

EFFECTIVE COMMUNICATION STRATEGIES FOR DEALING WITH EMOTIONALLY AND MENTALLY DISTRESSED INDIVIDUALS

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by
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1. Introduction

A. Legal Aid Society of Milwaukee, Inc.
"Equal Justice For the Poor Since 1916"

1. Our firm handles over 8,000 cases a years, with a staff of 27 lawyers, 7 social workers and 7 legal assistants¹

B. My Areas of Experience with these adult clients:

1. Wis. Stats., Chap. 51 Adversary Counsel - 18 years
2. Ch. 51 Implied Voluntary GAL
3. Ch. 55 Watts Review GAL
4. Sec. 813.123 GAL for individuals at Risk
5. General intake clients at Legal Aid
 - unfair debt collection practices
 - third-party debt collections
6. Past criminal practice

2. General Overview of the Topic

For many judges and court staff, the problems of dealing with litigants are exacerbated by the fact that some of them may be exhibiting signs of severe emotional distress, or signs they are suffering from some form of mental illness. Judges, court staff, and attorneys are often uncomfortable with and uncertain about how to deal with these litigants, fearful of a potential loss of control of courtroom proceedings and sometime fearful of actual physical risk. At a minimum, these litigants are seen as highly disruptive to court functioning. This presentation starts with an overview of the problem and concludes with practical communication tools to assist lawyers and court personnel to effectively address litigant's special needs

and minimize disruption of court proceedings.

3. The Roadmap

A. Why is this a timely topic?

B. Why is it important to learn these special communication skills?

C. General Communication Tips and Strategies

D. Suicidal Individuals

4. Conclusion - Q&A

II. Why is this a timely topic?

A. As talk of the banking crisis, falling housing prices, rising consumer debt and declining retail sales bring up worries about the nation's economic health, more Americans feel additional stress and anxiety about their financial future. Money and the state of the economy are two of the top sources of stress for 80% of Americans, according to the American Psychological Association's 2008 Stress in America survey.²

B. Bankruptcy, foreclosures and debt collection actions increasing

1. Bankruptcy filings in the federal courts rose 30% in calendar year 2008, according to data released by the Administrative Office of the U.S. Courts. The majority of filings involved non-business debts.³

2. U.S. foreclosure filings spiked by more than 81% in 2008, a record, according to a report by Realty Trac. Filings are up 225% compared with 2006.⁴

3. Debt collection actions are big business.⁵

C. Job loss, unemployment, and inability to access credit, substantially affect an individual's ability to economically sustain or survive

1. The country's growing unemployment is overtaking subprime mortgages as the main driver of foreclosures, according to bankers and economists.⁶

2. Banks continue to write off credit card debt as consumers hurt by record high unemployment default at an increasing rate. The unemployment rate rose to a 26-year high in May, 2009.⁷

- D. Pro se civil litigants represent a significant and growing burden on a judicial system ill-equipped to deal with them. In some counties as many as 70% of family cases now involve litigants who represent themselves.⁸ Dealing with these clients legally and emotionally is left to the judge and judicial personnel.
- E. Increasing judicial awareness of stress-related responses and underlying mental illness issues with clients and public in these cases.⁹

III. Why is it important to learn these special communication skills?

A. The Rules of Professional Conduct require it.

1. SCR 20:1.1 - Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. SCR 20:1.14 - Client With Diminished Capacity

(A) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reasons, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

B. The courts expect it.

1. Even when a person is before the circuit court facing an allegation of being mentally ill and dangerous, the law presumes competency.

a. Wis. Stats. Sec. 51.50 Incompetency No Implied

(1) No person is deemed incompetent to manage his or her affairs, to contract, to hold professional, occupational or motor vehicle operator's licenses, to marry or to obtain a divorce, to vote, to make a will or

to exercise any other civil right solely by reason of his or her admission to a facility in accordance with this chapter or detention or commitment under this chapter.¹⁰

C. We should expect it of ourselves.

1. We are all subject to the human condition. Represent the mentally ill as you would want to be represented. You might need someone to do that for you some day.

a. "We have committed the Golden Rule to memory; let us now commit it to life."

Edward Markham, American Poet, 1852-1940.

IV. General Communication Tips and Strategies

A. That Golden Rule is a Good Starting Point

1. The first goal is to avoid a crisis. Begin by providing a professionally welcoming and participative atmosphere that treats everyone as respectfully and fairly as you would want to be treated

B. The second goal is to diffuse a concerning situation and keep control of the courtroom. Some verbal and behavioral clues that indicate the person may be emotionally labile or mentally disturbed include:¹¹

1. Verbal cues

- illogical thoughts such as loose associations, grandiose ideas, ideas of persecution, and obsessive thoughts
- unusual speech patterns such as nonsensical speech or chatter, word repetition, extremely slow or rapid speech
- verbal hostility or excitement such as talking excitedly or loudly, threatening harm, and argumentative or belligerent hostility

2. Behavioral cues

- wearing bizarre makeup, clothing or clothing which is inappropriate for the season
- strange posture or mannerisms such as constantly looking over their shoulder or maintaining an unusual position for a

- long period of time
- continuous pacing
- sluggish or repetitive movements
- responding to voices or object that are not there
- confusion about or unawareness of surrounding
- inappropriate emotional reactions

C. A third goal is for the “polite professional” to become comfortable with being more direct and more concrete more quickly. Understand that emotionally distressed and mentally ill individuals often do not exhibit the same sense of social boundaries or respond to the same environmental clues that the court does.

1. Here are some general communication guides: ¹²

- speak in a clear and simple manner
- be courteous and firm in tone and intonation
- maintain a non-threatening posture and voice
- be aware of your body language and hand actions
- keep your words nonjudgmental or critical
- assure the individual that you are listening
- attempt to calm the individual by showing an understanding of the feelings the individual is displaying
 - I hear how angry you are
 - if you let me I can be of help
 - when you yell and scream I find it hard to listen
 - I’m sorry but I don’t understand what you said. Could you repeat it or say it in another way
 - your distress is understandable, but pounding on the table, using profanity, or threatening is not alright
- encourage communication and allow the individual, within reason, to verbalize, explain or outline his/her emotions¹³
- do not take verbal abuse personally, do insist that it stop
- ask one question at a time and allow the individual adequate time to answer
- maintain eye contact and repeat the question, if the individual is non-responsive or confused by any question
- ask the individual to repeat your question, request, or instruction to ensure that they actually heard it and understand
- use yes or no questions to focus the individual on each step of the issue you are asking them about

- avoid open-ended questions that can lead to resumption of the individuals venting behavior or distracted speech patterns
- avoid answering questions asked by litigants given in response to your questions
- limit choices offered to those that move the situation along
- remove friends, family and other non-judicial courtroom participants if they are agitating the situation
- keep your emotional control, internally acknowledge your own feelings about the situation and grant yourself the ability to take a recess, adjourn, reschedule, pass the case, seek help of bailiff or law enforcement

D. Suicidal Individuals. Special attention must be given to suicidal statements or actions. Among people aged 15 - 24, suicide is the third most common cause of death. Four times as many men die by suicide as women. And 78% of all suicide deaths are white males.¹⁴

1. Take serious words seriously, including:

- If I don't get help soon
- I'm better off dead
- I'm ready to leave this earth
- I have nothing to live for
- I don't care if I live or die
- No one would care if I wasn't here
- I might as well just end it all
- I'll take care of this my own way

2. Immediately repeat the statement to the individual.

- ask him/her if you heard it correctly
- inform them that these statements are taken seriously and a continuation of suicidal ideation will be referred to authorities for the safety of the individual
- ask them if they are feeling suicidal at this moment
 - if yes, ask for law enforcement assistance - Ch. 51
 - if no, ask them to rephrase their concern
- suggest an adjournment of proceedings so the individual can seek medical help and community support

IV. Conclusion

The current economic realities of continuing unemployment, job loss, consumer debt, and foreclosure, is bringing increasing numbers of individuals into the justice system. A concerning number of these individuals show signs of being emotionally distressed or mentally ill. Dealing compassionately and effectively with these litigants presents significant legal and communication challenges. The instances of courtroom disruption and potential for harm to self or others is a serious judicial concern. There are effective communication techniques that can prevent and diffuse some of these situations. Where appropriate, there are legal interventions available for those individuals needing medically-based mental health treatment.

END NOTES

1. The Legal Aid Society of Milwaukee, <http://www.lasmilwaukee.com>
2. [Http://www.apahelpcenter.org/articles](http://www.apahelpcenter.org/articles) (last viewed, October 7, 2009).
3. [Www.uscourts.gov/Press Releases/2009/BankruptcyFilingsDec.2008.cfm](http://www.uscourts.gov/Press_Releases/2009/BankruptcyFilingsDec.2008.cfm) (last viewed October 7, 2009).
4. [Http://money.cnn.com/2009/01/15/real_estate/millions_in_foreclosures/](http://money.cnn.com/2009/01/15/real_estate/millions_in_foreclosures/) . . . 2009 (last viewed October 7, 2009).
5. www.usatoday.com/money/perfi/credit/2008-05-18-debt-collectors Hhtml (last viewed October 7, 2009).
6. [Http://www.washingtonpost.com/wp-dyn/content/article/2009/08/17](http://www.washingtonpost.com/wp-dyn/content/article/2009/08/17) (last viewed October 7, 2009).
7. http://money.cnn.com/2009/06/16/news/companies/credit_card_losses.index.htm (last viewed October 7, 2009).
8. [Http://www.wicourts.gov/about/pubs/supreme/docs/prossereport.pdf](http://www.wicourts.gov/about/pubs/supreme/docs/prossereport.pdf) (last viewed October 7, 2009).
9. Request for this presentation based on judicial observation and discussions with legal colleagues.
10. Wis. Stats, 2007 - 08.
11. I have represented the mentally ill and those believed to be in need of guardianship and protective placement since 1991. These behaviors are common in this population
12. I have represented the mentally ill and those believed to be in need of guardianship and protective placement since 1991. These techniques are ones that have I have successfully used in this representation.
13. Distinguish these words from “vent”. You are not allowing the individual to be verbally loud, abusive, or outrageous. You are asking the individual to mentally calm down and, to the best of their ability, express and explain their distress.
14. [Http://www.webmd.com/depression/guide/depression-recognizing-signs-of-suicide](http://www.webmd.com/depression/guide/depression-recognizing-signs-of-suicide) (last viewed, October 7, 2009).