

feature article

Better Client Counseling Through Use of Reflective Practice Techniques

by Tana M. Fye



“Experts in a professional field must have the capacity to exercise judgment—they do so quickly, seamlessly, and repeatedly. Experts draw upon experience to distinguish relevant information from irrelevant, and to assess the risks of different courses of action. In most professional contexts, more than one course of action will successfully resolve the plan, and the expert will choose a particular course of action by using professional judgment.”¹ But what do you do when your client won’t listen to your professional advice? Or can’t listen? Or won’t stop crying? Or is just so angry at the spouse/the Department of Health and Human Services/the County Attorney that they just yell at you?

Attorneys regularly deal with clients who are under an immense amount of stress and in the midst of difficult situations. Reflective practice is widely understood in the mental health community as well by first responders as a way to improve performance, reduce burnout, address vicarious

trauma stress, and to simply think more clearly about problems faced. It is gaining acceptance in the medical field to help doctors and patients deal with complex problems and to work more cooperatively.² And for these reasons, reflective practice has begun to be used and accepted in the legal field and in child welfare as a way to deal with the secondary trauma faced by caseworkers, home interventionists, and attorneys.³

In 2017 and 2018, I had the opportunity to engage in reflective practice training and mentoring through The Nebraska Center on Reflective Practice in preparation for leading a reflective practice group for practicing attorneys in Kearney, Nebraska.⁴ Through the course of this training, what occurred to me early on was that these techniques are not so different from what I’m already doing in many meetings with clients. But reflective practice provided a framework for understanding why some of my client interactions went extremely well with the client able to think through problems in their case and possible solutions, and other interactions went very poorly with my client yelling, crying, storming out, or just not able to work through options in their case with me. And reflective practice provided a framework for me to understand where my client is, emotionally and cognitively, and to meet them there.

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What is Reflective Practice

Before discussing reflective practice further, it’s important to understand exactly what reflective practice is and what it means. Fundamentally, reflective practice involves an examination of feelings, exploration of issues, brainstorming solutions, and integrating these areas together to become more resilient.⁵ Reflective practice builds capacity “to imagine, think, and plan; to generate new awareness; to construct new understandings; and to use this process to transform practice.”⁶ There are many



REFLECTIVE PRACTICE TECHNIQUES

models of reflective practice used in different contexts, but the fundamental elements of the models are largely the same.⁷

Reflective practice can either occur through consultation or through supervision.⁸ Reflective supervision occurs between leaders and their staff. This can include managing attorneys and associates, as well as between agency managers and their supervisee employees. Reflective consultation can include groups of individuals and a consultant who engage in the reflective process with them. This includes the groups of attorneys throughout the state that meet biweekly or monthly — First Court in Omaha, and caseworkers in Family Drug Court in Lincoln.

Practically what happens during a client meeting which uses reflective practice, is as follows:

- (1) Ensuring that the attorney of the reflective practice session is self-regulated (i.e., calm, not distracted by other issues or cases, prepared to meet the client wherever he/she is emotionally and cognitively);
- (2) Setting an agenda that both the attorney and the client want to cover;
- (3) Listening for strong feelings experienced by the client and helping to contain them;
- (4) Exploring the problem or issue that needs to be addressed in this meeting;
- (5) Brainstorming and discussing possible solutions to the problem, while helping the client to feel empowered to decide the best path forward with input from the attorney's experience; and
- (6) Integrating the information together and either arriving at a decision, outlining when the client needs to respond to the attorney, or when another meeting needs to occur.⁹

If the client becomes dysregulated and responds emotionally later in the process, the attorney will need to circle back and help the client to again contain his/her emotions so that the process can move back to either exploring the problems or brainstorming solutions.

Why Use Reflective Practice

Reflective practice has not been studied in the context of client counseling, but has been studied in other contexts where it has been applied. The benefits have been universal in those contexts studied.

In the context of using reflective practice among managers of staff, the managers reported “a greater understanding of their own ‘triggers’ in interactions [which] allowed them to be less reactive and use more proactive approaches to problem solving. With greater ability to reflect, they were more able to step back and see issues from the staff's perspective and

then to build more on staff strengths.”¹⁰ When used by those interacting directly with families, the workers reported that reflective practice enabled them to better work in spite of their own adverse feelings toward a family, talk about stresses of their roles, process relationships with providers, and deal with feelings of overwhelm, undervalue, and lack of respect.¹¹

But the benefits of better client counseling are easily understood by practitioners. Clients whose emotions are contained are able to think more rationally about their cases and options. This eases interactions between the attorney and client, as well as interactions with others (the Department of Health and Human Services case managers, visitation workers, a former spouse, etc.). It ensures that the client has a better understanding of their case, which helps to ensure due process for the client. It can also (but as practitioners know, doesn't always) lead to better case outcomes. And when client meetings run more smoothly, the benefits to attorneys include less angst about cases, less stress in our own lives, and a generally more positive feeling about the work that we do.

Case Studies¹²

Case Study: Robert

Robert is a man who is lower functioning and has difficulty with speech, making him difficult to understand. I represent Robert in a criminal case, where he faces the potential for incarceration. He struggles to understand complex concepts, but is not low enough functioning such that competency is in question. Robert feels like people are out to get him, which causes him to be verbally aggressive. He shouts when he feels as if he isn't being understood or heard.

Step 1, in preparing for my meeting with Robert, I needed to ensure that I was calm, wasn't holding on to particular emotions or feelings from other cases, and ready to be patient. This is step one from the process outlined earlier.

Step 2 involves setting an agenda, so we started our meeting by doing just that (outlining upcoming court dates, discussing the plea offer, discussing the facts of his case—his version and the version in police reports, discussing pros and cons of the various options, and arriving at a decision about how to proceed). I outlined what I wanted to cover and asked Robert if he wanted to discuss anything else during our meeting. He advised that he did not have any other topics that he wanted to cover.

Knowing what was going to happen in our meeting helped Robert to feel in control which immediately made him less agitated. After advising Robert of the upcoming court dates and of the plea offer, I then let him take over and talk about what had occurred (Step 3). At times he was so upset that he shouted about how “it wasn't right” what the cops had done to him. Telling the story illustrated Robert's strong feelings of persecution and feeling misunderstood. I validated his feelings, which

REFLECTIVE PRACTICE TECHNIQUES

calmed him further. I contained his emotions by telling him that I understood how hard the situation was for him, and asked if he was ready to explore the options for dealing with his case. He agreed, and we were able to move from Step 3 to Step 4.

In our meeting (and most of my meetings with criminal defense clients) we essentially handled Steps 4 and 5 together. I asked some questions to clarify information that he'd given to me. We discussed the charges in his case, the possible penalties, what information was in the police reports and what likely would be presented at trial, and the options for going forward—trial or accepting the plea offer. I gave him advice based on my experience and answered questions. I told him that the decision was his to make, but made clear that I'd support whatever decision he arrived at. Once all of his questions had been answered, and he seemed as if he understood all of his options and what they meant, we moved to Step 5, brainstorming and discussing possible solutions.

In Step 6, we integrated our meeting. He told me that he wanted to accept the plea offer. I asked if he had any additional questions for me or other things that we needed to cover that we hadn't already covered. I asked if there was any other information that he wanted me to remember from our meeting. He advised that his questions had all been answered, and that he'd told me everything. We ended the meeting with Robert feeling calm and that he'd been heard, and with a clear path forward in his case.

Case Study: Emily

Emily's two children have been removed from her home and are in the care, custody, and control of the Department of Health and Human Services. They were removed due to domestic violence between Emily and her boyfriend, as well as a dirty house. Emily loves her children and her boyfriend, and is tearful at nearly every meeting. She is, however, a young mother without job or life skills, and is easily overwhelmed by the expectations on her.

Step 1—To prepare for my meeting with Emily, I again needed to ensure that I was calm and focused on her case, rather than be distracted by outside matters. I also needed to remember to be patient, as the process is new for Emily and she doesn't know what to expect.

Step 2—We first met after the Pre-Hearing Conference (PHC), approximately one week after her children were removed. It was clear to me from how she responded in the PHC that she was already overwhelmed. To keep from making this worse, and to try to calm her, I limited our agenda for that first meeting. I told her that we were going to discuss the general process of juvenile cases, talk about the things that she could start doing right away to help get her kids returned quickly, and just decide when we wanted to meet again to decide on a course of action. I asked her if this was alright, or if there were other things that she wanted to talk about right away. She told me that she also

wanted to talk about whether she and her boyfriend could stay together, so I agreed that we could cover that as well.

Step 3—I asked her how she was holding up with this situation. She started crying and telling me how much she missed her children. I told her that I heard how hard this was for her and how difficult it was. I validated her love for her children and her desire to get them back quickly. Once she had stopped crying, I asked if she was ready to hear about the process and the next steps that she could take.

Step 4—I then outlined, in a very general sketch, the juvenile court process from pre-adjudication through disposition. Because of her fragile emotional state, and to avoid moving her back to a place where her emotions, rather than her thinking controlled, I avoided telling her about the possibility of termination of parental rights at that stage. Knowing that we'd be talking again regularly, I covered this in a later meeting with her. I asked if she understood what the terms meant, and what the next steps were. She asked a few questions to clarify, and I knew that she understood at least generally.

Step 5—We talked about some of the things that she could control and start on right away. During the PHC, Emily had stated that she wanted to start on counseling and had already contacted an agency to set up her first appointment, so I highlighted her effort. I offered Emily some other services that she could get started on right away, and explored with her whether they seemed reasonable. I also told her some of the non-negotiable expectations of the case—that she attend her visits consistently, and that she have the house cleaned up within two weeks so that visits could return to her home. She agreed that she could do these things.

I asked her if we'd covered the things she wanted to talk about, and she reminded me that she wanted to talk about her relationship with her boyfriend. I thanked her for reminding me. We talked about how if her relationship were to continue with the boyfriend, he'd be expected to comply with a case plan, and that he needed to get started on the same types of things that she was expected to do. She stated that she understood and that she was going to talk with him about this, as well as talk to her counselor. I agreed that this was a good plan, and that we could continue to check-in and talk about this topic as the case progressed.

Step 6—I again asked if we'd covered everything that she wanted to talk about on that date, and she agreed that we had. I asked if there was any other information that she wanted me to remember from our meeting to discuss in the future, and she told me that she just wanted me to remember that she loved her kids and would do anything for them. I agreed that this was the case, thanked her for taking the time to meet with me, and told her that I'd be in touch to set up a time to meet with her again. She left the meeting much calmer than we'd started, and even



REFLECTIVE PRACTICE TECHNIQUES

smiled at the end. She appeared to feel empowered by knowing what she could do to help get her children back home.

Case Study: Holly

I represent Holly in a parenting plan modification case involving her two middle school daughters. Both of the children want to live with their mother full-time, and only see their father during daytime hours only. The girls' father has a drinking problem, but hasn't been convicted of any alcohol-related offenses, and claims that his drinking is normal. There is a history of difficult communication between Holly and her ex-husband, and their relationship is strained. Holly strives to be civil but finds it difficult. Making the situation more difficult to manage, opposing counsel is slow to respond to settlement offers, discovery requests, and e-mails.

In my previous interactions with Holly, she comes across as somewhat demanding, and expects her case to move more quickly than is realistic. She also has somewhat unrealistic expectations of how her case should be decided. When discussing possible settlement and potential outcomes of trial, Holly raises her voice to express her strong emotions and opinions. Although I like Holly and get along well with her, she can be intimidating.

Step 1—As in the other situations, I prepared for my meeting by ensuring that I was calm and not distracted by other cases. I also refamiliarized myself with the case and the most recent updates (Step 2), to ensure that I would not be intimidated by Holly.

Step 3—When we met, I started out by asking Holly how things had been going since we'd last talked. She outlined the latest of her grievances against her ex-husband, as well as how long the case was taking to resolve. I nodded along, made eye contact, and took notes of this information. Her fast rate of speech and raised volume indicated to me that she was upset and frustrated. I validated her feelings, and once it appeared that she was calmer, asked if she was ready to discuss next steps (containment of emotions). She agreed and we moved on to discuss the status of negotiations.


Step 4—We were able to talk through the parenting plan modification and the status of the negotiations. I reminded her that these cases can take some time to resolve, and that we were not fully in control of the timeline. We talked about how she like to take time to think over counter proposals and for us to discuss them, and that her ex-husband and his attorney needed to do the same. She appeared to understand and try to view the situation from their perspective on the issue of timing.

Step 5—I also engaged in capacity building with Holly by acknowledging that the case was taking a long time to resolve, validated her efforts to be patient and to try to see things from her ex-husband's perspective, and made sure that she understood that I was here to support her and help her through the process.

Step 6—Once it appeared that we'd discussed all of the issues in the counter-proposal, I outlined our position on it, and asked Holly to clarify if that was her understanding. After making sure that she and I were on the same page, I outlined for her the next steps that would be taken. She indicated that she understood. I asked if there was anything else that we hadn't covered and that we needed to, as well as if there was any other information that she wanted me to remember for our next discussion. She agreed that we'd covered everything that we'd needed to, and we ended the meeting.

Conclusion

Reflective practice can be a great tool for improving interactions with clients in many types of cases. As you can see from these case studies, it is particularly useful for cases and situations which are very stressful and in which clients are particularly emotional.

If you are interested in learning more about Reflective Practice, The Nebraska Center on Reflective Practice is a great resource. There are also upcoming continuing education sessions through the Center in conjunction with the Nebraska State Bar Association, including one on Reflective Practice in Client Counseling, which will be held in North Platte in August. Watch the NSBA website for more information. 

Endnotes

- ¹ Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 *Clinical L. Rev.* 317, 318 (2014).
- ² Leo C. Aukes et al., *The Development of a Scale to Measure Personal Reflection in Medical Practice and Education*. 29 *Medical Teacher* 177 (2007).
- ³ Alicia Henderson et al., *Lawyering from the Inside Out*, 20 *Neb. Law.* 29 (2017). Casey, *supra* note 1, at 350-351.
- ⁴ Many thanks to Kelli Hauptman and Jennie Cole-Mossman at the Nebraska Center on Reflective Practice, as well as Linda Gilkerson and the Erikson Institute for the training on reflective practice utilizing the Facilitating Attuned Interactions (FAN) conceptualization.
- ⁵ Linda Gilkerson, *Fussy Baby Network Supervisor FAN Pocket Guide: Things to Remember in Blended Supervision*, Erikson Institute Fussy Baby Network, 2010, rev. 2017.
- ⁶ Angela Tomlin & Sherryl Scott Heller, *Measurement Development in Reflective Supervision: History, Methods, and Next Steps*, *Zero to Three Journal* Vol. 37 No. 2 p. 6 (2016) (citing K. Brandt et al., *Transforming Clinical Practice Through Reflective Work*, *Infants and Early Childhood Mental Health: Core Concepts and Clinical Practice*. 293-308 (2014)).
- ⁷ Casey, *supra* note 1, at 327.
- ⁸ Henderson et al. *supra* note 3
- ⁹ Gilkerson, *supra* note 4.
- ¹⁰ Linda Gilkerson & Carolyn Cochran Kopel, *Relationship-based Systems Change: Illinois' Model for Promoting Social-Emotional Development in Part C Early Intervention*. Erikson Institute Occasional Paper, 13 (2004).
- ¹¹ *Id.* at 14.
- ¹² Names and details have been changed to protect the identities of clients past and present. And case studies may reflect composites of multiple meetings with the same client or multiple clients.