

ABA/ NLADA 2004 Equal Justice Conference

What Did You Say Your Name Was: Cross-Cultural Lawyering 101

Kimberly E. O'Leary

Director, Sixty Plus Elderlaw Clinic

Thomas M. Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48901,

(517) 334-5760, Fax, (517) 334-5761

Client-Centered Counseling: Best Practices

I will present an overview of currently accepted "best practices" in client interviewing, focusing on the model of client-centered counseling and the opening moments of a client interview.

Topical Outline:

- I. It doesn't simply matter what you ask, it matters WHEN you ask it
 - A. Research shows that lawyers do things in the first few minutes of client interviews that harm their ability to get good information from clients
 - B. The ideal order for a first intake
 - i. Icebreakers
 - ii. Client confidentiality (and fees for private cases)
 - iii. Obtain narrative information from client
 - iv. Identify client goals (there's almost always more than one) non-judgmentally (no lawyer-like filtering allowed)
 - v. Summarize what the client said: facts and goals
 - vi. Preliminary discussion of potential options
 - vii. Preliminary exploration of direction client wants you to take (authority for action)
 - viii. Discussion of retainer agreement (and fees if private case)
 - ix. Clear understanding of who is doing what, when and contact info
- II. How to obtain narrative information early in the first interview (Gellhorn)
 - A. Do the following:

- i. Write down the client's opening words, verbatim if possible
- ii. Set an agenda so the client knows he or she will have an opportunity to talk
- iii. Use
 - silence or continuers ("mm-mm", "go on", "I see")
 - non-verbal facilitators (eye contact, nodding)
 - additional open-ended questions (what other concerns do you have, tell me more, what else is going on)
- iv. Acknowledge and address emotional expression
- v. Show interest, excitement or fascination
- vi. Ensure you've elicited all concerns "Is there anything else on your mind?"

B. Don't do the following:

- i. Using
 - elaborators (tell me more about X)
 - recompleters (you're having trouble with X)
 - close-ended questions (Is X happening?)

III. You can ask all the questions you want, but if you don't listen to the answer, it won't make a difference

IV. If something doesn't make sense to you, ask the client to explain

A. We all operate out of our own world-view and experience (Moore)

B. So do judges, juries, arbitrators, mediators, opposing attorneys and parties

C. You can't represent someone else if you don't understand their world-view

V. Context affects counseling: explore with the client the kind of lawyer-client relationship you want to have, but be careful with vulnerable clients not to step on their autonomy.

Bibliography & Website Links:

Books

David A. Binder, Paul Bergman, Susan C. Price and Paul R. Tremblay, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (West, Second Edition, 2004).

Robert F. Cochran, Jr., John M.A. DiPippa, and Martha M. Peters, *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* (Lexis Pub. 1999).

Thomas L. Shaffer and Robert F. Cochran, Jr., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* (West, 1994).

Articles

Susan Bryant and Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, <http://clinic.law.cuny.edu/clea/multiculture/index.html>

Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 Clin. Law Rev. 321 (1998).

Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 Golden Gate Univ. L. Rev. 345 (1997).

Michelle S. Jacobs, *Full Legal Representation for the Poor: The Clash Between Lawyer Values and Client Worthiness*, 44 Howard L. Journal 257 (2001).

Albert J. Moore, *Trial by Schema: Cognitive Filters in the Courtroom*, 37 UCLA Law Rev. 273 (1989).

Kimberly E. O'Leary, *When Context Matters: How to Choose an Appropriate Client Counseling Model*, 4 T.M. Cooley J. Prac. & Clinical L. 103 (2001).

Kimberly E. O'Leary, *Using 'Difference Analysis' to Teach Problem-Solving*, 4 Clin. L. Rev. 65 (1997).

Kimberly E. O'Leary, *Creating Partnership: Using Feminist Techniques to Enhance the Attorney-Client Relationship*, 16 Legal Studies Forum 207, 213 (1992).