



Representing Economically Disadvantaged Clients

Approved for 1.5 Other Credits for Washington Attorneys

Presented on Tuesday, October 25 • Seattle, WA

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Faculty

A Special Thank You to Our Program Faculty!

Those who have planned and will present at this WSBA CLE seminar are volunteers. Their generous contributions of time, talent, and energy have made this program possible. We appreciate their work and their service to the legal profession.

Program Faculty

Alexandria Doolittle — *Seattle Community Law Center, Seattle, WA*

Benjamin Haslam — *Snohomish County Legal Services, Everett, WA*

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Program Schedule

Representing Economically Disadvantaged Clients

Tuesday, October 25, 2016

11:55 a.m. Welcome and Introductions

12:00 p.m. Representing Economically Disadvantaged Clients

This course will cover strategies and skills applicable to serving economically disadvantaged clients in the pro bono and legal aid context. Through discussion of example clients and cases, the co-presenters will offer insight into the unique challenges of pro bono work, gained from years of work and as pro bono volunteers and legal aid staff. These challenges include communication barriers (language, literacy, disability, cultural consideration, technology); isolation barriers (geography, institutionalization, disability, membership in insular communities); and knowledge and/or perception barriers (lack of knowledge about legal services, failure to identify problem as “legal” problem), that effectively prohibit clients from any real opportunity to have their day in court.

Skills covered will include attorney-client interaction techniques relevant to pro bono representation and clinic settings, with an emphasis on cultural competency and working with persons with mental illnesses. Finally, the presenters will discuss the need for and impact of legal aid in low income communities.

Benjamin Haslam, Snohomish County Legal Services, Everett
Gail Smith, Northwest Justice Project, Seattle

1:00 p.m. Holistic Representation

This course will outline strategies for assisting economically vulnerable clients by connecting them with community organizations that can provide them with a variety of services, including but not limited to: health services; financial services; family services; affordable housing services; food services; and work training services. By reaching out to other organizations in the community as part of their practice, attorneys can better serve their economically vulnerable clients’ needs and ensure that they can approach their legal challenges with a clearer frame of mind.

Alexandria Doolittle, Seattle Community Law Center, Seattle

1:30 p.m. Adjourn • Complete Evaluation Forms

Under MCLE Rules, we report hours of course attendance. Our report is based on you confirming your attendance with our CLE representative as you arrive, and the receipt of the form below from anyone who chooses to attend only part of the seminar.

We ask that you complete this form and turn-in to our representative if you leave before the end of the program.
Thank you, WSBA-CLE

The purpose of this form is to notify the sponsor listed below if you have earned less than the available credits while attending this CLE course. You can fax your completed form to WSBA-CLE: (206) 727-8324.

Under Washington State MCLE Rules (APR 11.6(a)(1)), sponsors must report attendance at each CLE course. The sponsor's report is based on confirming your attendance as you arrive and the receipt of this form as you leave if you choose to attend only part of the CLE course.

- If this form is not returned, the sponsor will presume that you have attended the entire CLE course and earned full credit.
- If you did not attend the full CLE course, this form must be returned to the sponsor.

How to calculate L&LP/Ethics/Other credits:

One credit is equivalent to one hour (60 minutes) of instruction time at an approved CLE course. Credits can be obtained in quarter-hour increments: 15 minutes of instruction equal .25 credits. No credit is given for breaks. Contact the sponsor if you have questions about which sections of the program, if any, have been approved for ethics credit.

For information, see the following website or contact the WSBA Service Center.

<http://www.wsba.org/Licensing-and-Lawyer-Conduct/MCLE/Members/Member-Online-MCLE-FAQs> - questions@wsba.org

Seminar Sponsor:	<u>WSBA-CLE</u>									
Seminar Name:	Legal Lunchbox: Representing Economically Disadvantaged Clients (LL171025WEB)									
Seminar Date:	October 25, 2016									
Approved Credits:	<u>1.50</u> CLE Credits for Washington Attorneys (<u>0.0</u> Law & Legal Procedure, <u>0.0</u> Ethics and <u>1.5</u> Other)									
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I hereby certify that I have earned the number of L&LP/Ethics/Other credits inserted above on the Credits Earned line.										
Signature:	_____	Date: _____								

CHAPTER ONE

REPRESENTING ECONOMICALLY DISADVANTAGED CLIENTS

October 2016

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BENJAMIN J. HASLAM is the Executive Director of Snohomish County Legal Services, a 501(c)(3) nonprofit legal aid organization based in Everett, Washington. He is a graduate of the University of Washington (B.A., 2001), and Santa Clara University School of Law (J.D., 2005). After entering the Bar in 2005, he clerked for the Hon. James H. Allendoerfer in the Snohomish County Superior Court. He then ran a solo practice in Everett, primarily focused on family law, and later joined a family law firm in Seattle. He was a volunteer attorney with Snohomish County Legal Services for more than 5 years, representing clients pro bono and also assisting at the weekly Family Law Clinic and Housing Justice Project, and then joined SCLS as a staff attorney in 2013, doing family law and housing work. In 2015, he became SCLS' Executive Director. He is also a Co-Chair of the Washington Pro Bono Council, and a member of numerous local community service Boards and committees.

GAIL R. SMITH is currently the Pro Bono Innovation Attorney at Northwest Justice Project, with offices in the Bellingham field office. He is a graduate of Stanford University and the University of Washington Law School. Upon admission to the Bar in 1976 he was employed as a staff attorney by the Puyallup Tribe of Indians and subsequently served as Co-Director of the Seattle Indian Center Legal Services Program. He established a private general law practice in Mount Vernon, Skagit County commencing in 1981. He and his law partner established the law firm of Jones and Smith in 1988. The practice included domestic relations, estate planning, guardianships, real estate, small business, Social Security disability, and bankruptcy law. In 2015 he was hired by Northwest Justice Project to design and implement a pilot project to assist Volunteer Lawyer Programs increase the level of pro bono attorney participation. He was one of the co-founders of the Skagit Volunteer Lawyer Program in 1986 and has been an active volunteer as well as serving as the chairperson of the Steering Committee of that organization. He served for a number of years on the Legal Aid Committee, the Pro Bono and Legal Aid Committee and the Legislative Committee of the WSBA. He is a member of the Washington Pro Bono Council. He was awarded the 2008 WSBA Pro Bono Award and a 2015 WSBA Local Hero Award in recognition of his activities and commitment to pro bono legal representation. He received the 2003 Skagit County Bar Association Professionalism award. He has served as chairperson and vice-chairperson of the Skagit County Bar Association as well as an officer and member of other community organizations.

Course Materials

Source of Responsibility to perform Pro Bono legal services;

Why should an attorney provide legal services to low income individuals?

Because it feels good. Because you “should”. These are the easiest and most common answers given by volunteers and it is these sentiments that drive volunteer lawyer programs. The ABA reports that the legal profession contributes the most free services of any profession.

In addition there is a professional responsibility. The Oath of Attorney taken by every Washington attorney provides in part that:

“I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person”

As attorneys we have an ethical obligation to provide legal assistance to those who are unable for financial reasons to access the legal system. The Oath of Attorney also states that the attorney will abide by the Rules of Professional Conduct approved by the Supreme Court. The Rules of Professional Conduct clarify the responsibility to perform pro bono services and provide guidance as to how it is to be exercised. The provision of pro bono services is a professional responsibility. It is the individual ethical commitment of each lawyer. Every attorney, regardless of professional prominence, professional workload, or identity of employer has a responsibility to provide free or low cost legal services to those unable to pay.

What is *pro bono* representation?

RPC 6.1 - PRO BONO PUBLICO SERVICE

- *Every lawyer has a professional responsibility to assist in the provision of legal services to **those unable to pay**. A lawyer should aspire to render at least thirty (30) hours of pro bono publico service per year. In fulfilling this responsibility, the lawyers should:*
 - (a) *provide legal services **without fee or expectation of fee** to:*
 - (1) **persons of limited means** or
 - (2) *charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and*
 - (b) *provide pro bono publico service through:*
 - (1) *delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, or charitable, religious, civil, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees*

would significantly deplete the organization's economic resources or would be otherwise inappropriate:

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

Paragraphs (a) (1) and (2) recognize the critical need for legal services that exists among persons of limited means. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative law, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means.

In order to qualify as *pro bono* service, the work must generally be without fee or expectation of fee. Your client who stopped paying months ago, even where you no longer expect them to ever pay, was taken on with an expectation of a fee, and shouldn't be retroactively regarded as *pro bono*. Similarly, work for which an attorney is paid a salary (even if generally regarded as public service employment) is not *pro bono* service. Constitutional, statutory, or regulatory restrictions may impede some government and public sector lawyers from performing some types *pro bono* services contemplated under RPC 6.1, but the scope of activities contemplated under RPC 6.1 afford ample opportunity for all attorneys to fulfill their professional responsibility. However, some fee generating work, such as the WSBA's Moderate Means program, is important forms of *pro bono* service.

Thirty hours of *pro bono* service per year is a goal all lawyers should aspire to, but it is not a requirement. In many jurisdictions it is a requirement for continued licensing, or even entry to the Bar. As an aspirational goal it falls upon the shoulders of every attorney to find the best means of fulfilling his or her ethical responsibility within the confines of the restrictive situations within which they find themselves.

Pro bono publico service may be reported annually on a form provided by the WSBA. A lawyer rendering a minimum of fifty (50) hours of pro bono publico service receives commendation for such service from the WSBA. About 4 hours per month is not much to ask, and who doesn't like getting an award for doing something rewarding?

The Comments to RPC 6.1 recognize that there may be times when it is not feasible for an attorney to engage in the provision of direct pro bono legal services. At such times an attorney may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. You can support any of the volunteer lawyer programs, specialized staffed programs, or best of all, support the Campaign for Equal Justice, which helps fund a wide variety of programs around the State.

Visit <http://www.legalfoundation.org> for more information!

What is the need for legal aid services?

We know from the Washington State Supreme Court's recently completed Civil Legal Needs Study Update that:

- **More than 70%** of low income households in Washington experience a civil legal problem each year
- The average per low income household is **more than 9 civil legal problems** per year
- When there has been **domestic violence or sexual assault**, the average is **more than 18 civil legal problems** per year
- Race, ethnicity, and other personal characteristics affect the number and type of problems people have, and the degree to which people experience discrimination, unfair treatment, and to which they are able to get legal help
- The **most prevalent** types of civil legal problems are related to health care, debt, and employment issues
- The problems people **most often seek help** for are related to housing, family law, and debt.
- **More than 80%** of the individuals who have a civil legal problem **face that problem alone**, with no legal help at all.
- Of those who are able to access civil legal aid organizations, **more than 60% achieve some resolution** to their problems.
- Most low income people have limited confidence in the state's civil justice system. Perceptions about the fairness and effectiveness of the system to help solve their problems differ significantly on the basis of race, ethnicity, and other characteristics.
- We have a lot of work to do!

What is the definition of low income?

Most legal aid organizations define low income (the standard for qualifying for free legal aid) as having household income below 200% of the Federal Poverty Level ("FPL". In 2016, those guidelines are:

200% FPL			
Family Size	Annual	Monthly	Weekly
1	\$23,760	\$1,980	\$457
2	\$32,080	\$2,673	\$617
3	\$40,400	\$3,367	\$777
4	\$48,720	\$4,060	\$937
5	\$57,040	\$4,753	\$1,097
6	\$65,360	\$5,447	\$1,257
7	\$73,680	\$6,140	\$1,417
8	\$82,000	\$6,833	\$1,577
Each Add'l	\$8,320	\$693	\$160

It is readily evident that clients with incomes below these threshold levels simply will never be able to afford to hire a private attorney on their own. Without access to legal aid programs, most low income individuals are unlikely to receive any legal help at all.

Some low income individuals are able to get financial help from family or friends to hire an attorney. Legal aid providers always encourage clients to hire a private attorney if they are able to. Most of the skills and challenges discussed below will still apply to working with such clients, even if it is not in the *pro bono* context.

Why do *pro bono* service through a legal aid provider?

RPC 6.1 does not require the service be provided through a legal aid organization in order to qualify as *pro bono* service. There are however considerable advantages derived from providing *pro bono* services through a legal aid organization.

- **Malpractice insurance** – Most legal aid programs carry comprehensive Professional Liability Insurance Policies that not only cover volunteers, but do so on a primary basis.
- **Screening of clients** – Legal aid programs screen clients to ensure(1)They meet income criteria; have a legal problem that can be effectively addressed and is worthy of *pro bono* time, and; the client is able to work cooperatively with a volunteer attorney
- **Training** – Programs generally offer their own high quality training, or access to it, in the subject matter you choose to volunteer in. These include written or online materials the volunteer can access.
- **Mentoring** – Legal aid programs offer ongoing mentoring to volunteers. These mentors might be volunteers or program staff attorneys, but they are experts in the subject area involved. Mentoring may be informal, or through a structured Mentor-Mentee program that will earn both participants MCLE credit. Mentorship can also take the form of helping a new attorney learn basic but necessary skills for practice and client management, or to help experienced attorneys learn a new area of law.
- **Help** – Legal aid programs are ready to help you and the client if problems come up. They can help when you have difficulty reaching your client, provide interpreters or help with scheduling, help with a new legal issue that wasn't anticipated when the representation began, assist with issues with the courts or opposing counsel, or take the case back if it has become too difficult or burdensome.
- **Expedited Filing Fee Waiver**—A low income client who has been screened by a legal aid organization for financial eligibility is eligible for a waiver of filing fees without the necessity of providing the court detailed financial documentation, thus saving the attorney time that can be best employed addressing the legal problems. The volunteer attorney need only file a declaration that the client was referred by a legal aid program that performed a financial eligibility evaluation.
- **Forms**—Legal aid programs often have basic forms and sample pleadings with will assist with your preparation of the case. These include engagement agreements, limited scope representation agreements and “pocket” briefs for frequently confronted issues.

- **CLE Credit**—an attorney may earn CLE credit for pro bono services provided through a legal aid program. APR 11 (e) provides in part:

...

(e) **Approved Activities.** *A lawyer may earn MCLE credit by attending, teaching, presenting, or participating in activities approved by the Association. Only the following types of activities may be approved:*

(7) *Providing pro bono legal services provided the legal services are **rendered through a qualified legal services provider** as defined in APR 8(e);*

...

APR 8(e)(2) defines a Qualified Legal Services Provider (“QLSP”) as:

A qualified legal services provider is a not-for-profit legal services organization in Washington State whose primary purpose is to provide legal services to low income clients.

All 17 local Volunteer Lawyer Programs in Washington State, the statewide Northwest Justice Project, and specialized programs including, but not limited to, Northwest Immigrant Rights Project, Unemployment Law Project, TeamChild, Columbia Legal Services, and Seattle Community Law Center, are QLSP’s.

In short, **up to 24 of your 45 required MCLE credits for each reporting period may be earned by engaging in pro bono work through a QLSP.** These credits may be earned by taking cases on for direct full representation, limited scope representation or assisting at legal advice clinics.

See <http://www.wsba.org/Licensing-and-Lawyer-Conduct/MCLE/APR-11> for more information.

What are the types of pro bono legal services?

Pro bono service takes many forms:

Direct Full Representation.

The oldest and most basic form of pro bono legal assistance is **direct full representation**. This generally means entering a Notice of Appearance, and taking a particular legal problem or case on for full representation. See CR 70.1(a). This is the type of case for which there is the greatest need for volunteer attorneys. Some cases may be quite complex. Other cases are relatively simple

but the client does not have the capability of independently bringing the matter to a satisfactory conclusion

Limited Scope Representation

Attorneys may also agree to undertake **limited scope representation**. This generally means entering a Notice of Limited Appearance which defines the extent and duration of the representation. It may involve representing a client through a particular phase of a case, a particular hearing, or even appearing to negotiate based on an unfiled Summons and Complaint. See CR 70.1(b).

Advice only clinic

Another form of limited assistance a pro bono attorney may perform is **pro se assistance** in the legal clinic setting. It is generally characterized as an advice only clinic as opposed to “representation”. An attorney client relationship is nonetheless established and does constitute representation for purposes of the Rules of Professional Conduct. This common form of *pro bono* service may seem self-explanatory to the attorney that representation is limited to that clinic, but an attorney should **never** assume the client in front of you sees it that way.

RCW 1.2(c) governs all such situations:

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

In the context of most legal aid clinics, it will be considered reasonable under the circumstances to limit your representation to providing advice and counsel during the appointed time. However, not always:

Perhaps the more important consideration here is the requirement of your client’s **informed consent**. They must understand that you are limiting your representation, and approve it.

Even with informed consent for limited representation, and even though you’re working for free, a lawyer is **never** exempted from the duty to provide competent representation. See RPC 1.1.

Also, see Comments to RPC 1.2 for further analysis of such problems

. When do economically disadvantaged clients qualify for a fee waiver?

GR 34 mandates the waiver of filing fees on the basis of indigent status. Our State Supreme Court recently reinforced the importance of this rule, in City of Richland v. Wakefield, No. 92594-1:

“[W]e find that it was legal error to disregard whether Wakefield could currently meet her own basic needs when evaluating her ability to pay. Such information is crucial to determine whether paying LFOs would create a "manifest hardship" for Wakefield. While the term "manifest hardship" is undefined in the statute, it is difficult to see how being unable to provide for one's own basic needs, food, shelter, basic medical expenses-would not meet that standard. A person's present inability to meet their own basic needs is not only relevant, but crucial to determining whether paying LFOs would create a manifest hardship.”

In short, GR 34 mandates a fee waiver for all clients who qualify for QLSP services. The determination of whether to grant a fee waiver is made at the outset of the case, and should be a final determination. A court should not be reserving a fee waiver for later review or imposition, or requiring an opposing party to pay it.

What are some more specific challenges common to working with economically disadvantaged clients?

A majority of legal aid clients have one or more barriers that effectively limit their ability to have their day in court. Some of these barriers include:

- **Communication barriers** (language, literacy, disability, cultural consideration, technology)
- **Isolation barriers** (geography, institutionalization, disability, membership in insular communities)
- **Knowledge and/or perception barriers** (lack of knowledge about legal services, failure to identify problem as a “legal” problem).

Before we can begin to work through these barriers, we must be aware of them. Some are apparent from reviewing a case file, some upon meeting your client for the first time, and some will only become known to you after extensive contact.

Always be **aware** of:

- **Common assumptions about clients** – E.g., that they are familiar with legal aid and the role of the judiciary; that the standardized forms are easy to fill out, or; that your client can and will work around your availability.
- **Role of implicit bias** - “[B]ias in judgment and/or behavior that results from subtle cognitive processes (i.e. implicit attitudes and implicit stereotypes) that often operate at a level below conscious awareness and without intentional control.”
- **Role of culture** – E.g., Perceptions, values, attitudes and beliefs; response to environment and circumstances; expectations; external behavior
 - Understanding court system and procedures

Some simple best practices for overcoming these issues:

- **Empathy** – Take perspective, stay out of judgment, recognize emotion in your client, and communicate that recognition

Interview techniques- Repeat nature of confidentiality if lack of trust, repeat facts for understanding, slow down and respect silence, clarify and ask open-ended questions, be mindful of emotions and maintain eye contact.

How do I work effectively with clients who have mental health issues and challenging behaviors?

Working with clients with psychiatric disabilities, cognitive impairment or brain injuries raises a number of complicated ethical issues for the *pro bono* lawyer. These include when to seek a guardianship for a client and what type, when it is appropriate to share information with others or withdraw from the representation, and how to respond when a client is making decisions that are not in their best interests.

The lawyer must bear in mind RPC 1.14(a)'s requirement to *“as far as reasonably possible, maintain a normal client-lawyer relationship with the client.”*

It is imperative to recognize the effects of psychiatric disabilities, and try to accommodate as much as possible. For some types of diagnoses, such as schizophrenia, bi-polar disorder, or multiple-personality disorder, it may be possible at times to maintain a functional attorney-client relationship, while at others it is not.

In more extreme cases, clients with psychiatric disabilities, cognitive impairment or brain injuries may not have capacity to represent themselves. RPC 1.14(b) provides that:

*When the lawyer **reasonably believes** that the client has diminished capacity, is **at risk of substantial physical, financial or other harm** unless action is taken and **cannot adequately act in the client's own interest**, the lawyer **may take reasonably necessary protective action**, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.*

“In determining the extent of a client’s diminished capacity, the lawyer should consider and balance the client’s ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision, the substantive fairness of a decision, and the consistency of a decision with the known long term commitments and values of the client.” Comment 6, RPC 1.14.

Further, the comments to the rule instruct lawyers to consider the expense and trauma disclosure may cause to the client, the potential prejudice to a client's case likely to result from disclosure, and the client's best interests and wishes. The fact that a client is not making good decisions is never enough to warrant a guardianship; it is only that a client cannot make decisions in their interests at all that warrants guardianship. In short, guardianship must be considered the last resort.

However, it does happen. Attorneys in these circumstances are authorized to reveal confidential information, but only to the extent reasonably necessary to protect the client's interests. See RPC 1.14(c).

EXAMPLE: A family law client seeking to formalize custody of her son has a significant developmental disability, and is unable to adequately act in her own interest. You believe she would qualify for a GAL, but disclosure of her condition necessary to secure one might mean she loses custody, or even CPS involvement.

If the decision is made that a client cannot represent himself or herself, and that a guardian is appropriate, the lawyer must decide which type to request:

- **Guardian ad Litem** - Commonly known as a Litigation GAL or Title 4 GAL, this is a person appointed by the Court to represent the client's interests in the litigation. The role of a Title 4 GAL is distinct from the Minor Settlement GAL's, or the Title 26 Family Law GAL.
- **Limited or Full Guardian** - A Title 11 Guardian can be limited to holding certain decision-making powers on behalf of a client, or can be appointed a Full Guardian, able to make all financial and even healthcare decisions for a client.

Most counties retain separate lists of available potential guardian ad litem who can be appointed at public expense. It is important to know what type of guardian you are asking for, and to seek appointment of the least restrictive form of guardianship powers that will safeguard the client adequately.

EXAMPLE: A client with dementia is facing eviction for non-payment of rent. He has the resources to pay the rent, but does not remember that he has a rental obligation. He expresses that he doesn't want anyone taking over his affairs. Do you seek a guardian? What kind?

While there are usually available options for GAL's to be appointed at public expense, they will have severely limited time to work for your client. As for Title 11 Guardians, there are currently very few resources for appointment at public expense. This type of Guardian can be a professional, but if your client is low income they will not have the resources to pay for one. Therefore, unless a reliable family member is prepared to take on the responsibility for free, currently

the only option is to seek one through the involvement of Adult Protective Services, and thereby the Attorney General's office.

Once a guardian or GAL is appointed, the lawyer must look to that representative for decisions on behalf of the client. However, the lawyer must still, as far as possible, treat the client with attention and respect, according the represented person the status of client, particularly in maintaining communication. See RPC 1.14 Comment 2.

When are persons with disabilities entitled to an attorney at public expense?

GR 33(a)(1)(C) provides that reasonable "accommodation" of disabilities includes *"as to otherwise unrepresented parties to the proceedings, representation by counsel, as appropriate or necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability."*

This rule is a groundbreaking attempt to ensure representation to persons with disabilities who are unrepresented, and due to their disabilities cannot access justice without the help of an attorney. It is based on the principle that access to justice for all persons is a fundamental right.

In practical terms, if a lawyer enters an appearance on behalf of a person who might otherwise qualify for appointment of an attorney at public expense, they will no longer qualify under the terms of GR 33. However, an attorney may provide pro se assistance to a person in making a GR 33 request. GR 33(b) provides the process for requesting accommodation.

Also, if a client lacks capacity or competency, appointment of an attorney will do little to resolve their needs, as the attorney must still have a person to give their informed consent and make decisions about the case. However, GR 33 is a useful and meaningful tool, especially for clients who have diminished capacity that significantly limits their ability to access the judicial system, but who nevertheless are competent to represent their own interests.

Should I withdraw?

A situation in which a client refuses to cooperate with you, rejects what you consider to be a great settlement, or asks you to pursue a course that you know will be detrimental to the client, can look like an issue of client competence.

Generally, a lawyer must abide by a client's decisions regarding the objects of representation, and must abide a client's decision whether to accept an offer of

settlement. See RPC 1.2. However, under RPC 1.16(b), an attorney may withdraw if:

- (1) - *Withdrawal can be accomplished without material adverse effect on the interests of the client;*

...

- (4) – *the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;*
- (5) – *the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;*
- (6) – *the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or*
- (7) – *other good cause for withdrawal exists.*

Although there are many reasons that may warrant an attorney's withdrawal from a case, the client is entitled to notice prior to withdrawal, and the fact of a client's potential incompetence and actual indigence may make "material adverse impact" from the attorney's withdrawal all the more likely.

Often in the cases like this, rather than seeking a guardian or withdrawing from the case, the best course is to delay when a client may ultimately change his or her mind about a decision that has serious adverse consequences.

How should I work effectively with clients with language barriers?

Language barriers are common in *pro bono* work. Most legal aid programs will offer interpretation services to assist with clients with limited English proficiency. In addition, courts are obligated to provide interpreters at public expense for non-English speakers, see RCW 2.43.040, and deaf and hearing impaired persons, see RCW 2.42.120, who are indigent.

GR 11 defines the code of conduct for court interpreters, and establishes the Interpreter Commission which oversees their certification and regulations.

There are some common issues that arise when utilizing interpreters:

- Less experienced interpreters or persons who are not court certified will struggle with legal terminology.
- In clinic meetings, we often utilize phone interpretation services, and these interpreters are used to working with medical providers, social workers, and other systems where exact wording isn't as important as conveying general meaning.

- Interpretation is different to translation. Even if a client understands every word said in court, if they don't understand the written order they leave court with, how much have we accomplished?
- Some languages include dialects that are very different to one another, and may render interpretation impossible
- Some interpreters – generally not court certified ones, but it happens – will start conversing with your client, and not interpret for you
- Some interpreters, especially from small/insular communities, will know your client, or the opposing party, which may create a conflict of interest

Here are some simple best practices for working with interpreters:

- Use only a qualified interpreter
- Have the interpreter sign a confidentiality agreement if you are unsure if they are court certified
- Speak with the interpreter beforehand and share documents, so they are prepared
- Allow significantly more time for client meetings with an interpreter
- Explain the interpreter's role to the client, including confidentiality
- Use the 1st person when speaking, and speak to the client, not the interpreter
- Make sure everything you said is interpreted, and use short sentences with breaks for interpretation if you are unsure
- Do not permit side conversations
- Debrief with the interpreter after the session

Be aware of unique issues with deaf and hearing impaired clients – do they utilize ASL? Do they lip read? Would they prefer to speak to you directly, or sign through an interpreter? Also be aware that ASL has a different vocabulary to spoken English. Especially be aware that facial expressions and demeanor form the grammar of ASL, and sometimes what looks like an angry or frustrated client or interpreter is actually just punctuation

What skills will you need for your attorney-client meetings, and *pro bono* work?¹

A low income pro bono client comes to you with many of the same legal problems and issues that your clients who can afford to pay for your services. It is never appropriate to apply a 'get what you pay for' attitude to pro bono work. The pro bono client should be accorded the same respect, courtesies and services that all other clients are provided. The pro bono client may, however, present with some unique situations or problems that bear consideration. If these situations are anticipated the resolution is much easier and satisfactory for both the client and the attorney. The following are illustrative of some situations that you may encounter in your pro bono practice.

Example 1—Who is your client: You meet with a young father who has stated during intake that he wants to be awarded primary parenting responsibility for his young child. He is accompanied by his mother who explains that the father is developmentally delayed and that she is one who makes all of the decisions and is really taking care of the child. The mother controls the conversation and responds to any question posed to her son, the young father.

Discussion:

The first issue that must be addressed is whether the young father has the mental capacity to be your client. See below, p.19.

Whose interests are being advanced in the matter? Does the young father want to have primary parenting responsibility or is he merely being used by his own mother as a surrogate. Will the young man's mother become an adverse party and initiate a third party custody proceeding if matters proceed against her wishes. It is absolutely essential that you identify who the client is and that you make that apparent from the inception.

If the young father is going to be the client it may be necessary to ask his mother to step out of the interview so that you can determine what the client's personal goals are and whether they are the same as his mother's. See RPC 1.4(a) ("a lawyer shall (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; [and] (3) keep the client reasonably informed about the status of the matter"); and 1.4(b) ("A lawyer shall explain a matter to the extent reasonable necessary to permit the client to make informed decisions regarding the representation."). However, the mother's presence may be required in order to get a clear picture of what is transpiring. Some clients, for a variety of reasons, require the presence of a known supportive individual in order to feel comfortable enough to reveal what the real issues are.

The presence of the mother in the interview may result in a waiver of the attorney client privilege. This must be explained to the client in a manner that he can understand and give informed consent to the presence of the third party. See *generally*, RPC 1.6 (Confidentiality); RPC 1.14 (Client with diminished capacity).

The lawyer must also consider the actual or potential conflict between client and his mother in this scenario. While both could give their informed consent and sign a waiver of potential conflict to allow you to assist the client, any advice to the mother about a third party custody option would be directly adverse to the client, prohibiting representation of either party under RPC 1.7.

Example 2—Conflict checks: You have agreed to participate in an advice only clinic organized by the local legal aid organization. The clinic is conducted on a drop in basis and the client’s identity is not known in advance. The first client you are assigned has a familiar sounding name and as the interview proceeds the situation begins to have a familiar sound to it.

Discussion:

In the context of short-term limited legal services, the Rules of Professional Conduct offer some flexibility regarding conflicts. Comment 36 to RPC 1.7 provides:

Notwithstanding Comment 3, lawyers providing short-term limited legal services to a client under the auspices of a program sponsored by a nonprofit organization or court are not normally required to systematically screen for conflicts of interest before undertaking a representation. See Comment 1 to Rule 6.5.

Therefore, while you should always perform a conflict check when feasible, if engaged in a clinic setting where it not possible to perform a conflict check, you are afforded some protection.

At the point that you identify a potential conflict you should immediately terminate the interview and let the client know the reason for your action. Explain that the program will attempt to make arrangements with an attorney who does not have a conflict or appearance of conflict

Example 3—Mission Creep: You have agreed to represent a client on full direct representation dissolution of marriage case. The client explains that there are nominal community debts and community assets and that the primary concern is the parenting plan because the spouse has a

serious alcohol problem. The parties are purchasing a residence with little or no equity. The opposing party agrees that your client should remain in the family residence. Temporary orders are successfully negotiated and you are commencing discovery. You are suddenly served with a complaint for adverse possession against a portion of the property the family residence is situated on resulting from a long simmering property line dispute with the neighbor. The client wants to know what you are going to do to stop the adverse possession claim. This is the first time you have ever seen an adverse possession claim and have no idea what is involved in such a proceeding.

Discussion:

It is important to have entered into an engagement agreement that clearly defines the scope of your representation. Otherwise the client will quite reasonably assume that you are the “family attorney” and that you will handle any and all legal issues that may arise. Although this may be advantageous if you want a private pay client as a long term client, it may be a bigger commitment than you thought you were signing up for with the pro bono client. The engagement agreement should be carefully crafted to anticipate potential “mission creep.” See RPC 1.2 (Scope of representation).

It is important to explore and advise the client of alternatives that may be available which include appropriate referrals to other resources that may be available. The legal aid program may have volunteer attorneys who specialize in foreclosure proceedings or other tangential legal matters. The program may be able to secure other volunteer counsel to assist the client with this problem.

The legal aid program may also have a volunteer attorney who is willing to serve as a mentor to you. As a result you develop new skills and experience that will allow you to assist private pay clients with foreclosure issues in the future.

Example 4—Time Allowed: You agreed to meet with a client for a 30 minute consultation regarding her child support obligation which is scheduled to be heard by the court on the motion calendar five days later. During the first 5 minutes of the interview the client discloses significant recent abuse by the father against both herself and the child. The Court is unaware of this abuse.

Discussion:

It is critical to afford appropriate time to client meetings, even in the context of limited representation. Although RPC 1.2(c) allows a lawyer to limit the scope of representation, such a limitation may not be reasonable if the time allotted is not sufficient to yield advice upon which the client can rely. See RPC 1.2 Comment

7. An agreement limiting representation does not exempt a lawyer from the duty to provide competent representation under RPC 1.1.

When it becomes clear that the time allotted is not sufficient to yield necessary advice, the lawyer should consider extending the time in order to sufficiently advise on the presenting issues. Otherwise, the lawyer must at minimum warn the client that the issues they are raising are of material importance to their case, that they do not have time to address them in this context, and that they should seek additional advice if possible. This is also the type of situation that should immediately be brought to the attention of the legal aid program, so they can provide additional resources if available.

Example 5—Litigation costs: You agreed to represent the client in a full direct representation dissolution matter with children involved. The client reports that there is documentary evidence of her parenting abilities and those of her spouse in the following nature:

Police reports regarding domestic violence from Butte Montana

Medical records of both the client and the children from both locally and Montana.

You instruct your client to obtain the documents in question to attach to a motion for temporary orders. The client contacts you ten days before the hearing and reports that she made the request, but that the record keepers will not forward the records without being paid in advance for the copying costs.

Discussion:

Pro bono representation of a client means that you are providing free legal services. It does not mean that the representation is without cost to the client. Most clients will not understand that there are legal costs associated with litigation unless it is explained to them. This should be addressed in advance in the engagement agreement. See RPC 1.5 (Fees).

The documents in question need to be properly authenticated in order to be admissible. Most pro bono clients will not understand the concept of authentication and obtaining documents like this is probably best done by the attorney.

An attorney may advance the costs of litigation if it is clear that the client is ultimately responsible for reimbursing the attorney for those costs. Legal aid programs sometimes advance such costs for their clients on a case by case basis, but resources are limited and they cannot do so for all clients. Programs will have language in the engagement agreement clarifying that the client is

ultimately responsible for such costs in their attorney-client representation agreements.

The domestic relations statute (RCW 26.09) allows for the award of attorney fees and costs from the opposing party under certain circumstances. Does the client understand that any fees that are recovered will be used first to reimburse the attorney for any costs advanced? Is there a mutual understanding as to how any attorney fees beyond costs will be distributed? The engagement agreement should address both of these matters in order to avoid conflict at a later time.

Example 6-- Maintaining contact with client: You agreed to represent a client in a termination of Social Security Disability benefits administrative hearing proceeding. You received notice that the hearing has been scheduled. You attempt to contact the client by phone and receive a message that the phone is no longer in service. A letter sent to the client is returned as undeliverable. The hearing is now scheduled for two weeks in the future.

Discussion:

Pro bono clients often do not have reliable means of being contacted. Phones are lost or stolen. The client cannot afford to purchase more minutes. They are homeless or are “couch surfing” and do not have a permanent residence address. It is essential that all alternative means of contact are explored at the initial interview. Inquire whether a friend or family member with whom they are in regular or frequent contact has a backup number. Inquire whether there is someone who will always know how to contact them and get the clients permission to contact that person if necessary. Alternative contact persons might be other service providers with whom the client is in regular contact such as a mental health counselor, a school administrative office or case worker.

The Rules of Professional Conduct and the Civil Rules regarding withdrawal apply even if the client has failed to maintain contact. That obligation does not change just because the client is being represented on a pro bono basis. Withdrawal cannot be accomplished under these circumstances without doing substantial damage to the client and accordingly should not be attempted. See *also* discussion below, p.21. Under Social Security regulations if the attorney appears the Administrative Law Judge will issue a show cause notice to the client as to why the appeal should not be dismissed.

Example 7—Language Barriers: Your client appears at your office with a consumer debt issue. The client speaks limited English; the client’s primary language is Spanish. The client is accompanied by a neighbor who offers to translate for the client. The neighbor explains that he is very

familiar with the situation because he has had many of the same issues with the same lender as the client. The neighbor proceeds to talk about his experience with the lender and acknowledges that his problems remain unresolved.

Discussion:

It can be very problematic to employ the services of a volunteer interpreter. Unless you have a general grasp of the language yourself it is very difficult to be sure whether you are getting an accurate interpretation or whether the volunteer is adding their own understanding. This example also circles back to the problem highlighted in Example 1 – *who is your client?*

Conclusion

The sheer magnitude of the need for civil legal aid in our State can seem overwhelming, and there can be complex and myriad challenges to working with economically disadvantaged clients. However, *pro bono* service can be the most rewarding and fulfilling experience of a lawyer's professional career. By applying appropriate skills and empathy, each lawyer can help fulfill our shared mission of ensuring meaningful access to justice for all. As we say, it's not justice if it's not equal!

Strategies and Skills for *Pro Bono* Legal Assistance to Economically Disadvantaged Individuals

Presented by Benjamin J. Haslam & Gail R. Smith

Scope of presentation

- What is *pro bono* legal assistance?
- The need in Washington state?
- Types of *pro bono* representation
- GR 34 Filing Fee waivers
- Common challenges and skills
- Clients with diminished capacity and mental health issues
- GR 33 appointment of counsel at public expense

Polling Question:

Approximately how many low income individuals in Washington state experience a civil legal problem each year?

- a. 90,000
- b. 450,000
- c. 900,000
- d. 1,800,000

What is the Need for Civil Legal Aid in Washington?

- **More than 70%** of low income households in Washington experience a civil legal problem each year
- The average per low income household is **more than 9 civil legal problems** per year
- When there has been **domestic violence or sexual assault**, the average is **more than 18 civil legal problems** per year
- **More than 80%** of the individuals who have a civil legal problem **face that problem alone**, with no legal help at all.
- Most low income people have limited confidence in the state's civil justice system. Perceptions about the fairness and effectiveness of the system to help solve their problems differ significantly on the basis of race, ethnicity, and other characteristics.

Definition of *Pro Bono*

- Basic definition - Professional work undertaken voluntarily and without payment
- RPC 6.1(a) defines as “...legal services without fee or expectation of fee to (1) persons of limited means...” or (2) delivery of legal services at a substantially reduced fee to persons of limited means
- APR 11 – MCLE credit (up to 24 credits per three year period) from providing *pro bono* legal services the legal services are rendered through a qualified services provider

What is a ‘QLSP’?

- APR 8(e)(2) – A Qualified Legal Services Provider (“QLSP”) is a not-for-profit legal services organization whose primary purpose is to provide legal services to low income clients
- 17 Volunteer Lawyer Programs in Washington State
- Also many statewide and specialized programs

Volunteer Lawyer Programs (“VLP”) in Washington State

Some of the statewide and specialized legal aid organizations:

Benefits of performing *Pro Bono* through a QLSP

- Malpractice Insurance
- Screening of Clients
- Training
- Mentoring
- Help
- Expedited Filing Fee Waiver – GR 34
- Forms
- CLE Credit

Types of *Pro Bono* legal services

- Direct Full Representation
- Limited Representation
- Advice Clinics

Considerations for Limited Representation

- RPC 1.2(c) – “A lawyer may limit the scope of the representation if the limitation is *reasonable under the circumstances* and the client gives *informed consent*.”
- Types of limitations on scope of representation – e.g. time, hearing, etc.
- CR 70.1(b) – “If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney’s role may be limited to one or more individual proceedings in the action. Service on an attorney who has made a limited appearance for a party shall be valid (to the extent permitted by statute and rule 5(b)) only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders. At the conclusion of such proceedings the attorney’s role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance which notice shall include the client information required by rule 71(c)(1).”

**SNOHOMISH COUNTY LEGAL SERVICES AND HOUSING JUSTICE PROJECT
LIMITED REPRESENTATION ATTORNEY-CLIENT AGREEMENT**

This document states the scope, conditions, and financial terms of the Agreement between
_____, (Attorney) and _____, (Client) §

§
 Attorney agrees to provide the legal services checked and initialed below. Regardless of the legal services checked and initialed, the Attorney's limited representation of Client, as allowed under CR 4.2, shall conclude at noon today. §
 If a different time period is noted and initialed at the end of this paragraph, Attorney's legal services shall instead conclude on:
 on _____, the _____ day of _____, 20____. §

Client agrees as follows: 1

§
 1. I agree to have the above Attorney provide the following limited service: §

§
 COUNSEL AND ADVICE - The Attorney will provide me only with personal consultation and legal advice. The Attorney will review my documents and provide advice on how I may proceed on my own and on options I may have. The Attorney may also provide brief service including, but not limited to, drafting pleading(s), letter(s), and/or other legal document(s) that I may use in representing myself. §

§
 NEGOTIATIONS - The Attorney will attempt negotiations with the opposing party. The Attorney will hold in confidence information provided by me and will not disclose information subject to the Attorney-Client privilege without my express consent. If the opposing party is willing to engage in a settlement, then the Attorney will discuss terms of the settlement with me and will not agree to anything without my express permission. The Attorney will assist me in drafting settlement document(s) and advise me regarding the settlement, but I will sign any settlement agreement in my individual capacity. I understand that I will be responsible for abiding by any settlement agreement. §

§
 LIMITED REPRESENTATION - The Attorney will represent me at the hearing being held today only. I authorize the Attorney to provide the court and the opposing party with an address where future legal papers may be served on me. At the completion of this hearing, I understand that the Attorney will file a Notice of Completion of Limited Appearance with the court stating that the Attorney withdraws from this case and no longer represents me. §

§
 2. I understand that the services of this Attorney are limited in scope, not ongoing, and free of charge. The only costs I will be responsible for are the actual costs of litigation, if any, which may include: filing fees, jury request fees, subpoena fees, court reporter or interpreter fees, service of papers costs, costs for transcripts of hearings, facsimile costs, and witness fees/costs to the extent they are required. I am also responsible for any required payment or bond into the court registry, along with any administrative fee. §

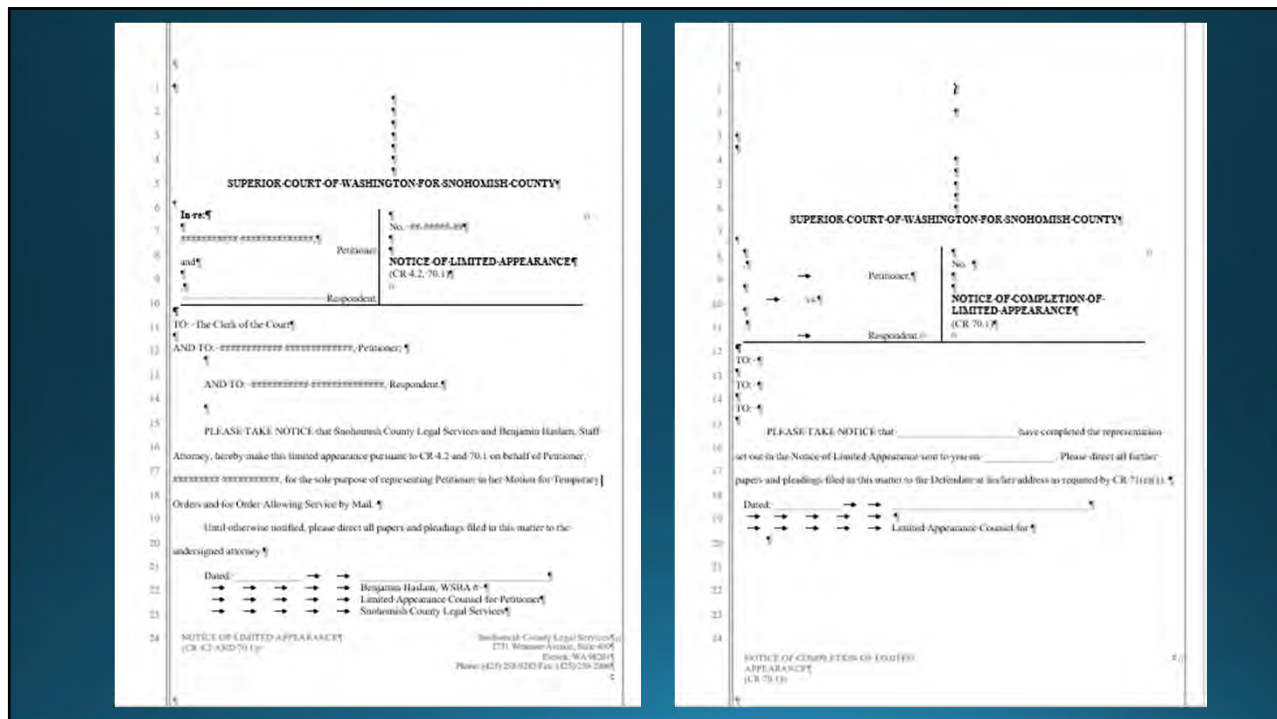
§
 3. I understand that there are risks to any litigation and that there is no guarantee of the outcome of my pending/unsuccessful defense action, despite the best efforts of the Attorney to provide me with accurate information, appropriate advice, and competent representation. §

§
 4. I understand that in the event I am dissatisfied with the quality of representation provided by the Attorney, a grievance procedure is available through Snohomish County Legal Services (SCLS). I acknowledge that I may submit my grievance in writing to: Executive Director, SCLS, 2731 Wetmore, Suite 410, Everett, WA 98201. §

§
 The undersigned Attorney and Client have read this Agreement, understand it, and agree to its terms. §

§
 Dated this _____ day of _____, 20____. §

§
 Clients Signature _____ Clients Printed Name §
 Attorney's Signature _____ Attorney's Printed Name and SCLS ID # _____ Client's name to Client's §



Example and Polling Question:

At the Housing Justice Project, you agree to represent your client at her eviction show cause hearing that day. You each sign a limited representation agreement to that effect, but the Court continues the hearing to the following week. Are you still representing the client for that hearing?

- a. Yes
- b. No

Considerations for Advice Clinics

- **Competent Representation** – RPC 1.1 – Adequate time and preparation
- **Scope of Representation** – RPC 1.2
- **Conflict screening** - RPC 1.7, Comment 36 – “...lawyers providing short-term limited legal services to a client under the auspices of a program sponsored by a nonprofit organization or court are not normally required to systematically screen for conflicts of interest before undertaking a representation.”

Common Barriers for Low Income Clients

Most legal aid clients have one or more barriers that will effectively limit their ability to have their day in court. These include:

- **Communication** barriers (language, literacy, disability, cultural consideration, technology)
- **Isolation** barriers (geography, institutionalization, disability, membership in insular communities)
- **Knowledge** and/or perception barriers (lack of knowledge about legal systems and services, failure to identify problem as a “legal” problem)

Polling Question:

What potential barrier for a low income person you are working with do you find most challenging?

- a. Doesn't speak or read English
- b. Has a developmental disability (e.g., intellectual disability)
- c. Has a psychological disability (e.g., schizophrenia)
- d. Is homeless and doesn't have access to a phone

Basic skills to work through barriers Be Aware of:

- Common assumptions about clients
- Role of Implicit Bias
- Role of Culture

Skills for *Pro Bono* attorney-client meetings

Example:

You meet with a young father who has stated during intake that he wants to be awarded primary parenting responsibility for his young child. He is accompanied by his mother who explains that the father is developmentally delayed and that she is one who makes all of the decisions and is really taking care of the child. The mother controls the conversation and responds to any question posed to her son, the young father.

Identify your Client

Consider:

- Who is your client?
- What are your client's objectives? *See* RPC 1.4(a)
- Is it appropriate for a third-party to be present? *See* RPC 1.6 (confidentiality) and 1.14 (client with diminished capacity)

Example:

You have agreed to participate in an advice only clinic organized by the local legal aid organization. The clinic is conducted on a drop in basis and the client's identity is not known in advance. The first client you are assigned has a familiar sounding name and as the interview proceeds the situation begins to have a familiar sound to it...

Perform Conflict Check

Consider:

- Always perform a conflict check when feasible
- If a conflict is discovered during a meeting, terminate the meeting and inform your client of the reason for your action – but also remember to respect the confidentiality of a prior client!

Example:

You have agreed to represent a client on full direct representation dissolution of marriage case. The client explains that there are nominal community debts and community assets and that the primary concern is the parenting plan because the spouse has a serious alcohol problem. The parties are purchasing a residence with little or no equity. The opposing party agrees that your client should remain in the family residence. Temporary orders are successfully negotiated and you are commencing discovery. You are suddenly served with a complaint for adverse possession against a portion of the property the family residence is situated on resulting from a long simmering property line dispute with the neighbor. The client wants to know what you are going to do to stop the adverse possession claim. This is the first time you have ever seen an adverse possession claim and have no idea what is involved in such a proceeding.

Avoid Mission Creep

Consider:

- Always enter into an engagement/representation agreement that clearly defines the scope of your representation
- Allow your client to express their most pressing concerns, and acknowledge them – but then reiterate the purpose and scope of your representation and focus on those issues
- Know your limits – you are not a social worker, mental health counselor, or financial planner

Example:

You agreed to meet with a client for a 30 minute consultation regarding her child support obligation which is scheduled to be heard by the court on the motion calendar five days later. During the first 5 minutes of the interview the client discloses significant recent abuse by the father against both herself and the child. The Court is unaware of this abuse.

Allow Sufficient Time

Consider:

- Any limitation on the scope of representation must be reasonable under the circumstances, and your representation must always be competent. *See* RPC 1.2, Comment 7
- Extend time, or warn the client
- Let the legal aid program know the situation

Example:

You agreed to represent the client in a full direct representation dissolution matter with children involved. The client reports that there is documentary evidence of her parenting abilities and those of her spouse in the following nature:

Police reports regarding domestic violence from Butte Montana

Medical records of both the client and the children from both locally and Montana.

You instruct your client to obtain the documents in question to attach to a motion for temporary orders. The client contacts you ten days before the hearing and reports that she made the request, but that the record keepers will not forward the records without being paid in advance for the copying costs.

Discuss Costs

Consider:

- The fact you are providing free legal services does not mean the legal action is without cost to the client
- Responsibility for costs should be addressed in the engagement agreement. *See* RPC 1.5.
- Most *pro bono* clients will struggle with authentication issues
- An attorney may advance costs of litigation if it is clear the client is ultimately responsible for reimbursing such costs. Legal aid programs sometimes advance such costs, on a case-by-case basis
- If attorney fees are allowed to your client, will they go to the attorney or the legal aid program?
- Clients should also be made aware of the potential for awards of attorney fees and costs against them

Example:

You agreed to represent a client in a termination of Social Security Disability benefits administrative hearing proceeding. You received notice that the hearing has been scheduled. You attempt to contact the client by phone and receive a message that the phone is no longer in service. A letter sent to the client is returned as undeliverable. The hearing is now scheduled for two weeks in the future.

Maintain Contact with your Client

Consider:

- Be aware that *pro bono* clients often do not have reliable means of being contacted
- Explore alternative means of contact during the initial interview, and periodically later on
- Consider the impact on your ability to withdraw if you cannot give advance notice to your client of your intent to do so

Example:

Your client appears at your office with a consumer debt issue. The client speaks limited English; the client's primary language is Spanish. The client is accompanied by a neighbor who offers to translate for the client. The neighbor explains that he is very familiar with the situation because he has had many of the same issues with the same lender as the client. The neighbor proceeds to talk about his experience with the lender and acknowledges that his problems remain unresolved.

Language Barriers

Consider:

- Volunteer interpreters can be very problematic, and should be avoided if possible – less experienced interpreters who are not court certified will struggle with legal terminology
- Interpretation is different to translation
- Many languages include dialects that will render interpretation impossible
- Be aware of the interpreter's appropriate role, and enforce it. *See GR 11*
- Be aware of the potential for conflicts for clients from small/insular communities

Simple best practices for working with interpreters:

- Use only a qualified interpreter
- Have the interpreter sign a confidentiality agreement
- Speak with the interpreter beforehand, and share documents
- Allow more time for meetings
- Explain the interpreter's role to the client, including confidentiality
- Use the 1st person when speaking, and speak to the client
- Make sure everything you said is interpreted, use short sentences with breaks
- Do not permit side conversations
- Debrief with the interpreter after the interview

Considerations for Clients with Mental Health Issues or Diminished Capacity

- Understand different implications for clients with psychiatric disabilities, cognitive impairment, or brain injuries
- "As far as reasonably possible, maintain a normal client-lawyer relationship with the client." RPC 1.14(a)
- Accommodate disabilities as much as possible to maintain a functional attorney-client relationship

When to take protective action

- If you *reasonably believe* the client has diminished capacity and is at *risk of substantial physical, financial or other harm* unless action is taken and *cannot adequately act in the client's own interest*, the lawyer may take *reasonably necessary* protective action. RPC 1.14(b)
- Protective action could include consulting with other individuals or entities, and in appropriate cases seeking appointment of a guardian ad litem (Title 4) or guardian (Title 11). The simplest answer is to notify the Court of your concerns, on the record.

What else to consider

- Confidential information may be revealed under such circumstances, but only to the extent reasonably necessary to protect the client's interests. *See* RPC 1.14(c).
- However, the lawyer must also consider potential prejudice to the client's case resulting from such disclosure, and the potential expense and trauma disclosure may cause to the client, and the client's wishes.
- Guardianship is a last resort
- If there is a guardian or GAL, continue to treat the client with attention and respect, and maintain communication with them, while allowing the guardian/GAL to make the decisions they are authorized to make

Appointment of counsel at public expense

GR 33(a)(1)(c) provides for representation by counsel at public expense when necessary to make court services and programs readily accessible to and usable by a person with a disability who is unrepresented.

In practical terms, if you have entered an appearance then a client who might otherwise qualify for appointment of an attorney at public expense, they will no longer qualify.

If capacity or competency are the issue, appointment of an attorney will do little to resolve their needs.

Closing Remarks

Thank you for volunteering!

CHAPTER TWO

HOLISTIC REPRESENTATION

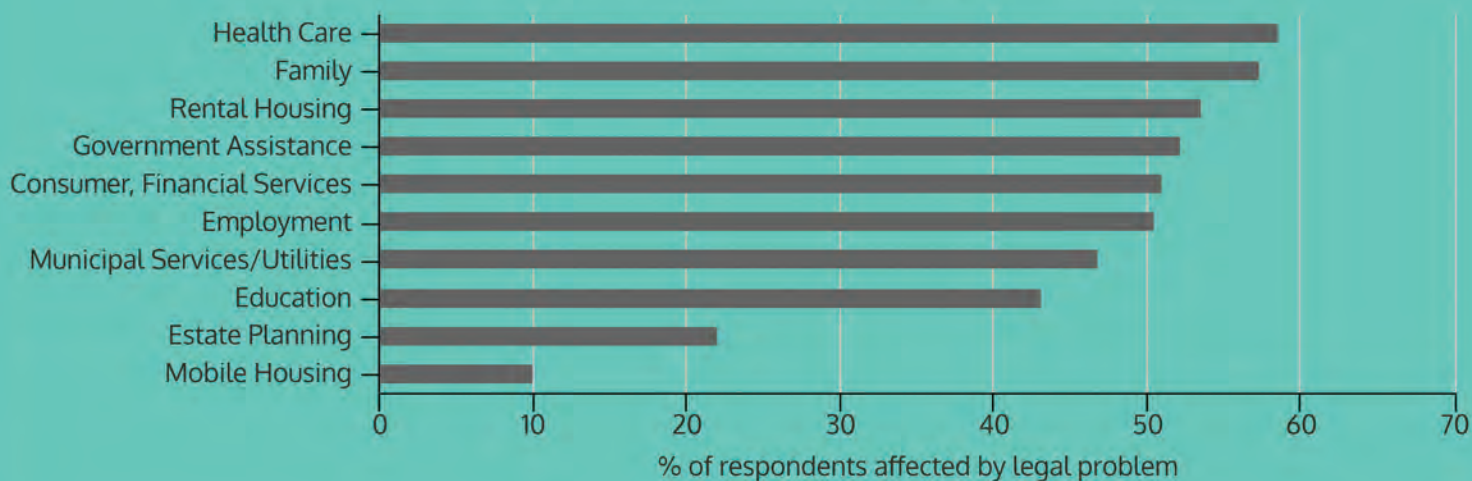
October 2016

Alexandria Doolittle
Seattle Community Law CenterPhone: (206) 686-7252
alex@seattlecommlaw.org

ALEXANDRIA DOOLITTLE became SCLC's executive director in July 2009 after having represented hundreds of clients in Social Security matters as the directing attorney of SCLC's Social Security Advocacy Project (SSAP). Alex is a graduate of Pacific Lutheran University (B.A.), and the University of North Dakota School of Law (J.D.). As a law student, Alex founded and was president of the UND Public Interest Law Students Association (PILSA), and was the Student Director of the UND Law Clinical Education Program. Alex utilizes her law degree as a tool to give a voice to individuals and entities that traditionally do not have a voice in the law. She has worked to help clients stand-up for their rights under the First Amendment, the Americans with Disabilities Act, WA Growth Management Act, WA Shoreline Management Act, and the Social Security Act.

SCLC in Context

Civil Legal Needs Study 2015, Prevalence of Legal Problems - N-PS



Government Assistance

Advocacy Goals :

- Access Disability Benefits
- Engage with the gov system



Rental Housing

Advocacy Goals :

- Prevent or end homelessness
- Enable Stable Housing
- Eviction Prevention

Access to Healthcare

Advocacy Goals:

- Access to Medicare & Medicaid
- Connect or reconnect with treatment



Stable Finances

Advocacy Goals:

- Prevent Overpayments
- Prevent termination of SSI/SSDI
- Discharge debt when appropriate



1404 E. Yesler Way, Suite 203
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www.seattlecommlaw.org

Housing

Emergency Housing:

Hope-Link – 425.869.6000 or hopelink@hopelink.org.
DESC – (206) 464-1570

Evictions

Housing Justice Project – (206) 267-7090

Rental assistance/Housing

Solid Ground – (206) 294-6742
Catholic Community Services – (206) 328-5696

Landlord/Tenant

Tenants Union – (206) 723-0500

Family

Divorce/Child Support

KCBA- Neighborhood Clinics–206-267-7070

Domestic Violence

NJP (206) 464-1519

DV Counseling

Asian Counseling and Referral Services – (206) 695-7600
Consejo Counseling & Referral Service – (206) 461-4880

Civil Rights

Discrimination

Office of Civil Rights (City of Seattle) (206) 684-4500
ACLU– (206) 624-2184

Immigration

Defense/Affirmative

NWIRP – (206) 957-8600
Catholic Community Services – (206) 328-5696

Disabilities

Access/Services

ACLU – (206) 624-2184
NJP – (206) 464-1519

Basic Needs

Food

DSHS – 877-501-2233
Northwest Harvest – (206) 625-0755

Food Stamps

Benefits Legal Assistance – (206) 694-6742

The Seattle Community Law Center is a 501(c)(3) organization that provides Social Security advocacy to people with disabilities who are homeless or low income.