

REPRESENTING LOW-INCOME CLIENTS

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Representing low-income individuals and families can be a successful and rewarding undertaking. All that is required (aside from having keen legal skills and knowledge, or a willingness to learn) is an understanding of (1) the barriers stemming from poverty that may affect the attorney-client relationship and (2) the possible collateral consequences that may ensue from successful representation.

I. Barriers

1. TRUST

In order to effectively represent clients in legal matters, you have to get them to trust you. While most paying clients are coming to you voluntarily seeking help (and therefore are likely to open up about their problems), low-income clients may be coming to you because they have nowhere else to go. A lack of trust may stem from:

(A) **Fear of or Distaste for Systems They Perceive As Having Not Treated Them Well or Fairly**

Low-income folks with legal problems may feel (and may often be justified in feeling) that the “system” – the legal system, the public assistance system, the Social Security system, the criminal justice system, the public education system – has let them down or has treated them badly. They may associate you with a particular system or be skeptical of your usefulness in dealing with that system.

(B) **Embarrassment**

Clients may be embarrassed about the nature or extent of their problem(s). They may have a hard time asking you for help.

(C) **Paranoia/Suspicion**

Clients may be reluctant to open up and to sign releases allowing you to obtain personal or confidential information. Their personal experiences sharing information may make them hesitant to talk candidly or to allow you to delve into personal issues. (A client who has been involved with Child Protection, for example, may understandably be hesitant to admit to mental illness, even though admitting it might enable him to get disability benefits. He may be concerned that information obtained through the disability process will be used against him in a custody proceeding).

(D) **Skepticism About Free Legal Help**

Clients may wonder why you are not being paid. Is it because you are not good enough to charge for your services? As a volunteer or civil legal aid attorney, are you a “real” attorney?

Suggestions:

- Be patient. Be willing to explain what information you need and why you need it.
- Explain your role and how that role is distinct from the “system.”
- Close the door to your office during an interview in which a sensitive topic is being discussed. Make sure your client understands you adhere strictly to client-attorney confidentiality. Reassure the client that you understand her hesitation in sharing information but that you cannot help her resolve her problems unless you are able to obtain information.
- Project confidence. Clients like it when we act like we know what we’re doing.
- Be straightforward. Give the client a fair assessment of his case and of what you can or cannot do for him.
- Don’t bluff when the answer eludes you. Assure the client that if you don’t know the answer or how to resolve her problem at present, you will find out the answer, get more information to determine how best to resolve the problem, or make an appropriate referral elsewhere.
- Explain why you work as a volunteer attorney or at legal aid. Display your law school diploma and your certificate of admission to the State bar when possible.
- Assure the client that you’ll keep in close contact with him as you proceed with his case.

2. LACK OF EDUCATION AND/OR MENTAL ILLNESS

It is no surprise that a lot of folks living on the edge of society have marginal educations and/or mental illness. These factors can interfere with successful legal representation in a variety of ways.

(A) **Inability To Present Information in a Logical or Linear Manner**

Low-income clients are often poor historians. They may not be literate. They may have

cognitive impairments affecting their memory. Depression and anxiety can also affect memory and concentration in a significant way, as can personality disorders, psychotic disorders, pain disorders, and the side effects of some medications. Clients may ramble or veer off-topic, answer tangentially or circumstantially, or be otherwise unable to present information in a helpful way.

(B) **Obvious Emotional Distress or Anger**

Clients may be quite distraught or on edge. Their distress is often understandable – they may be coming to you for help because they are in danger of losing or have lost something very important to them, such as their housing, their job, custody of their children, heat in their home, their health care, or their livelihood. Again, they may feel that they have been treated unfairly. Their mental health may be precarious. In extreme situations, they may talk about suicide or hint at a desire to harm someone.

Suggestions:

- Be patient.
- Gently redirect the client when she veers off topic. Gently remind her what information is most pertinent to her claim.
- Use outside resources (relatives, social workers, health care providers, etc.), with the client's permission, to fill in missing facts.
- Try to reassure the client that he is not alone and that his problems are not unique to him (in a way that does not patronize him or minimize his distress or the significance of the problems he is experiencing).
- Assure the client that anyone in her situation would be overwhelmed. Empathize.
- Ask if there are supports available at home or elsewhere and offer to facilitate connections with those supports,
- Try to get at the root of anger to determine at whom or at what it is aimed.
- Upon discovering the root of anger, try to defuse it, diffuse it, and divert it away from you.
- Take the client's threat of suicide or violence seriously. Have him promise to contact his mental health provider. If necessary, call the state ethics board for guidance.

3. TRANSPORTATION AND CHILD CARE

Most low-income folks, by definition, are barely making it. When you ask a low-income client to meet you in your downtown office, it may not dawn on you that she doesn't have \$5 to spend on the bus or that if she spends \$10 to park in your parking ramp, she will have to go without her medications, because her medication co-payments are \$3 each. She may not have gas money to come see you. She may not have anyone to watch her children while she meets with you. She may not be able to meet with you in the afternoon, for example, because she needs to be home when her kids get off the school bus.

Suggestions:

- Try to understand how low-income folks are actually living - their income, their expenses, their mode of transportation, their child care needs, etc. Keep in mind that family cash assistance payments have not increased since the mid 1980s and that General Assistance (GA) payments for single adults likewise have remained stagnant since the mid-1980s. (Family cash assistance remains \$532 for a family of three. GA is still \$203 per month!)
 - Be flexible in scheduling appointments.
 - Be understanding when a client fails to show up for his appointment - give him a second chance.
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4. LANGUAGE

Low-income clients may not speak or understand English. Those with some English skills may feel more comfortable conversing in their first language.

Suggestions:

- Use professional interpreters when possible. It is acceptable to have family members interpret in some instances. However, other situations or legal problems, because of their sensitive nature or their complexity, require the presence (in-person or by phone, through a language line) of a neutral party capable of providing objective interpretation.
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5. HOMELESSNESS AND/OR DOMESTIC VIOLENCE

Clients experiencing homelessness often have many of the other barriers listed above. Additionally, they may have difficulties getting mail, phone calls, or messages; keeping track of their paperwork; keeping appointments; and arranging child care for appointments. They may be focusing on immediate needs (searching for housing, going to a food shelf) such that they end up putting off dealing with their legal issues until late in the game. Clients who have been or are survivors of domestic violence may experience some of the same barriers.

Suggestion:

- Be flexible.

II. Collateral Consequences

1. RECEIPT OF GOVERNMENT ASSISTANCE

(A) **Cash Programs**

Many poor individuals and families receive some form of need-based government assistance. Such programs include cash assistance programs such as MFIP (formerly AFDC), GA, and Supplemental Security Income (SSI). Although these programs provide very limited cash stipends, they often keep families together and in housing. The loss of such benefits can be devastating.

(B) **Medical Assistance**

Many poor families and individuals receive Medical Assistance (MA), General Assistance Medical Care (GAMC), or MinnesotaCare. Similar to the cash programs cited above, these health care programs are available to those individuals and families that meet the individual program's strict income and asset guidelines. Simply, if recipients do not meet the income and asset guideline, they will be ineligible for or lose their benefits.

(C) **Potential Problems For Attorneys**

Problems arise when attorneys, in good faith, obtain settlements for their clients who receive government assistance.

Example A: Natalie is a mother of three children. She works a full-time job but also receives reduced MFIP benefits to make ends meet. She also receives child care assistance. Without MFIP and child care assistance, she cannot afford to pay rent, feed her children, and meet all of her other basic needs. Without child care assistance, she would not have anyone to watch her children and would lose her job.

Natalie received a \$10,000 cash settlement for pain and suffering in a tort case. She reported her settlement to the county and within a month, her MFIP benefits, including child care assistance, were terminated, because she was over the \$5,000 asset limit. Natalie must spend down the \$10,000 to \$5,000 before she is eligible for MFIP again.

Example B: Martin and Sally have two children. One of them, Joey, suffers from epilepsy stemming from a medical procedure. Martin is out of work and Sally works part time at a low-paying job. The entire family receives MA to cover its medical bills. Joey is on SSI.

A wonderful attorney settles a malpractice case. Joey receives \$18,000. The family reports this settlement to the County. The family's MA and Joey's SSI are terminated because of excessive assets. Soon after, Joey suffers a seizure that leaves him hospitalized for over a week. Without insurance, the family is obligated to pay a large portion of the medical bills.

The family might have been spared some financial anguish had a Special Needs Trust been created for Joey.

If the family had chosen not to report receipt of the settlement in a timely manner, Martin and Sally could have been charged with an overpayment of assistance and suspended from the program; alternatively, they could even have been criminally charged with wrongfully receiving public assistance.

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

2. HEALTH AND HUMAN SERVICES LICENSING

Many low-income individuals work in the health services field as nursing assistants, nurse's aides, child care providers, and foster care providers. Employers in these job areas are required to supply DHS with background information on their potential employees. DHS then conducts background studies to determine if the applicants are "disqualified." Disqualifying offenses include crimes, findings of "maltreatment," and even terminations of parental rights. If DHS determines that an individual is "disqualified" from working in a licensed facility, the employee is prohibited from working.

Depending on the nature of the disqualifying event, an individual may be disqualified from working in a licensed facility for seven, ten, or fifteen 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 finding 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. (Be aware that an involuntary TPA could permanently prohibit a person from working in licensed facility).

Preponderance of Evidence (POE) standard - 245C.14

Minn. Stat. § 245C.14 permits DHS to disqualify an individual when the POE supports a determination that the person committed a crime listed in Minn. Stat. § 245D.15. So, if DHS

concludes that even though the client was not *convicted* of the crime, but there is a POE that she committed the crime, she still may be disqualified.

Maltreatment Findings

A non-criminal finding of maltreatment disqualifies an individual from working in a licensed facility for seven 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 he doesn’t understand the ramifications of the finding, but he will be disqualified from employment for seven years nonetheless.

3. HOUSING

As an attorney working with low-income people, it is important to look at the effects of some legal determinations, both civil and criminal, on housing.

Find out if your client lives in public housing or receives a housing subsidy of some kind. While most housing assistance programs are not affected by lump sum awards, ongoing monthly income can affect rental amounts.

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

4. IMMIGRATION

There are a number of ways in which civil and criminal matters can affect the right 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), constitute grounds for removal (deportation).