

# Client Interviewing in Preparation for Trial

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## Learning Objectives

As a result of this webinar, participants will be better able to:

- Identify and overcome barriers to effective client interviewing
- Communicate with clients and elicit necessary information to prepare for trial by learning useful interview techniques
- Understand the importance of safety planning and referrals as a part of the client interviewing process

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## The Role of the Community

- “Once it is publicly recognized that a person has been harmed, the community must take action to assign responsibility for the harm and to repair the injury. These two responses – recognition and restitution – are necessary to rebuild the survivor’s sense of order and justice.” Trauma and Recovery, Judith Herman

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### Developing the Theory and Theme Your Case

- How to develop your case through interviewing
  - Interview your client multiple times
  - Compare information received through interviews
  - What are your client's concerns?
  - What is her affect, appearance, etc.?
  - How do her concerns relate to the relief requested?

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### Theory and Theme Continued

- Your theory and theme will develop over time in family law, tort, and other longer term proceedings
- You may not have the luxury of time when interviewing for a civil protection order hearing
- Resist developing the theme and theory too early

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### Importance of Surroundings

- Your surroundings are either inviting or not
- Offer the client something to drink
- Be on time
- Give client your attention
- Recognize when it is too difficult for client to recount every incident.
- Let client recall on their own timeline in writing

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## Have Your “Tools” Ready

### For example:

- Safety plans
- Retainer
- Authorization forms
- LSC funded programs: Statement of facts and Citizenship Attestation forms
- Referrals for other services needed by client
- Camera to document evidence

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## “Tools” Continued

- “Skeletons in the closet” form
- List of incidents form
- Questionnaires
- Affidavit of Inability to Pay Court Costs
- Review any and all prior completed intake forms and have questions ready to fill in gaps

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## Setting Up the Interview

- Confidentiality
- Presence of 3<sup>rd</sup> Party
- Waiving privilege; do you want a waiver in writing?
- Interview process
- Your interviewing difficulties – learning disabilities, etc.
- Time constraints and possible interruptions
- Breaks

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## The Art of Interviewing

- Listening and skillful questioning are the keys to effective interviewing
- Avoid the trap of thinking that the client is just “venting”
- All information you receive will add to your knowledge about the case

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## Tracking the Elements

| Elements and Evidence for a Protective Order | History of DV | Recent DV | Likelihood of Future DV | Potential Evidentiary Problems | Other Elements* |
|--|---------------|-----------|-------------------------|--------------------------------|-----------------|
| Client                                       |               |           |                         |                                |                 |
| Police Reports                               |               |           |                         |                                |                 |
| Hospital Records                             |               |           |                         |                                |                 |
| 911 Tape                                     |               |           |                         |                                |                 |
| SANE exam/ Rape Kit                          |               |           |                         |                                |                 |
| SANE Nurse                                   |               |           |                         |                                |                 |
| Witnesses                                    |               |           |                         |                                |                 |
| Photographs                                  |               |           |                         |                                |                 |

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## Engaged Listening

- Focus and appreciate what the client is saying
- Are there areas that the client returns to in most interviews?
- Respond appropriately to the information received
- Ask appropriate follow-up questions

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## Reflective Listening

- Repeat what you have just heard back to client
- Give client opportunity to either correct and/or add more information

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## Reactive Listening

- Explain next steps – discuss the timeframe for decision making
- Let the client know that some type of action will or will not be taken based on what they have said
- Come up with “game plan” for the case
- Remind client that this is a “team” effort but that she is the coach and it is “her” case
- Define the responsibilities of the lawyer and client

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## Effective Questioning

- Use direct questions
- Follow up to determine the significance to the client
  - e.g. “What does that mean to you?” (B. Hart)
- Has he ever done anything that makes you feel uncomfortable? (S. Buel)

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### Additional Helpful Questions

- If you had to describe your relationship with your partner in one word what would you say?
- What impact, if any, has the abuse had on your children?

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### Asking the Difficult Questions

- What is the worst possible thing that the opposing party will say about you, regardless of whether it is true or not?
- If you get nothing here, give the client a war story of what happened when a client did not tell you something you needed to know ahead of time.

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### Three Reasons You Need to Know

- You can prepare
- You can minimize the impact
- You may need to settle the case

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### Interviewing the Traumatized Client

- Client may be suffering from depression or post-traumatic stress disorder
- Perception may be altered, but not credibility
- Affect may be changed
- Client may be fearful of disclosing
- Client may remember significant events over time

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### Assessing the Client as Witness

- Will there be impediments to the client's testifying effectively at trial?
- Will traumatic behavior need to be explained?
- Will client minimize and deny while testifying?
- Are you able to address these problems through successive interviews?

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### How are You Responding to the Client?

- Are you non-judgmental?
- Are you asking the difficult questions?
- Can you interview effectively by topic as well as chronologically?
- Can you objectively assess the information that you receive from your client?
- Are you focused?
- Does the client embarrass you?
- Does the client trigger your unresolved issues?

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## Silence Can Be Your Friend

- Give the client sufficient “space” to formulate an answer
- Be comfortable with silence
- Be comfortable with tears
- Resist filling in words for the client
- Be aware of what makes you most uncomfortable during an interview

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## Give Client Options

- For example, with civil protection order cases, explain the various types of protection orders
- Explain process to the client
- Explain what remedies are available
- Give client honest assessment of their case

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## Challenge: What if a Client Wants to Remain with the Abusive Party?

- Explain that client can still get the protection order without the stay away provision
- What will make the client feel safe?
- Battering Prevention classes, Protective Parenting classes?
- Ultimately it is the client’s decision
- “It is a sign of success when a client comes back.” Leslye Orloff

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## Warnings to Give the Client

- Opposing parties often record their conversations
- Everything the client says can be used as evidence
- Opposing parties often destroy evidence, including electronic evidence
- Separation is the most dangerous time – safety plan throughout the case, i.e. when opposing party gets served, for deposition, etc.

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## What Will the Client Have When She Leaves Your Interview?

- A time frame for your decision-making on whether or not take the case, the appropriate type of action, etc.
- Homework assignments
- A plan – information on when the case be filed, when the opposing party will be served, when will there be a hearing, etc.
- Instructions – when the next appointment is prior to the hearing, how to get to courthouse, how to dress for court, etc.

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## After the Interview

- Debrief with a colleague
- Go over checklist of what you will need to work the case up. For example:
  - For Filing
  - For Temporary Order Hearing
  - For Discovery
  - For Final Hearing

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## Demonstration

- Ms. Fuentes is a client whom you have interviewed twice before. You have spoken with her for a total of approximately three hours. You suspect from her behavior that there is difficult information that she is not telling you. You are concerned that opposing counsel will surprise you with this information at trial.
- During this interview you are trying to determine whether or not your client is able to discuss difficult information with you.
- You also are wondering if you can keep the client from sensing your impatience at her reluctance to disclose.

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## Demonstration Observations

- What observations did you make regarding the client's behavior?
- What observations did you make regarding the interviewer's behavior?
- Is there anything about this interview that makes you uncomfortable?
- What were the strengths of the interview?

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## Special Interview Considerations

- *Understanding cultural context*
- *Limited English proficient (LEP) client*
  - Have interpreter available
  - Take breaks when using an interpreter and be aware of time constraints
- *Sexual assault victims*
  - Sexual assault may not be revealed until months of working with client
  - Be sensitive and respect client's privacy concerns
  - Client may not want to testify about assault nor seek PO
  - Client may not want her workplace to find out
  - Advise clients regarding her rights and refer if appropriate

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### Special Considerations - Continued

- *Client with disabilities*
  - Be aware of accessibility issues
  - Clients may be hesitant to disclose disabilities
- *Substance abuse*
  - How to ask about it: not if client knew or used but when did client know and when was the last time that client used
  - What to do about it: make sure that the court orders address the client's concerns
  - If the client has a problem, give client options to address it, i.e. specialized programs

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### Developing Trial Strategy through Interviewing

- Is it beneficial or detrimental to your client to raise immigration status issues?
- What cognitive limitations does your client exhibit?
- How might these limitations change your trial strategy?

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### Dealing with Emergency Cases

- Examples, Ex Parte Protective Order and/or Writs of Attachment
- Get most recent incident and most egregious incident – enough to establish ground for emergency jurisdiction and give client incidents form to get the rest at a later date if necessary
- May need to explain to client why the emergency

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### Stay Out of the Drama

- Triad of Victim, Abuser and Helper
- Stay outside the triad – you are there to do a job – to vigorously and ethically represent your client
- Maintain boundaries
- Otherwise, you at some point will be seen as the abuser and you will begin to feel like a victim

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### Checking the Effectiveness of Your Interviewing

- Do you see a progression in your client's trust of you?
- Are you confident that your questions are being interpreted appropriately?
- Do you see progress in your client's ability to process and to answer direct questions?
- Can you redirect the client effectively?

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### Your Post-Interview Follow Up Work

- Develop timelines of events
- List important witnesses and their likely testimony
- Develop a checklist of remedies your client seeks
- Match the information you have received to the elements that you must prove
- Review your lists with another to discover gaps
- Determine what topics are most difficult for the client to discuss
- Develop strategies for helping your client to interview/testify
- Keep detailed notes of your interview

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## Self Assessment

- What are your strengths as an interviewer?
- What are your strengths as a trial strategist?
- What are some interviewing techniques that have been successful for you?
- Are you able to be yourself when interviewing a client? (Can you show a sense of humor? Compassion? etc.)
- Can you be honest with the client about your own limitations? (time, resources, etc.)

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## Removing Roadblocks to Empathy

- Give yourself the time to prepare for an interview – develop a list of the information you need
- Develop goals for each interview
- Say “no” to other work that could interfere with your development of the client’s case
- Be assured that you are doing the best that you can for your client given any resource limitations
- Renew your sense of service

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## Vicarious Victimization

- Part of the assessment is to look for signs of your burnout or traumatization
- What triggers you?
- Can you really listen? Are you taking cases when your gut tells you not to?
- Are you no longer feeling any pain from what your clients are telling you?
- How is all of this changing how you represent your clients?

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## Suggested Reading

- "Client Interviewing" Drew, M. *Impact of Domestic Violence on Your Legal Practice*, 2<sup>nd</sup> Ed., American Bar Association\*
- Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases\*
- *Trauma and Recovery*, Herman, J (M.D.)
- Handouts mentioned during the presentation and additional supplemental materials are on the Commission's website

\*available on ABA Commission on Domestic Violence website ([www.abanet.org/domvio/](http://www.abanet.org/domvio/))

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