



South Carolina Bar
Continuing Legal Education Division

2026 SC BAR CONVENTION

SC Bar Foundation
“Nonprofit Practice”

Saturday, January 24

SC Supreme Court Commission on CLE Course No. 260145

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South Carolina Bar

Continuing Legal Education Division

Navigating Ethical Challenges in Nonprofit Practice

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Practical Tips for Navigating Ethical Challenges in Nonprofit Legal Practice
SC Bar Foundation CLE
2026 South Carolina Bar Convention
January 24, 2026

1. Managing Pro Bono Attorneys and Volunteers

Ethical Duties:

- Supervisory responsibilities (Rule 5.1/5.3): Ensure pro bono lawyers and volunteers are properly trained, supervised, and follow professional standards.
- Conflicts of interest (Rule 1.7, 1.10): Watch for conflicts arising from a volunteer's outside employment or other representations.
- Client confidentiality (Rule 1.6): Volunteers must be educated on maintaining strict confidentiality.

Best Practices:

- Provide onboarding, including confidentiality agreements and a handbook.
- Use limited scope representation agreements when appropriate.
- Maintain centralized case records to ensure continuity and oversight.

2. Interacting with Pro Se Litigants Who Are Opposing Parties

Ethical Duties:

- Rule 4.3 (Dealing with unrepresented persons): Do not give legal advice to pro se opponents.
- Rule 8.4(d): Avoid conduct involving dishonesty or misrepresentation, even if the pro se party is mistaken about your role.

Practical Tips:

- Be clear and respectful in communication.
- Use written disclaimers: "I represent only [Client], not you."
- Consider using standard scripts or templates when explaining procedural matters.

3. Nonprofit Legal Management

Ethical Duties:

- Understand nonprofit duties under state law: fiduciary duties, annual filings, board oversight.
- Ethical fundraising and grant reporting—avoid overpromising on outcomes or use of restricted funds.

Organizational Ethics:

- Create a culture of ethical decision-making and transparency.
- Have a clear intake policy and eligibility criteria for services.
- Document policies for case acceptance, client prioritization, and withdrawal.

4. Supervising Junior Attorneys, Law Clerks, and Staff

Ethical Duties:

- Rule 5.1 (Responsibilities of a partner or supervisory lawyer): Must ensure that junior lawyers comply with the Rules of Professional Conduct.
- Rule 5.3: Nonlawyer assistants must also be appropriately supervised.

Mentoring and Development:

- Promote open communication about workload, ethics, and burnout.
- Hold regular check-ins and performance reviews with clear feedback.
- Encourage junior staff to seek guidance when faced with ethical uncertainty.

5. Representing Clients in Crisis or With Mental Health Concerns

Ethical Duties:

- Rule 1.14 (Client with diminished capacity): Maintain a normal attorney-client relationship to the extent possible.
- Take reasonable steps to ascertain capacity; use social workers or mental health professionals if needed.

Trauma-Informed Practice:

- Use active listening and client-centered communication.
- Recognize signs of trauma or mental health issues; don't rush decisions or impose timelines unnecessarily.
- Know when protective actions may be necessary—but only as a last resort, and consistent with client autonomy.

Self-Care and Vicarious Trauma:

- Normalize seeking mental health support and institutionalizing debriefs and peer support for attorneys.

6. Succession Planning in Nonprofit Legal Departments

- Use Case Management System to Create Well-Documented Files: Maintain detailed, accessible case files so that any attorney stepping in has full knowledge of the case status and critical documents. This means making contemporaneous notes about conversations with the client and others, saving emails to the electronic or paper file, and maintaining a to-do list.
- Develop Transition Protocols: Have formalized transition plans in place that outline how cases will be handed off, including briefing the incoming attorney and notifying the client. Secure the outgoing attorney's new contact information in case questions come up after departure.
- Notify the Court and Opposing Counsel: If there is a matter with a court, promptly file for a substitution of counsel and provide opposing counsel with the new attorney's contact information.
- Ethical Considerations for Client Communication: Inform clients promptly when an attorney leaves and provide reassurance about the steps being taken to ensure continuity. If possible, arrange a client meeting with both the outgoing and incoming attorney so that all questions and concerns can be addressed.

7. The Unauthorized Practice of Law (UPL)

- Understand the Statutory & Case Law: Familiarize yourself with the UPL statute and UPL cases to understand what is considered the practice of law in South Carolina and where the Supreme Court draws the line between permissible legal document preparation and unauthorized legal advice.
- Use Technology Cautiously: When utilizing legal tech, ensure tools only offer "legal information" and do not cross into providing individualized legal advice, which could violate UPL rules. Generic templates are a starting point for legal documents and should be carefully reviewed and revised to ensure legal sufficiency and client-specific application.
- Report Nonlawyers for UPL Causing Client Harm: While some online document services are permitted, there is significant risk of harm to the public if nonlawyers are providing legal advice and services. The South Carolina Attorney General's Office and the SC Bar UPL Committee should be notified when nonlawyers engage in the practice of law, which is a felony in our state.
- Educate Clients on the Limits of Tech Solutions: Make sure clients understand the distinction between self-help legal services and full legal representation to manage expectations and avoid ethical pitfalls.

8. Addressing Concerns in Limited Scope/Brief Services Representation

- Make Sure the Limited Scope is Permitted in the Jurisdiction: The SC Rules of Professional Conduct expressly permit limited scope representation and there is no state statute or court opinion prohibiting "ghostwriting" legal documents. However, several federal court jurisdictions expressly prohibit the practice.
- Consider the Reasonableness of the Limited Services: Rule 1.2(c), RPC, permits a lawyer to "limit the scope of the representation if the limitation is reasonable under the circumstances." Comment [7] provides this example: "If a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely."
- Clarify the Scope of Representation in Writing: Clearly define and document the limited scope of representation in a written agreement or engagement letter, specifying the services that are both included and not included.
- Manage Client Expectations: Have a candid conversation with the client about the limits of on your legal services and ensure they understand the risks and responsibilities they retain. Limited scope representation is only permitted if the client's consent is informed. This requires the lawyer to "communicate reasonably adequate information and [explain] the material risks of and reasonably available alternatives to the proposed course of conduct." See, Rule 1.0(g), RPC.

- Prepare Documents the Client Can Understand & Explain: If the limited scope representation involves preparing documents for a *pro se* litigant to file with the court or submit to the opposing party, the lawyer must draft them using the simplest, most direct language that is legally sufficient to protect the client's interests and pursue the client's objectives.
- Provide the Client with Adequate Explanation of Information Needed: Reasonableness requires the lawyer to provide the client with sufficient information necessary to handle the portion of the legal matter the lawyer is not doing. For example, simply drafting pleadings for a *pro se* litigant is not competent representation without explaining where and how to file those pleadings and providing basic court navigation information.
- Ethical Monitoring of Limited Services: Continually evaluate whether the limited scope arrangement is still appropriate for the client's needs or whether a referral for full representation should be considered.

9. Dealing with Self-Represented Litigants

- Maintain Professional Boundaries: Make sure a *pro se* party clearly understands your role. Rule 4.3, RPC, says "In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding."
- Avoid Giving Legal Advice: When opposing *pro se* litigants, avoid giving them legal advice. Be mindful of the line between assisting and advocating for them. Rule 4.3, RPC, does permit a lawyer to give legal advice to a person who is not represented by counsel as long as the lawyer does not "know or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client." However, it is best not to attempt to thread that needle even when the client and the unrepresented person are not in conflict. Giving legal advice creates an attorney-client relationship and all that comes with it.
- Simplify Legal Communications: Use plain language when communicating with *pro se* litigants and other unrepresented people in order to avoid misunderstandings, but don't sacrifice thoroughness or legal clarity.
- Document All Interactions: Keep detailed records of all interactions with *pro se* litigants and other unrepresented people to protect against claims of unfair treatment or unethical conduct.

10. Managing Difficult Opposing Counsel

- Maintain Professionalism and Civility: Stay calm and collected when faced with difficult or abusive opposing counsel. Model professional behavior even when provoked.
- Address Economic Imbalance Transparently: If opposing counsel is unacquainted with the financial limitations of your client, clearly communicate the constraints without compromising the client's confidentiality or the case's merits.
- Choose to Ignore Harmless Bad Behavior: If opposing counsel's difficult behavior is not prejudicing the client, sometimes it is best to just ignore it. Goading a lawyer to the point of frustration or distraction might be their strategy. If you don't take the bait, that strategy fails.
- Document Bad Behavior that is Not Harmless: If the behavior of opposing counsel is negatively impacting your representation or the client's interests, make a record. Remember that any letter or email or text you send could become an exhibit. Focus on matters of significance and do not argue petty points. Avoid long strings of messages debating minor offenses.
- Consider Reassigning the Case: There might simply be a personality conflict that can be resolved by reassignment. A bullying opposing lawyer should never be able to dictate who your organization assigns to a client's case but there could be a strategic advantage – and it might be in the client's best interests – to switch up with another lawyer.
- Seek Judicial Intervention if Necessary: If opposing counsel's conduct crosses ethical lines, don't hesitate to raise the issue with the court to ensure fair proceedings.
- Do Not Threaten to File a Disciplinary Complaint: Rule 4.5, RPC, states "A lawyer shall not present, participate in presenting, or threaten to present criminal or professional disciplinary charges solely to obtain an advantage in a civil matter." However, our Supreme Court has applied this prohibition very broadly, sanctioning lawyers for threatening civil action in order to gain an advantage in a criminal case as well as a number of instances of more general threats against opposing counsel. If the actions of the opposing counsel rise to the level of misconduct, either file a grievance or don't file a grievance, just don't talk about filing a grievance.

11. Balancing Zealous Advocacy with Client Resources

- Prioritize Case Strategies Based on Resources: Discuss cost-saving strategies with clients, focusing on the most critical actions. Help them understand the trade-offs between different options.
- Use Alternative Dispute Resolution (ADR) Tools: Consider pre-suit mediation or other ADR methods to resolve issues without costly litigation.

- Be Transparent About Financial Realities: Set realistic expectations upfront about what the client can afford and ensure they understand the limits this may place on their legal strategies.

12. Balancing Zealous Advocacy with an Overwhelming Caseload

- Use Time Management Tools: Implement effective case management systems and other tech tools to track deadlines and prioritize urgent matters. Create templates, checklists, and a bank of pleadings, motions, briefs and other legal documents so you are not reinventing the wheel with each new case.
- Delegate When Possible: Delegate non-legal or routine tasks to paralegals or administrative staff to free up time for critical casework.
- Know When to Seek Help: If your caseload becomes unmanageable, notify your supervisor or seek support, whether through reallocating cases or requesting additional resources.

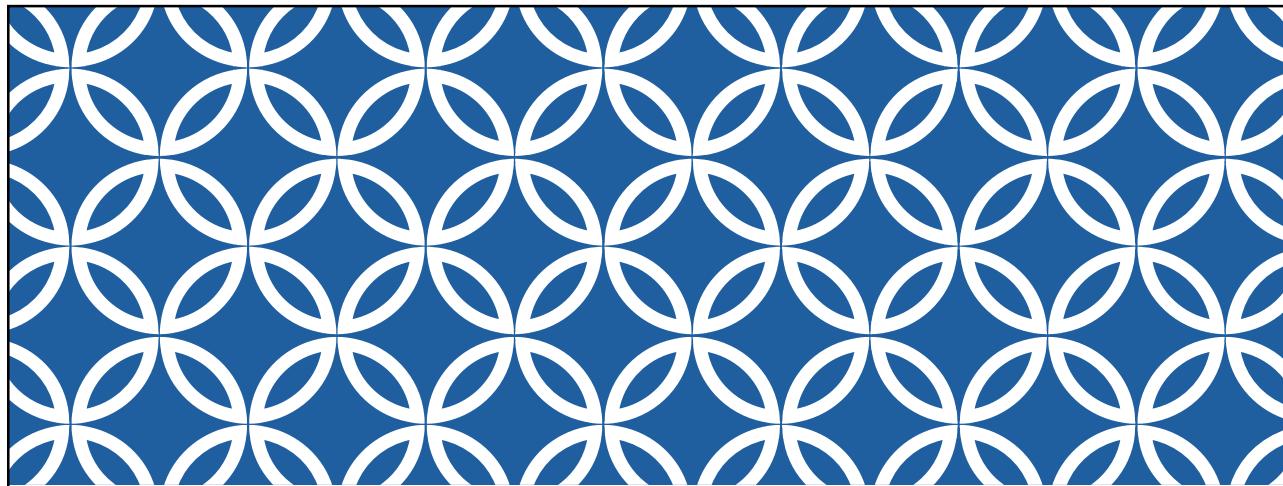


South Carolina Bar

Continuing Legal Education Division

Lawyering with Heart and Mind: Trauma-Informed Practice and Attorney Well-Being

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LAWYERING WITH HEART AND MIND: TRAUMA-INFORMED PRACTICE AND ATTORNEY WELLBEING



1

ATTORNEY FEARS & FRUSTRATIONS

It's life & death

Will I say the wrong thing?

Too emotional

Can I handle it?

I don't have time for all of this

Client won't feel comfortable talking to me

Traumatized clients are too difficult

They just can't get the story straight

The complex & intersecting legal, emotional and basic needs are too overwhelming or beyond my expertise.



2

CLIENT FEARS & FRUSTRATIONS

Dealing with all this is just too hard

They don't believe me.

I don't really understand what is happening

Why is everything taking so long

They aren't listening to me

They don't care about EVERYTHING that happened to me

They aren't fighting for me

Never calls me back

My attorney just doesn't understand what I am going through

3

A POSITIVE CLIENT/ATTORNEY RELATIONSHIP BEGINS WITH PREPARATION

- Attorney self-education on the origins & impact of trauma
- Establishing supportive relationships with legal peers & allied professionals with expertise working with traumatized clients
- Clarify personal limitations & boundaries
- Create time & space early in the relationship to build trust



4

WHAT IS TRAUMA-INFORMED LAWYERING?

A Two – Step Process

- Vivianne Mbaku, Justice in Aging

- 1. Identify & Recognize the Trauma & its Impact**

- 2. Adjust the Attorney-Client Relationship**

5

WHAT IS TRAUMA-INFORMED LAWYERING?

It is not a formula, but a stance

- Dr. John Sprinson

- 1. Transparency**
- 2. Predictability**
- 3. Client Control**
- 4. Reliability**
- 5. Proactive Support**
- 6. Patience**

6

WHAT IS TRAUMA?

Trauma happens after an **event**, series of events, or set of circumstances that someone **experiences** as physically or emotionally harmful or threatening. It can have a negative **effect** on a person's functioning and mental, physical, social, emotional, or spiritual well-being. Entire generations, communities, or cultures can experience trauma collectively.

- SAMSHA, Interagency Task Force on Trauma-Informed Care

7

NEUROBIOLOGY OF TRAUMA

The “emotional brain takes the reins and supersedes their executive functions.”



8

IMPACT OF TRAUMA?

Feelings of:

- Powerlessness/helplessness
- Humiliation/embarrassment
- Shame/guilt
- Betrayal
- Fear/horror
- Emotional numbing or detachment

Psychological symptoms:

- PTSD or flashbacks
- Depression
- Anxiety
- Hyper-arousal & easily startled
- Irritability or anger
- Difficulty concentrating
- Fragmented memory



9

TRIGGERING SITUATIONS AND RE-TRAUMATIZATION

Common triggers:

- Unpredictability
- Transition
- Loss of control
- Feelings of vulnerability, loneliness, or rejection
- Sensory overload
- Confrontation
- Embarrassment or shame
- Intimacy or even positive attention

Signs of being triggered:

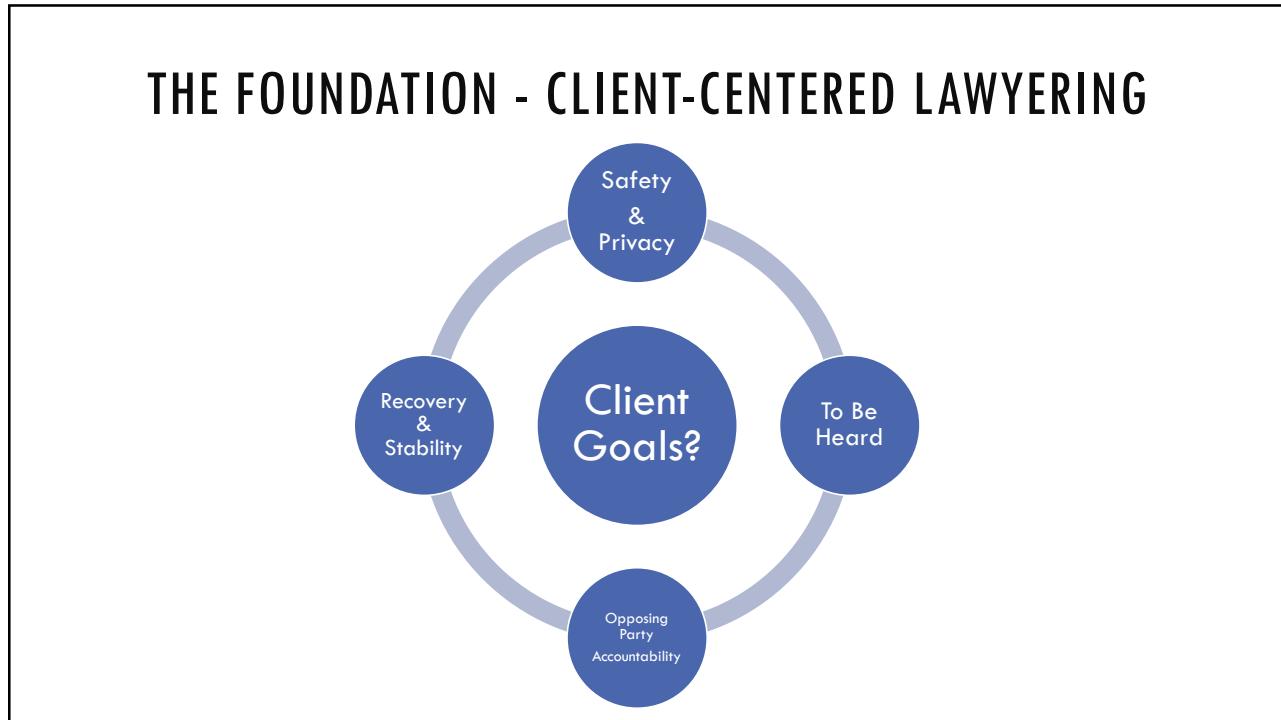
- Jumping up or lashing out
- Difficulty tracking questions
- Difficulty expressing thoughts
- Brief, clipped narratives or claiming not to remember
- Shutting down or appearing to “go somewhere else”
- Exhibiting flat affect
- Not following conversation



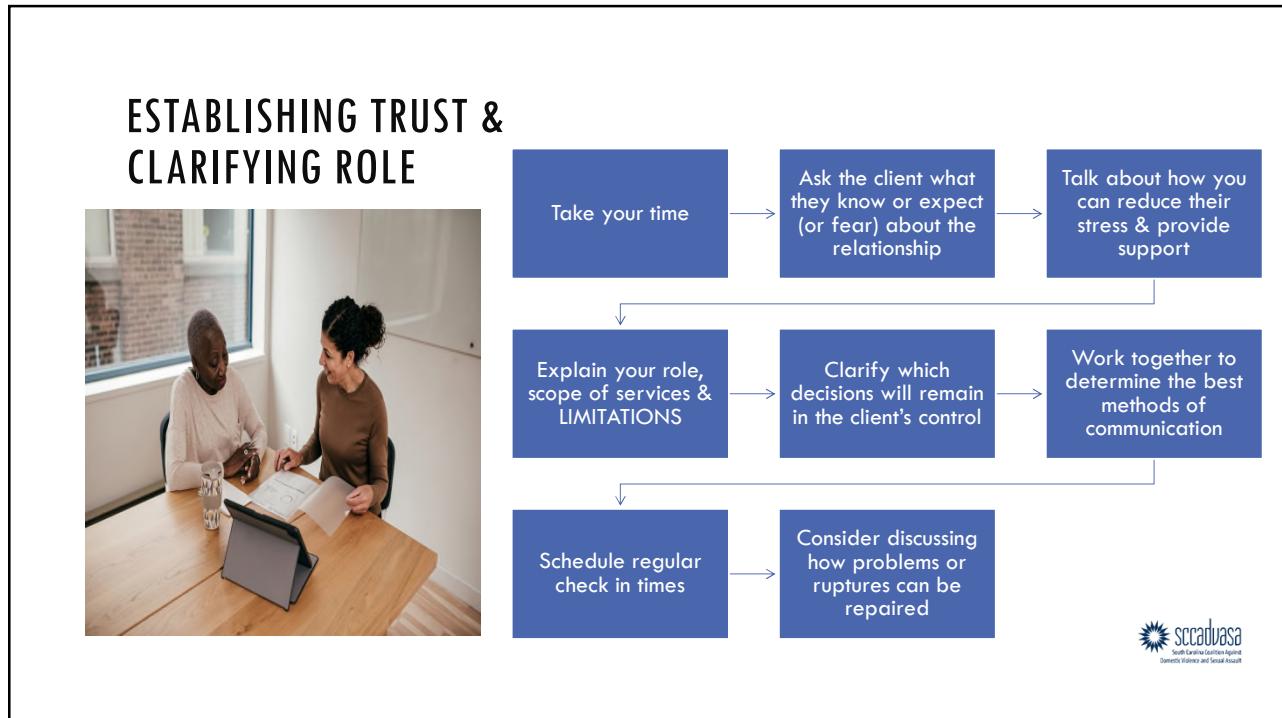
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11



12



13



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TRAUMA, MEMORY & TRUST- BUILDING

Scenario:

Someone you are working with doesn't share important information that is relevant to their case. It comes out later, during a court hearing.

Discussion Questions:

- What is happening from their perspective?
- What are the reasons they may not have shared?
- What might have helped?

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FRUSTRATION & ANGER

REFLECTIVE PRACTICES

Scenario:

The person you are working with is frustrated and angry. You feel like they are demanding and that they blame you for not doing enough to help them. You notice that it's hard to gather the energy to support them.

Discussion Questions:

- What is happening from their perspective?
- What makes this hard for the attorney?
- What might help both the client & attorney?

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STAYING ON TRACK

Scenario:

You are meeting with someone to provide support as they navigate a legal case, or to give legal advice. But they are talking about many other concerns that you cannot help with. You want to help them, but you are also worried that you won't have time to help someone else who is waiting.

Discussion Questions:

- What is happening from their perspective?
- What makes this hard for the attorney?
- What might help both the client & attorney?

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Continuum of Professional Boundaries

Entangled

- Over-involvement; meeting own emotional, social, or physical needs

Balanced

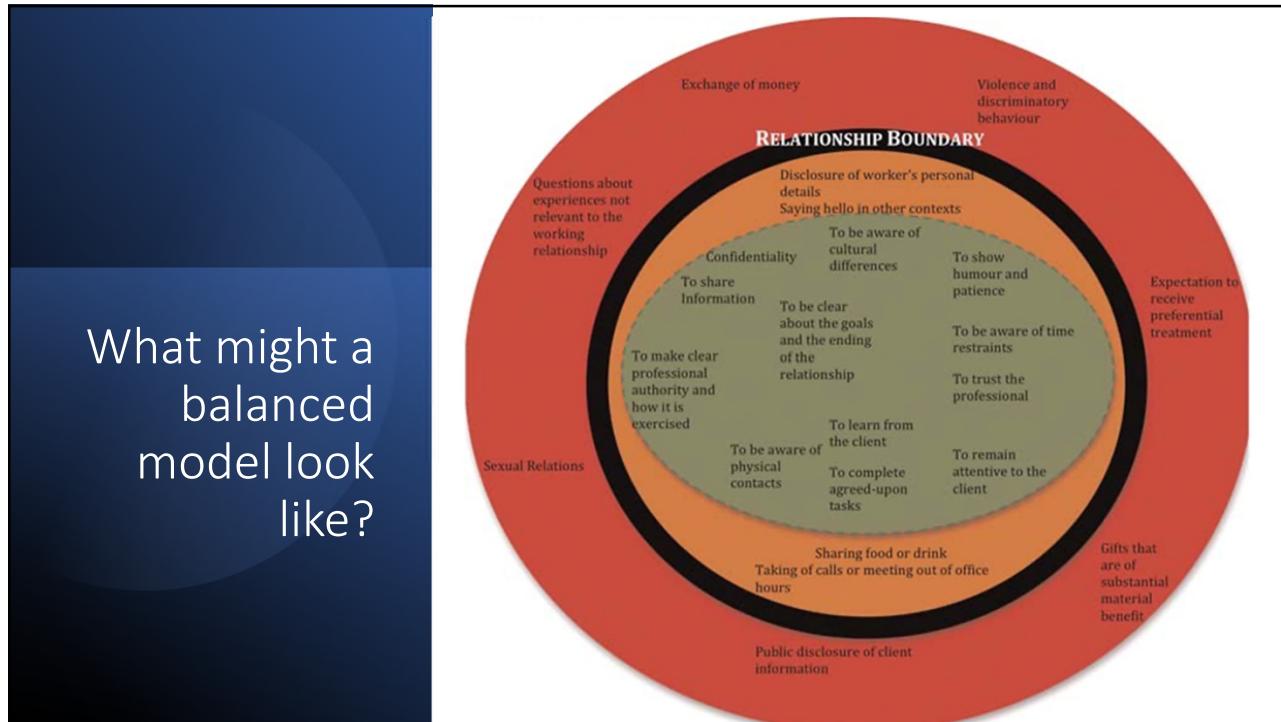
- Maintain boundaries; use judgement and self-reflection; decisions accountable to other professionals

Rigid

- Inflexible; do not attend to needs of clients

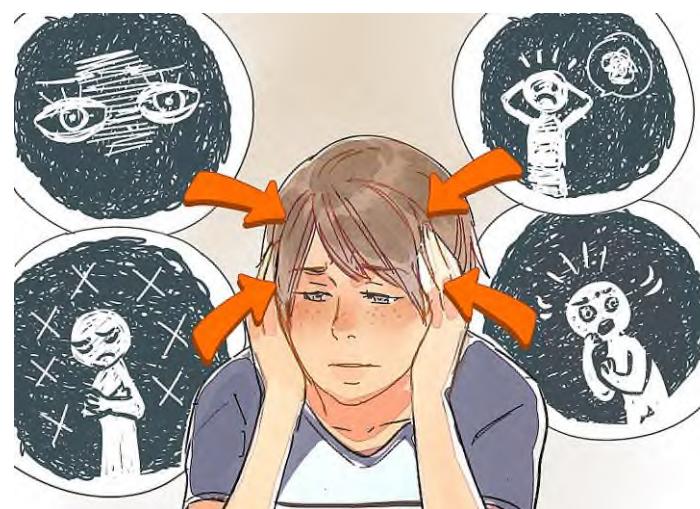


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LISTENING TO CLIENTS' TRAUMATIC STORIES



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SECONDARY TRAUMATIC STRESS & VICARIOUS TRAUMA



- “compassion fatigue”
- “the cumulative transformation in the inner experience...that comes about as a result of empathic engagement with the client’s traumatic material.”

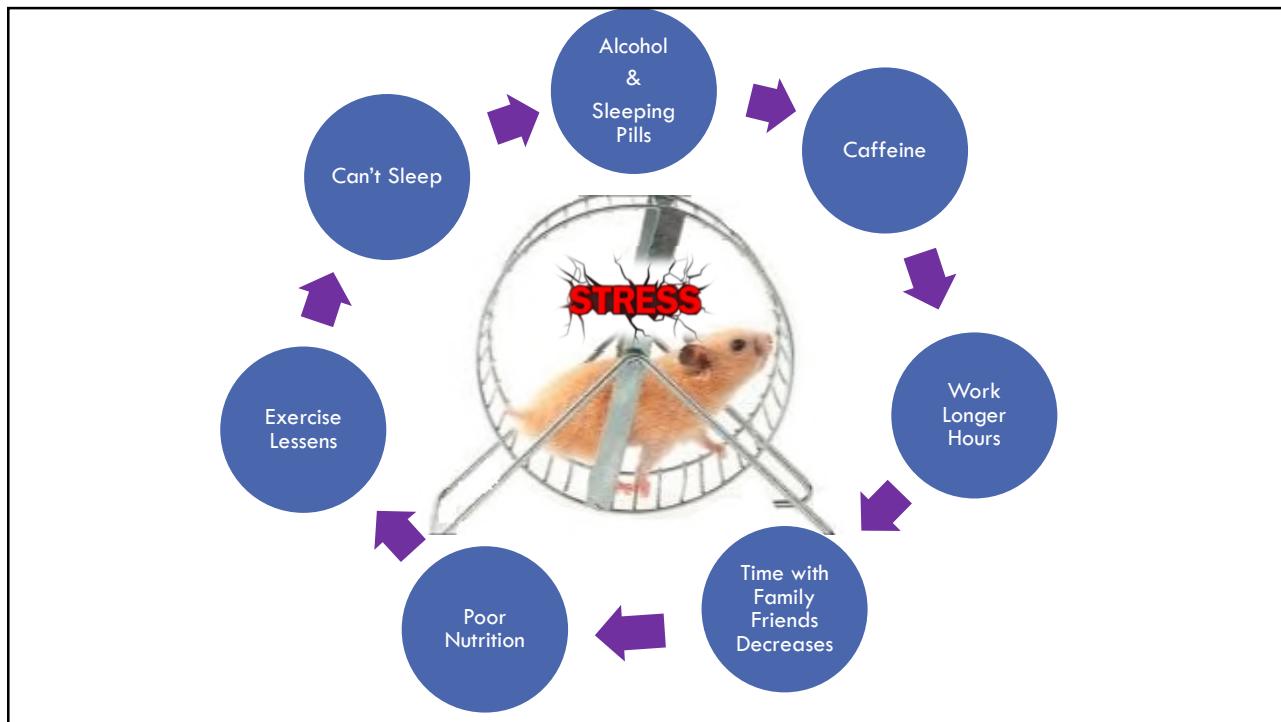


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VICARIOUS TRAUMA SYMPTOMS

- Re-experiencing
- Hypervigilance
- Difficulties Regulating
- Problems Maintaining Boundaries
- Avoidance
- Feeling Numb and Disconnected
- Emotional Exhaustion
- Anger and Cynicism
- Feelings of Professional Inadequacy

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ATTORNEY MENTAL DISTRESS, ALCOHOL & SUBSTANCE USE

MENTAL DISTRESS

3 times more likely to suffer from depression than members of other professions

61% reported experiencing anxiety during their legal career and 46% reported concerns with depression

5th occupationally in the incidence of suicide

All data from Krill, Patrick R. JD, LLM; Johnson, Ryan MA; Albert, Linda MSSW. The Prevalence of Substance Abuse and other Mental Health Concerns Among American Attorneys. *Journal of Addiction Medicine* 10(1): p. 6-52, January/February 2016.

ALCOHOL & SUBSTANCE USE

Substance abuse among lawyers is double the national average. 25% of attorneys in the study reported the nonmedical use of illegal drugs or prescription drugs

21% of lawyers reported problematic drinking



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SOUTH CAROLINA BAR - LAWYERS HELPING LAWYERS



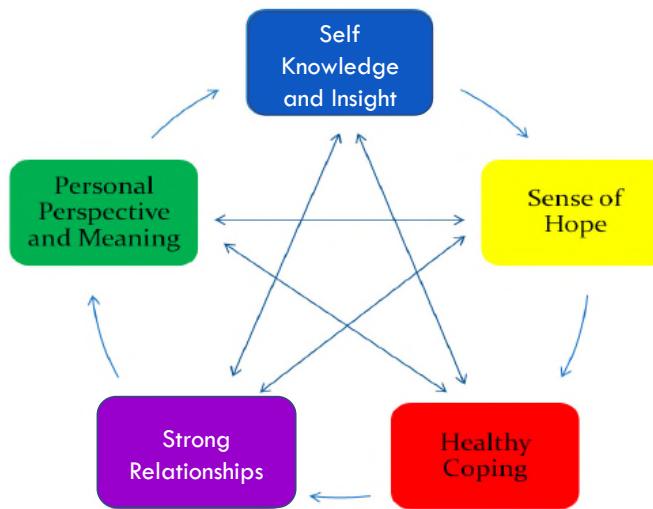
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- Lawyers Helping Lawyers Team- 866-545-9590
- 5 free counseling sessions - 855-321-4384, 24 hours a day/seven days a week



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RESILIENCY MODEL



Activity from A Gecko's Guide to Building Resiliency in Child Abuse Staff and Volunteers.

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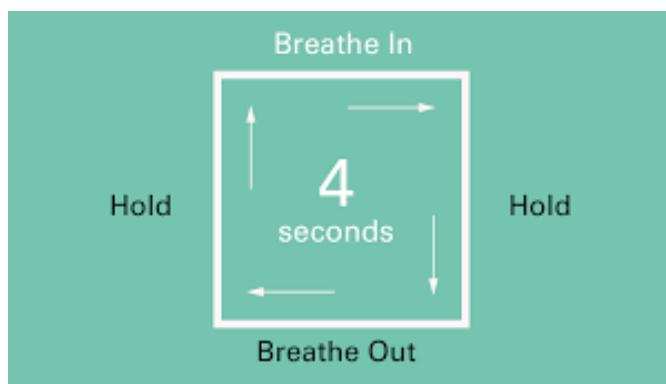
Self-Care



IDENTIFYING SOURCES OF ENJOYMENT

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PAUSE & REFLECT – CONNECT WITH BREATH & PRESENT MOMENT



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CONNECT

- Who within your family, friends or network of colleagues do you check in with?
- How do you make regular time for socialization and fun?
- Do you have established rituals with your family, coworkers, friends for socialization and fun?



Guarino, Kathleen. American Institutes for Research.

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Questions

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