

TRAUMA-INFORMED LEGAL ADVOCACY

LAKEN GILBERT ALBRINK†

I. INTRODUCTION

A trauma-informed approach in legal practice can reduce the re-traumatization of victims, provide recognition of the role trauma plays in the attorney-client relationship, and provide legal professionals with the opportunity to increase connections to their clients and improve advocacy.¹ Part Two of this article defines trauma and adverse childhood experiences and the impact they have on clients. It then explores indicators of trauma and how they may present case barriers if the attorney is not trauma informed. Part Three explores ways attorneys can tailor their practice of law to be trauma-informed with clients, support staff, and other professionals. It demonstrates how a trauma-informed practice enhances client resilience and case outcomes. Finally, Part Four explores how trauma-informed practice enhances the attorney's compliance with the Model Rules of Professional Conduct.

This article will explore sensitive matters that may be triggering for some readers. The article examines aspects of child physical and sexual abuse, child neglect, domestic violence, and suicidality. If you are contemplating suicide or are experiencing emotional distress, please contact your local Lawyer Assistance Program. A directory is in the footnote below.²

† Laken Gilbert Albrink, JD is a licensed attorney in Kentucky and Assistant Professor of Legal Studies at Morehead State University in Morehead, KY. She obtained her J.D. from the J. David Rosenberg College of Law.

1. See generally Talia Kraemer & Eliza Patten, *Establishing a Trauma-Informed Lawyer-Client Relationship (Part One)*, 33 CHILD L. PRAC. 193, 198 (2014) (describing generally the benefits of trauma-informed legal practice to the lawyer and client, how trauma can affect the relationship between lawyer and client, and how to engage in trauma-informed legal practices).

2. *Directory of Lawyer Assistance Programs*, A.B.A., https://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state/?fbclid=IwAR0VYecyELQWjTHJlJqLuvLqbXNIZyxLP3_NET11eWn-VO8f5uy7n77eenA (last visited Dec. 16, 2022).

II. UNDERSTANDING TRAUMA AND ADVERSE CHILDHOOD

A. Experiences “Trauma” Defined

“Trauma is an emotional response to a terrible event like an accident, rape, or natural disaster.”³ Trauma may result in both short- and long-term reactions for the person who experienced the terrible event.⁴ Although the term “traumatized” is often used for less-than-traumatic experiences, like saying “The last season of *Game of Thrones* was awful; I am so traumatized!” genuine traumatic events are much more severe. Trauma results from exposure to incidents or series of incidents that are “emotionally disturbing or life-threatening with lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, and/or spiritual well-being.”⁵ It can occur “as a result of violence, abuse, neglect, loss, disaster, war and other emotionally harmful experiences.”⁶ Traumatic events can happen to anyone, regardless of age, gender, socioeconomic status, race, ethnicity, geographical location, or sexual orientation.⁷

Attorneys provide a professional service to people who are either planning for, protecting against, or actively involved in a legal dispute that may involve traumatic experiences. Attorneys may be entering their clients’ lives at a time of great turmoil and possibly as a result of trauma the client or the client’s family members have experienced. Death, rape, violence, disasters, commercial sexual exploitation, neglect, and life-threatening illnesses are just some examples of potentially traumatic experiences.⁸ The attorney’s role is to represent their client’s interests in legal disputes. Therefore, attorneys can be uniquely positioned to help clients through whatever traumatic experience might have landed them in court. Through effective case management with a trauma-informed

3. *Trauma*, AM. PSYCH. ASS’N, <http://www.apa.org/topics/trauma> (last visited Oct. 25, 2022).

4. *Id.*

5. *What is Trauma?*, TRAUMA-INFORMED CARE IMPLEMENTATION RES. CTR., <https://www.traumainformedcare.chcs.org/what-is-trauma> (last visited Oct. 25, 2022).

6. SAMHSA’S TRAUMA AND JUSTICE STRATEGIC INITIATIVE, SAMHSA’S CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA-INFORMED APPROACH 2 (2014), https://ncsacw.acf.hhs.gov/userfiles/files/SAMHSA_Trauma.pdf.

7. *Id.*

8. *See Understanding Childhood Trauma*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., <https://www.samhsa.gov/child-trauma/understanding-child-trauma> (last visited Oct. 25, 2022).

approach, attorneys can pave the way for better case outcomes while simultaneously promoting resilience for the clients they serve.⁹

Attorneys utilizing a trauma-informed approach do not take off their “attorney hat” and shift into a therapeutic role. Rather, taking a trauma-informed approach is a mechanism by which the attorney enhances their effectiveness by responding to the physical, emotional, psychological, sociological, and physiological needs of the client.¹⁰ Just as an attorney representing a client in a personal injury case may be more effective by having an understanding of medical terminology relevant to that injury, so too are attorneys representing clients who have experienced trauma more effective when they shift and tailor their practice and communication strategies for those clients’ cases.¹¹ To adopt a trauma-informed approach, attorneys must first be trauma-informed, educating themselves about what trauma is, its prevalence, and its impact on clients. Second, attorneys must commit to engaging in trauma-informed practices, which is when an attorney shifts how they communicate, litigate, represent, and interact with clients based on that understanding of trauma and responses to trauma in a way that minimizes additional harm to the client and their family.¹²

B. Adverse Childhood Experiences

Clients may have experienced a wide range of potentially traumatic events, even as children. Clients may even experience the effects of childhood trauma well into adulthood. Attorneys working in family law, particularly in child welfare, may be appointed to serve as a guardian ad litem representing a child’s best interests or

9. See generally Vivianne Mbaku, *Trauma-Informed Lawyering*, NAT. CTR. ON L. AND ELDER RTS. 1–2, <https://ncler.acl.gov/files/trauma-informed-lawyering.aspx> (explaining the benefits to the lawyer and client of “trauma-informed lawyering,” including improved case outcomes for the lawyer and client and reducing re-traumatization) (last visited Oct. 25, 2022).

10. See generally Kraemer & Patten, *supra* note 1, at 200–01 (describing generally the procedures to be used in trauma-informed care and the reasons for them, including the increased effectiveness to an organization providing a trauma-informed approach and better serving the needs of the traumatized individual).

11. See Albert Averbach, *Medical Arsenal of a Personal Injury Lawyer*, 12 CLEV.-MARSHALL L. REV. 195, 203 (1963) (explaining the benefits to a personal injury lawyer understanding medical terms and facts); see generally Kraemer & Patten, *supra* note 1, at 198 (describing generally the benefits to legal practice of trauma-informed care).

12. See generally Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 371 (2016) (describing how an attorney should shift practices to adjust to a client’s trauma and minimize further harm).

as a court-appointed counsel representing a caregiver. Particularly when working on cases involving children, but even when working on cases involving only adults, it is important to understand Adverse Childhood Experiences (“ACEs”) and their long-term impact on clients.

According to the Centers for Disease Control and Prevention (“CDC”), ACEs are potentially traumatic events that occur in childhood.¹³ “ACEs are linked to chronic health problems, mental illness, and substance use problems” in adulthood.¹⁴ They can “negatively impact education, job opportunities, and earning potential.”¹⁵ Unfortunately, ACEs are also common, with the Centers for Disease Control and Prevention reporting that about 61 percent of adults surveyed across twenty-five states reported they have at least one type of ACE, and one in six experienced four or more types of ACEs.¹⁶

The impact of ACEs was first discovered by the CDC-Kaiser Permanente Adverse Childhood Experiences Study conducted from 1995 to 1997 with 17,337 exams and confidential surveys regarding childhood experiences and current health status and behaviors (commonly referred to as the “original ACE Study”).¹⁷

“[ACEs] are categorized into three groups: abuse, neglect, and household challenges” and “all ACE questions refer to the respondent’s first 18 years of life.”¹⁸ ACEs include experiencing emotional abuse, physical abuse, sexual abuse, having a mother treated violently, experiencing substance abuse in the household, experiencing mental illness in the household, experiencing parental separation or divorce, having an incarcerated household member, experiencing emotional neglect, and experiencing physical neglect.¹⁹

13. *Fast Facts: Preventing Adverse Childhood Experiences*, CTNS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/aces/fastfact.html> (last visited Oct. 25, 2022).

14. *Id.*

15. *Id.*

16. *Id.*

17. *About the CDC-Kaiser ACE Study*, CTNS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/aces/about.html> (last visited Oct. 25, 2022).

18. *Id.*

19. *Id.*

Experiencing ACEs can cause long-term, lasting impacts for children who have experienced them, even well into adulthood.²⁰ The correlation between one's ACEs score and outcomes is inverse, meaning the higher the ACEs score, the worse the outcomes.²¹ Impacts include negative health conditions, increased health risk behaviors, and socioeconomic challenges.²² Higher ACE scores are correlated to higher risk for negative health conditions including depressive disorder (44 percent), chronic obstructive pulmonary disease (27 percent), asthma (24 percent), kidney disease (16 percent), stroke (15 percent), coronary heart disease (13 percent), cancer (6 percent), diabetes (6 percent), and being overweight or obese (2 percent). Associated increased health risk behaviors include smoking (33 percent) and heavy drinking (24 percent). Finally, a higher ACE score correlates with increased socioeconomic challenges such as unemployment (15 percent), obtaining less than a high school education (5 percent), and no health insurance (4 percent).²³ It is estimated that up to 1.9 million cases of heart disease and 21 million cases of depression could be avoided by preventing ACEs.²⁴ Children who experience ACEs die on average twenty years earlier than those with no ACEs.²⁵

These statistics seem bleak. However, children who have experienced ACEs can go on to live healthy lives. Resiliency, "the ability to bounce back from life's difficulties," can play a role in improving outcomes for children.²⁶ Resiliency is shaped both by biological and developmental characteristics and external influences.²⁷ Positive influences are called protective factors, and protective factors are the antidote to ACEs.²⁸

20. See CTRS. FOR DISEASE CONTROL & PREVENTION, *Adverse Childhood Experiences (ACEs) Preventing Early Trauma to Improve Adult Health*, CDC VITAL SIGNS (Nov. 2019), <https://www.cdc.gov/vitalsigns/aces/pdf/vs-1105-aces-H.pdf>.

21. See Melissa T. Merrick et al., *Vital Signs: Estimated Proportion of Adult Health Problems Attributable to Adverse Childhood Experiences and Implications for Prevention – 25 States, 2015-2017*, 68 CDC MORBIDITY & MORTALITY WKLY. REPS. 999, 1001 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/mm6844e1.htm>.

22. See CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 20 (percentages have been rounded to the nearest whole number) (citing Merrick et al., *supra* note 21).

23. *Id.*

24. *Id.*

25. Kerry Jamieson, *Resilience: A Powerful Weapon in the Fight Against ACEs*, CTR. FOR CHILD COUNSELING (Aug. 2, 2018), <https://www.centerforchildcounseling.org/resilience-a-powerful-weapon-in-the-fight-against-aces>.

26. *Id.*

27. *Id.*

28. *Id.*

In fact, a 2017 study called “The Welsh Adverse Childhood Experience (ACE) and Resilience Survey examine[d] individual and community factors that may offer protection from the harmful impacts of ACEs.”²⁹ Conducted by the National Health Service in Wales, it found that overall, having a high resiliency rating like “having supportive friends, opportunities to engage with their community, people to look up to, and other sources of resilience in childhood more than halved the current mental illness in adults with four or more ACEs from 29% to 14%.”³⁰ Likewise, “individuals reporting constant personal support from at least one parent during childhood had lower levels of current mental illness than those without such parental support across all ACE levels.”³¹ The study concluded, “personal, relationship, and community resilience resources such as social and emotional skills, childhood role models, peer support, connections with school, understanding how to access community support, and a sense that the community is fair to you are strongly linked to reduced risks of mental illness across the life course.”³² “High childhood resilience is related to substantial reductions in lifetime mental illness and potentially offers protections even in those with no ACEs.”³³ Most intriguing for the purposes of this article is that access to sources of resilience in adulthood continues to be associated with lower levels of current mental illness, and “[f]ocus should include developing opportunities for individuals to increase their resilience resources across the life course, to offer protection from the adverse effects of ACEs as well as trauma that may occur in adulthood.”³⁴

Attorneys can promote resilience in their adult and child clients. “[I]ndividuals with higher ACE counts reported lower levels of childhood support . . . from professionals [], and had lower perceptions of the supportiveness of services as adults.”³⁵ Adults who have experienced ACEs are not getting the support from professionals that they need, and their perception of the services

29. Karen Hughes et al., *Sources of Resilience and Their Moderating Relationships with Harms from Adverse Childhood Experiences*, PUB. HEALTH WALES, NHS TRUST & BANGOR INST. OF HEALTH & MED. RSCH. 5 (2018), [https://www.wales.nhs.uk/sitesplus/documents/888/ACE%20&%20Resilience%20Report%20\(Eng_final2\).pdf](https://www.wales.nhs.uk/sitesplus/documents/888/ACE%20&%20Resilience%20Report%20(Eng_final2).pdf).

30. Jamieson, *supra* note 25 (citing Hughes et al., *supra* note 29).

31. Hughes et al., *supra* note 29, at 23.

32. *Id.* at 7.

33. *Id.*

34. *Id.* at 37.

35. *Id.* at 8.

professionals refer them to is low. With this knowledge, attorneys can shift their case management and communication with clients to accommodate clients' perceptions in a way they feel more meaningfully supported. If attorneys know at the outset that clients with high ACEs scores feel less supported, they can focus on building an attorney-client relationship where that support is more apparent, building a stronger rapport than they may otherwise have.

C. Impact of Trauma and ACEs on Clients

Responses to experiencing trauma are not uniform. Some individuals may exhibit signs of post-traumatic stress disorder (“PTSD”), while others may exhibit more subtle responses.³⁶ “How an event affects an individual depends on many factors, including the characteristics of the individual, the type and characteristics of the event(s), developmental processes, the meaning of the trauma, and sociocultural factors.”³⁷ Responses can be both short- and long-term. “Initial reactions [] can include exhaustion, confusion, sadness, anxiety, agitation, numbness, dissociation, confusion, physical arousal, and blunted affect.”³⁸ Individuals can experience reactions that are “emotional, physical, cognitive, behavioral, social, and developmental.”³⁹

i. Emotional

Emotionally, individuals who have experienced trauma may even after the initial reaction feel “anger, fear, sadness, and shame” (although they may not be able to recognize or articulate those feelings).⁴⁰ It can be difficult for individuals to regulate their emotions, and substance abuse is one of the methods individuals use in an attempt to regain control of their emotions.⁴¹ These individuals may also engage in self-harm, disordered eating, or

36. SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., TREATMENT IMPROVEMENT PROTOCOL 57: TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVS. 59 (U.S. Dep’t of Health and Human Servs. No. 14-4816, 2014), <https://www.ncbi.nlm.nih.gov/books/NBK207191>.

37. *Id.*

38. *Id.* at 61.

39. *Id.*

40. *Id.*

41. *Id.* at 63.

compulsive behaviors.⁴² Traumatic stress generally evokes one of two extremes: overwhelmingness or numbness.⁴³ Individuals may feel anxious, depressed, helpless, and in a state of panic.⁴⁴

ii. Physical

Individuals who have experienced trauma may present with physical conditions. “Common physical disorders and symptoms include somatic complaints; sleep disturbances; gastrointestinal, cardiovascular, neurological, musculoskeletal, respiratory, and dermatological disorders; urological problems; and substance use disorders.”⁴⁵ While more research is forthcoming on the biology of trauma, what scientists do know “is that exposure to trauma leads to a cascade of biological changes and stress responses.”⁴⁶ These are associated with “PTSD, other mental illnesses, and substance use disorders.”⁴⁷

A person may also present with hyperarousal, which is when they are hypervigilant as “the body’s way of remaining prepared.”⁴⁸ “It is characterized by sleep disturbances, muscle tension, and a lower threshold for startle responses and can persist years after trauma occurs.”⁴⁹

Although it serves as a means of self-protection after trauma, it can be detrimental. Hyperarousal can interfere with an individual’s ability to take the necessary time to assess and appropriately respond to specific input, such as loud noises or sudden movements. Sometimes, hyperarousal can produce overreactions to situations perceived as dangerous when, in fact, the circumstances are safe.⁵⁰

Sleep disturbances are also common. Individuals who have experienced trauma may experience “early awakening, restless sleep, difficulty falling asleep, and nightmares.”⁵¹ Additional

42. *Id.*

43. *Id.*

44. *FAQ: Common Reactions to Traumatic Events*, MASS. INST. OF TECH. MED., <https://medical.mit.edu/faqs/common-reactions-to-traumatic-events#faq-2> (last visited Nov. 2, 2022).

45. SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 36, at 64.

46. *Id.* at 65.

47. *Id.*

48. *Id.*

49. *Id.* at 65.

50. *Id.* at 65–66.

51. *Id.* at 66.

physical manifestations of trauma responses may include fatigue, headaches, stomachaches, increased heart rate, and elevated blood pressure.⁵²

iii. Cognitive

Some cognitive changes in individuals who have experienced trauma may include cognitive errors, excessive or inappropriate guilt, idealization, trauma-induced hallucinations or delusions, and intrusive thoughts and memories.⁵³ Cognitive errors present when an individual misinterprets a situation as dangerous, even when it really is not, because it reminds them of past trauma.⁵⁴ Individuals may also experience “survivor guilt,” wherein they feel guilty because others who also experienced the traumatic event did not survive.⁵⁵ Idealization can present as trauma bonding, where a person develops an emotional attachment to their perpetrator of interpersonal trauma (similar to Stockholm syndrome that involves “compassion and loyalty toward hostage takers”).⁵⁶ When individuals experience hallucinations and delusions, “they are biological in origin” and “contain cognitions that are congruent with trauma content.”⁵⁷ Finally, individuals who have experienced trauma may experience “thoughts and memories associated with the trauma.”⁵⁸ “[They] can easily trigger strong emotional and behavioral reactions, as if the trauma was recurring in the present.”⁵⁹

Cognitively, individuals who have experienced trauma may also experience difficulty concentrating, difficulty making decisions, memory disturbances, flashbacks, preoccupation with the event, a sense that things are not real, worrying, or experiencing amnesia of the event.⁶⁰ Individuals “often believe that others will not fully understand their experiences, and they may think that sharing their feelings, thoughts, and reactions related to the trauma will fall

52. MASS. INST. OF TECH. MED., *supra* note 44.

53. SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 36, at 66.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. MASS. INST. OF TECH. MED., *supra* note 44.

short of expectations.”⁶¹ Trauma impacts an individual’s perceptions of the world, the future, and the self.⁶²

iv. Behavioral

Behavior is often a reflection of emotions, and emotions are often a reflection of experiences. Therefore, it can be expected that experiencing trauma may impact behavior. “Some people reduce tension or stress through avoidant, self-medicating (e.g., alcohol abuse), compulsive (e.g., overeating), impulsive (e.g., high-risk behaviors), and/or self-injurious behaviors. Others may try to gain control over their experiences by being aggressive or subconsciously reenacting aspects of the trauma.”⁶³

Behavior can also be “consequences of, or learned from, traumatic experiences.”⁶⁴ Consequential behavior may include changes in sleeping patterns, eating patterns, decreased personal hygiene, withdrawal, neediness, or not wanting to be alone.⁶⁵ Likewise, behavior may be learned from trauma. The feeling of helplessness, for example, may have been a learned feeling from a traumatic event and may present as a behavior when that person struggles with decision-making.⁶⁶ Another example of learned trauma behavior is a child who has experienced child sexual abuse mimicking the abusive behavior while playing with dolls.

v. Social

If trauma impacts emotions, and relationships are forged on emotional exchanges, it can be expected that trauma can impact individuals on a social level. Individuals may either lean more into their relationships or withdraw from them.⁶⁷ For example, a child who experienced trauma perpetrated by a trusted adult⁶⁸ may

61. SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 36, at 68.

62. *See id.* (diagramming the “Cognitive Triad of Traumatic Stress” that is comprised of: (1) views of the world, (2) views about self, and (3) views about the future).

63. *Id.* at 70.

64. *Id.*

65. MASS. INST. OF TECH. MED., *supra* note 44.

66. *See* SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 36, at 70.

67. *See id.* at 74.

68. *See* RAPE, ABUSE, & INCEST NAT’L NETWORK, *Children and Teens: Statistics*, <https://www.rainn.org/statistics/children-and-teens> (last visited Nov. 2, 2022) (In many cases, child sexual abuse is perpetrated by a person the victim knows. Among cases reported to law enforcement, 93% of perpetrators are known to the victim.).

experience difficulty forming healthy attachments.⁶⁹ “Early betrayal can affect one’s ability to develop attachments, yet the formation of supportive relationships is an important antidote in the recovery from traumatic stress.”⁷⁰ People who experience trauma may have outbursts, feel ashamed of their reactions, and perceive that no one will understand and pull away, believing they are a burden to others.⁷¹

Consequential and learned behaviors may also prove to be impediments to a person’s relationships and may hinder the development of new, healthy relationships.⁷² For example, if a person as a result of trauma develops impulsive behaviors, they may have difficulty in self-regulating their words, actions, and reactions in social settings. Likewise, individuals who as a result of trauma engage in self-medication may experience difficulty interacting in social settings wherein self-medicating is taboo or have difficulty self-regulating alcohol consumption in social settings.

vi. Developmental

Trauma occurring early in life can have “enduring negative effects on brain development.”⁷³ “Experiencing many ACEs, as well as things like racism and community violence, without supportive adults, can cause what’s known as toxic stress. This excessive activation of the stress response system can lead to long-lasting wear-and-tear on the body and brain.”⁷⁴ Furthermore,

[I]earning how to cope with adversity is an important part of healthy development. While moderate, short-lived stress responses in the body can promote growth, toxic stress is the strong, unrelieved activation of the body’s stress management system in

69. See Hilary I. Lebow, *How Childhood Trauma May Affect Adult Relationships*, PSYCHCENTRAL (June 10, 2021), <https://psychcentral.com/blog/how-childhood-trauma-affects-adult-relationships>.

70. SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 36, at 74.

71. *See id.*

72. *See id.*

73. *Id.* at 75.

74. HARV. UNIV. CTR. ON THE DEVELOPING CHILD, *ACEs and Toxic Stress: Frequently Asked Questions*, <https://developingchild.harvard.edu/resources/aces-and-toxic-stress-frequently-asked-questions> (last visited Nov. 2, 2022); *see also* HARV. UNIV. CTR. ON THE DEVELOPING CHILD, *Toxic Stress Derails Healthy Development*, <https://developingchild.harvard.edu/resources/toxic-stress-derails-healthy-development> (last visited Nov. 2, 2022).

the absence of protective adult support. Without caring adults to buffer children, the unrelenting stress caused by extreme poverty, neglect, abuse, or severe maternal depression can weaken the architecture of the developing brain, with long-term consequences for learning, behavior, and both physical and mental health.⁷⁵

Significant neglect⁷⁶ can even “cause more lasting harm to a young child’s development than overt physical abuse.”⁷⁷ Having responsive caregivers is essential to a child’s healthy development.

Healthy brain architecture depends on a sturdy foundation built by appropriate input from a child’s senses and stable, responsive relationships with caring adults. If an adult’s responses to a child are unreliable, inappropriate, or simply absent, the developing architecture of the brain may be disrupted, and subsequent physical, mental, and emotional health may be impaired. The persistent absence of “serve-and-return” interaction acts as a “double whammy” for healthy development: not only does the brain not receive the positive stimulation it needs, but the body’s stress response is activated, flooding the developing brain with potentially harmful stress hormones.⁷⁸

Toxic stress can cause significant and lasting developmental disruptions.⁷⁹ Children who are not exposed to regular “serve-and-return” interactions are not getting the interactions they need to shape healthy brain architecture.⁸⁰ Therefore, addressing toxic stress in child welfare is critical, and brain science should inform the attorney’s client interactions and case management.

75. *Toxic Stress Derails Healthy Development*, *supra* note 74.

76. HARV. UNIV. CTR. ON THE DEVELOPING CHILD, *InBrief: The Science of Neglect*, <https://developingchild.harvard.edu/resources/inbrief-the-science-of-neglect-video> (last visited Nov. 2, 2022) (defining significant neglect as “the ongoing disruption or significant absence of caregiver responsiveness”).

77. *Id.*

78. *Serve and Return*, HARV. UNIV. CTR. ON THE DEVELOPING CHILD, <https://developingchild.harvard.edu/science/key-concepts/serve-and-return> (last visited Nov. 2, 2022).

79. *See id.*

80. *See id.*

D. Indicators and Barriers of Trauma and ACEs in Cases

Trauma and ACEs may have been experienced by any of an attorney's clients. Attorneys, by nature of being helping professionals, are positioned to encounter individuals who have experienced trauma. Put another way, one thing the entire list of ACEs has in common is that they are all instances when an attorney may get involved or when the person who experienced the ACE may encounter the legal system. Whether it be a substance-abuse-related criminal charge, a dissolution, a child removal proceeding, or probate, attorneys may encounter individuals who experience trauma and/or ACEs, and attorneys may encounter individuals at the time when that trauma and/or ACE has the most significant impact on their lives.

"Those who require the most help may be the hardest to reach."⁸¹ However, attorneys are often the best-positioned individuals to cultivate a client's resilience while representing their interests in court..⁸² When a client's traumatic experience or ACE must be encountered in a legal setting, they can manifest as case barriers.⁸³ Understanding the impact trauma and ACEs have on clients will better prepare attorneys to mitigate case barriers early in the attorney-client relationship. Examples of case barriers include:

<i>A client who has experienced trauma and/or ACEs may exhibit . . .</i>	<i>Which may cause or appear to cause the client to . . .</i>
Shame	Be less than forthcoming about their experience
Difficulty sleeping	Appear late to court or meetings
Difficulty concentrating	Not understand and therefore not follow the attorney's instructions or excessively contact the attorney for already provided information
Self-medication	Experience substance use disorders
Impulsive behaviors	Make decisions that provide short-term benefits while being

81. Hughes et al., *supra* note 29, at 8.

82. See generally Kraemer & Patten, *supra* note 1, at 199.

83. See *id.* at 198.

	detrimental in the long-term
Memory disturbances	Be unable to recall the sequence of events chronologically or remember key facts later making their story seem inconsistent
Fear	Be reluctant to testify
Avoidance	Not return phone calls
Trauma bonding with the perpetrator	Refuse to cooperate or seek for the case to be dismissed
Hyperarousal	Appear jumpy, nervous, and excessively responsive to loud noises or large spaces
Skepticism	Distrust turning to social workers, law enforcement, and the justice system for help
Dissociation	Appear as if they do not care
Insufficiently developed social skills	Appear as disrespectful

The second column in the above chart may be succinctly categorized as “case barriers.” An attorney, judge, or jury that does not understand trauma may view a client who exhibits these behaviors as disinterested, uncredible, inconsistent, disrespectful, difficult, unreliable, and time-consuming.⁸⁴ This characterization can lead the attorney to lash out at the client by asking “What is wrong with you?” rather than the more trauma-informed approach of asking “What happened to you?” a response that addresses the problematic behaviors as something to treat rather than something to punish. “Trauma-informed care or services are characterized by an understanding that problematic behaviors may need to be treated as a result of the ACEs or other traumatic experiences someone has had, as opposed to addressing them as simply willful and/or punishable actions.”⁸⁵

It can be frustrating for an attorney when they are in a situation where they are surprised with information from opposing

84. See generally Mbaku, *supra* note 9, at 1, 3 (recognizing that lawyers’ misunderstanding of trauma responses may lead them to ask the incorrect questions “What is wrong with you? Why are you so ___?” instead of “What happened to you?”).

85. *ACEs and Toxic Stress: Frequently Asked Questions*, *supra* note 74 (emphasis original).

counsel, law enforcement, or child protective services because they wish the client had disclosed the information earlier so any damage to the case's strength could be mitigated.⁸⁶ Oftentimes, surprise information creates barriers to the attorney's effective representation.⁸⁷ Attorneys may think, "I am representing this client, and I cannot do my job if they will not be transparent with me; we are on the same team!"

A trauma-informed attorney transitions their thinking about the situation and would reflect: "What about the developed attorney-client relationship made the client either (1) not know the information they withheld was important or (2) made them uncomfortable in being fully transparent?" Put another way, the trauma-informed attorney would refocus the problem on creating a relationship and environment that transitions the question of "What is wrong with you?" or "Why did you?" to "What happened to you?" They would refocus the response from that of punishment and blame to a response reflecting an understanding that the problematic behavior may be a result of trauma or ACEs. When trauma-informed attorneys reframe how they think about a problem, they can then promote the client's resilience and become a protective factor.⁸⁸ Trauma-informed attorneys can do this by shifting their communication with clients in a way that tells them they are genuinely believed, working with clients in a nonjudgmental manner, and treating clients with the compassion and dignity they deserve and may have never previously experienced.

Adopting trauma-informed techniques promotes resilience for clients, improves case outcomes, benefits the attorney and support staff, and strengthens the professional community. "The attorney-client privilege is the oldest privilege recognized by Anglo-American jurisprudence."⁸⁹ However, such a longstanding privilege

86. See generally Kraemer & Patten, *supra* note 1, at 199 (outlining how a client's past trauma may lead to a reluctance to disclose relevant information, which "can create many barriers" for the lawyer).

87. See generally *id.*

88. See generally Mbaku, *supra* note 9, at 1–2 (stating that "trauma-informed practice assists lawyers in connecting to their clients, creating better legal outcomes and more robust advocacy"); see also Jamieson, *supra* note 25 (identifying positive external influences as protective factors that foster resilience).

89. Stephen Forte, *What the Attorney-Client Privilege Really Means*, SMITH GAMBRELL RUSSELL (2003), <https://www.sgmlaw.com/ttl-articles/916/#fnref:1>; see also *Hunt v. Blackburn*, 128 U.S. 464, 470 (1888) (demonstrating early recognition of the attorney-client privilege).

is pointless if clients continue to feel unable to be fully transparent with their attorney despite such strong evidentiary protections.⁹⁰ By being trauma-informed, attorneys can build the attorney-client relationship necessary to make the client comfortable enough to be more transparent, thereby strengthening their cases by enhancing the attorney's capacity for effective representation.

The attorney and support staff also benefit from modeling trauma-informed techniques. Attorneys are "the most frequently depressed occupational group in the United States and are 3.6 times more likely to suffer from depression than nonlawyers."⁹¹ When attorneys create an environment of compassion with clients and staff, the attorney is better equipped to recognize and address their fatigue.⁹² Attorneys can then develop the self-care skills to better recognize and address signs of compassion fatigue and burnout. When attorneys model a trauma-informed approach, they also develop a culture wherein attorneys and support staff have permission to be vulnerable, authentic, and practice self-care before compassion fatigue and burnout develop. By being trauma informed, the attorney acknowledges many professionals have experienced trauma themselves; when that is acknowledged, the attorney can practice while reducing re-traumatization to those they work and serve with.

III. TAILORING YOUR LEGAL PRACTICE WITH A TRAUMA-INFORMED APPROACH

Once an attorney has an understanding of trauma, ACEs, and their impact on clients, they can tailor their legal practice to respond to clients in a way that promotes resilience. Taking a trauma-informed approach effectively promotes resilience for clients, strengthens the client's case, promotes self-care among

90. See generally Forte, *supra* note 89 (outlining that the rationale of attorney-client privilege is to encourage the client's "willing[ness] to communicate to counsel things that might otherwise be suppressed").

91. Michael S. Webb, *Dissenting From Death: Preventing Lawyer Suicide*, A.B.A. (Nov. 24, 2021), https://www.americanbar.org/groups/senior_lawyers/publications/voice_of_experience/2021/voice-of-experience-november-2021/dissenting-from-death-preventing-lawyer-suicide.

92. See generally Mbaku, *supra* note 9, at 2 (identifying self-care as an integral component of an effective trauma-informed approach that allows the lawyer to avoid and recognize secondary trauma and compassion fatigue).

attorneys and support staff, and promotes collaboration in the attorney's professional community.

A trauma-informed approach is supported by the American Bar Association. In a 2018 resolution, the American Bar Association articulated its support for attorneys using trauma-informed and evidence-based approaches and practices for system-involved children and youth exposed to violence.⁹³ Like this article, the American Bar Association resolution urges attorneys to recognize trauma's impact on children, respond through legal representation reflecting that awareness, and collaborate with other professionals to support resiliency.⁹⁴ Attorneys can begin the transition to a trauma-informed approach by shifting how they interact with clients.

A. Clients—Generally

A trauma-informed approach with clients should be implemented threefold: (1) before the attorney meets with a prospective client, (2) during the meeting and/or representation, and (3) after the meeting and/or representation has concluded.

Before the attorney meets with a prospective client, they can take steps to ensure their practice is fully utilizing a trauma-informed approach. During the meeting and throughout the representation, the attorney can utilize tactics to tailor their communication and case management in anticipation of and in response to potential traumatic client responses. Finally, the attorney can develop trauma-informed approaches to continue enhancing and reinforcing client resilience once the representation is complete.

i. Clients—Before Representation

Before the attorney ever meets with a prospective client, they can begin taking a trauma-informed approach in the way the attorney and/or the firm is presented using a variety of tactics. Attorneys should consider modeling trauma-informed techniques in the firm's environment, gaining cultural competency, understanding racial and historical trauma, providing resources,

93. *Child Trauma*, A.B.A. (Sept. 24, 2018), https://www.americanbar.org/groups/public_interest/child_law/resources/attorneys/child-trauma.

94. *Id.*

exhibiting transparency, ensuring intake processes are trauma-informed, training trauma-informed staff, and acknowledging biases.

The first tactic the attorney can use is to ensure they are providing an inclusive, welcoming environment. At a minimum, attorneys should plan to meet with clients in a space that provides accommodations, making it as accessible as possible. The attorney should make sure all meeting spaces are accessible to persons with disabilities and that they have reliable access to services like language interpretation. For attorney-client privilege and other practical reasons,⁹⁵ it is important that attorneys use professional interpreters rather than leaning on other individuals (like the client's family members) to translate. The attorney can make sure the infrastructure needed to meet with clients in an inclusive, welcoming manner is in place before they meet with the client.

Attorneys practicing family law should especially be prepared to interact with clients for whom acquiring childcare arrangements are difficult or impossible. Attorneys serving as a guardian ad litem should expect their clients to be children. While certainly there are many considerations regarding whether to allow a child to be present for the adult-client meeting, the attorney can at a minimum ensure the waiting areas of the office are equipped with family-friendly items (such as toys and child-themed magazines) to help serve as a distraction for the child. Having something in the waiting area for all ages can help the client feel the attorney was anticipating their needs.⁹⁶ This can lessen the traumatized client's potential feeling of being an inconvenience and reduce the anxiety that the attorney might not be welcoming and kind to them and their situation. Another seemingly simple environmental example would be to include tissues in rooms where the attorney meets with clients. This serves to normalize having emotional responses for the client and shows the client the attorney anticipated their needs in advance. The client may feel less of a

95. Clients may be reluctant to be fully transparent if they are reluctant to disclose that information to the person(s) accompanying them. Also, perpetrators can use the victim's language barrier as a means to further control and limit the victim's access to services. To ensure the client has the full ability to be as transparent and safe as possible, the attorney should insist on meeting with the client alone and utilize a reputable interpreting service.

96. See generally Kraemer & Patten, *supra* note 1, at 200 (identifying "proactive support" as a component of a trauma-informed lawyer-client relationship in which the lawyer "[a]nticipate[s] issues that may arise during" the representation).

burden because being prepared with tissues shows them that they probably were not the first person to cry in the office.

The second trauma-informed tactic attorneys can adopt before meeting with a prospective client is to be culturally competent. Attorneys work with clients from a wide array of cultures. Being intentional about understanding aspects of prospective clients' cultures and honoring them can serve as a protective factor in promoting client resilience. The key is understanding the client is the best expert on their culture. Therefore, it can be helpful to work with the client to identify what is culturally important to them. The infrastructure for those conversations and information collection can be created ahead of time, such as having standard questions in client intake forms and interviews identifying matters of the client's cultural importance. Attorneys can consult clients about what aspects of their culture are important to them and how the attorney can ensure they are honored throughout the legal process. However, the attorney must understand this to be an ongoing conversation throughout the representation, since neither the attorney nor the client can predict all the ways in which the legal system might impede on or overlap with the cultural needs and identity of the client.

Attorneys should also acknowledge the impact of racial trauma and historical trauma on their clients. For example, Black clients may have a legitimate fear of law enforcement due to racial trauma and ongoing instances of police brutality against the Black community.⁹⁷ Clients who have experienced racial and/or historical trauma may be scared about interacting with the justice system as a whole.⁹⁸ Likewise, clients who have immigrated without legal status may also be extremely fearful of the possible implications for them and their families, such as separation and deportation.⁹⁹ Attorneys should honor those feelings by being honest and transparent. They must ask about their client's concerns and help make a plan to

97. See generally Sirry Alang et al., *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 AM. J. PUB. HEALTH 662, 663 (2017) (explaining how excessive police force might create feelings of helplessness in the Black community).

98. See generally *Racial Trauma*, MENTAL HEALTH AM., <https://www.mhanational.org/racial-trauma> (last visited Nov. 10, 2022) (explaining how racial trauma can affect various aspects of an individual's life).

99. See generally Bob Glaves, *Immigration and Access to Justice: A Much Bigger Problem Than It Needs to Be*, CHI. BAR FOUND. (Feb. 28, 2017), <https://chicagobarfoundation.org/blog/bobservations/immigration-access-justice-much-bigger-problem-needs> (identifying fear of detention or deportation as an additional barrier immigrants without legal status face in gaining access to justice).

minimize those concerns when possible. A client who fears for their life, separation from their child, or deportation cannot adequately endure a legal process until those fears are addressed and they are supported.¹⁰⁰

The third trauma-informed tactic attorneys should use before meeting with a prospective client is to evaluate the resources they provide. The attorney should ask, “Am I providing adequate information about resources to the clients we serve?” Take note of what resources look like in the law office. If a person who has experienced trauma were to be sitting in the office waiting area or looking at the law firm’s website, what says to them “There is help for me.” Are the resources provided and promoted by an attorney trauma-informed and accessible?

The fourth trauma-informed tactic attorneys should use before meeting with a prospective client is to evaluate the law firm’s transparency. It can be helpful when working with clients who have experienced trauma to be proactively transparent. Have you ever watched a commercial and not quite understood what the product or service was that the commercial purported to promote? Attorneys should strive for the opposite. Prospective clients should not have that type of confusion. The law firm’s website should clearly outline what type of law the attorneys practice, who works there, and what the client can expect when they reach out. Clients who have experienced trauma will inevitably have to tell their story to the person who becomes their legal advocate. When a client can gauge to whom and in what type of environment that storytelling will happen, they will become more comfortable. A client might be asking themselves, “Does anyone at this law firm look like me? Do they defend people charged with the same things my perpetrator did to me?” Will they be compassionate?”

Fifth, attorneys should proactively review their standard form documents, such as retainer agreements and client intake forms to ensure they are trauma informed. The attorney can review form documents to make sure they are culturally competent and welcoming. For example, attorneys can proactively indicate their law firm is welcoming to transgender and non-binary people by asking on their intake forms for preferred names and pronouns. It is then critical that the attorney and staff honor and respect those preferences throughout the representation. Attorneys should also

100. See generally *id.*

ensure form documents reflect transparency, such as being clear about the scope of representation, fees, and how fees are calculated.

Sixth, attorneys should ensure support staff have been fully trained in a trauma-informed approach. The first people clients will likely encounter in the law firm are support staff. Attorneys can proactively ensure staff are trained in trauma-informed approaches as well.¹⁰¹

Seventh, attorneys should acknowledge their biases, because everyone has them. We are all human. As humans, we carry potential biases against individuals, whether it is their profession, race, gender, or even biases against certain caregiving roles, such as fathers or mothers. Attorneys should research reputable implicit bias training and consider incorporating it into regular law firm training. Once biases have been identified, attorneys and staff can create a plan for reducing their influence in case management. For example, it can be difficult to keep in mind that a client living in poverty does not equate to the client committing child neglect.. It is so easy to impute personal expectations and standards of living on others. Acknowledging these biases can be critical so attorneys and staff can check them periodically throughout case management.

Finally, the attorney should strive to use words reflecting their understanding of how trauma impacts the client. For example:

<i>Instead of asking . . .</i>	<i>Try . . .</i>
Why didn't you tell me the whole story?	I believe you. I am here if anything else comes to mind.
Why were you late?	Is there a time of day that works best for you? <i>or</i> Let's plan to meet beforehand to go over some things.
Why don't you understand what I just explained? <i>or</i> As I said previously . . .	What questions do you have for me? <i>or</i> I know this is all so very new to you; what can I elaborate on?

101. *Infra* Part II.

<p>Why aren't you quitting [substance]? Don't you care about getting your kids back?</p>	<p>Other clients have had great success with [successful program]; would you like for me to send you the information?</p>
---	---

ii. Clients—During Representation

During the attorney's representation of the client, they should implement trauma-informed tactics for client communication and case management. The difference between the trauma-informed tactics implemented before and during representation is that the tactics implemented during representation must remain fluid and responsive to a particular client's needs, whereas tactics implemented before representation can be uniform.

The first trauma-informed tactic the attorney should use during representation is to be transparent. The transparent attorney is clear about both case barriers and expectations. Clients who have experienced trauma, particularly children who have been neglected or abused, have likely been lied to, coerced, and manipulated into situations. Attorneys have the opportunity to demonstrate to that child that the legal profession will not further traumatize them. Attorneys must be transparent with clients, even with bad news. It will be much better for a client to hear that there is a case barrier from the attorney—their advocate—rather than experiencing it and learning about it for the first time in court. For example, imagine a survivor of child sexual abuse who first learns there is a problem with the prosecution's case against her perpetrator at trial when it came out during the investigator's testimony that a case delay was a result of the investigator's recorder getting wet and ruining some recorded interviews of witnesses on it. The survivor is then devastated and feels betrayed as if a secret that could have ruined the case was kept from her. However, had that situation been explained to her earlier, the prosecutor or investigator would have had the opportunity to explain that it would not be a huge barrier and could have explained ways in which they could have mitigated any damage to the case without the victim experiencing significant additional anxiety or feeling betrayed.

So too attorneys should be transparent about roles and expectations. Attorneys can outline roles and expectations in retainer agreements but having a meaningful conversation with clients is especially important when working with clients who have experienced trauma. This is true not only of the nature of the attorney-client relationship in general but in outlining the attorney's expectations for each meeting. For example, when an attorney asks the client to come into the office to practice their testimony, the attorney should explain that they will be asking the client questions as if they were on the witness stand. The attorney should further explain that testimony practice will entail the client detailing the nature of their victimization. The attorney should refrain from "sugarcoating" the situation when it comes to explaining to victims what they are being asked to do. They should also be patient and kind when the client has questions, proactively ask them what the attorney can do to make their experience less difficult, and reassess their comfort level regularly throughout the process.

Second, attorneys should strive to make the environment of their client interactions as trauma-informed as possible. For example, the law firm's conference room might be large and intimidating. That can be a very effective negotiation strategy when meeting with opposing counsel. However, just as law enforcement should interview victims and perpetrators using starkly different techniques, so too should attorneys meet with clients and opposing counsel in different environments and use different tones. Maslow's hierarchy of needs tells us individuals must attend to their basic physical and psychological needs before they can attend to needs like self-actualization.¹⁰² So if a client is hungry, they are not well-equipped to tell their story. When a client does not feel safe, like in the above example of racial trauma, they are not well-equipped to trust someone new like an attorney. When a juvenile client is worried about when they will get to visit their parents again, they are not well-equipped to be transparent about the facts of their case. Attorneys need to make sure they are meeting with clients in safe, comfortable spaces and in a manner that validates their concerns. For example, an attorney might decide to meet a child at school

102. Saul McLeod, *Maslow's Hierarchy of Needs*, SIMPLY PSYCH. (Apr. 4, 2022), <https://www.simplypsychology.org/maslow.html#%3A-%3Atext%3DThere%20are%20five%20levels%20in%20esteem%2C%20and%20self%2Dactualization.>

rather than having them come to the law firm's office, ensuring they are not meeting during lunch or recess to reduce resentment. Keeping Maslow's hierarchy of needs in mind, meeting the child at school may be effective if that is where the child feels safest.

Third, regardless of where the attorney and client meet, the attorney should allow plenty of time and provide flexible timeframes for meetings. The attorney should permit ample time for questions and practice patience and active listening, even when the client asks questions the attorney thinks were already addressed and explained. The attorney should remember how trauma can impact a client's ability to concentrate and cognitively digest new information, particularly when it relates to their traumatic experience.

Fourth, the attorney should ask open-ended questions, which means letting the client tell their narrative on their terms. Due to the impact of trauma, clients may have suppressed memories, and they may not be able to tell their narrative chronologically. It is a normal coping mechanism to experience memory lapses, and attorneys must be flexible in collecting information. While the attorney is the legal expert, the client is the only expert on their experience. Attorneys should listen, and actively listen, to what clients are saying. Through active listening, the attorney may pick up small things the client says that while initially seeming unimportant could be key information in corroborating the evidence in their case.

Fifth, the attorney should engage in a strengths-based approach. The attorney should ask about the client's and the case's strengths. For example, the attorney could ask, "What is strong about your case? What do you think your strengths are?" Assessing the strengths of a case can be just as beneficial as case barriers. The attorney who can articulate a case's strengths knows what to focus on in litigation, what the client is already proficient at, and acknowledges to the client that they are strong and capable, which promotes client confidence. By taking a strengths-based approach, attorneys acknowledge that their clients are the experts of their own lives and needs.

Sixth, the attorney should adapt their language when communicating with the client. Attorneys should use language the client understands and language that signifies compassion. Some legal terms and jargon can carry stigmatization and can be re-traumatization. So too attorneys may use words or phrases that are

not even in the law but carry stigmatization and traumatization. For example:

- “Incest” is a Kentucky statutory criminal offense. However, some survivors may feel “incest” implies there was no force.
- “Statutory rape” is a term often used to signify a sex offense between an adult and a minor. When “statutory rape” is used, it can make a survivor feel like their rape is being kneecapped as a “less-than version” of rape or that it implies they gave consent. Attorneys need not categorize offenses as “statutory;” is not all rape statutory?

Attorneys can garner a lot of information by asking clients how they perceive their experience of victimization and honoring that.¹⁰³ Words carry great significance and meaning in court, and it may be inappropriate to ignore the actual legal jargon in a courtroom setting. However, attorneys can be proactive with clients by explaining why certain terms are being used in court.

Seventh, attorneys should respect client boundaries. Often, clients who experience trauma have had their physical and emotional boundaries crossed, or they were not able to form healthy boundaries as children. Attorneys can promote resiliency in clients by respecting their personal and emotional boundaries whenever possible. As a start, the attorney can help the client establish healthy boundaries by explaining the attorney’s role and managing the client’s expectations for response time, case outcomes, and expenses. Then, the attorney should model healthy boundaries to the client in the attorney’s professional relationships with the court, opposing counsel, staff, and clients. Additionally, the attorney can help the client maintain healthy boundaries through legal advocacy when others cross the client’s boundaries.

iii. Clients—After Representation

The attorney should also engage in trauma-informed practice after the representation of the client is complete. The attorney can be trauma informed in how they end the relationship,

103. See Katz & Haldar, *supra* note 12, at 375 (discussing the benefits of allowing survivors “to tell their side of the story” and voice their own perspectives).

providing resources and referrals, and empowering the client to advocate for change.

First, the attorney should exercise trauma-informed care when ending the attorney-client relationship. The attorney should articulate that the representation is complete and provide the client in writing with information on what, if any, steps are next. For example, if an attorney has represented a client in a domestic violence case resulting in a protective order, the attorney should communicate in writing when the protective order will expire and what the client should do leading up to that date.

Second, the attorney should ensure the client has appropriate resources and referrals. Depending on the case, clients may benefit from a case tracking system, such as VINELink;¹⁰⁴ mental health counseling; attorney referrals for adjacent legal matters, such as immigration; public benefits information and contacts; contacts for victim advocacy for any associated criminal matters the client may be involved; and more. Providing resources and referrals and doing so in writing is critical because clients who have experienced trauma may have difficulty remembering and trouble accessing them.

Third, the attorney could empower the client to advocate for changes in law and policy. Some clients may not want to resort to advocacy, and the attorney should respect that. However, if an attorney has a client who finds resiliency in advocating for change, the client may benefit from having the attorney encourage and empower them with the legal knowledge and background to be successful. Attorneys can help the client navigate the process of making legislative or regulatory changes that could result in better outcomes for future cases. Even if a case does not result in a positive outcome for the client, the client may nonetheless experience resilience through knowing their story may help someone else.

B. Professional Communities

Attorneys can promote trauma-informed practice by being trauma-informed when they work within their professional communities. Likewise, attorneys can use their professional

104. VINE: EMPOWERED BY INFO., <https://vinelink.com/#state-selection> (last visited Nov. 2, 2022).

communities to enhance the attorney's trauma-informed techniques.

i. Support Staff

Attorneys and support staff may have experienced trauma firsthand and may experience secondary or vicarious trauma through their work. If the attorney expects staff to be trauma informed with clients, so too the attorney should model trauma-informed techniques when working with staff. Do staff feel empowered to take a day off work to tend to their own fatigue without feeling guilty? Is the attorney checking in with them in a meaningful way? Do staff feel valued?

The attorney should take a strengths-based approach with staff just as they do with clients. Attorneys can help build staff confidence by highlighting their successes and having them self-assess their strengths. The attorney can also incorporate self-care strategies into the workplace to demonstrate that self-care is a priority. Examples include incorporating a regular work lunch, having a work walking break, and incorporating yoga and meditation in the office.

The attorney should take time to learn from their staff about trauma-informed techniques. Often, the first person a prospective or current client speaks to is the support staff. It can be a major step for someone who is experiencing trauma to make that first phone call. What is the reaction they are receiving? Is it compassionate, welcoming, and listening? Or are attorneys piling on so much work on their staff that they feel compelled to pass the client on or to abruptly silence the caller? Again, support staff are not therapists, but staff who realize they are encountering clients who have experienced trauma and that they may be the first person a client opens up to are better equipped to respond in a trauma-informed manner.

Support staff may also be collecting intake information from clients. Attorneys should review with support staff the importance of utilizing best practices, such as asking open-ended questions, actively listening, and being prompt. If staff are trauma informed, it sets the tone for the client that their experience with the firm will be trauma-informed as well.

Support staff may also be a great source for brainstorming trauma-informed techniques specific to the firm. Whether it is

documentation gathering, making the office waiting area more welcoming and accommodating, or adjusting how the office communicates with clients, trauma-informed support staff may be better positioned to identify needed changes and effectively implement them.

ii. Professionals in Other Disciplines

Attorneys should acknowledge trauma's prevalence among the other professionals they work with. Attorneys may be working with other attorneys, court staff, child protective services, and others. The attorney should proactively brainstorm ways they can model trauma-informed care among those professionals.

Attorneys can be trauma informed by seeking out opportunities to collaborate with professional partners.¹⁰⁵ While doing so, attorneys must respect the importance of their work and the value added to improving systems. Fostering an environment where the professionals are all working toward the client's objectives when possible can be value added to the client's ability to be resilient. Attorneys should take time to understand the professionals' objectives while maintaining the client's confidentiality.

Juvenile court is unique in the legal profession in that at least initially, everyone's goal is typically and statutorily the same: maintain a safe family unit. Zealous advocacy does not necessarily mean the advocacy is adversarial. When attorneys can work with professional partners to obtain united objectives, they are better equipping their clients for long-term success.

Attorneys can also lean on other disciplines to enhance the client's resilience. For example, guardians ad litem may look to Court-Appointed Special Advocates ("CASAs") when assessing a child's best interest. Sometimes, CASAs have the opportunity to build a stronger rapport with the child, the child's family, and other caregivers. Families may be more inclined to trust a CASA volunteer than someone working in the justice system like a social worker, law enforcement officer, or attorney. That trust can build a relationship wherein the CASA volunteer may be able to help the family assess its strengths and assist in developing a plan for long-term success.

105. See generally Kraemer & Patten, *supra* note 1, at 198 (encouraging attorneys "to consult other resources and mental health professionals working directly with [their] clients to better understand the impact of a client's experiences with trauma").

Some professionals also bring the added benefit of looking at the case from a different perspective. With social workers, law enforcement officers, and attorneys often carrying extremely heavy caseloads, CASAs sometimes work with just one family and may be better equipped to develop the rapport that other professionals cannot. Attorneys should also consider other professionals such as teachers, healthcare professionals, in-home services (such as Health Access Nurturing Development Services (“HANDS”)), child advocacy centers, domestic violence and rape crisis centers, and more.

iii. Self

Finally, attorneys should be trauma informed themselves. Attorneys can prioritize their well-being by engaging in self-care. Self-care can be especially important when attorneys start to feel compassion fatigue or burnout sets in. Attorneys experience compassion fatigue when their ability to empathize with others becomes compromised.¹⁰⁶ They experience burnout when that exhaustion overwhelms them, and that can lead to low job satisfaction.¹⁰⁷ Attorneys may also experience secondary trauma from working with clients who have experienced traumatic events.¹⁰⁸ They can become stressed as a direct result of hearing clients describe the trauma that occurred to them.¹⁰⁹

It is difficult to identify when a person needs to take a moment to themselves. Oftentimes, attorneys have such heavy workloads that it may seem like self-care is another item on a to-do list. Attorneys cannot always be expected to do their best; otherwise, their best would just be their normal. Implementing a consistent self-care plan can help address compassion fatigue and burnout before the attorney realizes it is happening. If attorneys are not trauma informed themselves, they are susceptible to compassion fatigue and burnout, which if untreated, can lead to repercussions

106. See Lee Norton et al., *Burnout & Compassion Fatigue: What Lawyers Need to Know*, 84 UMKC L. REV. 987, 989 (2016) (identifying “numbness” and “inability to remain engaged with and connected to people” as signs of compassion fatigue).

107. *Id.* at 988 (“The universal lament of professionals who suffer from burnout is, ‘I hate my job.’”).

108. Mbaku, *supra* note 9, at 2.

109. See generally *id.* (recognizing secondary trauma as a condition that “resembles post-traumatic stress disorder”).

for their work and their clients.¹¹⁰ To be truly trauma informed, attorneys must model a healthy relationship with themselves, those they work with, and those they serve. This may mean seeking therapeutic help when appropriate and encouraging staff to do so as well.

IV. THE TRAUMA-INFORMED APPROACH AS A METHOD OF ENHANCING COMPLIANCE WITH RULES OF PROFESSIONAL CONDUCT

Attorneys must adhere to the Rules of Professional Conduct in the states in which they are licensed. The trauma-informed approach enhances the attorney's compliance with the Model Rules of Professional Conduct.

A. *Competence*

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”¹¹¹

Attorneys must have “the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”¹¹² When attorneys work with clients who have experienced trauma, they do a more thorough job when they take a trauma-informed approach.¹¹³ The trauma-informed attorney is more prepared, and the client is more prepared to handle the case and approach the case in a way that promotes resilience for the client. Attorneys cannot compellingly advocate for clients' needs if they have not taken the time to understand and thoroughly assess their needs with their clients.

Attorneys should also exhibit more legal competence when they have an understanding of matters underlying a case or impacting a client. For example, when representing clients who

110. See generally, *supra* note 106, at 988–89 (explaining how attorneys can be susceptible to compassion fatigue and burnout as well as outlining the negative impacts of each).

111. MODEL CODE OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 1983).

112. *Id.*

113. See Mbaku, *supra* note 9, at 1 (“Integrating trauma-informed practices provides lawyers with the opportunity to increase connections to their clients and improve advocacy.”).

have experienced child abuse or neglect, attorneys are more competent when they understand the nature of what their clients have experienced. Attorneys are better equipped to represent victims of child sexual abuse when they understand how perpetrators groom victims, families, and communities. An attorney who does not understand grooming—the process by which a perpetrator gains the trust and isolates the victim to begin sexually abusing them—may not understand why a victim delayed disclosure, recanted after disclosure, or developed a trauma bond with their perpetrator. If an attorney represents a victim of child sexual abuse and is not competent in the psychological components of trauma, they may not be as thorough and prepared at the hearing or able to evaluate what is in the child’s best interest. Attorneys should strive to obtain at least a basic knowledge of the underlying components of any case, just as an attorney would want to understand what a transmission is when working on a lemon law case regarding a faulty transmission.

*B. Scope of Representation & Allocation of Authority
Between Client & Lawyer*

- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- (b) A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.

- (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.¹¹⁴

This rule provides the route for attorneys to empower clients. Scope of representation and allocation of authority requires lawyers to respect clients' decisions concerning objectives and to consult with clients about the means by which they pursue those objectives. The attorney must also abide by the client's decisions regarding whether to settle.

Attorneys should take care not to impute their own case analysis onto the client in an attempt to sway their decision. Attorneys can articulate their experience with similar cases in the past and give them a legal analysis of the facts they have but should refrain from imputing on their clients what is "best" for them. Attorneys empower clients not by treating them as vulnerable but by doing the opposite. Attorneys can help clients realize they have power, they are believed, and they are capable.

Clients who have experienced trauma in the form of child abuse and their nonoffending families may have often been in situations where they did not control what they did, or what they said, or have the ability to vocalize what they needed. The attorney-client relationship might be the first relationship the client has had that gave them any authority, much less the authority to control the case objectives. Therefore, they may be less vocal about their objectives and may require the attorney to build rapport by showing they genuinely believe them and will respect the objectives and boundaries the client sets. There is power in promoting resiliency by the attorney modeling an appropriate agency relationship and

114. MODEL CODE OF PRO. CONDUCT r. 1.2 (AM. BAR ASS'N 1983).

respect for the client's authority. Likewise, when the attorney consults the client about how their objectives are pursued, the attorney communicates that the client's opinions matter.

There is also power in relinquishing being the expert. The attorney may know the best legal strategy to "win" a case, but they cannot know if the means are in line with the client's objectives without consulting them. For example, an attorney may be debating whether to call a child to testify about violence the child witnessed in a home domestic violence case. While it may be beneficial for the case outcome, calling the child to testify may not be in line with the client's objective if they wish to minimize the child's exposure to court and not subject them to testifying.

Attorneys might also think about this rule in terms of representing a caregiver in a dependency, neglect, and abuse proceeding in which the child has been temporarily removed from that caregiver. If the goal is to have the child returned to the caregiver under safe circumstances, there are many means by which that goal could be achieved. Sometimes, the means to achieving that goal could be to work on and complete a child protective services case plan. In that instance, the attorney should consult with the client about what they need to be successful in completing their case plan and perhaps work to renegotiate components of the plan. Only by being trauma informed can the attorney know what strengths their client brings to the case—and every client brings strengths—and what barriers the client might have in completing the case plan. Then, through consultation, the attorney can maneuver how the client can reach that objective and tailor the means to the client's strengths. When the attorney discusses objectives with clients, they should gain an understanding of both short- and long-term objectives and strive to utilize means consistent with both.

C. Diligence

"A lawyer shall act with reasonable diligence and promptness in representing a client."¹¹⁵

In addition to being ethical, being diligent and prompt is being trauma informed. When representing clients who have experienced child abuse, diligence is demonstrated when the

115. MODEL CODE OF PRO. CONDUCT r. 1.3 (AM. BAR ASS'N 1983).

attorney shows care and is conscientious of the child's trauma while managing the case. Attorneys demonstrate trauma-informed diligence by demonstrating reliability and prompt responsiveness.

For example, while working in government, the author received complaints from constituent child abuse victims and their families. The most common complaint was that no one was doing anything on the case. The constituents reported abuse, felt like their case was "falling through the cracks," and felt that no one cared. When the author looked into the cases, typically they were being pursued, but there were often unexpected delays or communication barriers. By being prompt and precise with clients and proactive in communication, attorneys honor the role they have throughout the process.¹¹⁶

D. Communications

The Model Rules of Professional Conduct provide guidance for adequate and appropriate attorney-client communication. Rule 1.3 states:

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.¹¹⁷

116. This is true even in instances where attorneys are not legally representing the victim, such as a prosecutor in a criminal prosecution.

117. MODEL CODE OF PRO. CONDUCT r. 1.4 (AM. BAR ASS'N 1983).

The communications rule includes the term “reasonable,” “reasonably,” and the phrase “reasonably necessary” when outlining what attorneys must do to comply.¹¹⁸ Reasonableness may vary from case to case, and clients who experience trauma may need increased communication to meet the reasonableness requirement.

Remembering that trauma impacts memory should inform the attorney that more frequent communication and reminders may be necessary. Attorneys should not only be understanding of this but be proactive in providing the information in multiple ways, such as reiterating important deadlines and court dates in writing.

Attorneys must be especially cognizant of maintaining the confidentiality of clients who have experienced trauma. Clients may have perpetrators, current or past, who could use phone numbers, emails, or addresses to harm or threaten harm to the client. For example, the attorney should be extremely cautious when calling clients who have experienced domestic violence. They should be careful and selective about what they say in a voicemail because a perpetrator may have access to the client’s phone. Attorneys should become familiar with local and state rules providing for the redaction of contact information of clients who have experienced violence.

Attorneys should also communicate with transparency about the public nature of court proceedings. They should explain which proceedings are confidential and which are open to the public. Attorneys should prepare the client thoroughly for testifying, so they are as equipped and comfortable as possible when that time comes. The attorney should also be as open with clients as possible about the scope of questioning they might encounter with opposing counsel.

Attorneys must understand that when a person has experienced domestic violence or abuse from another, their interests are inherently adverse, even if the matter is uncontested. Abuse creates a power imbalance. It simply is not trauma informed to represent both the perpetrator and the victim, even when the subject matter of the case is not specific to the violence because that power and control permeate throughout the entire relationship. Attorneys cannot expect traumatized clients to be forthcoming and

118. *Id.*

to genuinely have authority over their objectives when their manipulator is a client, too.

V. CONCLUSION

Traumatic experiences can have an incredible and long-lasting impact on the people exposed to them. Attorneys are often poised to represent clients who have experienced trauma. Attorneys who utilize a trauma-informed approach to practicing law can enhance their client's resilience—their ability to “bounce back”—and enhance their advocacy and case outcomes. There are a number of ways attorneys can be trauma informed with clients before, during, and after representation. Likewise, attorneys should be trauma informed with support staff and other professionals and model self-care. Finally, the attorney who uses trauma-informed practice enhances their ethical compliance with the Model Rules of Professional Conduct.