

Promoting Well-Being in Domestic Relations Court

Understanding Series



NATIONAL JUDICIAL TASK FORCE TO EXAMINE STATE COURTS' RESPONSE TO MENTAL ILLNESS

Chapter 1: Understanding Well-Being in Domestic Relations Court

Key Points

1. Encountering people with mental health conditions or who have experienced trauma is not uncommon for those in the court system.
2. Understanding those conditions or circumstances is of paramount importance for the administration of justice.
3. Exposure to trauma can be debilitating, but a change by judges and court staff in how that exposure to trauma is addressed can be empowering.

One in five persons have experienced a mental health condition, ranging from anxiety to a diagnosis of serious mental illness. At some point during their lives, nearly half of the adults in the United States will experience a mental health challenge, which include depression, anxiety, post-traumatic stress, substance use disorder, bipolar disorder, or psychotic episodes. While there is growing recognition of the prevalence of mental health conditions, stigma still attaches to them, and many individuals do not have access to professional help that could be of benefit.

Judges and court staffs often feel uncomfortable when faced with a court participant who may have a mental health condition or may have experienced trauma or may be uncertain as to the best approach when working with such an individual. A basic understanding of the concepts, issues and vocabulary can improve their comfort levels or enhance effectiveness. This chapter identifies stressors in domestic relations cases, presents considerations to work effectively with parties as well as suggestions for taking care of court staff and peers in the process.

Judges or staff unfamiliar with the impacts of trauma, mental health conditions or domestic abuse may have questions such as these:

Domestic relations cases are a small portion of my workload (or, I'm only on this assignment for two years) and I rely on attorneys and parties to bring issues before me. Why do I need more in-depth knowledge of such these concepts?

The Domestic Relations assignment may be the most challenging calendar assignment that a judge faces. Research shows that the rate of trauma and mental health conditions is high among participants in Domestic



Relations Court.¹ Judges and court staff are generally under-equipped or under-informed as to how to deal effectively and helpfully with such circumstances. But the judge remains responsible for the effective, fair, and efficient disposition of the case, and for safeguarding the well-being of the family. So, an understanding of the impact of mental health conditions and trauma on domestic relations matters will significantly assist a judge and staff in such work.

Judges with an understanding of mental health conditions and available services, as well as the dynamics of intimate partner violence and its impacts on those who experience trauma, will interact more effectively with affected litigants and will manage the legal process better, while also safeguarding the well-being of the individuals before the court. Judges are not psychologists, nor should they endeavor to establish diagnoses or provide for parties' treatment without an assessment by a qualified provider. However, the ability to identify the signs of trauma and mental health conditions is a critical skill. With it come opportunities to engage in early and effective judicial intervention and reduce escalation of conflicts,² which serves to the benefit of children and families.

“Trauma” seems to have become a fashionable buzzword these days. I’m not even sure what it means.

The American Psychological Association gives a description of trauma in its “2017 Clinical Practice Guideline for the Treatment of PTSD”:

“Trauma refers to events or experiences that are shocking and overwhelming, typically involving major threat to the physical, emotional, or psychological safety and well-being of the individual victim(s) and loved ones and friends (as well as to others). Its original occurrence is usually sudden and unexpected and it may be a one-time event. In some cases, after the first incident, it may recur on either a short-term or intermittent basis or it may occur on a regular or prolonged basis to the point of becoming continuous and chronic.”

The Substance Abuse and Mental Health Services Administration (SAMHSA) describes *trauma* as:

“Individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, or spiritual well-being.”

Building on previous sources, such as those above, the Child Welfare and Juvenile Justice subcommittees of the national Mental Health Task Force have developed a description of trauma that is of more practical use to judges:

¹ Idstad, M., Torvik, F. A., Borren, I., Rognmo, K., Røysamb, E., & Tambs, K. (2015). Mental distress predicts divorce over 16 years: the HUNT study. *BMC Public Health*, 15(1). doi:10.1186/s12889-015-1662-0

² Braver, S. L., Sandler, I. N., Cohen Hita, L., & Wheeler, L. A. (2016). A randomized comparative effectiveness trial of two court-connected programs for high-conflict families. *Family Court Review*, 54(3), 349–363. doi:10.1111/fcre.12225

It results from exposure to an incident or series of events that is emotionally disturbing or life-threatening with lasting adverse effects on the individual's functioning and well-being - mental, physical, social, emotional, or spiritual. Trauma can include a direct encounter with such an event(s), or it can involve witnessing the endangerment or suffering of another living being. A key condition that makes these events traumatic is that they can overwhelm a person's capacity to cope, and elicit intense feelings such as fear, terror, helplessness, hopelessness, and despair. Traumatic events include: emotional, physical, and sexual abuse; neglect; physical assaults; witnessing family, school, or community violence; war; racism and other forms of discrimination; bullying; acts of terrorism; fires; serious accidents; serious injuries; intrusive or painful medical procedures; loss of loved ones; abandonment; and separation.

As can be seen from the above, many individuals and organizations have added to the concept of trauma and its many dimensions. Chapter 2 of this document offers a fuller explanation of trauma and includes additional links and references for the reader's use.

We all have stress in our lives, often daily. Why is an exploration of the stressors in domestic relations cases of special importance?

At the heart of a domestic relations matter of any type is the breakdown of a personal relationship. Other than the loss of a loved one, there may be no more stressful event in one's life. Some research shows that such stress may induce trauma in one or more of the participants³ and the dissolution process itself can induce trauma. Research also shows that the incidence of mental health conditions is higher than average among persons involved in domestic relations disputes (including support enforcement actions) or domestic violence.⁴ Being able to understand their experience places the court in a far better position to address their circumstances, to ensure fairness and to protect the best interests of children.

Nearly half of all children in the United States are born to unmarried mothers.⁵ Therefore, not to be forgotten are children and single parents who have never experienced a traditional family unit. Research has found this population is at risk of having more traumatic events with long-term consequences than traditional families.⁶ In a large number of cases, those parents' engagement with the court will come about only to address child support issues. Therefore, courts should consider developing unmarried parenting guides for those parents in recognition of the fact that their issue before the court is child support but their personal experience may be one filled with trauma.

³ Chung, M. C., Farmer, S., Grant, K., Newton, R., Payne, S., Perry, M., & Stone, N. (2003). Coping with post-traumatic stress symptoms following relationship dissolution. *Stress and Health, 19*(1), 27–36. doi:10.1002/smi.956

⁴ Humphreys, C. (2003). Mental health and domestic violence: "I Call it Symptoms of Abuse." *British Journal of Social Work, 33*(2), 209–226. doi:10.1093/bjsw/33.2.209

⁵ Center for Disease Control and Prevention / National Center for Health Statistics

⁶ Carlson, M., McLanahan, S., England, P., & Devaney, B. (2005) What we know about unmarried parents: Implications for building strong families program (Report No. 3). Mathematic Policy Research, Inc.

What are some simple steps I could take to improve the way court processes are perceived by the litigants, especially those who are unrepresented?

Litigants' perceptions of court proceedings are often distorted by their limited viewpoints as they move from step to step without a comprehensive understanding of the entire process. Providing litigants with information, perhaps in pamphlet form, about the whole process should improve those perceptions. Moreover, at each court appearance, ensuring that litigants understand the next step in the process will improve their understanding.

The judicial system, as is true with other complex systems, has its own jargon – names, terminology, acronyms, and the like – that judges, staff and attorneys adopt and use quite readily. Judges can reduce the confusion that a court's special language creates in litigants by using plain English to the extent possible and explaining terminology when its use is unavoidable. It never hurts to ask the participant, "Do you understand?", or "What is your understanding?", or "Is there anything else you would like to have explained to you?"

Self-represented litigants (SRLs), who in many jurisdictions constitute a large percentage of the parties to domestic relations matters, put more burden on judges and staff for making the process understandable. When trying to facilitate SRLs' understanding of the process to make them more effective participants, judges and their staffs have to walk a fine line between giving legal information and giving legal advice. Fortunately, most jurisdictions provide guidance on that subject that must be kept in mind when trying to improve SRLs' perceptions. When legal advice is warranted, judges or staff should offer litigants alternative sources for free or inexpensive legal advice.

How can lawyers and other community partners contribute to better handling of challenging cases?

For the court to be most effective in its dual roles of safeguarding the well-being of families while moving issues or cases to resolution, other stakeholders, especially attorneys, legal services agencies and behavioral health services providers need an understanding of the concepts and needs that we address in this document. Judges should enlist counsel, as officers of the court, in the effort to make the entire process more readily understandable to the participants. Further, as judges and their staffs become trauma-informed, they need to encourage attorneys to develop a deeper understanding of the effects of both trauma and mental health conditions on their clients.

The concept of building a trauma-informed community is beginning to take hold across the country. Chapter 3 of this series addresses that concept more fully.

How do I shield myself and my staff from the impact of being exposed to traumatic events or traumatized people (people who have been traumatized)?

It is clear that the nature of the cases and issues that come before the court on a domestic relations calendar expose judges and court staff to the risk of experiencing trauma. Exposure to trauma experienced by others is unavoidable and can impact those exposed in ways similar to those who have suffered direct trauma. Judges and court staff often see or hear evidence that details horrible events suffered by those who come before the

court, or interact with people who have suffered great trauma. As an illustration, suppose that during a hearing, significant evidence of domestic violence and child abuse is presented. The nature of the evidence is quite distressing, so much so that having viewed or heard the evidence, it becomes a trauma-inducing event for the judge or court staff. There is actually a term for the impact of being exposed to such traumatic life events experienced by others—Secondary or Vicarious Trauma. For judges and court staff, exposure to trauma experienced by others is likely unavoidable and can impact those exposed in ways that are similar to those who have suffered direct trauma.

But judicial officers and court staff can equip themselves to reduce the impact of such exposure to trauma by adjusting how they process information and view their roles in the lives of those who have been traumatized. It begins with a few understandings:

- By nature, judges and court staff have the desire to serve those who come before the court;
- The trauma others experience cannot be undone by a judge or court staff;
- Judges and court staff are able to assist those who have been traumatized, whether through judicial action or appropriate support;
- Focusing on how a judge or member of court staff can help someone who has experienced direct trauma is empowering in that it allows the court the opportunity to make a beneficial contribution to the lives of those who are suffering.

By concentrating on how one can assist another in this fashion, rather than on how one is impacted by being exposed to the trauma experienced by others, judges and court staff can make a difference in parties' lives and that outcome not only minimizes the secondary/vicarious trauma, it actually becomes a fulfilling and meaningful experience. This overall understanding and simple change in perception can replace the impact of being exposed to secondary trauma. Rather than suffering the burdens of having to bear witness to the traumas suffered by others, judges and court staff can recognize the privilege of being in a position to assist those who are suffering.

In the context of secondary trauma, it is important for judges to maintain awareness of their own mental and physical health. Partly because of the judge's role, it is not unusual for a judge to maintain a protective shell of dispassionate stalwartness within which the judge may not recognize their own secondary trauma. A judge who needs help or has trouble identifying that need within themselves should seek help from a professional or from a peer support group.⁷ Then, the judge should take whatever steps are needed to ensure the judge's health is maintained or improved. Judges should also accept the responsibility of reaching out to their peers who may be unaware of their own trauma.

In similar fashion, a judge can be most helpful to staff by becoming aware of their mental and physical health and then taking steps to help them. This requires the judge to develop or hone skills of observing, understanding, sympathizing, and encouraging staff to seek treatment, often through an Employee Assistance Program, for any secondary trauma they are experiencing.

⁷ Maricopa County (Phoenix) Superior Court has such a peer support program, which allows judicial officers to assist their peers who are impacted by the challenges of serving in this role. Contact the Human Resources Office at JudicialBranchHR@JBAZMC.maricopa.gov for additional information.

The best that each judge can offer while serving on the bench is to bring their humanity to the courtroom. Unfortunately, repeated exposure to traumatic events can cause a judge to become overly self-protective, building an invisible impenetrable wall that shields the judge from the impact of trauma exposure. The cost to this approach is that a judge slowly begins to lose the humanity they offer to those who appear before the court. Judges must accept that the work they do can be painful, but the solution is not to wall oneself off from the pain, but to allow the pain to empower the judge to remain humane in the dealings with litigants and to focus on how the judge can improve the lives of those who come before the court.

Concluding Thoughts

While the questions above offer a short overview of some of the key issues, there are other special considerations that need highlighting:

- One of the impacts of COVID-19 has been the introduction of virtual hearings in nearly every jurisdiction across the country. Preliminary research is showing that participants in such proceedings view them positively, due to a number of factors, and that many courts intend to continue such methods in at least some types of proceedings. One “cost” to relying upon virtual appearances is that it limits direct contact between the judge and those who appear. This may hinder the court’s ability to identify those who have experienced or are experiencing mental health conditions or the impact of trauma. Not only might this lead to misinterpretation of behaviors, but it also limits the court’s ability to effectively assist those individuals. There is more detail on this topic in Chapter 4.
- COVID-19 also brought greater national recognition of stressors and their impact on personal functioning. The disruptions, social, economic and otherwise, will have long-reaching impacts on court functionaries and parties alike.
- Judges always need to be mindful that any decisions they make should be informed by a holistic perspective that takes into account the wide range of issues that drive human relationships.
- When a judge takes on a domestic relations calendar, it does not take long to learn that the judge's involvement rarely ends with a decree or final order. Post judgment disputes, especially where children are involved, can span years. Therefore, at each encounter, judges should look beyond the issue before the court and make every effort to work with the parents to secure longer term resolution of issues.