

The Ethics of Being a Trauma Informed Practitioner

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Advisory Opinion Service

- ▶ Available to licensed MN attorneys
- ▶ OLPR attorneys will provide no cost verbal opinion on application of specific facts to rules; every day an attorney is assigned to A/O tasks and spends much of the day returning calls; will receive answer the same day or next day
- ▶ Confidential; non-binding on third parties
- ▶ No opinion will be offered on (1) conduct of third parties, (2) where conduct has already occurred, and (3) OLPR does not approve lawyer advertising, but will advise rules relating to same
- ▶ In 2017, the OLPR provided 1890 opinions.
- ▶ Options: Submit a written request on line (preferred where facts are complicated or detailed); call 651-296-3952 or toll-free 1-800-657-3601 and ask for the A/O attorney
- ▶ Website: <http://lprb.mncourts.gov>

Client Security Fund

- ▶ Available to compensate clients who have been victims of dishonest conduct by an attorney that results in a direct loss.
- ▶ Loss must arise from an attorney-client relationship
- ▶ Must be caused by dishonest conduct of attorney
- ▶ Direct loss is compensable; consequential damages are not
- ▶ Has paid out \$8.3 million over life of the fund (30 years) relating to 660 claims against 182 lawyers
- ▶ Funded by \$6 from annual registration
- ▶ www.csb.mncourts.gov

OLPR Statistics

- ▶ Most Frequent Areas of Law Involved
 - ▶ Criminal (254)
 - ▶ Family Law (156)
 - ▶ General Litigation (182) (number up over 2017)
 - ▶ Probate (85) (Real estate right behind)
- ▶ Most Frequent Areas of Violations
 - ▶ Rule 1.4—Failure to Communicate
 - ▶ Rule 1.3—Diligence

Lawyers Concerned for Lawyers Minnesota LAP

- ▶ History
- ▶ Confidentiality
- ▶ Lawyers, judges, law students, and their families
- ▶ Education
 - ▶ CLEs
 - ▶ Website www.mnlcl.org
- ▶ Consultation
 - ▶ Advice and support to concerned persons
 - ▶ Assistance to legal organizations with policies and procedures

Lawyers Concerned for Lawyers Minnesota LAP (continued)

▶ Services

▶ Clinical Services

- ▶ 24 hour hotline
- ▶ Assessment
- ▶ Intervention Coaching
- ▶ Short term counseling
- ▶ Referral to Community Services
- ▶ Support and Therapy Groups

▶ Peer Support

▶ Well-being Resources/Mentoring

▶ Social Support

LCL Partnership with EAP

- ▶ Up to 4 free counseling sessions
- ▶ Resource website
- ▶ www.sandcreekeap.com
 - ▶ Click on employees
 - ▶ Enter password LCL1
- ▶ Contact EAP directly at **612-332-4805** or toll-free: **1-800-367-3271**



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Context

- ▶ During 2018: 99 open disciplinary probations—32 cases included a disability related condition, either mental health (20) and/or substance use (12) (some with both)
- ▶ The ABA/Hazelden study indicates that one-fifth of U.S. attorneys may suffer from some level of problematic drinking, and a significant percentage of study participants reported mental health concerns.
- ▶ Study participants advised that barriers to seeking treatment included (1) not wanting others to find out they needed help; and (2) concerns regarding confidentiality or privacy (and relatedly, their license).
- ▶ **Lawyer assistance programs like Lawyers Concerned for Lawyers are not required to report misconduct disclosed to them by an attorney seeking assistance. Rule 8.3(c), MRPC.**
- ▶ Please do not let concerns for your license interfere with seeking help from a lawyer assistance program.
- ▶ Lawyers Concerned for Lawyers: 651-646-5590 or **help@mnlcl.org**
- ▶ 24-hr crisis line: 612-332-4805

The Ethics/Bias Connection

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An abstract geometric design featuring several overlapping triangles and intersecting lines. The design is composed of thin, light gray lines that create a complex web of shapes. A single, slightly thicker dark gray line runs diagonally across the lower right portion of the image. The overall effect is one of layered, intersecting planes and lines, suggesting a sense of depth and complexity.

What do you think of?



How about now?



Implicit Bias

- ▶ Is activated involuntarily and without an individual's awareness or intentional control.
- ▶ The associations we harbor in our subconscious cause us to have feelings and attitudes about other people based on their characteristics.
- ▶ Implicit and explicit biases are **related but distinct**. They are not mutually exclusive and may even reinforce each other.

Mental Health, Trauma & Bias

- ▶ Our attitudes and impressions inform our actions
- ▶ Stigma (bias) is associated with certain conditions
- ▶ Stigma is a feeling of disgrace or fear, experienced with mental health issues or stress
- ▶ Stigma leads to feelings of shame and isolation
- ▶ Stigma and trauma can trigger each other
- ▶ Education can help with public stigma; personal stigma is tougher

Trauma & Impacts

- ▶ Understanding how trauma impacts those accessing justice system
- ▶ Understanding how being trauma informed in this capacity best positions you to provide good representation and be compliant with ethical rules
- ▶ Understand how exposure to trauma impacts you
- ▶ How recognizing this exposure & impact and taking time to add wellness into your practice is equally important to being an ethical lawyer

How Ethics Are Impacted

Implicated Rules of Professional Conduct

- ▶ Rule 1.1- Competence
- ▶ Rule 1.3- Diligence
- ▶ Rule 3.6- Trial Publicity
- ▶ Rule 3.8- Special Responsibilities of Prosecutor

Often Implicated Ethics Rules

- ▶ Rule 3.4(c)-Knowingly disobey obligation of tribunal
- ▶ Rule 3.4(e)-In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of the accused
- ▶ Rule 8.4(d)- Conduct Prejudicial to the Administration of Justice

Examples of Potential Ethical Issues

- ▶ Failing to Return/Make Phone calls
- ▶ Failing to Communicate
- ▶ Neglecting Work that is not Reactionary
- ▶ Case disposition issues
- ▶ Discovery Violations
- ▶ Closing Argument Issues

The Ethical Sinkhole

- ▶ When impacted by trauma we avoid, we become overwhelmed
- ▶ We act rashly
- ▶ We act in our own self interest
- ▶ When we avoid we are not competent- Rule 1.1
- ▶ When we avoid we are not diligent 1.3
- ▶ Prosecutors fail to heed their special responsibilities in Rule 3.8, MRPC

ABA Opinion 467 (September 8, 2014)

Entitled Managerial and Supervisory Obligations of Prosecutors under Rules 5.1 and 5.3

- ▶ Opinion specifies that prosecutors have additional duties (defines 'reasonable efforts') under Rule 5.1 and 5.3 to supervise and manage attorneys in their offices. (Can be disciplined for conduct of subordinate if order, ratify or fail to correct/remediate violation.)
- ▶ The Opinion provides detail regarding establishing office-wide policies and training for all prosecutors, regardless of years of experience, and provides advice on how to create a "culture of compliance."
- ▶ Supervisory prosecutors should train incoming lawyers, regardless of experience, on matters such as disclosure of exculpatory evidence, public statements, what must be revealed to a tribunal, how to deal with represented and unrepresented persons, how to conduct closing arguments and what conduct by other prosecutors must be reported and to whom — up the ladder reporting. Non-lawyer training is also addressed regarding Rule 3.8 and preservation of evidence.

Trauma

What is our definition of Trauma?

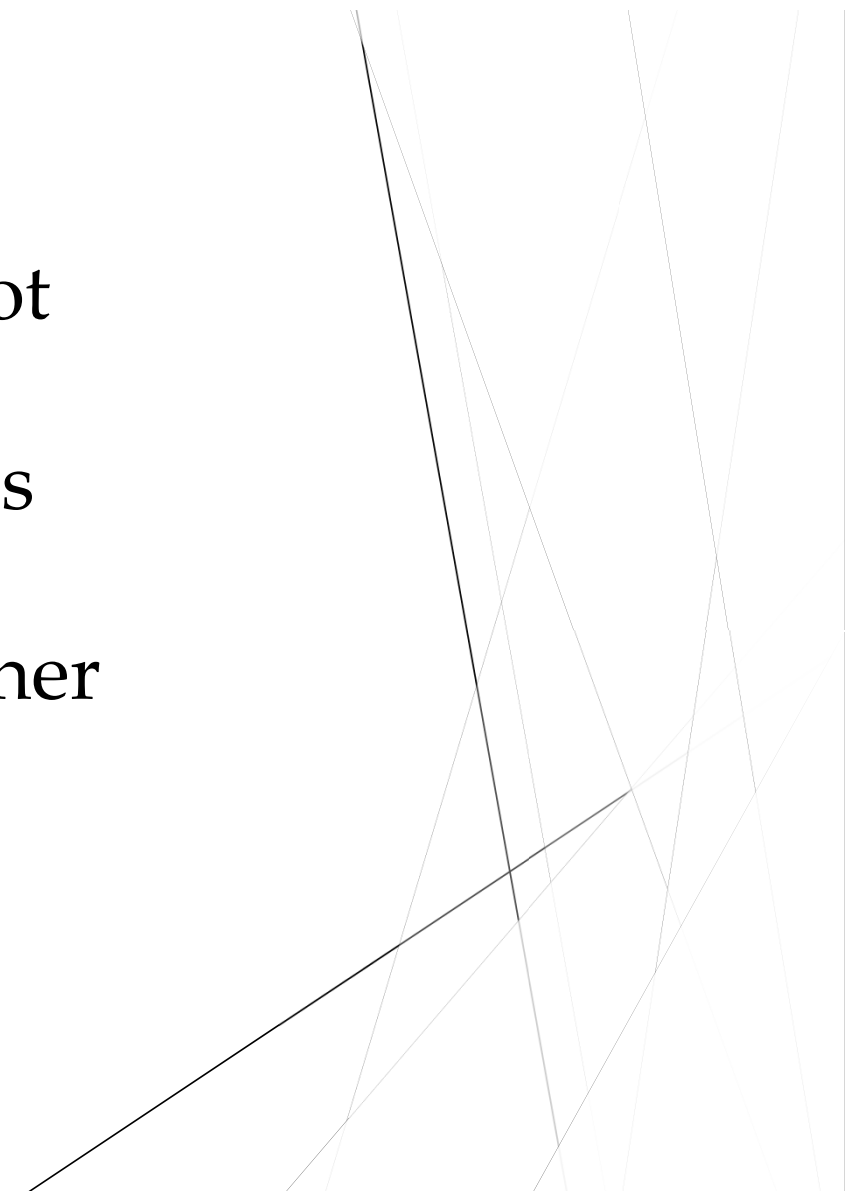
Trauma is the unique individual experience of an event, series of events, or set of circumstances, in which:

- ▶ The individual's ability to integrate his or her emotional experience is overwhelmed; and
- ▶ The experience is physically or emotionally harmful or threatening and has lasting effects on the individual's functioning and physical, social, emotional, or spiritual well being

Trauma: Exposure to the pain & suffering of others

- ▶ **Direct Trauma:** direct personal exposure to situation involving personal risk during victimization, disaster, or war
- ▶ **Secondary Trauma:** continued, frequent, or close contact with persons who have experienced direct trauma
- ▶ **Vicarious Trauma:** Exposure to reports, descriptions, and photos of horrific events

Even if an individual does not meet diagnostic criteria for trauma-related disorders, it is important to recognize that trauma can still affect his or her life in significant ways.



Empathy Distress in Lawyers/Compassion Fatigue

- ▶ The cumulative physical, emotional and psychological effects of being continually exposed to traumatic stories and events while working in a helping capacity.
- ▶ Don't show weakness. Deny, defend and deflect vulnerability, while staying emotionally detached at all times.

What do you think of when you think of trauma?

- ▶ Rape and sexual abuse
- ▶ War trauma
- ▶ Life threatening accidents
- ▶ Natural disasters (hurricanes, tornadoes, earthquakes, etc.)
- ▶ Physical abuse/assault
- ▶ Mass shootings/terrorism

Additional types of traumatic experiences

- ▶ Adoption
- ▶ Infertility
- ▶ Neglect
- ▶ Death of loved one
- ▶ Bullying
- ▶ Emotional abuse
- ▶ Medical trauma/physical injury
- ▶ Homelessness
- ▶ Professional Conduct Issues
- ▶ Prostitution
- ▶ Torture
- ▶ Suicide of a loved one
- ▶ Motor vehicle accidents
- ▶ Traumatic grief/loss
- ▶ Displacement
- ▶ Mental illness/addiction

Additional types of traumatic experiences

- ▶ Poverty
- ▶ Removal from home
- ▶ Religious/spiritual
- ▶ Psychological torture
- ▶ Captivity
- ▶ Involuntary hospitalization/civil commitment
- ▶ Seclusion/restraint
- ▶ Cults
- ▶ Being a victim of a crime
- ▶ Witnessing a traumatic event
- ▶ Sexual harassment
- ▶ Stalking
- ▶ Illness/disability of loved one
- ▶ Historical

Effect of Trauma

- ▶ Brain Development is stunted
- ▶ Focus on Safety
- ▶ Trouble with
 - ▶ Information Processing & Receptive Language
 - ▶ Emotional Regulation
 - ▶ Verbal Expression
 - ▶ Critical decision making

Effective Trauma Informed Attorney-Relationships

Building Trust

- ▶ Not instantaneous
- ▶ Considerations
 - ▶ Judgement
 - ▶ Care & Concern
 - ▶ Transparency
 - ▶ Predictability
 - ▶ Consistency

Attorney-Participant Relationship

- ▶ Improve engagement
- ▶ Achieve justice centered representation
- ▶ Empower the participant
- ▶ Assist in improving life outcomes

Interviewing Tips

- ▶ Promote Safety
- ▶ Time & Interruptions
- ▶ Expectations & Roles
- ▶ Triggers
- ▶ Cultural Competence
- ▶ Patience & Humility

Forensic Experiential Trauma Interviews (FETI approach) (Russell W. Strand, United States Army Military Police School)

1. Acknowledge the Client/Victim's trauma and/or pain

- ▶ Assists the listener in demonstrating genuine concern and empathy towards the interviewee
- ▶ Helps provide a sense of psychological and physical safety during the interview
- ▶ Make every effort to demonstrate genuine empathy, patience, and understanding

Forensic Experiential Trauma Interviews (FETI approach)

2. Ask the client/victim/witness what they are able to remember about their experience
 - ▶ Using the word “able” can relieve pressure on the interviewee, thereby increasing the information they are able to provide
 - ▶ Using the word “experience” encourages the interviewee to describe their actual experience, relieving the pressure on the interviewee to try and figure out what is important in the context of a criminal investigation

Ask the client/victim/witness what they are able to remember about their experience (cont.)

- ▶ Ask open ended questions
- ▶ Engage in active listening
- ▶ Avoid asking the interviewee to “start at the beginning” – that can inhibit trauma memory recall. A sequential narrative can be developed later.

Forensic Experiential Trauma Interviews (FETI approach)

3. Ask the client/victim/witness about their thought process at particular points during their experience
 - ▶ What was he thinking?
 - ▶ How was she processing her experience?
 - ▶ Helps interviewer understand actions and inactions of interviewee during incident
 - ▶ Try to avoid “why” questions: why didn’t you fight back, scream, run, etc.
 - ▶ “why” questions may re-victimize, close down conversation, increase false information, and destroy or damage fragile trauma memories

Forensic Experiential Trauma Interviews (FETI approach)

4. Ask about tactile memories such as sounds, sights, smells, and feelings before, during, and after the incident.
 - ▶ May increase the interviewee's ability to relate to the experience in a way that produces significantly more information
 - ▶ Sensory information may assist fact-finders in relating to the interviewee's experience

Forensic Experiential Trauma Interviews (FETI approach)

5. Ask the interviewee what the most difficult part of the experience was for them
 - ▶ Trauma victims/witnesses may repress extremely difficult to handle information about their experiences
 - ▶ Can increase your understanding of the totality of the circumstances in reference to the interviewee's experience
 - ▶ May unlock key central details

Forensic Experiential Trauma Interviews (FETI approach)

6. The interviewer should ask what, if anything, the interviewee cannot forget about their experience
 - ▶ Gives a better understanding of the interviewee's perception and response to the trauma
 - ▶ May obtain additional psychophysiological evidence

Forensic Experiential Trauma Interviews (FETI approach)

7. Clarify other information and details **after** facilitation and collection of the above evidence.
 - ▶ Follow up with who, what, when, where, and how questions

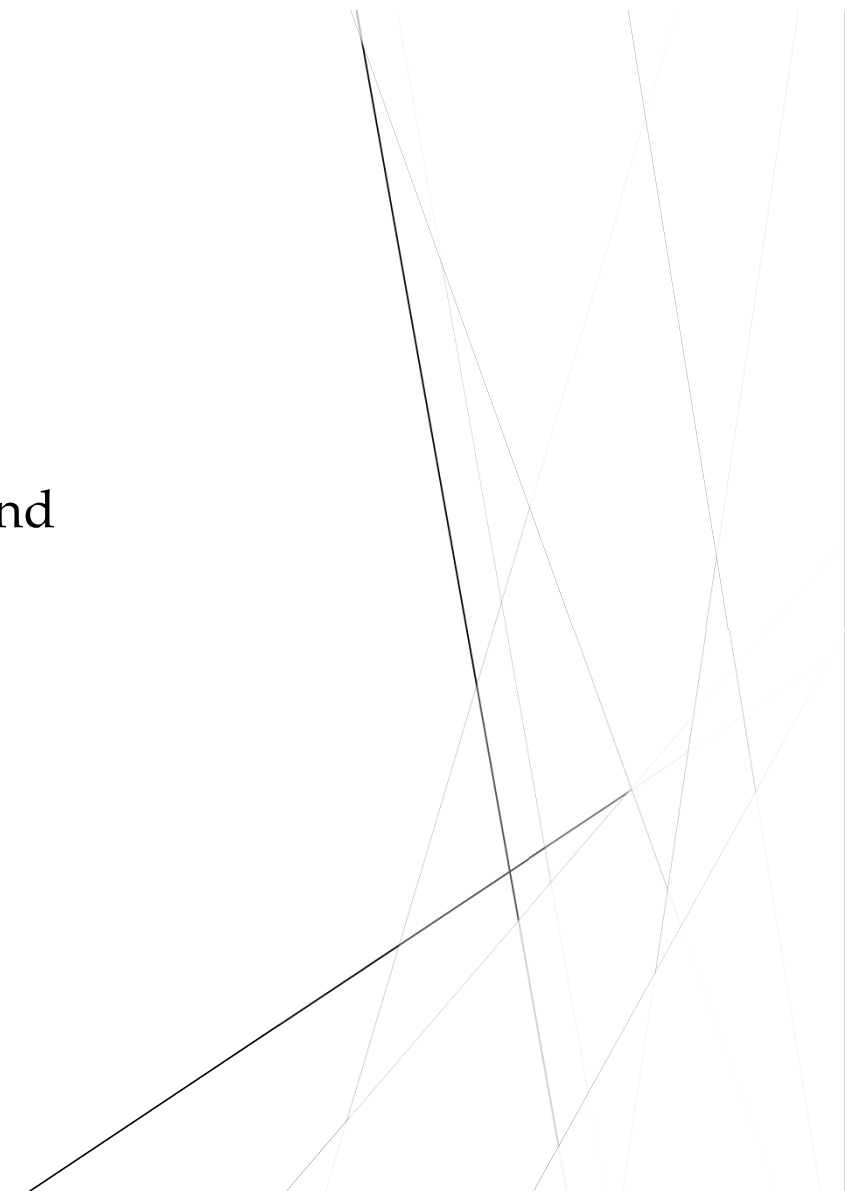
Trauma Exposure- Attorney Impacts

Unprocessed Trauma

- ▶ Lawyers and Judges with unprocessed trauma may transfer their own trauma reactions & symptoms onto others
- ▶ Results in re-traumatization of the (witness, stakeholder, client)
- ▶ Impairment of the attorney-client relationship
- ▶ Impairment of the effectiveness of counsel

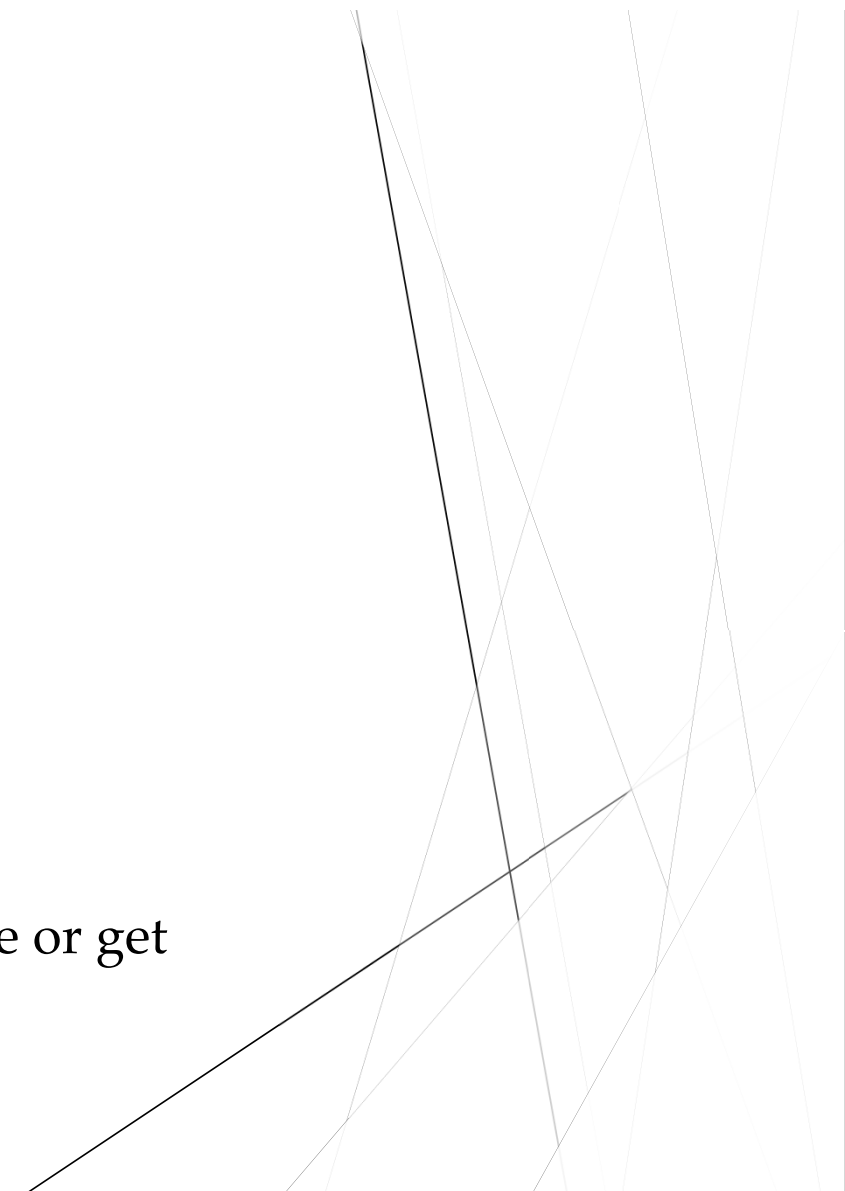
Risk Factors - Personal

- ▶ Personal history of previous trauma
- ▶ Personality features including temperament and emotionality
- ▶ Personal values conflicts
- ▶ Sense of control
- ▶ Personal strength, patience & resilience
- ▶ Self-care – health and rest



Risk Factors - Professional

- ▶ Work overload
- ▶ Traumatic cases
- ▶ Isolation
- ▶ Adversarial System
- ▶ Lack of Appreciation, Support, and Respect
- ▶ Inadequate Resources
- ▶ Lack of control in one's work life
- ▶ Lack of enough time to process issues and give or get support



Signs of Traumatic Impact - Cognitive

- ▶ Recurrent intrusive thoughts or dreams of the trauma
- ▶ Poor concentration, memory, inattention, forgetful, indecisive, spacing out
- ▶ Trying to avoid reminders of the case, not returning calls, not recalling case details, avoiding discussion of details

Signs of Traumatic Impact - Affective

- ▶ Emotional numbing, blunting, insensitivity, indifference, loss of humor
- ▶ Hyper-vigilance for the expected and unexpected
- ▶ Strong and disturbing feelings (anxiety, sadness, anger) at the recollection or exposure to the event (e.g., conversations, photos, reports, news)

Signs of Traumatic Impact - Physical

- ▶ Appetite and energy changes
- ▶ Sleep disturbance – getting to and staying asleep, fatigue
- ▶ Increase in self medication - smoking, drinking, drugs, risky behaviors
- ▶ Physical complaints: headaches, digestive distress, more frequent illness

Signs of Traumatic Impact - Social

- ▶ Lack of interest in and withdrawal from social activities and interests.
- ▶ Cynicism, excessive suspicion, over cautious, general mistrust of other people, demoralization.
- ▶ Overprotective of family and professional subordinates through isolation or action.
- ▶ Being irritable and short fused with family and friends

Signs & Reactions . . .

- ▶ Were you impacted by a case differently than you expected?
- ▶ Did you make assumptions about the perpetrator?
- ▶ About the alleged victim?
- ▶ About a witness?
- ▶ About law enforcement?

Compassion Fatigue Study

2010 - Wisconsin State Public Defender's Office

- ▶ Conducted by Dr. Andrew Levin, Medical Director of the Westchester Jewish Community Services in New York and Linda Albert, State Bar of WI Wis LAP Coordinator
- ▶ Study focused on measuring compassion fatigue in Wisconsin public defenders and their support staff, including:
 - ▶ Investigators
 - ▶ Client Service Specialists
 - ▶ Administrators

Compassion Fatigue Study

Response rates:

- ▶ 78% of attorneys statewide
- ▶ 65% of support staff statewide

Compassion Fatigue Study

Study identified 5 main symptoms of compassion fatigue:

- ▶ Depression
- ▶ Post-Traumatic Stress Disorder
- ▶ Functional Impairment
- ▶ Secondary Traumatic Stress
- ▶ Burnout

Compassion Fatigue Study

Depression Symptoms

- ▶ General Population: 10%
- ▶ SPD administrative support staff: 19.3%
- ▶ SPD attorneys: 39.5%

Compassion Fatigue Study

PTSD Symptoms

- ▶ General Population: 7%
- ▶ SPD administrative support staff: 1%
- ▶ SPD attorneys: 11%

Compassion Fatigue Study

Functional Impairment

- ▶ SPD support staff: 27.5%
- ▶ SPD attorneys: 74.8%

Compassion Fatigue Study

Secondary Traumatic Stress

- ▶ The “cost of caring” about another person who has experienced trauma
- ▶ Symptoms are similar to those of PTSD

Compassion Fatigue Study

Secondary Traumatic Stress

- ▶SPD support staff: 10.1%
- ▶SPD attorneys: 34%

Compassion Fatigue Study

Burnout

- ▶ Job-induced physical, emotional, or mental exhaustion combined with doubts about one's competence and the value of one's work

Compassion Fatigue Study

Burnout

- ▶SPD support staff: 8.3%
- ▶SPD attorneys: 37.4%

Compassion Fatigue Study

Coping Strategies for Lawyers:

- ▶ Debrief
- ▶ Take care of yourself
- ▶ Strive for balance and interconnection
- ▶ Come up with a plan
- ▶ Seek help

Compassion Fatigue Study- Self Care

- ▶ Eat healthy foods – this includes taking time during the day to actually eat!
- ▶ Exercise regularly
- ▶ Get enough sleep
- ▶ Learn relaxation techniques
- ▶ Make time for activities that truly make you happy

Compassion Fatigue Study-Self Care

Strive for balance and interconnection

- ▶ Balance – accept that you can't do everything for everyone all the time
- ▶ Counterbalance – make time for friends and family to alleviate stress and put things back in perspective

Compassion Fatigue Study-Self Care Plan

- ▶ Take a break
- ▶ Evaluate how you're feeling, reacting, and behaving at work and at home
- ▶ Develop an action plan
- ▶ What needs to change?
- ▶ Where can you start?
 - ▶ Learning to say no
 - ▶ Learning to ask for help
 - ▶ Learning to accept help

Compassion Fatigue Study

► Seek Help:

- LCL: Lawyers concerned for lawyers
- <https://www.mnlcl.org/>
- 651-646-5590 or 1-866-525-6466
- Email: help@mnlcl.org
- Free, confidential help and support for lawyers
- LCL does not report to or share information with the OLPR!
- Self-Test for compassion Fatigue:
- [Http://www.proqol.org/ProQol_Test.html](http://www.proqol.org/ProQol_Test.html)

Lawyer Well-Being & Ethics

- ▶ New report—National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being, Practical Recommendations for Positive Change* (August 2017)
- ▶ Specific recommendations for legal employers
 - ▶ Form a Lawyer Well-being Committee or appoint a well-being advocate
 - ▶ Assess Lawyers' Well-being (including stressors such as secondary trauma and workload)
 - ▶ Establish policies and practices to support well-being including confidential reporting procedures
 - ▶ Monitor for signs of work addiction and poor self-care
 - ▶ Actively combat social isolation and encourage interconnectivity
 - ▶ Provide training and education on well-being including during new lawyer orientation
 - ▶ Emphasize service-centered mission versus competition
 - ▶ Create standards, align incentives and give feedback on wellness efforts.
 - ▶ Duty of Competence—to include lawyer well-being (Rule 1.1)—action for regulators

Well-Being Toolkit for Lawyers and Legal Employers

- ▶ Released August 2018
- ▶ Accessible via www.mnlcl.org
- ▶ Provides examples of activities, education and assessments
- ▶ Offers worksheets to assess and improve many aspects of well-being

Additional Resources

- ▶ Wealth of Resources on Website, <http://lprb.mncourts.gov>
- ▶ Index and text of Bench and Bar articles and MN Lawyer ethics columns by Office, sorted by Rule, Subject and Year (no precedential value but useful guidance)
- ▶ Current Rules (MRPC and RLPR) and Board Opinions
- ▶ Suspended and Disbarred Lawyer List
- ▶ Attorney Search containing all public discipline, with links to Court opinions and petitions for discipline
- ▶ Trust Account Information and Resources, including FAQs
- ▶ Professional Firm Filing Requirements
- ▶ Cross Border (Multijurisdictional Practice) Information
- ▶ Annual Reports of OLPR, including historical reports
- ▶ Announcements and News
- ▶ Board and Office Directory
- ▶ Complaint forms in English, Hmong, Russian, Somali, and Spanish

Closing

► Thank You!

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