Direct Representation: Essential Client Interview Skills

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Source Material:
NeighborWorks Training Institute
Legal Services NYC, Immigration Unit Intake Procedures
Purposes For Interviewing Client

- Form an attorney-client relationship
- Learn client’s goals
- Learn as much as the client knows about the facts
- Reduce the clients anxiety without being unrealistic
Prepare in Advance

• If possible ascertain a vague sense of why the client wants to see you. (Pre-Screening)
• Take a look at the most obviously relevant parts of the law before the client arrives to keep elements of law fresh in your mind.
• Develop a checklist or intake questionnaire that will help to keep interview focused and on track.
Interviewing Dynamics

• Inhibitors
  – What might inhibit a client from telling you everything he/she thinks and remembers?
    • Embarrassing to confess a problem that is out of control.
    • Details of client’s problem are often very personal and may make the client look inadequate or reprehensible.
Interviewing Dynamics Continued

• Facilitators
  – What might help a client tell you as much as possible?
    • Show empathy and respect rather than distance.
    • Encourage communication with nonverbal communication and active listening.
    • Ask clear and well-organized questions.
    • Set up your office in a way that clients find welcoming.
Organizing the Interview

• Brief Opening
  – Lawyer and client become acquainted before getting down to business.

• Information Gathering (longest part of interview)
  – Let client tell his/her story (open-ended narration)
  – Follow-up with detailed questions (probing stage)
  – Describe client’s story as you understand it and let the client make necessary corrections (review stage)
Organizing the Interview Continued

- Learn Exactly What the Client Wants to Accomplish to Resolve the Problem
  - Goal Identification.
- Discuss Preliminary Strategy
  - Tentatively discuss possible strategies for handling the problem.
- Closing Phase
  - You and client come to an agreement on what will happen after the interview.
Beginning the Interview

- **Explain Attorney-Client Confidentiality**
  - Rule 1.6 of the Model Rules of Professional Conduct: “A lawyer shall not reveal information relating to representation of a client.”
  - 4 Exceptions
    - Client consents to disclosure.
    - Implied consent when disclosure is necessary to carry out representation.
    - Lawyer reasonably believes disclosure is necessary to prevent client from committing crime likely to result in imminent death or substantial bodily harm.
    - Lawyer reasonably believes disclosure is necessary to protect lawyer in a fee dispute, malpractice action, ethics investigation, or where lawyer is being sued in connection with representation of the client.

- **Be an Active Listener**
  - Social skill you are already adept at.
  - Try to refrain from interrupting with narrow questions.
Information Gathering

- Make the client comfortable and let her tell you her story her way
  - Go back and review story get clarification where needed.
  - Don’t forget to develop the timeline (chronology).
- Okay to take Notes
  - Don’t let note taking interfere with your rapport with the client.
Understand Your Client’s Goals

- **What is Client’s desired outcome**
  - Vindication
  - Compensation for a loss
  - Revenge

- **Assumptions are dangerous**
  - Get a clear statement from the client.
  - You may need to help tease this out for the client.
Consider Strategy During the Interview

- Listen for Facts Relevant to Your Tentative Legal Theory.
- Find client’s persuasive story
  - Facts that will seem most persuasive to the fact-finder.
- Burdens of Proof
  - Legal theory must satisfy the elements of the legal tests that make up your burden.
  - Prepare your legal theory that prevents the other side from satisfying the elements of the legal test the other side must prove.
- A Persuasive Theory is based on Solid Evidence and the Inferences that can be Drawn from that Evidence.
Closing

• At the conclusion of the interview do you know if will you take on this client for representation?
  – If yes, explain to client they should:
    • Refrain from doing anything that will make the situation worse.
    • Not speak to anyone other than you about their case because they could waive privilege.
  – If no, make it absolutely clear that you are not in a position to take case on.
    • Following-up in writing always a good idea; reiterating that you are not taking on case.
Case Study#1 Jessica Johnson
Divorce Action/Custody/Child Support/Alimony/Equitable Distribution

- Jessica Johnson is 22yr old college student and a mother of an 18 month old daughter, Jasmine. Jessica has been married to her high school boyfriend, Mark Johnson, 25yrs old, for 4 years. Jessica would like to get a divorce from Mark alleging that she has been verbally and physically abused for the past 3 years.

- Jessica explains that Mark has become very jealous since she enrolled at Bronx Community college. A month ago, Jessica called the police after a particularly abusive incident. Mark was arrested and Jessica was issued a temporary protective order, prohibiting Mark from returning to the home, and making direct or indirect contact through a 3rd party.

- Jessica feels as though she’s being followed or watched by Mark and his friends as Mark and his buddies always seem to know where she is because they’ll often show up at school or near her friend’s homes.

- Jessica and Mark both have Facebook profiles and the last time Jessica visited Mark’s Facebook profile, she saw that he had posted a picture of her hanging out with a couple of friends with the tagline “U betta watch ur back.” Jessica has also been receiving threatening text messages and emails from addresses she does not recognize. She knows that Mark is sending her these messages but does not know how to prove it.

- Jessica works part-time in her school’s alumni office and Mark owns a computer repair business called “Geeks-2-Go” with a couple of high school buddies. Jessica believes that Mark makes good money because he pays their bills on time, go out to the movies and dinners, and hire a baby sitter so that Jessica could go to school.

- Mark has stopped paying the rent and the utility bills. The bills are piling up and Jessica is unable to pay.
Case Study #2 Violence Against Women Act (“VAWA”) Ms. W. Kim

- Ms. Kim was born in South Korea. She first met her husband, Mr. H. Kim, in 1991 through friends. Mr. Kim called Ms. Kim often while they maintained a long-distance relationship. In 1994 Mr. Kim went to Korea to visit Ms. Kim. While there he met her family and friends and asked for her to marry him. Ms. Kim accepted and they had an engagement ceremony in Korea.

- Mr. Kim returned to the US shortly after the engagement and Ms. Kim joined him in the US a few days later. Ms. Kim entered the US via Canada by boat.

- Once Ms. Kim was in the US Mr. Kim’s attitude towards her changed. He became verbally and emotionally abusive. He was controlling and would not allow Ms. Kim to leave the home. He often called her “f#$%ing b*&^h” and “dog b*&^h” when they would argue.

- Mr. and Ms. Kim married in 1996 after the birth of their daughter, Cho Hee.

- About 3 years later after the birth of Cho Hee, Mr. Kim started to physically abuse Ms. Kim. He started to throw things at her leaving her body bruised. In 1999, their 2nd daughter Hana was born.

- About 2002, the abuse became worse. Mr. Kim frequently stayed out all night and drank all the time. He also started to force Ms. Kim to have sex with him on a regular basis. Ms. Kim would always refuse but Mr. Kim would pin her down leaving bruises on her wrists.

- On or about September 2003, Mr. Kim threatened to kill Ms. Kim with a knife and raped her. The next day, Ms. Kim went to the precinct to file a report but ultimately did not and instead got counseling at the Korean American Family Service Center to help her cope.

- On or about January 2004 Mr. Kim hit Ms. Kim hard on the chest and when their 7yr old child intervened Mr. Kim punched the child in the arm. The Kims separated in February 2004 when Ms. Kim moved into a domestic violence shelter.
Case Study #3 Cassandra Wynn
Mortgage Default

- Cassandra Wynn is a single mother. She and her husband divorced 2 years ago. 5 months ago her ex-husband died. She has an 8yr old daughter.
- Cassandra has been employed with the same company for 12 yrs and was recently promoted to a management position. She is paid every other week.
- When Cassandra’s ex-husband was alive, he paid half the mortgage payment. Last month, Cassandra began receiving a $900 monthly payment from an annuity that her ex-husband provided for their daughter, which will last until her daughter turns 18 when a lump sum will be paid out.

- Cassandra has been told her daughter will receive $400 in Soc. Sec. benefits, but this has not started yet.
- Cassandra made a verbal agreement with the bank to pay an additional $500 towards her mortgage until her loan is current. She is not going to be able to make the first payment under that agreement.
- The bank told Cassandra that if she missed the payment they will begin foreclosure proceedings, but she has received nothing from them in writing. Cassandra did however, receive a letter stating that her mortgage payments will go up by $100 next month.