Defending the mentally ill: Balancing the scales

Training for public defense attorneys in dealing with such clients is uneven

By Jessica Prokop, Columbian Courts reporter
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Lawyers required to fulfill continuing legal ed credits, but mental health training not among topics

The Washington State Bar Association has designated certain topics in law as mandatory continuing education for attorneys. Mental health is not one of them.

According to the Washington Courts website, each active member of the state Bar Association, and other lawyers who are covered by the state’s admission and practice rules, must complete a minimum of 45 credit hours of approved continuing legal education by Dec. 31 of the final year of the lawyer’s three-year reporting period.

Public defense attorneys face a number of challenges — time demands, stress, limited resources, difficult clients and negative public perception, just to name a few.

Throw a mentally ill client into the mix and balancing the scales of justice becomes even more precarious.

Defense attorneys are bound by law to give their clients, including those who suffer from mental illness, the best possible representation. However, there is no universal training or standards when it comes to working with this client base. Some veteran lawyers acknowledge that formal training is important but say it doesn’t make or
The attorney may earn all or at least half of the required credits as live credits — teleconferences, webinars and webcasts, as well as traditional in-person events.

A minimum of six credits must come from the area of ethics. The attorney may earn half of the credits through self-study; six credits annually through pro bono training; and six credits in law school competitions, moot court or mock trial programs.

New members must also complete 45 credits during the four full calendar years after his or her date of admission.

After that time, the attorney must complete the 45 credits every three years.

If an attorney completes more than the required credits for a reporting period, up to 15 may be carried over into the next period. Of those, a maximum of two credits may be applied toward the ethics requirement and five credits to self-study.

Abbey Perkins, an attorney for the King County Department of Public Defense, said she thinks members would benefit from credits in mental health training. However, she doesn't anticipate the state Bar Association making that a requirement.

She said one problem would be determining where to draw the line. There are several other issues in law that some may argue should require mandatory training, she said.

— Jessica Prokop

break an attorney’s ability to adequately represent a mentally ill client. But advocates for people with mental illness are not so sure.

Don Greenwood, a past president of the local chapter of the National Alliance on Mental Illness, said he’s not surprised that there isn’t much mental health training for defense attorneys. Still, he disagrees with the notion that formal training isn’t necessary to adequately represent a mentally ill client.

"How do people expect us to already know about mental illness? We have to learn. We have to go to classes. You don't just suddenly acquire the knowledge. Unless the defenders have someone in their family, they don't really know," he said.

Christie Emrich, an attorney with Vancouver Defenders, knows all too well the challenges that come with defending a client who suffers from a mental illness.

"The deterioration of the human condition is just awful," she said. "We see a lot of young clients who develop mental health issues as they enter adulthood. Mental illness can be a fluid thing. You can be healthy and happy and then hit a catalyst and spiral out of control."

A hypothetical scenario: A young man has become moody and withdrawn. He never had any behavioral problems in high school. Now, he refuses to leave his room. His parents attempt to intervene, and a fight ensues. He pushes his mother. His parents call the police, and instead of being taken somewhere for help, he's hauled off to jail.

Now, he's facing domestic violence-related assault and is barred from contacting his parents. He just lost his support system. He knows something is wrong but has no idea what's going on in his mind.

It can only take a slip-up of medication or change in dosage to escalate a mental illness, Emrich said. People may become combative and do something that they wouldn't normally do.

Emrich has represented clients in Clark County's Mental Health Court in District Court off and on since 2006. She said these clients present a unique challenge as they maneuver through the criminal justice system, especially if they don't qualify for the specialty court.

**Jurisdictions vary**

In 2014, there were 2,610 criminal cases filed in Clark County Superior Court, according to the Washington Administrative Office. Of those, 88 defendants — both in- and out-of-custody — were ordered by a judge to undergo
a competency evaluation, Clark County Indigent Coordinator Ann Christian said in an email. However, there are a number of defendants who have mental health issues but whose competency is not an issue, Christian added.

In comparison, there are about 50 lawyers who provide defense services for indigent defense cases in the county. The majority have some type of training in working with mentally ill clients, Christian said. However, the term "training" is used in the broadest sense and is not universal.

In Washington, public defense varies from county to county and city to city. Each governmental agency decides how best to offer defense services, as well as training for attorneys and funding.

Some jurisdictions hire defense attorneys on contract or full-time and designate them as public defenders. Other areas have established a county agency to handle services. There are also a few private, nonprofit groups that render public aid.

In Clark County, the Vancouver Defenders, a private law firm, holds a contract with the county to represent all misdemeanor defendants and some accused felons. There are also a number of local attorneys who hold contracts with the county to offer felony public defense services.

This means attorneys from different backgrounds with varying levels of training and experience are selected from a rotating pool to represent indigent cases.

Some may have more knowledge in defending mentally ill clients than others.

Many challenges

Representing clients who suffer from a mental illness is often taxing.

Many mentally ill people face everyday challenges, such as ensuring and maintaining treatment, finding housing, and holding down a job or going to school. Once someone enters the court system, these challenges are only exacerbated, particularly for those taken into custody and held involuntarily, Christian said in an email interview.

These challenges in turn create significant obstacles for the client's lawyer.

"Just as with any doctor/patient or other professional relationship, effective communication and a high level of trust are critical," Christian said. "Establishing and maintaining both sometimes is more difficult with individuals who have mental health concerns."

Abbey Perkins, lead defense attorney for King County's Regional Mental Health and Veterans Court, said she thinks lawyers should spend time talking with their mentally ill clients about their goals. They should discuss the client's personal life, housing situation, relationship with their case manager and any side effects from medications.

"You're laying the groundwork to let them know you're there to protect their rights and advocate for their best interests," Christian said.
she said. "This means having a heart-to-heart about what that means."

"They are a different and challenging client base to work with," she added. "I think you have to figure out different ways to communicate and be more willing to meet people where they are, which isn't always where you want them to be."

Visits may need to be more frequent and longer to ensure everyone understands what's going on.

Typically, cases where mental illness is a factor cannot be resolved as quickly as other criminal cases. The length of time between arrest and a solution may end up exceeding any jail sentence the client would receive, especially in lower-level cases. This raises a significant challenge for attorneys in advising their clients on what course of action to consider.

Christian said clients may blame their attorney if their jail stay is extended due to a competency or mental health evaluation. So, the client may refuse to cooperate.

Interactions with the client's family and friends are also more difficult because the attorney is ethically limited to what he or she can share about the client. At the same time, the attorney usually needs treatment records and historical information that the client may be unable to provide.

In considering their client's mental health history, attorneys also have to examine any consequences of potential defenses or mitigation.

Yet, Christian notes, lawyers are not psychologists or psychiatrists.

"The interrelationship between psychology and the law is not black and white," she said. "Being an effective defense attorney requires some understanding of mental illnesses and substantial legal knowledge when it comes to what 'competency,' 'diminished capacity' and 'insanity' mean in the criminal law setting."

"It all takes additional time, experience and continuing training," she added.

**Not much training**

A disadvantage for defense lawyers, however, is that there isn't much training offered for working with mentally ill clients, Perkins said.

"Not a whole lot of us have expertise because they don't provide the training for us. Certainly, law schools do not prepare you for this, at all," she said.

"It's really been self-taught, going to continuing education and seminars and reading a lot of books," Perkins said. "I think the vast majority are either using past experiences with clients, kind of cobbled together, with talking with colleagues who are well-versed in mental health."

The caveat is that formal training doesn't ensure any attorney will be effective in representing a mentally ill client, Christian said, though, she acknowledges the training is important.

"It's the defense counsel's responsibility to establish and maintain an effective relationship in order to jointly work toward a 'best resolution,'" she said.

"Lacking for some attorneys may be the available time or, possibly, the willingness to avail themselves of training opportunities readily available at no or relatively low cost," Christian said. "When these attorneys come to my attention, they are counseled."

Perkins said she thinks everyone should have basic training on how to deal with difficult clients: an awareness of what symptoms look like and how to communicate — a sense of how mental illness affects people. However, she said she doesn't think everyone is suited for in-depth training.

"So much of it is a personality thing. You need to have the patience and understanding of how to interact with these clients," she said.

Emrich agrees, adding that many attorneys didn't get into law to deal with mentally ill clients.
"In some ways, the legal community is a bit dismissive," she said. "A lot of people don't know how to deal with their (mentally ill) client. It's easier not to interact with the client as a person and to focus on law. Some attorneys only see the criminal aspect of the case."

However, working as a public defense attorney means one will inevitably encounter a client who suffers from mental illness.

A lack of formal training in this area doesn't mean the lawyer is inadequate to represent the client, Perkins said. It simply means that attorney needs to do more research. "That's what we do as defense attorneys every day," she said.

Local opportunities

Clark County's indigent defense attorneys are strongly encouraged to attend training courses on mental illness and join professional organizations that provide training and support, Christian said.

The Washington Defenders Association often partners with different county organizations to co-produce trainings. The training is not mandatory, however. There is a membership fee to join the organization; after that, all training is free.

Most state-sponsored continuing legal education courses are held in the Puget Sound area and are fairly expensive, Christian said. This can pose a problem for local attorneys. She said her office has tried to bring courses to Clark County.

In 2009, Christian's office co-sponsored a six-hour course with the Washington Defenders Association. Some of that time was devoted to working with mentally ill clients and establishing and maintaining good client relationships. The following year, it held two trainings related to competency in juvenile and adult criminal cases. In 2013, Christian sponsored a course on mental health, alcohol and drug resources for defense clients. Most recently, she offered a course with a psychologist on the topic of competency.

Christian said Washington Defenders Association's newsletter often has articles on the topic of mental illness, which she shares with Clark County's indigent defense attorneys.

She said in the future she would like to provide the local attorneys with the opportunity to participate in small group or one-on-one training with mental health professionals.

Greenwood argues that reading up on mental illness and seeing it superficially is much different than experiencing it.

Though, he acknowledged, "It's better than nothing, but it doesn't really give an in-depth emotional experience."

Formal training would give public defense attorneys "more alternatives and ideas on a broader and deeper sense of how to defend a person with mental illness — a more flexible understanding," he said.

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There are some deeply ingrained assumptions about the mentally ill. Consider that many people view the mentally ill as being more prone to violence whereas statistics show that not only are the mentally ill less prone to violence overall but that they are more likely to be victims of violence. These assumptions can prevent an attorney from adequately representing a mentally ill client.

Good article, thank you Jessica.

http://depts.washington.edu/mhreport/facts_violence.php