

## Working with Pro Bono Clients

*By Martha Delaney and Scott Russell*

Attorney Larry McDonough, a Legal Aid attorney since 1983, recalls a 48-year-old female client who had rented a run-down apartment which the city condemned after she moved in. She withheld rent; the landlord filed eviction papers.

Although the city had condemned the apartment twice before, the landlord continued to try to rent it, each time removing the “condemned” sign.

McDonough faced what might seem an odd barrier to helping the woman resolve her case: She initially refused to call the housing inspector. The woman didn’t understand her options, he said. She didn’t understand the law. She had an overriding sense that whatever happened, it wouldn’t go well for her.

McDonough could easily get frustrated with the client who won’t pursue the “obvious” solution. Yet it’s a common situation faced by McDonough and other attorneys who work frequently with clients living in what could be referred to as “generational poverty.”

Drawing any generalizations about class differences between middle class attorneys and poor clients<sup>1</sup> is treacherous ground; some would call it stereotyping or patronizing. Yet for *pro bono* attorneys who work with impoverished clients only occasionally, failing to understand and deal with these differences has its dangers. Ignore them and *pro bono* service can become frustrating and burdensome instead of a source of satisfaction — and clients may not get the help they desperately need.

## UNWRITTEN RULES

Educator Ruby Payne lectures on the challenges faced by middle class teachers working with students from chronically poor families. Growing up in those different economic worlds teaches students and teachers different survival skills and promotes different “hidden rules” regarding how people relate to each other, she said.<sup>2</sup>

Many of Payne’s ideas apply to the relationship between *pro bono* lawyers and their clients. For instance, Payne says differences between persons growing up middle class (“M.C.”) and persons growing up in generational poverty (“G.P.”) can include:

- Logistical obstacles to planning ahead, *e.g.*, failure to keep appointments (greater in G.P.)
- The degree of belief in own ability to control events (greater in M.C.)
- Willingness to share money with friends and relatives, even when financially strapped (greater in G.P.)
- Dependence on written communication vs. oral communication (greater in M.C.)
- The influence of work, achievement, and material security in decision making (greater in M.C.)
- The influence of survival, entertainment, and relationships in decision making (greater in G.P.)

The authors interviewed eight people with hands-on legal experience with clients from generational poverty, asking for reactions to these and other Payne observations. They included private attorneys with a long-term *pro bono* practice, legal aid attorneys, courthouse staff helping *pro se* clients, and a district court judge.

We asked them for ideas on how *pro bono* attorneys could head off common pitfalls that can emerge when serving people from an impoverished background. They offered many concrete ideas, but three key themes emerged:

1. Getting to know your client and the client’s circumstances may take a little more diligence;
2. Communicating effectively may require that you be more explicit in your speaking and listening; and,
3. Teaching your client how to succeed in the legal system probably will have dimensions that differ from teaching your paying clients.

## GETTING TO KNOW YOU

Mark Vyvyan of Fredrikson & Byron PA in Minneapolis has handled *pro bono* housing cases for eight years. He takes it for granted that he can pick up his phone and call his paying clients, he said. Not so for his *pro bono* clients.

To illustrate the point, he recalled one particular client, a blind man, Marvin (not his real name), who asked for help with a landlord who had rented him a roach-infested apartment. Vyvyan wanted to see the place for himself. The client didn't have a phone or, as it turned out, even a doorbell. The client said he had a first floor apartment and told Vyvyan to stand in the alley at 8:30 a.m., yell his name, and he would come and get him.

"So I'm in this alley, in not the greatest neighborhood, at 8:30 in the morning, yelling 'Marvin, Marvin' and of course he is not home. So I stand there for 15 minutes yelling his name like an idiot."

Vyvyan and others who frequently work with generationally poor clients say *pro bono* attorneys must understand the barriers their clients face and ask direct questions to figure out a workable strategy for achieving success. Clients may not have reliable transportation, day care, an employer who allows time off for appointments, a phone, or in some cases, even a doorbell. To stay in touch and keep appointments, he and others suggest asking questions like:

- What is the best way for me to get a hold of you?
- Do you have your own car, use public transportation or rely on friends?
- Do you work? Does your company allow you time off for an appointment?
- Do you have children? Do you have day care?
- Are you ever in this area for other reasons?

Armando Vilchez, a senior clerk at the Hennepin County District Court Self-Help Center, has learned to ask such questions. He helps *pro se* clients complete legal paperwork, *e.g.*, name changes, criminal expungements, and car title transfers. A number of the Self Help Center's customers are those who can't afford an attorney and aren't knowledgeable about the legal system, he said.

"If I know more about their limitations or the situation they are going through, I am better able to make a connection and help them," Vilchez said.

He recalls being perplexed with “Bill,” who needed a follow-up appointment to finish his paperwork. Vilchez knew from the conversation that Bill was unemployed, yet Bill wouldn’t commit to a specific date and time to come back. After Bill rejected a couple of his suggestions, Vilchez thought to himself, “You’re not employed, what’s wrong with 8:30 a.m.?”

Yet when he asked the direct question “Is there a problem with coming early,” he got the information that Bill was too embarrassed to volunteer on his own. Bill lived in a shelter across town, Vilchez said, and a morning time would conflict with his ability to get a free breakfast. Others might not be sure if they could come because they didn’t have bus money.

With longer-term, more in-depth *pro bono* cases, getting to know the client’s circumstances can be particularly important.

Fred Ojile of Messinger & Ojile, PLLP, has a private family law practice and has handled *pro bono* divorces for clients from battered women’s shelters for years. These clients have a particularly good reason not to trust people who have authority over them, and that can affect the attorney-client relationship, he said. His first goal is to gain the client’s trust.

“I never write down anything when I first meet with a client,” he said. “I just sit there and let them talk to me for ten minutes, because just through that experience people get looser. If you’re not sitting there taking notes, they just open up more. People in general don’t like to sit across from somebody taking notes. It’s like you’re a cop or something.”

Melissa Froehle, an attorney with Central Minnesota Legal Services, works mostly with low-income, noncustodial fathers trying to get parenting time or custody.

She recalled a case where her male client, 24, was trying to establish a relationship with the four-year-old girl he had just learned was his daughter. Child protection had become involved and Froehle’s client had been portrayed as the abuser. It turned out that the mom had a history of ongoing abuse/neglect with this child — which the client only learned about once the matter ended up in court.

Like many fathers Froehle works with who have cases in the child protection system, this client was frustrated that the child had not been protected in the past by the system, and that *he* was now being blamed for the mother’s abuse. As they talked more, Froehle learned that he

himself had been in the child protection system as a child and it had been a “rotten experience.” He had no faith that the system would protect his daughter. Understanding his background helped Froehle understand the extent of his concern, distrust and anger toward the authority figures in the case — and helped her advocate more effectively for her client.

## COMMUNICATING EFFECTIVELY

To communicate effectively with their *pro bono* clients, attorneys often need to use simpler language, double-check their assumptions, and provide extra explanations about the legal system.

For example, those we interviewed suggested that rather than just sending clients written material, attorneys should take the time to go over all materials verbally with their clients. Clients will let an attorney know when they are ready to pick up the pace.

Several interviewees also suggested avoiding legal jargon or complicated words, like “writ,” or “in lieu of.”

McDonough observed that “There’s no real downside to explaining things at a more basic level, unless the person gets the impression that you think he’s a dope. But I haven’t felt that.”

When asked about stereotyping the poor, McDonough didn’t hesitate. “It’s okay to start with a stereotype if it leads you to do something positive. I mean, if you go in with the idea that people speak different languages based on class, so you’re explaining things in a little more detail, the worst that’s happening is that the person is getting it quicker! [But it may be that] you’re explaining it *better* to someone who’s *not* getting it quicker.”

Several of the eight interviewees observed that sometimes attorneys need to explain why they are asking certain questions. For example, Froehle said her clients get angry at what they think are irrelevant questions, especially about the past. It feeds into their experience of being constantly judged.

Froehle tries to head off the frustration before it surfaces. “I do a lot of education and explanation up front on the child protection system. ‘This is how the system is set up. This is what the system is supposed to do. I can understand that you are angry about having to do X, Y and Z. But if you don’t do X, Y and Z, these are the results. Here’s where I can see it helping you.’” Others use visuals with clients to help explain

the legal system clearly, including flowcharts.

It's also easy to judge or jump to conclusions, and it's worth taking the time to question your first impressions. Froehle recalled again the client who was trying to get custody of his four-year-old daughter. Shortly into the case, Froehle saw that the child's mother had given the child her client's last name. "So I assumed — and I'm sure the social workers in the case would have — this kid has your last name, how could you not have been involved [in the past four years]? How could you not have cared?"

Knowing this perceived past indifference could be devastating to her client's case, Froehle asked him about it. He said, "I had no idea she had my last name. I'd never heard her last name, never seen her last name in writing." Recognizing that the client's case could be harmed if others in the case shared her assumption, Froehle took time to clarify the situation with them.

Clients often have an unrealistic view of how fast the system works, and it takes patient explaining. Vilchez said he has had people come to him thinking they could complete the forms and get the judge to sign them the very same day. He first empathizes with their frustration, and then explains the paperwork process and timeline they have to follow.

But Vilchez often asks more questions to determine whether there's any way to help in the meantime. Vilchez recalled one man who said his employer was going to fire him because of an old misdemeanor on his record. Vilchez could not speed the expungement petition process, but by listening to the man's concerns, he came up with a partial solution. He wrote a letter to the man's employer explaining that he had started the process which, while not binding, might convince the employer to keep the employee on the job pending the outcome of the expungement case

## **TEACHING YOUR CLIENT**

Unless the client has legal experience, all attorneys need to teach their clients how to succeed in the legal system. *Pro bono* attorneys, however, need to start with the basics.

For example, *pro bono* attorneys often need to stress the importance of appointments and court dates. Froehle said some of her clients are overwhelmed with problems; they may be unemployed, face a driver's license suspension, or be dealing with other low-level offenses. Often living from week to week, they are more used to reacting to events than planning ahead. In this context, an appointment with an attorney may

not seem that important. So, at the outset, she tells her clients: “If you have an appointment with me and you are not going to make it, that’s OK. But you need to let me know.”

If she tells them that it is disrespectful of her time if they don’t call ahead, they get it, she said. “Most of us would take that for granted, but our clients don’t have a history of knowing those kinds of things.”

Helping clients with important papers can be another point of service. Some provide manila envelopes for clients to keep all case-related papers. Others, like Vilchez, offer to keep important papers for them so they won’t get lost.

Teaching what’s relevant is also key. Vyvyan said some of his eviction clients have the attitude “I just want to go in there and tell the judge my story. I know he is going to see it my way.”

Vyvyan has to explain that, “‘No, on a legal level, the judge doesn’t care if you don’t have money to pay the rent because you lost your job or your drug-dealing boyfriend stole it, or whatever.’ You try to focus your client on the issues that will help in court.”

Helping clients keep emotions in check during the hearing can save a case from devastating results. While true for all clients at some level, McDonough tells his housing clients, “Going into court is not a venting experience, it is a persuading experience. If you want to vent you should do it with someone who is not going to get angry over it. So when you come to court, it is strictly a persuading-someone-to-do-you-a-favor experience.”

What most experienced attorneys and judges use as cues to determine reliability may not translate well to their *pro bono* clients. Michele Garnett MacKenzie, an immigration attorney at Minnesota Advocates for Human Rights, notes that people who have survived abuse often do not display the emotions or the chronological memory of details that most attorneys or judges look for to evaluate credibility. Attorneys need to spend extra time preparing such clients in advance to make sure they are ready to testify in a way that the judge will perceive as credible. For example, Garnett MacKenzie notes that she often needs to encourage her clients to have eye contact with the judge.

## CONCLUSION

All lawyers must strive to understand their client, communicate clearly and effectively, and help their client succeed in the legal system. *Pro bono* lawyers representing people in chronic poverty often will find

that the concrete steps to achieving these goals play out in unfamiliar ways. *Pro bono* clients have grown up in a different world with different survival skills. In order for the legal system to work effectively for these clients, *pro bono* lawyers need sensitivity, awareness, and extra diligence. Successfully understanding and accommodating these differences results in higher quality services to the client and a greater level of satisfaction for the attorney for a job well-done. ☐

## NOTES

1. *This article talks about clients in generational poverty. Typically, that is defined as a person who comes from a family where two or more of the past generations have lived in a household whose annual income is at or below 125% of the federal poverty guideline. In 2005, 125% of the poverty level for a household of four is \$24,188 per year.*

*The patterns of behavior described herein are selectively chosen and have exceptions. It is not the intent to stereotype, only to provide a framework of understanding poverty so that those individuals who may fit the overall pattern may be better understood and better served.*

2. *Much contained in this article is based upon the ideas and input of Ruby K. Payne, Ph.D. author of A Framework for Understanding Poverty. For more information on Ruby Payne and her work, see [www.ahaprocess.com](http://www.ahaprocess.com).*

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## VIEW FROM THE BENCH

“In family court, we work a lot with *pro se* litigants from generational poverty. One of the main things I’ve learned is not to expect most *pro se* persons from generational poverty to have good written materials or an accurate summary of the issues. Deadlines can’t be strictly enforced.

“I also watch very closely to make sure that they are always talking directly to me. I’ve found emotional discourse is common with some poor people, and I want to keep them focused on the issues by keeping them talking to me, not each other.

“I try to make my courtroom informal. If I think it will help in reaching a settlement, I invite them to my office rather than staying in the courtroom. I try to keep my language simple.

“I allow plenty of time for hearings. I explain my rulings to them and what the order will say. And often I’ll give them my clerk’s phone



number so if a problem comes up we can try to work it out over the phone. It doesn't help to make them file paperwork that won't be useful to me anyway. Sometimes, people start using that option too much, though, and I stop offering it as an alternative.

"In sum, the important accommodations I make are 1) to allow more time for the hearings; and 2) to expect to do more follow-up."

— HON. BRUCE PETERSON,

4th Judicial District

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### DIFFERENCES IN STORY STRUCTURE

Finding out "what happened" from a client in poverty can be frustrating to middle-class lawyers and judges who are used to chronological, plot-driven stories with a cause and effect. The story structure in generational poverty tends to be a more random, episodic, and entertaining replay that starts at the end and includes a number of brief episodes followed by listener participation. Events are included to the extent that they have emotional significance to the teller.

If a *pro bono* attorney is having a difficult time understanding what happened to the client, one way to find out the whole story is to ask the client to tell the story several times. The first time, the attorney just listens. The second time, the attorney interrupts and takes notes. The third time, the attorney tells the story back to the client, asking the client to correct any inaccuracies. Often, the best information is gathered this third time. The teller is so intent on the attorney getting it correct that they will recount new (often important) parts of the story.

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*This article originally appeared in Bench & Bar of Minnesota, the magazine of the Minnesota State Bar Association.*