



# FINDING PERSPECTIVE

**Trauma Informed Lawyering and Empathizing  
Without Becoming "Part of the Problem"**

ADR Services, Inc. 2023 MCLE Day  
January 11, 2023

**Bette Epstein, Esq.  
Glenn Lerman, Esq.**

# SPEAKERS



**Bette Epstein, Esq.**



**Glenn Lerman, Esq.**

# COMPETENCE DEFINED

## Rule 1.1 Competence

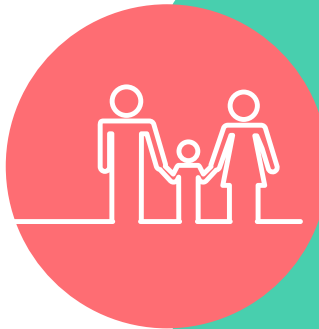
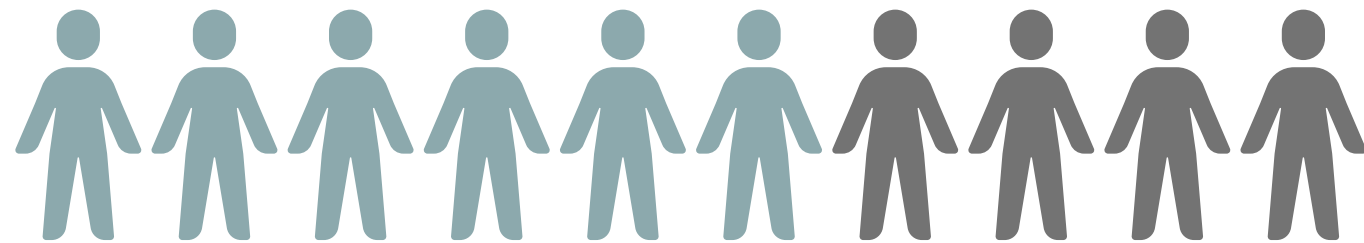
(Rule Approved by the Supreme Court, Effective March 22, 2021)

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “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.
- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes\* to be competent.
- (d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances.

# TRAUMA DEFINED

An event that renders an individual's internal and external resources inadequate, making effective coping impossible.

# EVENTS THAT CAN RESULT IN A PERSON EXPERIENCING "TRAUMA"



Life events such as death, divorce, job loss, abuse, business failure



## Litigation

- Unrealistic Expectations
- The Truth Doesn't Matter

# OTHER CIRCUMSTANCES THAT CAN RESULT IN CHALLENGES FOR COUNSEL (LITIGATORS & TRANSACTIONAL)

Clients or opposing counsel with personality disorders – diagnosed or undiagnosed

Narcissistic Personality Disorder: excessive preoccupation with one's own needs

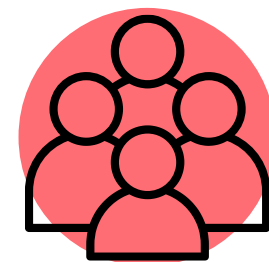
Borderline Personality – characterized by instability in mood, behavior and functioning

Anger Management Issues

# MANAGING THESE CIRCUMSTANCES

# THE INTAKE PROCESS

TAKE NOTE OF RED FLAGS:  
TRUST YOUR INSTINCTS



How Many Prior Counsel Have Represented the Client in this Matter?



How Many Prior Suits Has the Prospective Client Been Involved in?



# RETENTION AGREEMENT LANGUAGE

**SET BOUNDARIES/EXPECTATIONS  
REGARDING AVAILABILITY FOR MEETINGS,  
PHONE CALLS, EMAILS AND TEXT MESSAGES**



# EXAMPLE RETENTION AGREEMENT LANGUAGE

## Client Expectations:

Client understands that the Attorney has several other clients, who also require time from the Attorney. Client also understands that there will be times when the Attorney will be required to devote more time to other client matters, depending on the circumstances of each case. While the Client's case is always important, the Client acknowledges that the Attorney will need to prioritize their time as required.

## Communication:

Attorney will make every effort promptly to respond to communications from the Client. Unless it is an emergency, Attorney will make every effort to return calls and emails by the following business day.

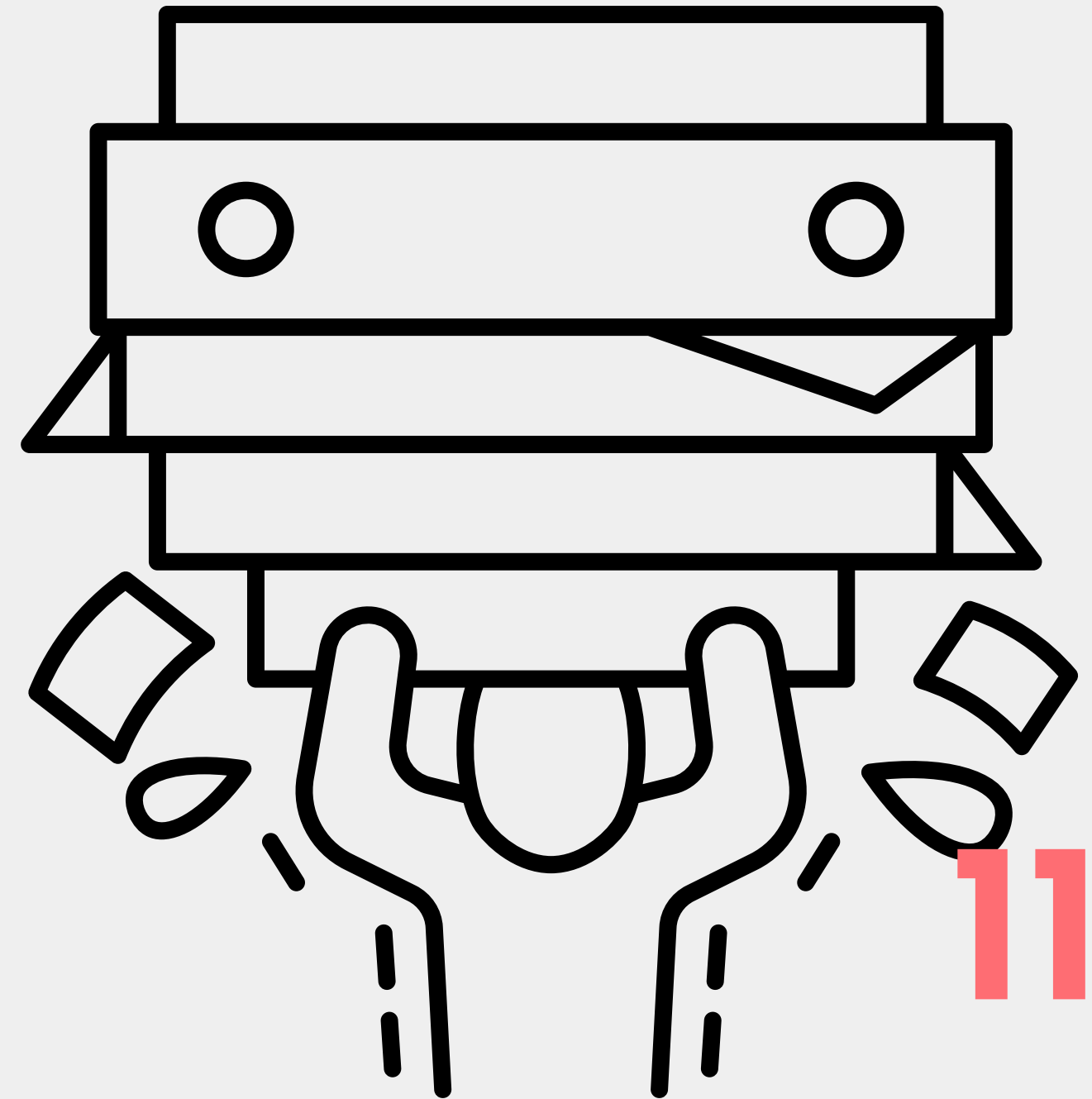
## Meetings:

Attorney and Client will need to meet in person from time to time as part of the litigation process. As a matter of course, the Attorney will determine when and how often in person meetings will occur.



# MANAGE YOUR CASELOAD

How Many Challenging/Highly Emotional Clients Can You and Your Colleagues/Staff Competently Represent at Any One Time.



**AVOID CONFLICT WITH CLIENTS BY RESPECTING  
THEIR VALUES, PERSPECTIVES, EMOTIONS AND  
DECISION- MAKING PROCESS**





# EDUCATE YOURSELF AND YOUR CLIENT WITH OUTSIDE RESOURCES AND INFORMATION

- Learn about the dynamics of domestic abuse, alcoholism, grief, etc.
- Suggest to Clients opportunities for behavioral health intervention, counselors, support groups.



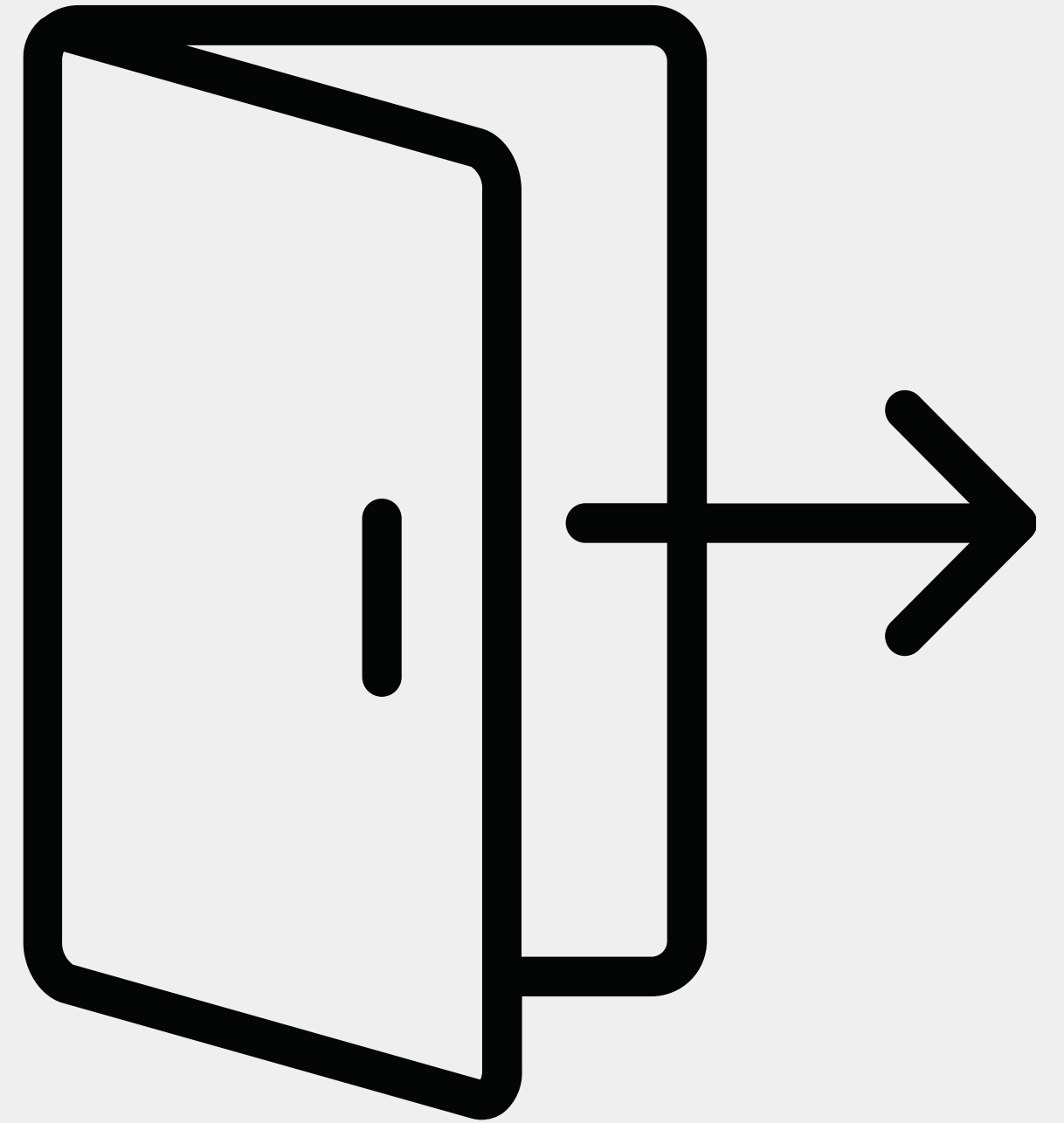
# AVOID "VICARIOUS" TRAUMA

Do Not Make Your Client's  
Trauma Your Trauma

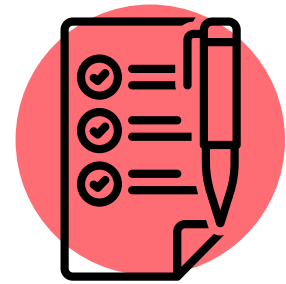


# BE AWARE OF WHEN YOU NEED TO GET OUT

- Motion to be Relieved as Counsel:  
CA Rule of Court 3.1362
- The Earlier the Better



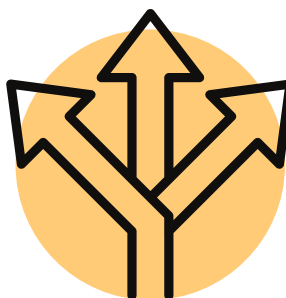
# IN MEDIATION



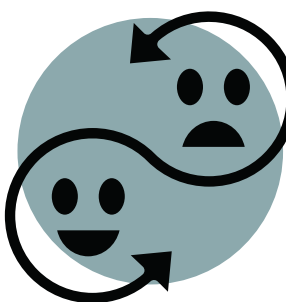
Prepare your client to be able to make binding decisions as part of the mediation process including ensuring that all critical information has been made available.



Understand the clients' decision-making process including the need for non-parties to provide support.



Manage client expectations, unrealistic demands/offers.



Discuss inherent stress of litigation and trial, especially with emotional clients.



# RESOURCES



- The Pedagogy of Trauma-Informed Lawyering: Katx & Haldar  
[law.nyu.edu](http://law.nyu.edu) March 8, 2016
- Strategies for a Trauma-Informed Practice: Howlett & Sharp  
[Legalburnout.com](http://Legalburnout.com) October 28, 2021
- Can Lawyers and Traumatized Clients Learn to Trust Each Other: Lori  
Teresa Yearwood  
[Slate.com](http://Slate.com) April 1, 2021
- The Impact of Trauma on the Attorney-Client Relationship  
American Bar Association: October 1, 2017

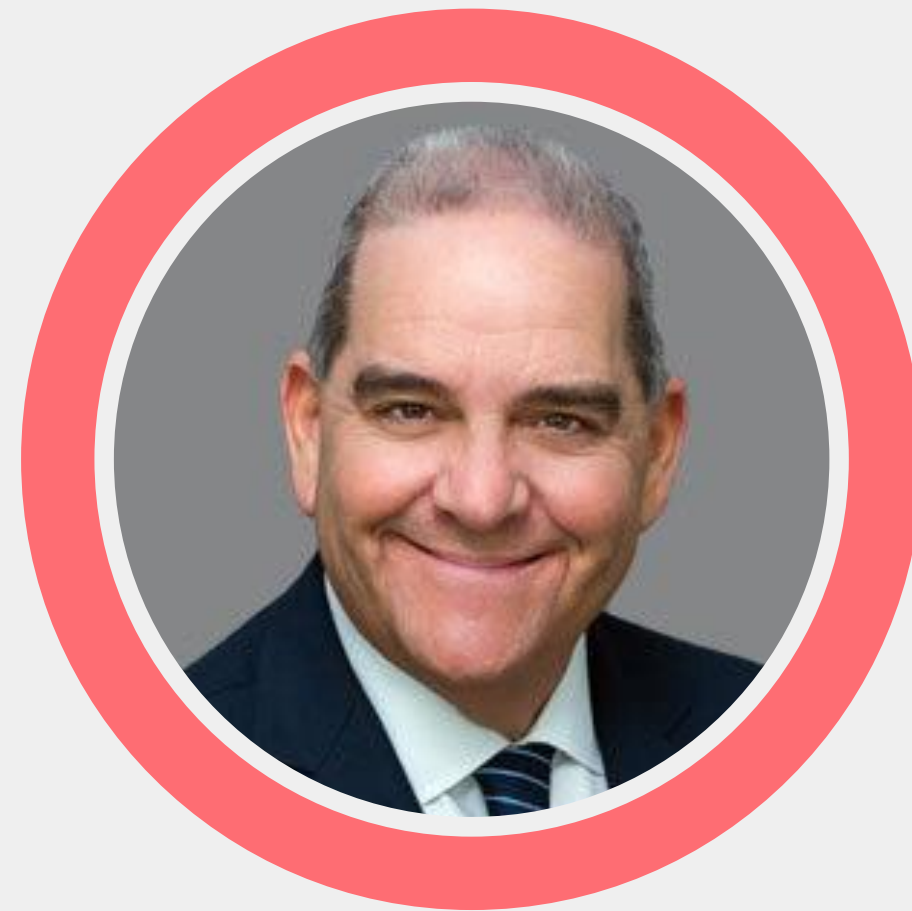


# THANK YOU



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