Introduction

Melissa Averett, principal of Averett Family Law in North Carolina, USA, has been a Board-Certified Family Law Specialist since 2009, was awarded SuperLawyer for 2018 and again for 2019, as well as Top 30 Matrimonial Lawyers in North Carolina in 2018. She is the Chair of the Domestic Violence Committee of the North Carolina State Bar and is a member of the Executive Committee of the Family Law Council of the NC State Bar. She has testified as an expert witness on domestic violence and founded and operated a non-profit law firm for victims of family violence from 2000-2008.

She is here today to talk to you about strategies when representing clients who are survivors of trauma.

Representing Traumatized Clients

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NORMAL REACTIONS TO ABNORMAL EVENTS

Have you ever become frustrated or confused when a client alleges that she[1] is a victim of domestic violence, sexual assault, stalking, human trafficking, cyber-harassment, emotional abuse, or some other horrific event, and:

- As she describes the event, her demeanor does not align with her words, for example, she smiles or giggles.

- When she practices testifying about being raped or beaten, her voice is monotone, and her facial expression is blank. She appears to be staring into space and shows no emotion. She may even dissociate, becoming unaware of her surroundings and lost in the memory of the event. This is particularly likely if she has a history of abuse and was disassociating during the event she is now describing.

- Your client adapts her story. Either she exaggerates the violence, even though no exaggeration is necessary, or minimizes the violence and makes excuses for the defendant. She may tell you her story repeatedly.

- She gets the details of different incidents confused with ones that happened earlier or later in the relationship, leaves out important facts or has gaps in her memory.

- She will not make decisions, about anything, and wants you to tell her what to do. She may also believe that the case is hopeless, the result inevitable, and there is nothing you or anyone can do to help her.

[1] Gender specific pronouns in this document are intended for ease of reading and are not meant to imply that women are subject to being traumatized more often than men or vice versa.

- She appears to be afraid of you, startles easily, or avoids communicating with you. When she does communicate, she seems distrustful, even paranoid.

- She is angry with you for no apparent reason.

This manuscript is intended to explain how these reactions are **NORMAL** reactions to **ABNORMAL** events[2] and to give you tips on representing clients who are dealing with trauma. Attorneys can be better advocates if they understand a traumatized client's seemingly odd behavior. Part 1 of this manuscript describes trauma and the effects of trauma, particularly on clients during family law litigation. Part 2 explains trauma-informed legal representation, and part 3 consists of specific practice tips that attorneys can use to better serve traumatized client.

Part 1:

What is Trauma?

Two of the best places to start to learn about mental disorders caused by trauma are the ICD-11 and the DSM 5. The ICD-11 is latest version of the International Classification of Diseases (ICD-11) produced by the World Health Organization (WHO), in which Chapter V covers Mental and Behavioral disorders.[3] The DSM 5 is the latest edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), which was

[2] "Individuals who have experienced a traumatic event often suffer psychological stress related to the incident. In most instances these are normal reactions to abnormal situations." Bob Douglas and Jo Wodak, editors, Preface to *Trauma-related stress in Australia Essays by leading Australian thinkers and researchers*, September 9, 2016, retrieved in May 2019 from http://australia21.org.au/wp-content/uploads/2016/09/FINAL-Trauma-Related-Stress-2016-09-07.pdf

[3] World Health Organization. (2018), *International statistical classification of diseases and related health problems* (11th Revision), retrieved from https://www.ncbi.nlm.nih.gov/books/NBK207191/box/part1_ch3.box19/?report=objectonly

published in 2013 by American Psychiatric Association.[4] As the name suggests, it is an extensive handbook that describes the criteria for diagnoses of mental disorders. The *DSM-5* definition of trauma specifies "actual or threatened death, serious injury, or sexual violence." [5]

The Oxford English Dictionary defines trauma as: "A deeply distressing or disturbing experience. . .. Emotional shock following a stressful event or a physical injury, which may lead to long-term neurosis."[6]

According to the Australian Psychological Society, "[s]ituations and events that can lead to psychological trauma include:

- acts of violence such as an armed robbery, war or terrorism
- natural disasters such as bushfires, earthquakes or floods
- interpersonal violence such as rape, child abuse, or the suicide of a family member or friend
- involvement in a serious motor vehicle or workplace accident" [7]

In family law practice, trauma usually comes in the form of domestic or sexual violence, harassment, emotional abuse, cyberbullying, stalking, or witnessing a family member experience these events. But it is important to remember that you could have a client who has experienced significant trauma outside of the family law context.

Potential Effects of Trauma

[4] https://www.psychiatry.org/psychiatrists/practice/dsm/feedback-and-questions/frequently-asked-questions
[5] American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders. 5th ed. American Psychiatric Association; Arlington, VA, USA: 2013 at p. 271.
[6] https://en.oxforddictionaries.com/definition/trauma
[7] https://www.psychology.org.au/for-the-public/Psychology-topics/Trauma, visited May 2019.

Trauma has a physiological effect on the brain, which in turn affects behavior, and consequently, affects relationships, including the attorney/client relationship.[8]

Experiencing trauma can result in post-traumatic stress disorder, acute distress disorder[9], depression and/or anxiety (including learned helplessness) in varying degrees and combinations. According to BeyondBlue, a non-profit organization dedicating to addressing depression, "one in nine Australians is currently experiencing high or very high psychological distress [,]" [10] including post-traumatic stress disorder. **"**Three million Australians are currently experiencing anxiety or depression. Every day, nearly eight people take their own lives." [11] Having some knowledge about these conditions can inform the attorney's interactions with the client and assist the attorney to be more sympathetic, patient, and understanding of a traumatized client. It can also help the attorney explain the client's behavior to the court.

Post-Traumatic Stress Disorder (hereinafter PTSD)

The ICD-11 criteria for PTSD are:

A. Exposure to a stressful event or situation of exceptionally threatening or horrific nature likely to cause pervasive distress in almost anyone

[8] Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-informed Lawyer*, Clinical Law Review, Vol.22:359, March 2016 retrieved from http://www.law.nyu.edu/sites/default/files/upload_documents/Katz%20-%20Halder%20Pedagogy%20of%20Trauma-Informed%20Lawyering.pdf

[9] Acute distress disorder in the DSM 5 is defined as symptoms lasting at least 3 but no more than 30 days, and the criteria overlaps with PTSD, and therefore, acute stress disorder is not addressed in detail in this manuscript. Further the ICD-11 excluded acute distress disorder. World Health Organization. (2018), *International statistical classification of diseases and related health problems* (11th Revision), retrieved in May 2019 from https://icd.who.int/browse11/l-m/en#/http%3a%2f%2fid.who.int%2ficd%2fentity%2f334423054 . For more information, see https://www.uptodate.com/contents/acute-stress-disorder-in-adults-epidemiology-pathogenesis-clinical-manifestations-course-and-diagnosis,

[10] https://www.beyondblue.org.au/media/statistics^ (under the General statistics heading) based on extrapolating the current Australian 16 to 85 year old population from 3101.0 ABS Australian Demographic Statistics, June 2016.

[11] https://www.beyondblue.org.au/about-us/who-we-are-and-what-we-do (footnote omitted)

B. Persistent re-experiencing that involves not only remembering the traumatic event, but also experiencing it as occurring again

C. Avoidance

D. Persistent hyperarousal (i.e., heightened perception of current threat)

E. Clinically significant functional impairment[12]

The criteria for PTSD in the DSM 5 are similar[13] and the American Psychiatric Association also adds:

> Many people who are exposed to a traumatic event experience symptoms like those described above in the days following the event. For a person to be diagnosed with PTSD, however, symptoms last for more than a month and often persist for months and sometimes years. Many individuals develop symptoms within three months of the trauma, but symptoms may appear later. For people with PTSD the symptoms cause significant distress or problems functioning. PTSD often occurs with other related conditions, such as depression, substance use, memory problems and other physical and mental health problems. [14]

[12] World Health Organization. (2016), *International statistical classification of diseases and related health problems* (10th Revision) retrieved from https://www.ncbi.nlm.nih.gov/books/NBK207191/box/part1_ch3.box19/?report=objectonly

[13] DSM 5 criteria: 1. Intrusive thoughts such as repeated, involuntary memories; distressing dreams; or flashbacks of the traumatic event. 2. Avoiding reminders of the traumatic event may include avoiding people, places, activities, objects and situations that bring on distressing memories. People may try to avoid remembering or thinking about the traumatic event. They may resist talking about what happened or how they feel about it. 3. Negative thoughts and feelings may include ongoing and distorted beliefs about oneself or others (e.g., "I am bad," "No one can be trusted"); ongoing fear, horror, anger, guilt or shame; much less interest in activities previously enjoyed; or feeling detached or estranged from others. 4.Arousal and reactive symptoms may include being irritable and having angry outbursts; behaving recklessly or in a self-destructive way; being easily startled; or having problems concentrating or sleeping. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, Chap. 5 (5th ed. 2013) (DSM-V).

[14] Physician review by Ranna Parekh, M.D., M.P.H., What is PTSD, January 2017retrieved in May 2019 from https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd quoting American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, Chap. 5 (5th ed. 2013) (DSM-V).

In my experience, family law clients suffering from PTSD can appear panicked on one day, sending multiple emails stating they are convinced that the opposing counsel or the judge are bent on the client's destruction (persistent hyperarousal) and then for the next month refuse to communicate at all (avoidance). A client suffering from PTSD may disassociate while testifying, *i.e*. be overcome by a flashback or shut down and be unable to continue. With regard to both the traumatic events and current events, memory issues are a problem among my clients who have PTSD.[15] They not only can have trouble remembering what I just told them, but especially in cases of long term abuse, my clients often confuse the details of multiple incidents, have trouble remembering dates, or have complete memory gaps. Not only is amnesia regarding aspects of the trauma a form of avoidance[16], but PTSD affects areas of the brain responsible for memory.[17] Armed with that information, you can present evidence about PTSD and memory loss to the court to explain your client's contradictions or inability to describe an event.

Depression:

The DSM-5 outlines the following criteria to make a diagnosis of depression. [18]

1. Depressed mood most of the day, nearly every day.
2. Markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day.
3. Significant weight loss when not dieting or weight gain or decrease or increase in appetite nearly every day.

[15] For more information on memory issues and PTSD, see https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3182004/ (visited May 2019).

[16] Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-informed Lawyer*, Clinical Law Review, Vol.22:359, March 2016 retrieved in May 2019 from http://www.law.nyu.edu/sites/default/files/upload_documents/Katz%20-%20Halder%20Pedagogy%20of%20Trauma-Informed%20Lawyering.pdf

[17] Kristin W. Samuelson, *Post-traumatic stress disorder and declarative memory functioning: a review*; Dialogues Clin Neurosci. 2011 Sep; 13(3): 346–351. Retrieved in May 2019 from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3182004/

[18] The ICD-11 definition is much more succinct: "Depressive disorders are characterized by depressive mood (e.g., sad, irritable, empty) or loss of pleasure accompanied by other cognitive, behavioral, or neurovegetative symptoms that significantly affect the individual's ability to function. World Health Organization. (2018), *International statistical classification of diseases and related health problems* (11th Revision). Retrieved in May 2019 from https://icd.who.int/browse11/l-m/en#/http%3a%2f%2fid.who.int%2ficd%2fentity%2f1563440232

4. A slowing down of thought and a reduction of physical movement
5. Fatigue or loss of energy nearly every day.
6. Feelings of worthlessness or excessive or inappropriate guilt nearly every day.
7. Diminished ability to think or concentrate, or indecisiveness, nearly every day.
8. Recurrent thoughts of death, recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide. [19]

In my experience, depressed client's express feelings of hopelessness, have trouble gathering and producing documents and other evidence, miss deadlines, and simply do not want to engage. According to the DMS 5, "depressed individuals also present with irritability, brooding, and obsessive rumination, and report anxiety, phobias, excessive worry over physical health, and complain of pain."[20] When testifying on direct, they tend to have a flat affect, and especially on cross examination, can become easily confused or even angry. These clients are susceptible to substance abuse to "self-medicate" their depressive feelings. One large-scale study of more than 40,000 subjects found that as many as 25% of people with depression tried to alleviate negative symptoms with drugs or alcohol.[21] They also found that depressed men were twice as likely as depressed women to self-medicate. [22]

Anxiety

The DSM 5 defines General Anxiety Disorder (GAD) as:[23]

[19] Jessica Shelton, *Depression Definition and DSM 5 Diagnostic Criteria* last updated March 18, 2019, retrieved in May 2019 https://www.psycom.net/depression-definition-dsm-5-diagnostic-criteria/ quoting American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders (DSM-5), Fifth edition. 2013.

[20] Id.

[21] https://www.projectknow.com/co-occurring-disorders/depression/ (visited May 2019).

[22] Bolton, J., Robinson, J., & Sareen, J. (2009). Self-Medication of Mood Disorders with Alcohol and Drugs in the National Epidemiologic Survey on Alcohol and Related Conditions; *Journal of Affective Disorders, 115(3), 367–75.*

[23] The ICD-11 states: Anxiety and fear-related disorders are characterized by excessive fear and anxiety and related behavioral disturbances, with symptoms that are severe enough to result in significant distress or significant impairment in personal, family, social, educational, occupational, or other important areas of functioning. World Health Organization. (2018). *International statistical classification of diseases and related health problems* (11th

1. The presence of excessive anxiety and worry about a variety of topics, events, or activities. Worry occurs more often than not for at least 6 months and is clearly excessive.
2. The worry is experienced as very challenging to control. The worry may easily shift from one topic to another.
3. The anxiety and worry are accompanied with at least three of the following physical or cognitive symptoms

    - Edginess or restlessness
    - Tiring easily; more fatigued than usual
    - Impaired concentration or feeling as though the mind goes blank
    - Irritability (which may or may not be observable to others)
    - Increased muscle aches or soreness
    - Difficulty sleeping (due to trouble falling asleep or staying asleep, restlessness at night, or unsatisfying sleep) [24]

My clients who suffer from trauma, especially anxiety, may smile or giggle when testifying.[25] Psychologists theorize that smiling while relaying traumatic events may be an effort to minimize the event, or distance painful feelings.[26] A client with anxiety might put a lot of effort in making sure that I like her, that I believe her story, and that I will not abandon her. In my experience, clients with an anxiety disorder are more likely to exaggerate incidents of abuse because they think it was not bad enough to be actionable or garner sympathy. And of course, these clients are the most likely to insist

Revision); retrieved in May 2019 from https://icd.who.int/browse11/lm/en#/http%3a%2f%2fid.who.int%2ficd%2fentity%2f1336943699

[24] American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders (DSM-5), Fifth edition. 2013.

[25] Lisa Ferentz LCSW-C, DAPA, *Why Clients Smile When Talking About Trauma, part 1,* posted September 4, 2015 retrieved in May 2019 from https://www.psychologytoday.com/us/blog/healing-trauma-s-wounds/201509/why-clients-smile-when-talking-about-trauma-part-1

[26] Lisa Ferentz LCSW-C, DAPA, *Why Clients Smile When Talking About Trauma, part 2,* posted Sept. 13. 2015, retrieved in May 2019 from https://www.psychologytoday.com/us/blog/healing-trauma-s-wounds/201509/why-clients-smile-when-talking-about-trauma-part-2

that I give them guarantees, or accurately predict what will happen and what the court, opposing party, or opposing counsel will do next.

Learned Helplessness

"Learned helplessness is a phenomenon observed in both humans and other animals when they have been conditioned to expect pain, suffering, or discomfort without a way to escape it."[27] Learned helpless occurs as a conditioned response to a painful or dangerous situation over which the victim has no control. Over time, the victim simply stops trying to escape, even if the chance to leave or get out of the situation presents itself. For example, a survivor of abuse during childhood who does not try to leave an abusive marriage, who is convinced that no court will hold her abuser responsible for his actions, no one can stop him, no one will believe her.

When human or other animals come to understand (or believe) that they have no control over what happens to them, they begin to think, feel, and act as if they are helpless. [28] If every decision is wrong, if every decision or preference or choice has an adverse result, it becomes better to not express anything, and eventually, decisions, any decisions, become overwhelming.

In fact, learned helplessness, over time, creates changes to the brain.[29] The dorsal raphe nucleus is the portion of your brain that is the primary producer of serotonin, and the portion of the brain that identifies which behaviors feel rewarding. Behaviors that feel rewarding cause the brain to release dopamine. [30] Serotonin and dopamine are

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[27] Courtney Ackerman, **Learned Helplessness: Seligman's Theory of Depression (+ Cure);** last updated August 23, 2018, retrieved in May 2019 from https://positivepsychologyprogram.com/learned-helplessness-seligman-theory-depression-cure/

[28] Id.

[29] Steven F. Maier and Martin E. P. Seligman, *Learned Helplessness at Fifty: Insights from Neuroscience*; Psychol Rev. 2016 Jul; 123(4): 349–367; Retrieved in May 2019 from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4920136/

[30] https://www.thefreedictionary.com/Dorsal+raphe+nucleus

neurotransmitters. Neurotransmitters are chemical messengers that affect the central nervous system that controls, among other things, mood. A lack of serotonin and dopamine are associated with depression and anxiety, and a sense of lacking control. [31]

My clients suffering from learned helplessness find it impossible to make decisions or even tell me their goals and needs. They are convinced that the opposing party can "fool everyone," will never be held accountable, and is the smartest, most manipulative, most influential person in the jurisdiction. The opposing counsel is invincible. The judge is already prejudiced against our side.

[31] Scientists have observed changes to the dorsal raphe nucleus and a reduction in serotonin and dopamine in test subjects who have been placed in controlled situations where they cannot stop or escape from adverse consequences, such as electrical shocks or loud noises. Steven F. Maier and Martin E. P. Seligman, *Learned Helplessness at Fifty: Insights from Neuroscience*; Psychol Rev. 2016 Jul; 123(4): 349–367; retrieved in May 2019 from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4920136/

Part 2

Trauma-Informed Legal Representation

Trauma-informed legal representation (also called trauma centered practice), refers to the attorney adjusting "the practice approach informed by the individual client's trauma experience."[32] To be trauma-informed means to be educated about the impact of violence and other forms of trauma on an individual's life and development.[33] According to one author, the key characteristics of trauma-informed legal representation are "identifying trauma, adjusting the attorney-client relationship, adapting litigation strategy and preventing vicarious trauma."[34] Another definition describes the approach as including "(1) trauma awareness, (2) emphasis on safety, (3) opportunities to rebuild control, and strengths-based approach."[35] According to this author, the three main components of trauma-informed legal representation are identifying trauma, building trust, and self-care.

Identifying Trauma: An attorney does not have to be a mental health professional to recognize that a client is exhibiting or describing symptoms of trauma. The ability to effectively communicate with a client is essential to advocating for that client. Just as gender, race, sexual orientation, world view, and political view color communication with a client, so does trauma.[36] The effect of trauma differs from person to person and

[32] Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-informed Lawyer*, Clinical Law Review, Vol.22:359, March 2016 retrieved in May 2019 from http://www.law.nyu.edu/sites/default/files/upload_documents/Katz%20-%20Halder%20Pedagogy%20of%20Trauma-Informed%20Lawyering.pdf

[33] Denise E. Elliott and Paula Bjelajac, *et al*., *Trauma -informed or Trauma Denied: Principles and Implementation of Trauma-Informed Services for Women*, 33(4) Journal of Community Psychology, 461-477, 462 (2005).

[34] Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-informed Lawyer*, Clinical Law Review, Vol.22:359, March 2016 retrieved in May 2019 from http://www.law.nyu.edu/sites/default/files/upload_documents/Katz%20-%20Halder%20Pedagogy%20of%20Trauma-Informed%20Lawyering.pdf

[35] Sara E. Gold, *Trauma: What Lurks Beneath the Surface*, Clinical Law Review, Vol 21:201, March 15, 2018, p.229, retrieved in May 2019 from http://www.law.nyu.edu/sites/default/files/upload_documents/Sara%20Gold%20re%20Trauma%20-%20What%20Lurks%20Beneath%20Surface.pdf

[36] For Trauma-Informed Approaches for LGBTQ Survivors of Intimate Partner Violence, see http://www.glbtqdvp.org/wp-content/uploads/2016/06/TIP-for-LGBQT-Survivors_Practice-Observations.pdf

cannot be generalized. If a family escapes a house fire, for example, each family member will be affected in a different way and to a different degree, including possibly having no symptoms of trauma. An attorney educated in the effects of trauma, including how trauma affects the brain, and behaviors and deficits associated with traumatized clients, will ask more questions about what happened to the client as opposed to what is wrong with the client and thereby identify those clients in need of trauma informed legal representation.

Building Trust: Whether the traumatized client is withdrawn and cannot remember details, is anxious and floods the attorney's inbox with information, or is angry, the key to reducing the client's adverse behaviors is developing trust.[37] The withdrawn client needs to feel safe enough to remember and relay relevant facts. The anxious client needs to feel heard and feel in control. The angry client needs transparency and responsiveness. Cultivating trust through being informative, dependable, empathetic and non-judgmental will assist you and the client in having a successful attorney/client relationship. For example, a client with anxiety, or learned hopelessness, is unlikely to ask questions, disagree with the attorney or tell the attorney when the client does not understand what the attorney has explained. A trauma-informed attorney is more likely to ask the client to repeat her understanding of the plan of action for the case to make sure the client is clear on the process and the goals. Trauma informed legal representation seeks to improve legal outcomes but also to improve the client's experience with the attorney and the legal system by focusing on a relationship of trust, safety, and respect.[38]

[37] Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-informed Lawyer*, Clinical Law Review, Vol.22:359, March 2016 retrieved in May 2019 from http://www.law.nyu.edu/sites/default/files/upload_documents/Katz%20-%20Halder%20Pedagogy%20of%20Trauma-Informed%20Lawyering.pdf

[38] Sara E. Gold, *Trauma: What Lurks Beneath the Surface*, Clinical Law Review, Vol 21:201, March 15, 2018, p.226, retrieved in May 2019 from http://www.law.nyu.edu/sites/default/files/upload_documents/Sara%20Gold%20re%20Trauma%20-%20What%20Lurks%20Beneath%20Surface.pdf

Clients suffering from a traumatic event have had control taken away; they feel unsafe, and their trust in others and themselves has been damaged.[39] Trauma-informed legal services focus on making sure the client feels safe and in control, to the extent possible, and focuses on the client's strengths.[40]

Being aware of the client's body language can help a trauma-informed attorney adjust the tone of the conversation to help the client relax. If a client seems tense, moving closer, such as moving from behind the desk to the chair next to the client might make the conversation more intimate, conversely, sitting behind a desk might make the client feel safer due to the distance. A client may not want to sit with his back to the door or with the lawyer between the client and the door.[41] When in doubt, ask the client what he would prefer. The same is true about whether the office door is open or closed. Keeping the door closed offers privacy but may make the client feel trapped. Again, the focus of this approach is client-centered, making sure the client feels safe, respected, and in control, allowing the attorney to focus on what happened to the client as opposed to what is wrong with the client.

Transparency about the legal process and explanations as to why the attorney needs to ask certain questions or needs the client to provide certain information can help build trust and give the client a feeling of control. Even discussing why the attorney is taking notes (or not taking notes) can prevent the client from making assumptions about confidentiality, whether the attorney is paying attention, and what the attorney is writing about the client. Giving the client a copy of the notes can help a client with memory issues or help dispel the client's suspicion.

Predictability, which includes defining roles and responsibilities, setting boundaries (*e.g.* letting the client know that you do not answer emails after 10 p.m.) and stating what the

[39] Id.
[40] Id.
[41] Id.

attorney can, or cannot, accomplish[42] is especially helpful to a client whose boundaries have been violated and whose trust has been betrayed. Along with predictability is the need for reliability. That means the attorney should avoid making promises that she cannot keep. It also means meeting deadlines, even if it is just "I'll get you a draft next week." If a deadline will be missed, the attorney should communicate with the client and explain the reason for the delay. Healthy adults know that attorneys are busy and have more than one client, but the clients with depression or anxiety assume the worst and fear the attorney has abandoned them, does not care about the case, has decided they are crazy, or even that the attorney has sided with the opponent.

Preventing Vicarious Trauma: Self-care is an essential element of trauma-informed legal representation. Working with clients who are suffering from trauma can result in the service providers, including attorneys, developing vicarious trauma. Vicarious trauma refers to "the experience of a helping professional personally developing and reporting their own trauma symptoms as a result of responding to victims of trauma." [43] An essential element of trauma-informed legal representation is recognizing and addressing vicarious trauma. Symptoms of vicarious trauma in lawyers include:

- Feeling helpless/anxiety
- Avoiding certain clients or types of cases
- Withdrawing from colleagues, friends and family
- Insomnia
- Irritability
- Apathy

[42] Id.

[43] Judge P.E. Smith, Judge Administrator, District Court Queensland, *Vicarious Trauma and the Legal profession*- Speech to Queensland Law Society 10, October 2018, retrieved in May 2019 from http://classic.austlii.edu.au/au/journals/QldJSchol/2018/24.pdf quoting Pearlman, L. A., & Saakvitne, K. W. , *Trauma and the Therapist: Countertransference and Vicarious Traumatization in Psychotherapy with Incest Survivors,* London: W. W. Norton & Company, (1995).

- Flashbacks, intrusive thoughts and nightmares

A study on vicarious trauma in the legal profession was conducted in New South Wales in 2008. [44] The study found that criminal lawyers, including public prosecutors (ODPP), Legal Aid and the Women's Legal Service, suffered from higher levels of depression when compared with conveyancing lawyers and academics, and that the criminal lawyers reported higher levels of avoidance, intrusion and hyperarousal. [45] "The Resilient Lawyer: A manual for staying well at work" points out the risk of vicarious trauma for lawyers working in criminal law, child protection, immigration law or family law.[46] "It would be erroneous to assume that professional detachment protects lawyers from being at risk of developing vicarious trauma." [47]

Included in the appendix is a speech from Judge P.E. Smith, Judge Administrator, District Court Queensland to the Queensland Law Society on 10 October 2018 concerning Vicarious Trauma, which details tips and strategies for addressing vicarious trauma, which I recommend to you, as well as The Resilient Lawyer: A Manual for Staying Well @ Work, by Robyn Bradey.

For further study, the (US) National Center for Domestic Violence, Trauma and Mental Health[48] has a complete webinar series on trauma-informed legal representation[49], and several their handouts are included in the appendix to this manuscript. Other resources specifically for domestic violence cases include:

- Any book by Lundy Bancroft, http://lundybancroft.com/books/

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[44] Id, quoting Vrklevski, L. P., & Franklin, J., *Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material. Traumatology*, 14(1), March 2008, p.106-118. The study compared solicitors involving 100 members of the profession were participants (50 on each side of the equation).

[45] Id.

[46] Bradey, R., *The Resilient Lawyer: A Manual for Staying Well @ Work*, Brisbane: Queensland Law Society, 2014.

[47] Judge P.E. Smith, Judge Administrator, District Court Queensland, *Vicarious Trauma and the Legal profession*- Speech to Queensland Law Society 10, October 2018, retrieved in May 2019 from http://classic.austlii.edu.au/au/journals/QldJSchol/2018/24.pdf quoting Murray, D. & Royer, J., "*Vicarious Traumatization: The Corrosive Consequences of Law Practice for Criminal Justice and Family Law Practitioners*," Legal Profession Assistance Conference, Halifax, Canada (2003).

[48] http://www.nationalcenterdvtraumamh.org/

[49] http://www.nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/

- Denice Wolf Markham, JD, ***Mental Illness and Domestic Violence: Implications for Family Law Litigation***, Journal of Poverty Law and Policy (2003).
- ***Representing Domestic Violence Survivors Who Are Experiencing Trauma and Other Mental Health Challenges: A Handbook for Attorneys*** *(written by Mary Malefyt Seighman, JD, Erika Sussman, JD, and Olga Trujillo, JD, on behalf of NCDVTMH).*

Part 3

Practical Solutions

So, you have a client and:

- As she describes the traumatic event, her demeanor does not align with her words, for example, she smiles or giggles.

If she needs to testify about the event, you may want to reassure her that that she does not need to minimize the event to make you, the defendant, or the court officials more comfortable. You can tell her that it is okay to cry, even if she feels that if she starts crying, she will never stop, or she will be embarrassed. Assure her that you are there for her, you are listening, and you can -and will - ask the court to take a break if needed. If you feel that she trusts you enough for you to give her constructive criticism, have her practice while being videotaped, and then play it back to her. See if she can see the issues with her facial expressions and demeanor before you point them out to her. Even if you are satisfied with the client's progress in the office, have your research or your expert witness ready to explain to the court why trauma victims smile when relaying traumatic events, in case the client's testimony in court is undermined by her seemingly happy demeanor.

- When she practices testifying about being raped or beaten, her voice is monotone, and her facial expression is blank. She appears to be staring into space and shows no emotion. She may even dissociate, becoming unaware of her surroundings and lost in the memory of the event. This is particularly likely if she has a history of abuse and was disassociating during the event she is now describing.

If this client does not have a therapist, she needs to get one. Then you can work with the therapist about how to bring her out of a dissociative state. The therapist can work with the client to reconnect with the emotions surrounding the event. With a client who dissociates, my experience has been that filming her and playing it back may make the situation worse until the client learns to control her tendency to dissociate. This is a person who does not feel safe. She does not feel safe enough to experience the emotions caused by the event. She does not feel safe enough to describe the event. She may believe that the event, or something like it, will happen to her again. The more prepared she is about what will happen in court, the more in control she will feel. If possible, take her to the actual courtroom in advance of the trial. To the extent possible, tell her what will happen, in what order, and where each person will sit or stand. Help her picture the scene. If a friend or trusted family member can come to court and be in her line of sight, have her tell her story to that person as if they were the only two people in the room, or give her some other point to focus her gaze, such as just over the judge's shoulder. Warn her about things you cannot control, such as a continuance because the judge calls out sick, or a substitution in the opposing party's counsel. Talk to her about security in the courthouse and everything that is being done to make sure she is safe.

- Your client adapts her story. Either she exaggerates the violence, even though no exaggeration is necessary, or minimizes the violence and makes excuses for the defendant. She may tell you her story repeatedly.

This is a client who does not think she will be believed. Try active listening,[50] *i.e.* as she tells the story, repeat it back to her using phrases such as "what I hear you saying is…" Concentrate on what she is saying and stop thinking about how this story will come across in court or what legal issues are raised. For now, if possible, do not take notes, just listen. She needs to be ***heard.*** She also needs to know that the traumatic event was not her fault, and while she did not have control of the situation at the time, there are

[50] Dianne Schilling, *10 Steps to Effective Listening* posted November 9, 2012 and retrieved in May 2019 from https://www.forbes.com/sites/womensmedia/2012/11/09/10-steps-to-effective-listening/#68bfd8c23891

lots of things she can control now. Take her through the event step by step and give her room to correct her previous exaggerations or minimizations, after all, it is hard to remember details of a traumatic event. Do not compare her case to other cases. If she starts repeating herself, refocus her on the purpose of the meeting and what they are trying to accomplish.[51]

- She gets the details of different incidents confused with ones that happened earlier or later in the relationship, leaves out important facts or has gaps in her memory.

Attorneys like dates, and documented details, and clear provable timelines. It is frustrating when a client who cannot remember if the car wreck happened in March or June, or if the December argument was when his wife threw a coffee cup at him or if that was when she destroyed his phone. The client's lack of memory can damage their credibility or cause you to misrepresent the facts to the court. It is important that you remember that memory issues are associated every one of the mental health conditions resulting from trauma. Reassure the client that memory lapses are normal. Help the client fill the gaps by looking into ancillary details. Ask what the weather was like when the incident occurred, what were they wearing, was it before or after Christmas, how old were the children when the event occurred? Did the client tell anyone about the incident who might remember the timeframe? Is there an email, or a text, a Facebook post, or a phone record, medical record, repair bill that might give you a date?

One resource for interviewing domestic violence victims is the Power and Control Wheel, included in the appendix. But there are many other models (spin-offs of the Wheel, if you will), that are adaptable to different types of trauma.[52]

[51] Sara E. Gold, *Trauma: What Lurks Beneath the Surface*, Clinical Law Review, Vol 21:201, March 15, 2018, p.235, retrieved in May 2019 from http://www.law.nyu.edu/sites/default/files/upload_documents/Sara%20Gold%20re%20Trauma%20-%20What%20Lurks%20Beneath%20Surface.pdf

[52] https://www.theduluthmodel.org/wheels/

You can also suggest that your client to keep a notebook by the bed, or a draft an email for herself, to use to record memories of the trauma if they come up after the appointment is over. Let the client know that it is fine to share information with you once the client feels comfortable. This type of client may not respond well to active listening, but instead, needs to be able to tell the story without being interrupted,[53] even during silences.

Once the full story is known, this client needs to practice telling it in order to be consistent and credible on the witness stand.

- She will not make decisions, about anything, and wants you to tell her what to do. She may also believe that the case is hopeless, the result inevitable, and there is nothing you or anyone can do to help her.

If she is telling you that you are going to fail, try not to get defensive.[54] This is not about you, after all. This is a client who may have learned helplessness or depression. She does not believe she has control over anything. Talk about the things she does control, the things she can choose. Start small and build up from there. Break down the decisions she needs to make into smaller parts and see if she can make one decision that leads to the next decision and the next until you get the full picture of what she wants. This type of client also needs as much preparation and predictability as possible. At least you will not have to convince her that she is not entitled to 100% of her husband's income and 150% of the marital estate.

[53] Sara E. Gold, *Trauma: What Lurks Beneath the Surface*, Clinical Law Review, Vol 21:201, March 15, 2018, p.238, retrieved in May 2019 from http://www.law.nyu.edu/sites/default/files/upload_documents/Sara%20Gold%20re%20Trauma%20-%20What%20Lurks%20Beneath%20Surface.pdf

[54] Judy I. Eidelson, *Post-Traumatic Stress disorders: Representing Traumatized clients*, Phila. Bar Ass'n Fam. L. Sec. CLE (2013)

- She appears to be afraid of you, startles easily, or avoids communicating with you. When she does communicate, she seems distrustful, even paranoid.

This type of client typically responds well to active listening. You may want to explain hypervigilance and/or give the client information about it. Hypervigilance is a symptom of PTSD and anxiety and can manifest as overanalyzing situations and believing them to be worse than they are, being overly sensitive to people's tones and expressions and taking them personally, being jumpy, and thinking there is danger around every corner.[55] Encouraging your client to talk to a mental health professional about whether she is suffering from hypervigilance. Therapy may make your client more aware of her behaviors, so that she will feel less "crazy."

Tell the traumatized client that you understand how hard it is to tell their story to someone they have just met. This helps to build trust and demonstrates empathy.

Ask neutral questions such as "what happened?" as opposed to "why didn't you bring the documents I asked you to bring?" Neutral questions invite an explanation and possible valuable information as opposed to putting the client on the defensive.

- She is angry with you for no apparent reason.

Irritability is a symptom of all the mental health conditions brought on by trauma described in this manuscript, and a secondary symptom of insomnia, which is often a symptom of anxiety, depression or PTSD.[56] Anger is a normal reaction to feeling out of control. Again, not about you. Acknowledge the client's emotion ("You sound like you are angry, how can I help?"), and remember that trauma victims have had a frightening experience. The fact that it is safe to get mad at you is a bit of a compliment. It

[55] Timothy J. Legg, PhD, CRNP, *Hypervigilance: What you need to know*, Medical News Today, September 7, 2017, retrieved from https://www.medicalnewstoday.com/articles/319289.php

[56] See criteria for each trauma related condition on pages 6-10 herein.

indicates that the client feels safe enough with you to risk your reaction to his anger. Stay calm and relaxed. I typically lower my voice to a deeper tone when talking to an angry client.

Conclusion

"[U]nresolved trauma in the lives of many people who engage in various capacities with the legal system is not necessarily apparent to practitioners of law."[57] But make no mistake, trauma and law are interconnected.[58] "As a powerful institution in society, law regularly encounters and deals with people, both as victims and offenders, whose lives have been shaped and harmed by traumatic events."[59] But as Australian Professor Beverley Raphael points out in her essay, *Building on the Strengths of the Victim*, "People who have been impacted by trauma also have strengths, ideas, and capacity for hope. There is no stronger force for change and hope than the human spirit."[60] Using trauma-informed legal representation strategies will create better outcomes for the client, the lawyer, and the community.

[57] Kezelman C.A. & Stavropoulos P, *Trauma and the Law: Applying Trauma-informed Practice to Legal and Judicial Contexts;* Blue Knot Foundation www.blueknot.org.au (2016) retrieved in May 2019 from https://www.blueknot.org.au/Portals/2/Reports%20and%20Docs/Legal%20and%20Justice%20Background%20Paper%20with%20Abstract%20FINAL.pdf

[58] Melanie Randall & Lori Haskell, `*Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping'*, The Dalhousie Law Journal (Fall 2013), p.503.

[59] Id. At 523.

[60] Beverley Raphael, Emeritus Professor Beverley Raphael AM is Professor of Psychological and Addiction Medicine, Australian National University, Professor of Population Mental Health and Disasters, University of Western Sydney and Emeritus Professor of Psychiatry, University of Queensland, Building on the Strengths of the Victim, from Bob Douglas and Jo Wodak, Eds., *Trauma-related stress in Australia Essays by leading Australian thinkers and* researchers, September 7, 2016, retrieved in May 2019 from http://australia21.org.au/wp-content/uploads/2016/09/FINAL-Trauma-Related-Stress-2016-09-07.pdf