeanor level crimes
- 15 years = felony level crimes
- Permanent = various types of nasty crimes including murder, crim sex, etc, but also including involuntary termination of parental rights under Minn. Stat. § 260C.301.

Preponderance of Evidence (POE) standard – 245C.14. Minn. Stat. § 245C.14 permits DHS to disqualify someone when the POE supports a determination that the person committed a crime listed in Minn. Stat. § 245D.15. So, if DHS concludes there is a POE that she committed the crime, even though she wasn't *convicted*, she still may be disqualified.

Maltreatment Findings. A non-criminal finding of maltreatment disqualifies an individual from working in a licensed facility for 7 years. This disqualification often occurs when a county Child Protection agency investigates a case. The definition of “maltreatment” includes many acts that would not appear to the average person to warrant such a finding. As a result, a county investigation may conclude that maltreatment occurred but then determine that there is no need for Child Protection services. In this scenario, the individual doesn't often appeal since there are no immediate ramifications from the finding; the ramifications become apparent only when the person is disqualified from employment for 7 years.

Other employment. Any criminal conviction can make it difficult for a client to maintain or obtain employment.

TIP: Work to negotiate an acquittal, dismissal, pretrial diversion or de novo program (with no plea of guilty) or continuance for dismissal (with no guilty plea), which may be expunged later.

3. A CRIMINAL CASE OUTCOME OR MONTHLY INCOME CAN AFFECT HOUSING

Always consider the effects of civil and criminal legal determinations on housing. For example, if your client lives in public housing or receives a housing subsidy of some kind, ongoing monthly income can affect rental amounts.

TIP: consider lump sum awards, which don't affect most housing assistance programs, as long as they do not affect public benefits as noted above.

Additionally, some criminal offenses can have devastating effects on those seeking or living in public housing. For example, public housing laws and regulations may allow an eviction of a public housing tenant whose family member or guest used drugs within several blocks of the premises, regardless of whether the tenant was aware of the drug use.

If your client is not in public housing, still be aware that any eviction record or guilty plea may make it very difficult for your client to obtain future housing. Note that criminal convictions can also affect employment.

TIP: if a client comes to you before an eviction action is filed, work to reach resolution with the landlord and avoid any court filing. If an eviction action has already been filed, look for any grounds to seek immediate expungement, and ask the landlord in settlement agreements to agree not to oppose an expungement motion.

TIP: In criminal matters, work to negotiate an acquittal, dismissal, pretrial diversion or de novo program (with no plea of guilty) or continuance for dismissal (with no guilty plea). These pleas may be expunged later.

4. IF WORKING WITH AN IMMIGRANT, WATCH FOR POSSIBLE IMPACT ON IMMIGRATION STATUS

There are a number of ways in which civil and criminal matters can affect the rights of an immigrant to adjust her immigration status, to obtain citizenship, or even to remain in the United States. Someone seeking to naturalize and become a citizen may be precluded from doing so if she has not paid her child support. Even fairly minor convictions for domestic abuse or violations of protective orders, including “No Contact” orders and Orders for Protection (OFPs), may constitute grounds for removal (deportation).

TIP: when representing a non-citizen in almost any matter, consult with an attorney who is experienced in immigration law to avoid any unforeseen but devastating consequences.

For any questions about these tips or specific questions relating to clients, please feel free to contact:

Jon Geffen

Arneson & Geffen PLLC

jon@arnesongeffen.com

Laura Melnick

Southern MN Regional Legal Services, Inc.

laura.melnick@smrls.org