



## Mindfulness in the face of trauma

THE WORLD IS EXPERIENCING A COLLECTIVE AND DEVASTATING TRAUMA, TRAUMA THAT CAN AFFECT OUR ABILITY TO COMPETENTLY DISCHARGE OUR DUTIES

What were you doing a year ago? This article is being published in March, so odds are you were adjusting to working from home, perhaps supervising children learning remotely, and searching for hand sanitizer, masks and toilet paper. Most of us thought that reality would be temporary. Little did we know, we were experiencing the beginning of a long-term transition.

This year has been one of the most traumatic in recent memory – from the toll the COVID-19 pandemic has had on our lives to the events at the capitol on January 6, 2021.

The American Psychological Association defines trauma as an emotional response to a terrible event. It can cause a person to feel anxious, nervous, overwhelmed, irritable or moody. Trauma can make it difficult to concentrate or make decisions. And it can result in a strain on interpersonal relationships, resulting in conflict or

causing a person to withdraw from activities with others.

It is no secret the COVID-19 pandemic has been associated with mental health challenges. “Symptoms of anxiety disorder and depressive disorder increased considerably in the United States during April-June of 2020, compared with the same period in 2019.” (Czeisler MÉ, Lane RI, Petrosky E, et al. Mental Health, Substance Use, and Suicidal Ideation During the COVID-19 Pandemic – United States, June 24-30, 2020. *MMWR Morb Mortal Wkly Rep* 2020; 69:1049-1057. DOI: <http://dx.doi.org/10.15585/mmwr.mm6932a1> external icon.)

Qualtrics and the Human Research Ethics Committee of Monash University (Melbourne, Australia) conducted a survey in June 2020 of adults residing in the United States and found:

- 40.9% reported an adverse mental or behavioral health condition such as

symptoms of anxiety disorder or depressive disorder

- 51.9% of respondents age 25-44 reported at least one adverse mental or behavioral health symptom
- 13.3 % reported starting or increased substance use to cope with stress or emotions related to COVID-19
- 10.7% reported having seriously considered suicide in the preceding 30 days  
(*Ibid.*)

### Justice and trauma

The justice system only functions as well as its participants. And lawyers and judges are principal actors in that system. We are human and are affected by trauma just like everyone else. And that is a fact which must be acknowledged and accepted. But that is not the end of the analysis. If we are not emotionally healthy, Lady Justice is not healthy. Enter the rules

of ethics and professional responsibility.

In recognition of the important roles we play, we are subject to ethical rules and standards to safeguard the health of our system of justice. Rules governing the conduct of lawyers and judges are comprehensive, at times are complex and interconnected, and are essential to upholding the rule of law and ensuring access to justice.

Trauma can affect our ability to function at our best to the detriment of the public trust. So how do we counteract trauma?

### Mindfulness

Mindfulness is not easy. It requires reflection and being intensely aware of what we are sensing and feeling in the moment. And it requires a willingness to step back, accept the force of trauma on our actions, and to take steps necessary to ensure it does not impair our ability to act within our ethical responsibilities.

We are all living in bubbles. Lawyers are working from home, yet technologically tethered to their offices and clients while simultaneously tending to household responsibilities. Judges are also tethered to work yet physically isolated from colleagues, counsel, and the parties. Judges and lawyers alike are frustrated by imperfect technology and challenges to engaging in fundamental litigation activities like depositions, mediations and trial. While technology goes a long way in keeping us connected, when our bubbles intersect, the effects of the trauma surface and can trigger responses running counter to our professional responsibilities.

The practice of law can be mentally challenging under ordinary circumstances – the long hours, demanding and difficult clients and colleagues, multiple time demands. The resulting stress is expected and understood. When trauma is added to stress, mindfulness of our behavior is the key to wandering onto the perilous path of unethical conduct.

Judges and lawyers are subject to intersecting professional rules of conduct designed to facilitate equal access to justice and efficient administration of justice. There is a reason lawyers are often referred to as “officers of the court.” We are all in this together.

“A judge shall require order and decorum in proceedings before the judge.” (Cal. Code Jud. Ethics, canon 3B(3).) Judges are required to “dispose of all judicial matters fairly, promptly, and efficiently” and “shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.” In doing so, judges must require lawyers to “be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others” and to “refrain from manifesting, by words or conduct, bias, prejudice, or harassment.” (*Ibid.*)

A lawyer must not “engage in conduct that is prejudicial to the administration of justice.” (Rule of Professional Conduct 8.4(d).) Lawyers “also are obligated to maintain the respect due to the courts of justice and judicial officers.” (Bus. & Prof. Code, § 6068, subd. (b).)

These are perhaps the most fundamental pillars of our collective professional responsibilities. They intersect and are dependent on each other. And when we falter in stressful times, the resulting toll on mental health can have ethical consequences for judges and lawyers alike.

“A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of all staff and court personnel under the judge’s direction and control.” (Cal. Code Jud. Ethics, Canon 3B(4) (emphasis added).) The canons of judicial ethics, judicial ethics handbooks, and judicial educational courses are replete with directions,

suggestions, and tips for maintaining decorum and exhibiting good judicial temperament. And each year, the Commission on Judicial Performance publishes its Annual Report – a powerful illustration of the consequences of failing to heed the call.

### The duty to be patient, dignified, and courteous

While there is no corresponding California rule of professional responsibility that states an attorney’s duty to be patient, dignified, and courteous in such stark terms, that is not to say such a duty does not exist.

“The law, like boxing, prohibits hitting below the belt.” (*Martinez v. Department of Transportation* (2015) 238 Cal.App.4th 559, 566.) In *Martinez*, counsel asked improper questions of a witness in a jury trial despite the judge’s repeated rulings and admonitions. The court found this questioning to be “directly disrespectful, almost as if [counsel] were daring the trial judge to take some action to stop [it].” The court reversed the jury verdict and remanded the case, finding that counsel took “advantage of this judge’s good nature” and the judge “took no corrective action whatsoever.” Moreover, the Court of Appeal instructed the clerk to send a copy of the opinion to the state bar, “notifying it the reversal of the judgment is based solely on prejudicial attorney misconduct.” (*Id.*; see Bus. & Prof. Code, § 6086.7; Cal. Code Jud. Ethics, Canon 3D(2).)

The duty to be patient, dignified and courteous manifests itself in other ways as well.

“In representing a client, a lawyer shall not use means that have no substantial purpose other than to delay or prolong the proceeding or to cause needless expense.” (Rule of Professional Conduct 3.2.) Lawyers are encouraged to grant first requests for reasonable extensions of time to respond to litigation deadlines and should not seek extensions or continuances for the

purpose of harassment or prolonging litigation. They should not attach to extensions unfair and extraneous conditions. As with all advocates, lawyers should at all times be civil and courteous in communicating with adversaries, whether in writing or orally. When conducting discovery, attorneys should give reasonable consideration to accommodating schedules when setting depositions where it is possible to do so without prejudicing the client's rights, and should engage in a meaningful meet and confer prior to filing any motion. And finally, lawyers should not attempt to delay a deposition for dilatory purposes but only if necessary to meet real scheduling problems. (Los Angeles County Superior Court Local Rules, App. 3.A.)

### **Don't make COVID your excuse**

Resist the temptation to use the COVID-19 pandemic as grounds to justify refusing to participate in a deposition even using remote technology, failing to timely respond to discovery requests because you are working from home, refusing to meet and confer over discovery and other disputes, refusing to stipulate to reasonable requests for extensions or other accommodations necessitated by the pandemic, or making litigation demands made excessively difficult or impossible demands in light of travel restrictions and/or the need to socially distance. Doing so not only implicates the attorney's ethical responsibilities but triggers the ethical responsibility of the judge to take appropriate remedial action against the attorney.

Operating within the bounds of professional advocacy is not the only potential casualty of unaddressed stress due to trauma.

We all experience frustration and even anger in connection with work. When experiencing feelings of anger or frustration, it is important to be mindful of the source of those emotions, both for personal emotional health and for

reasons of professional responsibility. We can use some of the tools we use in ordinary life to avoid unfortunate professional consequences – know your triggers and never argue when angry or with someone else who is angry.

Do not let fear steer you in the direction of violating your responsibility to avoid delaying or prolonging the proceedings or causing needless expense. This is the time to be creative. If you are working on a case deep in litigation and/or headed quickly to trial, explore ways to leverage technology to support your practice. While imperfect, several online platforms can effectively facilitate depositions, evidentiary hearings, and bench trials. Explore remote ADR offerings. Now is the time to learn the technology and invest in the infrastructure needed to support it. Many of the innovations and changes in the way we interact as a society due to the need to socially distance will likely become permanent fixtures in the future practice of law. And investing in them now will only serve to enhance the ability of attorneys to serve their clients and the court in the administration of justice.

The world is experiencing a collective and devastating trauma. As officers of the court, that trauma can affect our ability to competently discharge our duties. We must remain aware and vigilant and take steps to safeguard against it. We meet our ethical responsibilities when we are mindful and take steps to mitigate against the harmful impact the resulting stress has on our emotional health.

Trauma and the resulting stress can have a direct impact on an attorney's professional competency. "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." (ABA Model Rule 1.1; see Rule of Professional Conduct 1.1.) Competence "in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical

ability reasonably necessary for the performance of such service. (Rule of Professional Conduct 1.1(b).) In the work-from-home framework of our new normal, it is imperative for attorneys to practice set boundaries – limit the number of times you check email, use the "do not disturb" settings on your devices, and take breaks away from your devices.

Because the practice of law is stressful even under ordinary circumstances, it may be hard to recognize the impact the reality of living in these times is having on our ability to do our jobs. But it is imperative that we do so in the interest of justice and the integrity of the profession.

For more information, resources and support, please visit:

**American Bar Association  
 Coronavirus (COVID-19) Taskforce:**  
<https://www.americanbar.org/advocacy/the-aba-task-force-on-legal-needs-arising-out-of-the-2020-pandem/>

**California Lawyers Association:**  
<https://calawyers.org/covid-19-attorney-resources/>

**Centers for Disease Control:**  
<https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/managing-stress-anxiety.html>

**Consumer Attorneys of Los Angeles:** <https://www.caala.org/?pg=CAALAWellnessPlatform>

**Consumer Attorneys of California:**  
<https://www.caoc.org/?pg=Coronavirus>  
**World Health Organization:** <https://www.who.int/teams/mental-health-and-substance-use/covid-19>

**Los Angeles County Coronavirus/COVID-19 Mental Health Resources:**  
<https://dmh.lacounty.gov/covid-19-information/>

*Hon. Michelle Williams Court is an Assistant Supervising Judge of the Civil Division of the Los Angeles Superior Court and a Chair of the Court's Technology Committee.*

