



# Virginia State Bar

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## **Trauma-informed Representation – Practicing with Empathy**

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Has anyone else noticed that the need for legal assistance has intensified? Or that some of those seeking legal assistance are in more distress than similarly situated individuals were pre-pandemic? I have noticed this in my practice just over the past year, and it seems as though our legal aid organizations are seeing similar demands and distress across the state. Family and domestic relations, welfare and public benefits, workers' compensation, unemployment benefits, and civil rights practices are already fraught with stress as attorneys reach into fire after fire to help their clients. It feels like a good moment to consider a powerful tool attorneys can use that has emerged in practice over the past few years: trauma-informed representation.

"Trauma" is a strong word. Clinicians in other disciplines have defined trauma as "an emotional response to a terrible event like an accident, rape, or natural disaster."(i) Something is traumatic when a person's internal and external resources are inadequate to allow them to effectively cope.(ii) Complex traumas may also emerge from experiencing recurring or long-term traumatic events such as domestic violence and traumas that happened in childhood.(iii) Burgeoning research also links higher rates of Post Traumatic Stress Disorder ("PTSD") among people of color to the traumatic experiences of racism.(iv)

Many of us will have experienced trauma ourselves, and most of us have likely already, or will at some point in time, represent clients suffering from trauma. Depending on your practice, you may deal with traumatized clients every day. It shows up as spotty or inconsistent memory, physical and emotional discomfort during interviews or court appearances (racing heart, sweating, stumbling over words while speaking, etc.), general fear of the legal process, self-blame, and many other feelings and behaviors that directly impact legal representation and the attorney-client relationship.

Trauma-informed representation just means that you, the attorney, bring into your practice a deepened understanding of what your clients are facing, challenges they may have as compared to others, and doing what you can to make your client's access to justice a little easier.(v) There are myriad resources to consult for deeper philosophy and practice of trauma-informed representation, but here are my top practice tips from the trauma-informed community.

### *Interviewing and Screening (can also translate to witness preparation)*

It is hard for many to speak about traumatic events clearly. Whether a client is consulting me over something traumatic, or for something routine and something triggers them, these tools have helped me to assist in grounding that client while also keeping the interview on track:

- Taking breaks during an interview;
  - Offer a break when you can tell someone is struggling; and
  - If you know ahead of time that something may be challenging for a client or potential client, schedule enough time for a consult or screening interview to allow for a five minute break here or there
- Helping clients place, or ground, facts in time;
  - Rather than asking about exact dates, establish chronology by asking “before or after” seasons, holidays, or other events you can concretely establish
- Making gentle assurances that you are not judging someone who is showing signs of emotional distress; and
- Providing or offering tissues and water as you're able to assist in comforting the client.

### *Communication and Empowerment*

Many people who have experienced trauma have also experienced invalidation or incredulousness regarding their trauma, as well as oftentimes a lack of control, during the traumatic events and/or in trying to deal with the aftermath of the trauma. Invalidation may be the reason they are seeking legal assistance to begin with—they are seeking justice that you may or may not be able to achieve. If the legal system cannot provide the validation they are looking for (and it often does not), you are in a position to be able to empower your client just by listening and validating them and their experience.

- Gently affirm the client's (or potential client's) point of view before offering legal analysis.
  - As attorneys, we may be thinking straight to legal conclusions after we receive a client's story or new piece of information. If that story or information is important to them, we can first validate them without committing to a specific legal course of action and offer support and patience by listening and responding as a human first and attorney second.
  - Many times an intake does not yield a cognizable claim, and in those circumstances, sometimes just hearing an attorney say “that is very unfortunate, I am so sorry that

happened to you” goes a long way in allowing someone to move past a challenging situation.

- Preview the steps in the legal process and provide ample information.
  - Making a concerted effort to explain and outline the steps in the legal process can help the client better understand what they can expect, which helps to fight feelings of powerlessness and uncertainty that may be heightened due to trauma.
  - Taking special care to outline when the most intense moments in the case may strike can help clients prepare themselves and understand the bigger picture, especially in litigation.
  - Prioritizing transparency in the process of representation can help to dispel intimidation clients may feel from the legal process and help them to recover their individual agency.

There are many more practice tips to be learned from trauma-informed representation principles, and I encourage you to explore them. Go forward with empathy.

(i) AM. PSYCH. ASS'N, Trauma, <https://www.apa.org/topics/trauma> (last visited March 29, 2023).

(ii) See Sarah Katz & Deeya Haldar, The Pedagogy of Trauma-Informed Lawyering, 22 CLINICAL L. REV. 359, 364 (2016).

(iii) See Christine A. Courtois, Complex Trauma, Complex Reactions: Assessment and Treatment, 41 PSYCHOTHERAPY: THEORY, RSCH., PRAC., TRAINING 412, 412 (2004).

(iv) Monica T. Williams, Uncovering the Trauma of Racism, AM. PSYCH. ASS'N (Feb. 2019), [apa.org/pubs/highlights/spotlight/issue-128](https://www.apa.org/pubs/highlights/spotlight/issue-128).

(v) Many organizations, law schools, and firms have great resources on trauma-informed representation and have developed varying definitions.

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## About the Authors

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**Mary Margaret Thacker (née Hawkins)** joined BotkinRose in 2022 after completing her clerkship for the Honorable Circuit Court Judges of Rockingham County. This experience has prepared her for the many different types of cases and clients she has at BotkinRose. She also brings with her varied experiences during law school, including a judicial internship in the United States District Court for the Northern District of West Virginia. Mary Margaret earned her law degree, cum laude, with a Family Law Concentration and became a member of the Order of the Barristers upon graduation for her excellence in trial advocacy. She focuses her practice on litigation, and she is able to handle a variety of matters dealing with family formation and domestic disagreements, from adoptions to divorce and child custody, as well as trust and estate issues, contract disputes, and construction controversies.

Mary Margaret is actively involved in the Virginia State Bar Young Lawyers Conference, currently serving as a 7th District Representative. She resides in Rockingham County with her husband and their black lab,

Gunner. They enjoy all that the Valley has to offer in the way of hunting, fishing, kayaking, and hiking. She is also an avid baker and enjoys reading when she has the extra time.

**Nicole D. Faut** is a solo practitioner in the Shenandoah Valley whose practice focuses on plaintiff-side labor/employment and civil rights. She obtained her J.D. from the City University of New York (CUNY) School of Law where she got her start advocating for working people, and she is licensed to practice in New York, Washington, D.C., West Virginia, and Virginia. She serves as a District 7 Representative of the YLC.

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