



Pitfalls and Pit Bulls: Unique Challenges for Pro Bono Cases

By Losmin Jimenez, Esq.

As an attorney, the quality of your representation will suffer if you are unaware of certain obstacles many pro bono clients face. If you have accepted a pro bono case from your local legal aid office, chances are your client's income does not exceed 200 percent of the federal poverty guidelines. *See* 45 C.F.R. § 1611.5(4), Legal Services Corporation. For example, to qualify for services at a legal aid program, a family of four would have a monthly income of \$3,842 or less. *See, e.g.*, New Mexico Legal Aid, Inc., [LSC Income Guidelines](#). You may have a client who is single and whose monthly income is Supplemental Security Income (SSI). A client receiving SSI for a household of one would be living on \$698 per month. *See* SSA, [SSI Federal Payment Amounts for 2012](#). Imagine having to pay your rent or mortgage, utility bills, clothing, and transportation expenses with only \$698 a month.

Your pro bono clients are just as important as any Fortune 500 company you may counsel. They deserve and need your advocacy. The first part of this article discusses some situations you may encounter when working with clients living in poverty. If you are not aware of these pitfalls, your representation will be impaired. The second part of this article is a case study of an encounter I had with a clerk of court who refused to waive the filing fees for a client, even though the waiver of filing fees is mandatory for indigent clients in civil cases.

Pitfalls in Pro Bono Cases

Communication and Correspondence

When you first contact your client, try to get one or two alternative phone numbers and an email address if the client has email. I have often had clients whose phone was disconnected by the time their case was accepted for representation. At first, I would try alternative numbers or email and, if there were no alternative numbers or email, I would send a letter requesting that they contact me. Sometimes the client called shortly after his or her initial intake interview to let me know his or her phone had been disconnected and to provide new contact information. Clients should know about Safelink Wireless, a cell phone that the U.S. government provides to income-eligible individuals based on the federal poverty guidelines and participation in state or federal support programs. But be advised that a recipient receives only 250 free minutes a month. *See* [Safelink Wireless](#).

Your client may not be able to answer the phone at work and may be able to talk only after 5 p.m. or on weekends. For example, "Terry" worked at a poultry processing plant. Her shift was from 7 a.m. to 4 p.m. She lived an hour from her local legal aid office. She needed an attorney to help her obtain custody of the grandchildren she had raised since their birth, yet she could only



speak with me on the phone during her lunch break or after work hours. To represent her effectively, I had to work around her schedule.

Many low-income persons do not have a computer in their home or access to the Internet. I have had clients who had an email address but could check their email only at work, at a friend's house, or at a public library. One client could check her email only once a week, on her one day off, at the public library. Beware of emailing an urgent message or document that needs immediate attention as the client may have an extended period of time without Internet access.

During my years in public interest, I have had many clients who were illiterate. You need to be extra sensitive to this. Some clients may tell you that they have problems with reading and writing to hint at this. Many of my clients who struggled with illiteracy were elderly or middle-aged and had grown up in rural areas. As young people, many were forced to drop out of school to help their parents financially or work in agriculture. Your clients may cope with this problem by bringing someone to review forms with them or by telling you they have someone who helps them with their mail. Sometimes the person who has been a "caregiver" of sorts wants to attend the client meeting. Indeed, sometimes you find out that this "caregiver" has been taking advantage of your client. Advise your client about the confidential nature of your communication and correspondence and the dangers of granting a third-party access to privileged information. Even if I had a client who was illiterate, I would still send the client correspondence and follow up with a phone call to make sure he or she received the letter and reviewed the contents of the letter.

I have also had clients with an elementary school reading and writing level. These clients were not always elderly; they included some women in their twenties. It made me very sad because they did not choose their lot in life and were often victims of childhood abuse or had been in foster care and attended multiple schools, which had a negative impact on their education. Be extra careful about your choice of words in client correspondence and write in plain English, not legalese.

Transportation

Because of limited income, a client may not own a car and may rely solely on public transportation or a ride from friends or family. Transportation problems could result in the client arriving late to your office, arriving late to a court hearing, or missing an appointment or hearing. In rural areas, where public transportation is often nonexistent you may need to have several phone appointments, meet the client in the client's home, or meet the client in a public place near that person's home. You should call your client several days in advance of a court hearing to make sure he or she has a way to get to court.



Court Attire

In preparation for a court hearing, I usually discuss a dress code with the client. The client may not be aware of the court's dress code, and court personnel have sometimes sent pro se litigants home to change or made disparaging remarks. By discussing the court's expectations, you may avoid having your client face an uncomfortable and embarrassing situation.

Pit Bulls in Pro Bono Cases

Filing fees are one of the hurdles litigants face in gaining access to justice. While a \$400 filing fee for a divorce is not a lot of money for someone who makes \$40,000 a year, imagine how insurmountable that amount is for someone who is homeless and has zero income. Many states waive filing fees for indigent clients after the client completes the necessary filing fee waiver documentation. There is also some confusion about the definition of indigence. Some people think "indigent" means that you do not have a home, car, or job; but that belief is not correct. For example, in Florida's determination of indigent status, applicants are presumed indigent if their income is equal to or below 200 percent of the federal poverty guidelines. *See Fla. Stat. § 57.082(2)* (2011). The value of the person's homestead and one vehicle with a net value of \$5,000 are excluded from the calculation. *Id.* The indigence determination also takes into account the number of dependents an applicant has and the applicant's net value of assets and total value of debts.

One would think it would be sufficient to complete the required indigent status documents and file the client's case. However, I dealt with a court that refused to waive filing fees for an indigent client. During my representation of a client in a guardian advocate case, I learned you have to stand up for your client's right to a filing fee waiver. In preparation for filing the case, I scheduled a meeting with the client at the courthouse for a final review of the pleadings. Normally, I would review pleadings with a client in the office, but this client lived one hour away from the office. Also, the client's sole monthly income was \$678, which was her developmentally disabled daughter's SSI. Asking her to drive two hours to review pleadings was an economic hardship.

I arrived at the courthouse, met the client, reviewed the pleadings with her, filled out the Affidavit of Indigency, and we proceeded to the clerk's office. We walked into the clerk's office so the client could sign the Affidavit of Indigency in the presence of a notary and have the clerk determine whether the client was indigent under the statute. *See Fla. Stat. §§ 57.081, 57.082* (2011). As soon as I showed the clerk the Affidavit of Indigency, she said, "We are not doing *that* here." I asked, "What do you mean?" The clerk said, "We are not doing that anymore. We did for a while, but we are not letting people file for free anymore." I informed her that indigent clients have had their filing fees waived in civil cases in Florida since July 2009 and this was 2011. She told me, "Well, we are not doing that. We were going bankrupt from that. The only indigency thing we are doing is a payment plan for divorces." I told her, "Payment plans for



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filing fees were the law before July 2009, but now indigent litigants don't have to pay filing fees. The only payment plan a litigant would have to enter into is a payment plan for costs such as mediation and service of process, and that is only if they cannot pay the court costs. Also, most sheriff's offices waive the service of process fees if the client is indigent." The clerk said, "Well, we are not doing that." I could not believe what I was hearing. The filing fee waiver statutes had been in effect for two years. I told the clerk I would be back.

During my conversation with the clerk, I was professional and treated the clerk and other court personnel with respect. I know the importance of developing good relationships with court personnel and have had good working relationships with court personnel in the different courts I practice in. However, you may come in contact with a person who is resistant to legal aid organizations and their clients.

Curiously, this court was in a county that had a population of about 16,000 people, with 21 percent of the population living below the poverty level. Thus, this was not the first time the clerk's office had dealt with a client who could not afford the filing fees. I told the client not to take this personally and that she was not going to pay the filing fee. I told her I would be back with copies of the Florida Statutes and we would try to file again.

About two weeks later, I met the client at the courthouse and brought copies of the filing fee waiver statutes. I showed the statutes to the clerk who greeted me. She said she could not waive the filing fees, and that I would have to wait for the clerk of court. After waiting 40 minutes, I was told that the clerk of court was not available and would call me later with a decision. I got a call later that day and was informed that the clerk of court would not waive filing fees for guardian advocate cases. I told the clerk that the statute stated that filing fee waivers were available for "all civil cases" and that all a clerk could decide was whether someone was or was not indigent. *See Fla. Stat. § 57.082(2)(b) (2011)*. I was told my client had to enter into a payment plan if she wanted to file her case. At that time, I requested a hearing with a judge for review of the clerk's determination. *See Fla. Stat. § 57.082(4) (2011)*.

We scheduled the hearing for case number "To Be Determined" because the clerk of court refused to give me a case number. Upon arriving at the hearing, my client and I were given intimidating looks. I was not going to be intimidated. The judge started the hearing by saying, "I had not seen these statutes before this afternoon. Your client has to enter the payment plan." I proceeded to explain the statutes with much opposition. I informed the judge that this has been the law in Florida since 2009 and that every other county in the state waived filing fees for indigent clients in civil cases. The judge told me, "I don't care what the other counties are doing." The hearing ended with the judge stating, "I am going to do some research and make my decision." It was surreal. This was the law; this was not an option. I told my client that I did not



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know what was going to happen, but that my office was planning to file an appeal if the judge did not rule in her favor.

Two days later, I got an order granting the filing fee waiver. I took the order to the court, and on the fourth trip to meet with the client, we got to file her guardian advocate case. It was very troubling that she would have to face such opposition just to file her case, but this experience reinforced why I work in public interest. Throughout this ordeal, I wondered how many people had been wrongfully forced into payment plans for the past two years.

I hope this article has opened your eyes to some of the obstacles that clients living in poverty face in access to justice. While every pro bono case will have completely different dynamics, try to understand what your client is facing and how you can make the attorney-client relationship more productive and rewarding for both of you. It may take a lot more effort if you have some pit bulls to deal with, but it will be completely worth it.

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[Losmin Jimenez, Esq.](#), is a litigation attorney at Americans for Immigrant Justice in Miami, Florida.



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