

Attorneys as Counselors:

Recognizing the Stress of Litigation on Clients

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I. Recognizing the Stress

In 1989, a psychological disorder called Litigation Stress Syndrome was identified by Dr. Paul R. Lees-Haley. Due to Mr. Lees-Haley's other questionable opinions, such as arguing that mold spores did not impact indoor air quality, he was largely ignored. However, in the last twenty-five years, psychologists have acknowledged the connection between litigation and symptoms of anxiety, depression, and physical illness. Psychologists have given several names to this condition without agreement. "Critogenic (law-caused) harm" is defined as the "intrinsic and often inescapable harms caused by the litigation process itself, even when the process is working exactly as it should." "Litigation-response syndrome" is "made up of complaints that arise solely from the experience of being personally involved in a lawsuit, rather than the events that precipitated the litigation." Finally, there is "forensic stress," which is the burden of stress accompanying litigation which can develop into "forensic stress disorder." (Windsor Yearbook of Access to Justice, Volume 34, Issue 1, Abstract, I. Intro, II. What is Litigation Stress?, IV. How is Litigation Stress Manifested?, and VI. What can Lawyers Do to Mitigate Their Clients' Litigation Stress?)

One article illustrated the idea by examining the *Exxon Valdez* case. The spill occurred in 1989, but trial did not take place until five years later. From there, another fifteen years went by in order to conduct post-trial appeals. In total, the approximate 40,000 plaintiffs had to litigate the matter for a total of twenty years. After the spill, people affected were asked questions from the "Impact of Events Scale." The recipients of this test were given statements of their mental condition such as "I feel anxious" and they ranked these statements from one to four with four being the most extreme. Not surprisingly, significant stress was reported by all the test-takers. However, the people involved in the lawsuit against Exxon had heightened stress, as well as "intrusive stress." Intrusive stress is thoughts, mental images, flashbacks, nightmares, and unpleasant emotions in recalling the events around the spill. The litigants experienced memories as if they were in the present rather than the past. This was due, in part, to having to relive the events during the discovery phase and trial, as well as having the on-going litigation, which did not allow the wounds to heal.

Dr. R.K. Pittman discussed the manner in which litigation stress can take place. He opined that patients involved in lawsuits are no longer able to rely on the psychological defense of avoidance due to the necessity of consulting with their attorneys and experts, testifying at depositions, and testifying again at trial. This failure of avoidance causes a repeated memory of the traumatic events. (The Litigant-Patient: Mental Health Consequences of Civil Litigation *J Am Acad Psychiatry Law*, Vol. 27, No. 2, 1999) In the same article, Dr. Seymour Halleck noted that there are psychological consequences for plaintiffs in personal injury litigation particularly when their veracity is called into question. A therapist of a litigant will encounter not only the trauma that produced the lawsuit, but the distress and disruption of litigation. And this is not even taking into consideration the financial burden.

II. So What Can We Do?

First and foremost is to recognize that stress actually exists and our role as counselors. In the age of email, most communication is written, which can result in the client not feeling heard or having an advocate. This can be particularly true when the case has been assigned by an insurance company and there is no relationship between the attorney and the insured-client. With greater awareness, lawyers can better prepare their

clients for litigation stress, and, where appropriate, take preventative actions to minimize the negative aspects of the litigation experience.

1. Prepare the Client – During the first meeting with the client, explain the process. This is particularly true when the client has never been involved in litigation before. Understanding the litigation map can reduce the stress. This includes a discussion of the anticipated involvement of the client, the timeframe of litigation, and a plan to handle the case. It is also recommended that the client be advised of the very real possibility of settlement to prevent a feeling of betrayal or disappointment that they did not “get their day in court.”
2. Keep the Client Informed – Part of the stress is caused by a client feeling a lack of control. According to Dr. Sharyn Ann Lenhart and Dr. Diane K Shrier, litigants who fare the best emotionally are those who set realistic goals, maintain a sense of control of the litigation process, seek out adequate support, appreciate and focus energy on restoring the original equilibrium of their lives and adequately acknowledge and grieve the losses that come with litigation, even when it has a favorable outcome. (Windsor Yearbook of Access to Justice, Volume 34, Issue 1, Abstract, I. Intro, II. What is Litigation Stress?, IV. How is Litigation Stress Manifested?, and VI. What can Lawyers Do to Mitigate Their Clients’ Litigation Stress?) The stress can be reduced by the attorney keeping the client up-to-date on the case, advising of next steps, and explaining how others in the same position have felt.
3. Set Realistic Expectations – By advising the client of the strengths and weakness of the case and the expected outcome, attorneys can allow the client to make informed decisions, which also increases a sense of control. It is also important that the client be advised of the anticipated social and psychological impact of litigation. Many clients feel righteous and want to move forward to trial so they can have a jury of twelve confirm that they were right. What they do not understand is the amount of stress and anxiety trial can induce.
4. Discuss the Financial Impact – In addition to providing information regarding the merits of the case, it is also important that the client understand the true cost of litigation. This is true whether the client is paying out of pocket, has a deductible, or is covered by insurance. The client’s understanding of the financial implications is one more piece of information in making informed decisions such as settlement.
5. Watch for Stress – This is important in depositions, mediation, and trial. Studies show that if a party to a lawsuit is required to make repeated decisions, he/she will get “decision fatigue,” the result of which is not making a decision at all and maintaining the status-quo. This can inhibit settlement and have a client move forward to trial because it is the easiest decision. This is particularly important when the client is new to litigation.