

Trauma-Informed Legal Advocacy: Practice Scenarios*

Taking a trauma-informed¹ approach can help us to be more effective legal advocates and lawyers and, ultimately, help someone achieve their legal goals. This tool uses six common scenarios to explore how taking a trauma-informed approach can help us to improve our legal advocacy. In each scenario presented, we will apply a trauma-informed perspective to look at what might have happened from the perspective of the person we are working with and what might have helped.

A trauma-informed approach is one that

- recognizes the pervasiveness of trauma;
- incorporates an understanding of its impact on individuals and communities;
- minimizes retraumatization;
- supports healing and resiliency;
- addresses the root causes of violence;
- is self-reflective and relational (the relationship as the foundation of healing and justice work); and
- takes a contextualized approach to understanding and responding to trauma.

Scenario 1: Trauma, Memory & Trust Building

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

Step 1. What happened from their perspective?

In this case, we can start by recognizing that there are many reasons why someone might not share information with us, some of which may be related to experiencing trauma. In particular, experiencing abuse by someone who

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¹ The term trauma-informed was originally coined by Maxine Harris and Roger Fallot in 2011.

is close to us (such as an intimate partner) can make it difficult to trust people in the future. Of course, someone's hesitations about sharing information may also reflect an awareness of real dangers that the information shared will be held against them in court.

Another reason that someone may not share information right away is that they don't remember, or they can't recall it in the way that you are asking for it. In some cases, this may reflect a dissociative response. The Sidran Institute explains that, when someone dissociates, "there is a change in a [their] consciousness which disturbs the normally connected functions of identity, memory, thoughts, feelings, and experiences."² Thus, when we dissociate, our understanding of what is happening and our experiencing of what is happening become disconnected. This is a protective coping mechanism that can keep someone emotionally safe during traumatic events.³ "People may use their natural ability to dissociate to avoid conscious awareness of a traumatic experience while the trauma is occurring, and for an indefinite time following it."⁴

The Sidran Institute gives the following factors as relevant to why someone might dissociate:

| Factors Influencing Continuous Memory | Factors Influencing Dissociation/Amnesia |
|--|---|
| <i>Single traumatic event</i> | <i>Multi-event (repetitive)</i> |
| <i>Natural or accidental cause</i> | <i>Deliberate human cause</i> |
| <i>Adult victim</i> | <i>Child victim</i> |
| <i>Validation and support</i> | <i>Denial and secrecy</i> |

Despite the fact that it is very common for survivors of trauma to forget information and then remember later, we know that courts often react negatively to this situation. Similarly, courts may also react negatively when

² Sidran Institute and the Sheppard and Enoch Pratt Health System, *What are Traumatic Memories?* (1994), available at <http://www.sidran.org/sub.cfm?contentID=74§ionid=4>.

³ Some of the language about dissociation used here comes from Olga Trujillo, JD. Visit www.olgatrujillo.com.

⁴ Sidran Institute, *supra* note 2.

information from litigants is not organized in a way that is familiar to them. Survivors' credibility may be questioned when there are gaps in their memory.

For example, a 2009 study explored the differences between petitions for orders of protection that were granted and those that were denied. Researchers found that petitions filed by lawyers were more likely to be granted than those filed pro se. They also found that the lawyer's petitions were more likely to (1) have an overarching theme, (2) highlight events that met the legal definition of abuse, and (3) order the events chronologically.⁵ Of course, survivors of trauma do not always remember their experiences in chronological order. On the other hand, survivors of domestic violence may remember events but they may ascribe different meaning to the events than reflected in legal definitions of abuse, which often emphasize physical violence. For example, incidents of psychological abuse are often described as more hurtful than physical acts of violence by survivors of domestic violence.

Step 2. What might have helped?

This scenario illustrates that a trauma-informed approach includes being thoughtful around issues of trust and memory. Building trust with someone takes time. Unfortunately, in our advocacy and attorney-client relationships, time is often limited due to large caseloads. A key part of a building trust when time and resources are limited is being transparent about what we have to offer, including limitations on time.

"I'm really glad you called. I have about five minutes to talk right now. If we need more time, we can schedule another call."

You can also build trust by being transparent about why you need the information you asking for, such as information about mental health history. This practice can help us to avoid communicating an assumption that we have the right to information about a person by virtue of our role as an advocate or lawyer.

"Is there any reason why your ex might say you are not a good parent? The reason I'm asking is so that we can prepare together for every possible thing that he might say, not because I don't believe you."

⁵ Alesha Durfee, *Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders*, *Feminist Criminology* (2009).

It's also important to look at information gathering as a process that happens over time and, whenever possible, not just during one meeting. As your relationship develops, the person who you are working with may want to share more information, or they may even change parts of their story. This reflects increased trust in you.

"This meeting was really helpful to me, and I want to remind you that I will keep everything that you've said completely confidential. If it's okay with you, I'd like to come back to some of these topics later."

Keep in mind that sharing personal information, such as details about experiences of abuse, can make someone feel vulnerable, especially if they have never shared that information before. Thus, in some cases, someone might share a lot about themselves in an initial meeting and then become more guarded, withdraw from the relationship, or even stop responding to our calls altogether.

With regard to helping someone with memory, the best approach is to start by letting the person you are working with tell their story from start to finish. You can lay out the things that you are interested in learning about in broad terms. Use open-ended questions if necessary to gently facilitate this part of the interview. But use clarification questions sparingly.

"I want to know more about your relationship with you partner, so that we can describe to the judge why you are afraid. Can you tell me what this relationship has been like for you?"

Once a survivor has shared their story, you can go back and ask question to fill in more details.⁶ This is the best approach not only for helping someone remember as much as possible, it also allows time for trust to grow over the course of the conversation.

If you are a lawyer representing someone, you may decide to argue that gaps in memory or other mental health effects of trauma are evidence that someone has experienced abuse. On litigation strategy in family law cases in general, see Denice Wolf Markham, JD, *Mental Illness and Domestic Violence: Implications for Family Law Litigation*, Journal of Poverty Law and Policy (2003).

⁶ Mary Fabri, PsyD, *Interview Guidelines for Attorneys and Legal Staff Working with Survivors of Human Rights Violations*; Jan Russel, JD, *Effectively Interviewing Battered Women* (2008).

Scenario 2: Traumatic Triggers

You are having a hard time connecting with someone who you are working with. Maybe they seem distracted, anxious and agitated, or just shut down.

Step 1. What happened from their perspective?

A person may be feeling distracted, anxious and agitated, or shut down for many reasons. From a trauma-informed perspective, traumatic triggers are one factor that may explain why you are having trouble connecting. A *trigger* is something that evokes a memory of past traumatizing events, including the feelings and sensations associated with those experiences. Encountering triggers may cause someone to feel uneasy or afraid, although they may not always realize why they feel that way. A trigger can make someone feel as if they are reliving a traumatic experience and can elicit a fight, flight or freeze response. Many things can be a possible trigger for someone. A person might be triggered by a particular color of clothing, by the smell of a certain food, or the time of year. Internal sensations, such as rapid heartbeat, nausea, or tightened muscles, can be triggers as well.⁷

A person who is being triggered by something may become anxious and agitated. They might feel nauseous or have other physical reactions. They may not know why they are feeling or reacting that way. They may also appear bored or uninterested, talk about things in a flat or unemotional way, have a blank stare and spacey look, or appear to be shut down or checked out. Their answers to questions may be slow and incomplete. This may reflect a dissociative response. See Scenario 1 for more information about dissociation.

Step 2. What might help?

There are many things that you can do to limit the number of things in your environment that are common triggers for survivors of trauma, and to make your interactions with someone more trauma informed as well.

⁷ This paragraph is taken from NCDVTMH's Special Collection: Trauma-Informed Domestic Violence Services: Understanding the Framework and Approach (Part 1 of 3), available at www.VAWnet.org.

1. *Offer options in the physical space.* As best as possible, provide options to the person you are working with in order to avoid situations that might be triggering. For example, you might be able to provide options on where you will meet; which chair they can use; and whether a door is closed, open, or slightly ajar. If you have an office, consider whether you can make slight adjustments to accommodate multiple seating options.

"Which chair would be most comfortable for you?"

"Would you prefer the door closed or slightly open?"

At the same time, be aware that sometimes options can be overwhelming to someone who is not used to being given many choices.

2. *Facilitate self-soothing.* Experiencing trauma can disrupt a person's ability to manage emotions and self-soothe when they are starting to feel upset. All of us do many things to self-soothe (even if we don't call it that), such as listening to music, going for a walk, or snuggling with a dog or cat. In the context of a legal meeting, your options are more limited, but there are still many things that you can do. Doodling or coloring with crayons, fidgeting with toys or other objects, wrapping up in a blanket, looking at calming pictures, and drinking water are all things that can help someone to negotiate their distance from hard material, manage their emotions, and stay present. Consider whether you can provide physical things in your meeting space that will facilitate someone's ability to self-soothe. This may include having pens, crayons, paper, and small toys on the table in the space where you are meeting, offering water, and hanging pictures in places where someone can easily focus if they need to briefly take a little more distance from what's going on.
3. *Explain things in advance.* For people who have experienced trauma, it can often be helpful to know in advance what is going to happen. This includes telling someone how much time you have to meet, which can also help with building trust. It can also mean telling someone what kinds of things you will need to ask them about during your meeting.

"We have about 45 minutes to talk today. I'd like to hear you talk about your relationship with your partner and then I'd like to ask you some questions. You can ask me questions at anytime. At the end of the meeting, I'd like to make some copies of the materials you brought."

4. *Offer breaks.* Taking breaks can provide someone with the space they need to stay present during a meeting or interview. Offer breaks not only at the beginning of the meeting but also periodically throughout.

"How are you doing so far? Would you like to take a break or would you like to keep going?"

5. *Be thoughtful about note taking.* For people who have been involved in criminal legal systems or in social service agencies that don't practice trauma-informed care, having someone take notes about them may have been one part of a very dehumanizing experience. Being open about our note taking, such as by asking permission to take notes, summarizing the notes that we have taken, or using open body language when taking notes can keep this experience from feeling objectifying. Also, don't allow note taking to take you away from being present with someone. Consider how much time you spend with a pen or pencil in your hand. Whenever possible, try to increase the time you spend with the pen or pencil down, just listening.

There are also things that you can do if someone is being triggered.

1. *Notice and validate their feelings.* Noticing and validating someone's feelings can help them become aware of what's happening with them, if they are not already. It can also let someone know that you care about their emotional safety. This matters in part because it contradicts what happens in many traumatic incidents, where a person's feelings of anxiety and fear are often ignored and dismissed, or where showing these feelings may be met with increased violence. Noticing and validating means sitting with someone as they move at their own pace through their feelings.

"That sounds really scary/hurtful."

"It really means a lot that you are sharing this with me, even though it makes you sad to talk about it."

2. *Ask what would help.* When making suggestions, offer several options whenever possible, rather than just asking "yes-no questions." Asking someone how you can help when they seem triggered also reflects that you are approaching the relationship as a partnership of equal respect.

"Let me know if I can get you a glass of water, or we can just sit together for a moment."

"Would it help to have a moment to yourself or visit with your friend in the waiting room, or maybe something else?"

3. *Use open body language.* If someone is very upset and agitated, using open body language can help to let them know that you do not pose a threat. This includes keeping your shoulders relaxed, keeping your body posture and hands open and relaxed, and avoiding blocking them from being able to exit or walk away.
4. *Help them to get grounded in the present.* If someone seems to be having a dissociative response, you can say things to help them feel safe and ground themselves in the present. Easy ways to ground someone in the present include helping them notice their breath, their physical presence in the environment, or physical things in the environment. For different people, different senses (sight, sound, smell) may be more grounding than others. (If you know grounding might come up for someone, you can ask in advance.) Remember, dissociative responses come up when cues in the environment tell someone that it is not safe. Therefore, it's also important to be attentive to emotional safety while supporting someone in grounding themselves.

"I noticed that you are wearing really nice shoes. Are they comfortable?"

"You know we can sit here on this bench for as long as we need to. We are okay right now, you and me. We can just take our time, no one is going to bother us here."

"Is it hard for you to focus on these questions? When that happens, some people say it helps them to just take a minute to notice yourself breathing in and out."

Scenario 3: Reflective Practice Techniques - Responding to Frustration & Anger

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.

Step 1. What's happening from their perspective—and what gets in the way for us?

There are many reasons why someone may be showing frustration and anger. You may be offering the first place where they can safely show frustration and anger. Their partner may not have allowed them to show frustration and anger at home. You may also be offering the first place where someone's feelings are met with interest and care.

But even if we know this, we may feel an urge to defend ourselves. We might think about how hard we are working and feel unappreciated. We may find ourselves thinking about how “demanding” and “difficult” that person is to work with. We may feel that they are blaming us and in turn we may want to blame them when things are not going well in their case. When we blame someone, it’s hard to find the energy to support them. And without our help it may be less likely that they will be successful in their case.

Over time, we may feel this way about more and more of the people who we are working with. This may be one sign that we are experiencing some of the challenges of doing empathic work, such as the following:⁸

- 1. Burnout**, including exhaustion, cynicism, and ineffectiveness
- 2. Counter-transference**, which refers to the feelings, thoughts, and physical responses that we might have in response to a person we are working with, *and* our defenses and responses to the uncomfortable feelings brought up by that person
- 3. Secondary trauma (sometimes called vicarious trauma)**, which refers to the effects of working empathically with and feeling responsibility toward people who have survived the trauma of abuse, violation, and discrimination

Like other professionals who work survivors of domestic violence, attorneys and legal advocates can be affected by these challenges while during legal work. For example, in one study, public defenders’ self-reports of the number of clients they worked with who had experienced trauma were associated with self-reports by the same attorneys of symptoms of PTSD, depression, and functional impairment (negative impact on their ability to enjoy social and family life, etc.).⁹

⁸ This material is taken from various materials by Carole Warshaw, MD, Director, and Terri Pease, PhD, Senior Training Consultant, at NCDVTMH (citing Saakvitne et al 2000).

⁹ Levin, Besser, Albert, Smith & Neria, *The Effect of Attorneys’ Work with Trauma Exposed Clients on PTSD Symptoms, Depression, and Functional Impairment: A Cross-Lagged Longitudinal Study*, Law and Human Behavior (2012). Attorneys did not specify whether clients were victims or perpetrators of traumatic incidents, or both.

Step 2. Are there ways that you can support them better?

Using a reflective practice approach can help us to maintain ourselves in our work, both within the context of individual cases and over time. Having a reflective practice means regularly engaging in reflection, both in the context of individual interactions and after big successes or losses. Depending on the environment you work in, it can help to team up with one or more of your co-workers on a regular basis to engage in reflective practice. It's important that you share the same goals of being able to build more compassion for the people you are working with, as well as to learn lessons from your successes and losses so that you can improve your work over time.

Whether you are meeting with a co-worker or working by yourself, set specific goals for what you want to accomplish. The following steps might be helpful in being reflective on your work with individuals:

- 1. What might be getting in the way of your ability to work with someone?** In answering this question, the following tool might be helpful.¹⁰

Check any or all of the areas in which you feel challenged by someone:

- Your sense of safety
- Your sense of trust
- Your self-esteem and sense of competence
- Your beliefs
- Your world-view
- Your regulation of your own feelings
- Your need for control
- Your freedom to be yourself
- Your spirituality
- Other areas

- 2. Given this, what are some short-term goals you can set for your work with this person?** For example, is there something you want to try and keep in mind as you work with them? Do you want to try

¹⁰ This checklist was adapted from Saakvitne, Gamble, Pearlman & Tabor Lev (2000), *Risking Connection*, Sidran Press, by Susan Blumenfeld, LCSW, Child Trauma Training Director at NCDVTMH.

and get something done in their case that you've been putting off? Is there additional assistance you could find for them that you haven't thought of before?

3. Is there anything that you can continue doing or start doing to make it easier for you to meet your short- and long-term goals? Examples:

- Set boundaries around phone calls
- Work on the case during a specific time each week, when possible
- Ask a co-worker to remind you of the ways that you are doing a good job in this case
- Use calming or grounding techniques yourself during phone calls (e.g., coloring with crayons)
- Ask for additional supervision
- Write down things that you want to remember when you interact with someone, such as not to take things personally, that you are doing a good job, etc.

Scenario 4: Preparing for Court - Mental Health

During a court proceeding, the person you are working with gets anxious, becomes very angry, or starts to slow their speech and looks like they are "checking out."

Step 1. What happened from their perspective?¹¹

In Scenario 2, we explained traumatic triggers in general. Specific to the court environment, traumatic reminders come in many forms. This may be the first time the survivor has seen the person who abused them in a long time, and they may be triggered by being in the same room as their abuser, by a particular facial expression, a seemingly benign comment, the color of their abuser's clothes, or the way their abuser smells. Encountering such reminders may cause a survivor to feel uneasy, afraid, or terrified. At that moment, the survivor may re-experience what they felt when they were initially traumatized, as if it is happening in this very moment. Also keep in mind that the

¹¹ This section is taken from NCDVTMH's Preparing for Court Proceedings with Survivors of Domestic Violence: Tips for Civil Lawyers and Legal Advocates (2013) available at www.nationalcenterdvtraumamh.org.

abuser may be intentionally doing things or using the court process itself (e.g., filing motions unnecessarily for the purpose of creating opportunities for contact) in order to try and make the survivor feel uneasy, afraid, or terrified.

It is also helpful to remember that, generally speaking, the intent of perpetrators of domestic violence is to control what the survivor says, thinks, feels, and does. Even though confronting their abuser publicly may in the long run be empowering to a survivor, the contentious nature of the legal process requires them to participate in a very public challenge of their partner and often to tell others what has happened—these actions being in stark contrast to the usual dynamics of their relationship. This public confrontation may be intimidating to the survivor, particularly when standing up for themselves in the past led to retaliation. It may also trigger memories of previously attempted challenges that ended traumatically.

There may be other things that are affecting how a survivor participates in court proceedings. If intimidation by an abuser has been ongoing throughout the court proceedings, they may be experiencing the direct effects, such as increased anxiety, sleep deprivation, and exhaustion.

In addition, many people and their communities (e.g., communities of color, LGBTQI communities) have been and continue to be targeted and deeply affected by legal and administrative systems, such as criminal justice, immigration, and child protective services systems. For these reasons, distrust of the system may be another significant factor for the person you are working with.

Step 2. How could you have prepared differently?¹²

You can take steps to help someone emotionally prepare for court in advance:

1. *Offer a virtual tour.* There is often not enough time to visit a courtroom in advance. But you can always take a virtual tour. Move through the logistical and spatial details of attending court, including where both parties will wait before court opens, where they will take breaks, who will be in the courtroom, and the location of restrooms. There is a balance here of giving someone enough information to help them know what to expect and giving them too much information, which could potentially overwhelm them. Let them guide you. If you are working with someone at a courthouse, you can take a virtual tour of the courtroom itself.

¹² This section is also taken from NCDVTMH's Preparing for Court Proceedings tip sheet.

2. *Enlist supporters.* Encourage the person you are working with to bring someone to court with them if they can. If there is no family member or friend who can make it, you can ask about people they may know through a support group, social activity, or church group. If no one is available to attend in person, friends or family can show that they are with someone in spirit, such as by giving notes with messages of support or trinkets that can be carried in the pocket. If you are working with someone with very limited support, they may want to find a peer support hotline. You can help them find one using our resource: [Locating Mental Health and Substance Abuse Supports for Survivors: A Reference Sheet for Domestic Violence Advocates](#).
3. *Suggest making a "night before" plan.* Not sleeping and not eating can have an impact on our ability to manage our emotions, but when we are anxious about something we may have a hard time doing both. Acknowledging to someone that this is often the case can help them to decide how they want to prepare.
4. *Offer to help make a "what if" plan.* This means asking the person you are working with whether they think anything about the court proceedings might be particularly difficult or triggered for them and making a plan for how you will respond. Encourage the person to practice self-calming techniques prior to the day of court so that they become automatic and easier to access when stress makes it hard to think. We might not always know how an experience will affect us. And even if we have some idea, it could be hard to talk about. Always follow the lead of the person you are working with to see how much they want to plan with you.

Even if you haven't made a "what if" plan, it can help to ask the court for a recess when the survivor feels they need one or when you notice them experiencing a trauma response. While on break, validate their feelings. Acknowledge that what's happening may be very upsetting and that they are doing a great job. Sometimes just silently being with someone for a few minutes can help them to calm themselves and prepare to continue.

If a survivor's answers to questions are slow and incomplete, this may be a sign of dissociation usually brought on by intense fear or reliving of a particular attack or experience. Once in recess, support them in re-grounding themselves. As described in Scenario 2, you can say things to help them feel safe and ground themselves in the present. Easy ways to ground someone in the present include helping them notice their breath, their physical presence in the environment, or physical things in the environment. You might also acknowledge what happened. You might say, for example, "Their attorney asked you a question intended to scare you. You did get scared, you 'went away,' and nothing bad happened." If you can't take a recess, you may be able to offer a glass of water or do something else that will bring someone's attention to the present.

Scenario 5: Preparing for Court - Substance Abuse

Someone you are working with comes to a court hearing under the influence of alcohol or other drugs. It is clearly affecting their ability to participate in their case and you are worried that the judge will notice.

Step 1. What happened from their perspective?

Many people use alcohol or other drugs to cope with ongoing violence and abuse or the traumatic effects of violence and abuse. For survivors of domestic violence, experiences of abuse may be connected to substance use in other ways as well. Abusers may have forced or coerced their partners to use or they may have sabotaged their partner's efforts to get clean and sober. Research shows that between 25% and 50% of the women receiving domestic violence services have substance abuse conditions.¹³ Furthermore, between 67% and 80% of women in substance abuse treatment are survivors of domestic violence.¹⁴

People who abuse alcohol or other drugs to cope are at risk of doing so when they are under stress. Of course, court proceedings can be extremely stressful. If someone does not have alternative coping mechanisms or if they don't have social support for abstaining, their risk of using will be higher. The stress of going to court can also create risk for some people who are in recovery from alcoholism or addiction.

Step 2. What could you have done differently?¹⁵

Asking about substance use in a way that destigmatizes drinking and using can reduce the risk that someone will abuse substances during legal proceedings. If you are a lawyer representing someone in their case, you may also need to prepare for the possibility that someone's use of substances could be used against them at trial. If you have a confidential relationship with the person you are working with, you can let them know that if they want to talk about substance use, the conversation will be privileged.

¹³ Patricia Bland, M.A., CDP, *In Harm's Way: Substance Abuse and Safety Issues in the Context of Violence Against Women* (citing studies by Bennett & Lawson, 1994; Downs, 2001; Ogle & Baer, 2003).

¹⁴ *Id.* (citing studies by Cohen, et al., 2003; Downs, 2001).

¹⁵ The suggestions in this section are taken from Patti Bland, Substance Abuse Training Director at NCDVTMH.

"So many people I work with tell me that they drink alcohol, pop pills, or use something else when they are stressed out. Having to go to court can be really stressful. That's why I ask everyone I work with whether they want help making a plan for staying clean and sober before going to court. And since I'm your lawyer, anything you tell me is confidential."

If someone discloses substance abuse to you, work together to develop a brief emergency relapse prevention plan. Making a plan can be as simple as writing on a slip of paper:

If I feel like using alcohol or other substances before court:

I will _____

I want my advocate, lawyer, sponsor, or friend to _____

Because abusers often use stigma related to substance abuse against their partners, such as by telling them that no one will believe them due to their alcohol or drug use, countering stigma can help to facilitate someone's healing beyond their immediate case.

If you are serving as someone's lawyer, disclosure of information about substance abuse history can also give you an opportunity to plan for how to respond if this information is used against your client in their case. Finding out more about how substance abuse was connected to the relationship could be helpful. For example, you may want to know if the abuser forced your client to use or sabotaged her recovery. You may also want to know if your client's use has decreased since leaving their abusive partner or if there is other evidence that their substance use was part of your client's coping strategy. This information will help you develop your strategy for responding if this information comes up in the case.

"I'm really glad that you told me about that. A lot of people struggle with that, even though people don't talk about it because it's so stigmatized. I'd like to ask some more questions about your history of using so that we can be prepared in case your ex brings it up in court."

For more plans that you can fill out, see [Preparing for Court Proceedings: An Info & Work Sheet for Survivors, Legal Advocates & Lawyers](#). If you need help locating support resources for someone, see our resource, [Locating Mental Health and Substance Abuse Supports for Survivors: A Reference Sheet for Domestic Violence Advocates](#).

Scenario 6: Supporting Parenting

You are working with someone who is involved in a custody case. It is possible that their mental health or substance abuse history or status will be used against them in the case.

Step 1. What's happening from their perspective?

In contested custody cases, abusers often use their partners' mental health history against them. An abuser may argue that it is not in the best interests of the children to be with the survivor, even if the survivor has been the primary parent of the children for many years.

These arguments are often a continuation of abusive patterns that were ongoing throughout the relationship. Abusers may have engaged in tactics designed to exacerbate their partners' mental health or substance abuse conditions or may have used these issues to undermine their partners' credibility with friends, families, and others. And abusers often directly undermine their partners' ability to parent. According to Susan Blumenfeld, LCSW, Child Trauma Training Director at NCDVTMH (citing Lundy Bancroft):

We've learned from many first hand accounts that survivors are often undermined in their parenting role by their abusive partners. Harsh criticism, put downs, and being blocked from carrying out nurturing and protective responses (e.g., being stopped from comforting a crying toddler) or other aspects of their role as parents can leave mothers feeling inadequate, uncertain about their capacity to parent, and guilty about not being able to protect their children from exposure to violence in their homes. The cumulative effects of domestic violence can erode her sense of confidence and alter her view of herself which includes being a competent, effective parent.

For all of these reasons, when you are working with someone involved in a custody case or in a termination of parental rights case, supporting their ability to parent—and *helping them to document their efforts*—is very important.

Step 2. How can you support them?

In a recent focus group conducted in June 2013 by NCDVTMH in collaboration with the National Council on Juvenile and Family Court Judges with a group of family law judges from across the country, many judges indicated that they knew that mental health and substance use conditions were often trauma related and could improve over time. At the same time, many judges expressed that they often felt unable to award custody to a survivor-protective parent due to lack of (1) time for her to become stable enough to care for the children and (2) the resources to support her in becoming stable.

The data from this focus group suggest that many judges value and will consider evidence that a survivor is using resources to support her parenting and overall well-being. Legal advocates and lawyers can improve the likelihood that the person that they are working with will win custody by support their ability to parent during the course of the case—and *helping them to document their efforts*.

The following list is taken from Denice Wolf Markham's module on Legal Issues, part of *Access to Advocacy: Serving Women with Psychiatric Disabilities in Domestic Violence Settings*, available at www.nationalcenterdvtraumamh.org:

While a client's case is pending, a legal advocate or lawyer can support a survivor to

- Attend parenting classes;
- Comply with all treatment;
- Attend domestic violence services;
- Establish social supports, including church, playgroups, closer association with family members (such as grandparents, aunts and uncles);
- Become employed if possible, but adequate daycare must accompany employment;
- Become involved in the children's school, including ensuring the children's attendance, participating in parent/teacher conferences, and helping with homework;
- Establish activities with the children, such as scouts, art classes, summer camp, or whatever is available at the client's park district or school.

In addition, the following list is adapted from the UPenn Collaborative on Psychiatric Disabilities' tips on supporting parents with disabilities who are being threatened with loss of their children to child protective services:

While a client's case is pending, a legal advocate or lawyer can support a survivor to

- Communicate as much as possible with their child and document every contact;
- Stay mentally healthy, including following through with mental health or substance abuse treatment;
- Develop their parenting skills and support systems, including through attending support groups; and
- In some cases, develop a wellness or recovery plan that includes a child care plan and an advance directive for treatment.

For more resources on supporting parents with psychiatric disabilities, visit <http://www.tucollaborative.org/>.

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