

## **Vicarious Trauma and Attorney Self Care as an Ethical Issue** **Iowa Attorney General's Office, 2018**

Recently, available literature addressing the impact of working with victims of abuse and abusers has expanded its consideration to the effect on attorneys. The unpleasant realities of abuse affect those in the helping professions, including therapists and medical professionals (for whom trauma and self-care are more frequent topics of professional conversation), but also law enforcement, attorneys, and judges. Vicarious trauma,<sup>1</sup> also known as secondary trauma or compassion fatigue, occurs when a person develops symptoms of exposure to trauma, even when the exposure is not direct personal experience, but secondary from bearing witness to the trauma experiences of others.

Criteria for Post-Traumatic Stress Disorder in the Diagnostic and Statistical Manual of Mental Disorders can be met from indirect exposure to the trauma of others. Those symptoms include: avoidance, difficulty concentrating and focusing, depression/hopelessness, difficulty sleeping, hypervigilance, intrusive images, and somatic symptoms like headaches or stomachaches. The hallmark symptoms of PTSD like flashbacks (intrusive images) or exaggerated startle response (hypervigilance) may be more recognizable, but may not be as common. Attorneys should be especially aware of symptoms like avoidance and difficulty concentrating or focusing, since those more subtle, symptoms can lead to impairments in practice which can lead to ethical issues.

### **Avoidance and the Ethical Requirement of Diligence**

Iowa Rule of Professional Conduct 32:1.3 provides: “A lawyer shall act with reasonable diligence and promptness in representing a client.” The comments to this rule require a lawyer to “pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer . . .” (Comment 1 to R. Prof. C. 32:1.3). This is a weighty burden and is sometimes at odds with the attorney’s needs as a person.

Comment (3) raises the impact of procrastination, not only in terms of the matter in question, but it’s bearing on the regard for the legal profession as a whole. “Perhaps no professional shortcoming is more widely resented than procrastination. A client’s interests often can be adversely affected by the passage of time or change of conditions . . . Even when the client’s interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer’s trustworthiness.”

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<sup>1</sup> C.R. Figley, Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview, in *Compassion Fatigue: Coping with Secondary Stress Disorder in Those Who Treat the Traumatized*, 1-20 (Charles R. Figley, ed. 1995).

(Comment 3 to R. Prof. C. 32:1.3). Avoidance, as a symptom of vicarious trauma, can lead to procrastination.

Attorneys may relate to the experience of having *THAT* file that sits on the desk, waiting for every other conceivable task to be completed before being addressed. If the attorney finds he or she has a number of *THOSE* files, or that those files have a theme, it may be time to consider whether this is an avoidance symptom of vicarious trauma.

### **Personal Reaction and the Ethical Requirement of Independent Judgment**

Attorneys are people first, and people have personal and emotional reactions to their experiences. The legal profession requires that attorneys separate their personal reactions and rely on objective and independent judgment in advising their clients. Repeated trauma, however, can erode this professional objectivity.

Iowa Rule of Professional Conduct 32:2.1 provides: “In representing a client, a lawyer shall exercise independent judgment and render candid advice.” The Comment to Rule of Professional Conduct 32:1.7 Conflicts of Interests provides: “Loyalty and independent judgment are essential elements in a lawyer’s relationship to a client.” Vicarious trauma can lead to difficulty concentrating. Re-experiencing symptoms, such as intrusive thoughts and images, can complicate efforts at independent judgment.

There is little in the Rules of Professional Conduct that address the attorney as person and how an attorney’s emotional involvement impacts the professional duties to be discharged. One of the few areas that does directly address emotional involvement is Comment 17 to Rule of Professional Conduct 32:1.8, describing a prohibition on sexual relationships with a client. “In addition, such a relationship presents a significant danger that, because of the lawyer’s emotional involvement, the lawyer will be unable to represent the client without the impairment of the exercise of independent professional judgment.”

Vicarious trauma is an emotional reaction and it can affect objectivity in a similar manner to a romantic relationship.

### **Empirical Studies Confirm the Impact of Vicarious Trauma on Attorneys**

Empirical studies have confirmed vicarious trauma in attorneys and their support staff. One study of the Wisconsin State Public Defenders Office found that 34% met criteria for secondary trauma and 75% met criteria for functional impairment (disruption in personal life, family life).<sup>2</sup>

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<sup>2</sup> A.P. Levin, L. Albert, A. Besser, D. Smith, A. Zelenski, S. Rosenkranz, Y. Neria (2011). Secondary traumatic stress in attorneys and their administrative support staff working with trauma exposed clients. *J. Nerv. Ment. Dis.* 199(12), 946-55.

A study of 23 Canadian prosecutors working with “sensitive cases” involving domestic violence and incest indicated the attorneys experienced demoralization, anxiety, helplessness, exhaustion, and social withdrawal.<sup>3</sup>

Judges also can experience vicarious trauma. One study found that 63% experienced symptoms of trauma, including sleep disturbances, intolerance of others, physical complaints and depression.<sup>4</sup> A study investigating both mental health professionals and attorneys all serving victims of domestic violence found that compared with mental health professionals and social service workers, attorneys were consistently higher on measures of secondary trauma.<sup>5</sup> Research on vicarious trauma in other disciplines suggests that trauma not only leads to psychological distress, disruption of deeply held beliefs about safety or the inherent kindness of others, but can also degrade the professional’s ability to do his or her job.<sup>6</sup>

In short, the emotional toll taken on attorneys by virtue of the privilege of their professional is significant. Recognition of the personal cost should be more common place, and attorneys should be encouraged to discuss and seek support throughout their careers.

### **How to Manage Vicarious Trauma in the Context of a Meaningful Legal Career.**

- Set healthy work/life boundaries. Although it’s not uncommon for attorneys to work long hours to meet deadlines and prepare for upcoming court appearances, these times should be balanced with time off or times of reduced stress. Vacations should be just that - vacations.
- Develop a team. Developing a cohesive professional team that can respond for one another during times out of the office is key to having true respite.
- To the extent possible, TURN IT OFF. Electronic means of communication set the expectation of constant responsiveness, which in turn erodes work/life boundaries. There are times where after-hours responsiveness is needed, but to the extent possible, refrain from immediately attending to any electronic communication outside of work.

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<sup>3</sup> I.M. Gomme and M.P. Hall, Prosecutors at Work: Role Overload and Strain, 15 J. Crim. Just. 191-200 (1995).

<sup>4</sup> P. Jaffe, C.Crooks, B.L. Dunford-Jackson, & M. Town. Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice, 54 Juv. & Fam. Ct. J. 1-9 (2003).

<sup>5</sup> A. Levin & S. Greisberg, Vicarious Trauma in Attorneys, 24 Pace L. Rev. 245-257 (2003).

<sup>6</sup> A.P. Levin. Secondary Trauma and Burnout in Attorneys: Effects of Work with Clients Who are Victims of Domestic Violence and Abuse. (2008).

- Take a break. There will be times when an attorney needs a break and some variety in the legal diet. Seek variety or respite in case load before the secondary trauma becomes too severe. If an attorney is supported by a team, perhaps another team member can step into a particularly bothersome matter, ensuring the client's representation and the attorney's well-being.
- Confess. Find a confidant to talk about the issues of the day. Some of the literature on vicarious trauma indicates attorneys felt relief in knowing they were not alone in the personal distress that accompanies the work.
- Maintain good physical health habits, like healthy eating, exercising, and getting enough rest.
- Be aware. Attorneys are people first. It is natural to have an emotional response to trauma, but the legal culture does not often recognize the attorney as a person. If an attorney notes symptom progression, the attorney should self-monitor and adjust practices to the extent possible.
- Seek assistance. Professional support is available and can help manage the emotional toll taken in service to others.

The legal profession infrequently addresses the attorney as a person and the impact that trauma or other artifacts of the practice of law could have on the practitioner. Attorneys should know personal reactions are normal responses to what can be rewarding but taxing work.