



Legal Ethics & the Strengthening Families Model

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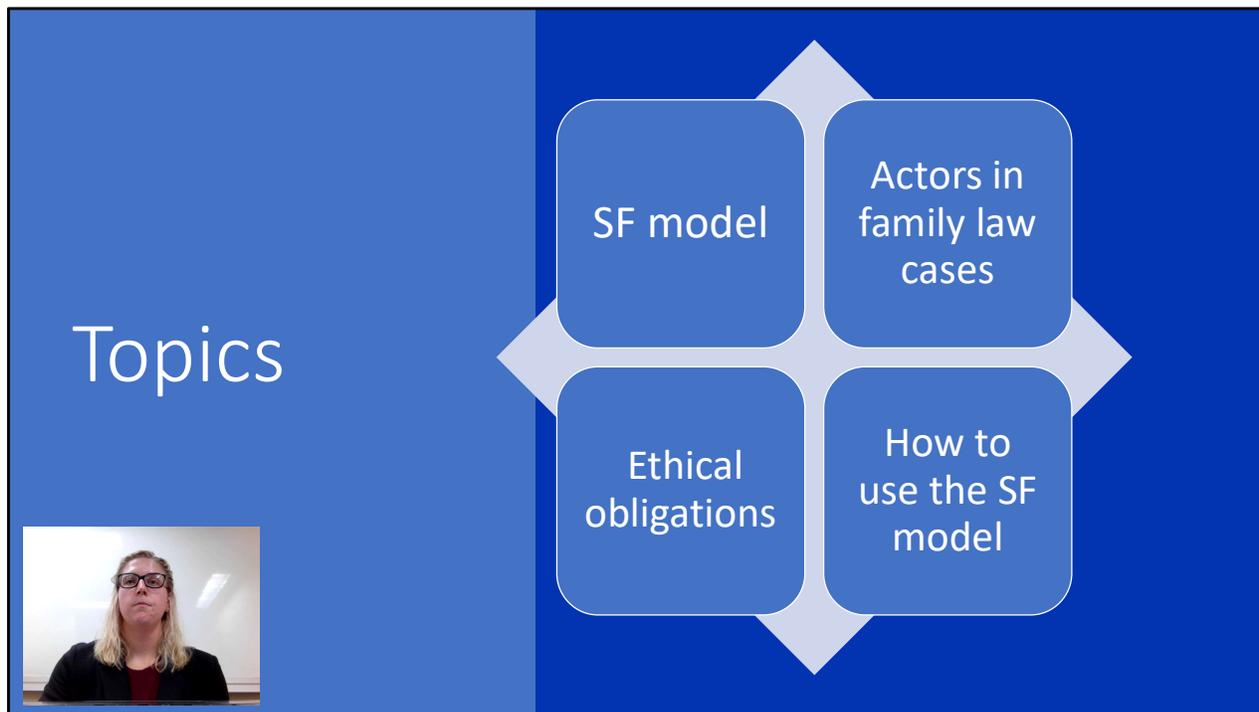
Hello everyone my name is Jordan Morton and my co-presenter is Kayla Clark. We are students at Washburn University School of Law and will be talking with you today as part of the Children and Family Law Center about how the strengthening families model can help attorneys make more ethical decisions. This presentation is one of 6 in this project. We will be referencing some of the other topics in our presentation today, and you can find them on the Children and Family Law Center website.



Introduction to Strengths-Based Advocacy



Attorneys have a tremendous amount of power in family law cases. Attorneys can make decisions that are more in line with their ethical obligations by adopting a strengthening families model of advocacy. This presentation posits attorneys can better advocate for their clients and reduce trauma inducing outcomes by adopting a model of advocacy that promotes the strengths of a particular family. As a result, attorneys will make decisions that are more in line with their ethical obligations to their clients, which we will explore in more detail.



During this presentation, we will discuss the strengthening families model, the different actors in family law cases, the impacts of the strengthening families model on attorneys ethical obligations, and how attorneys can use the model to advocate better for their clients.

What is the SF model?



Let's start with a basic overview of the strengthening families model. Our colleagues have put together an entire presentation on this subject and we recommend watching that presentation for a more in depth discussion of this topic. But for the purposes of this presentation, all you need to know is strengthening families model is a highly structured, evidence-based family skills training intervention with different age versions from 0 to 17 years of age. The graphic on the screen shows five protective factors that research indicates can reduce childhood trauma: enhancing parental resilience, providing parents with concrete resources in times of need, supporting healthy social and emotional development in young children, facilitating knowledge of parenting and child development, and providing an array of social connections. This approach seeks to increase family strengths, enhance child development, and reduce the likelihood of child abuse and neglect. Evidence has demonstrated that outcomes for at risk families are improved when things such as these protective factors are in place. This can be crucial for helping families reduce trauma and make it through adversity they face in their lives every day.



Consider the following:

- Jane is a single mom with two young children.
- Jane's friend gave her some pills to help her relax.
- Jane has become dependent on the pills to the point that it impairs her ability to parent her children.



Throughout the presentation, we ask that you keep this hypothetical situation in mind to evaluate how the strengthening families model approach we are discussing can impact the results of a family law case.

Jane is a single mother of two. She works multiple jobs part time and the children's father is not in their lives. Jane depends on family members and friends for childcare. A friend from work noticed that Jane seemed to be more stressed in recent weeks and asked her what was going on. Jane responded that she had been let go from her other job because the company couldn't survive the pandemic and she was becoming concerned about how she was going to make ends meet. Jane's friend gave her some pills to help her relax. At first, Jane only took them at night before she went to bed. But over the course of many months, Jane began taking the pills more and more frequently to help her deal with stress. Now she feels like she has to take them just so she can function.

Jane's children usually stay with Jane's mother after school until Jane gets off work and is able to pick them up. The children's teachers have commented to Jane's mother that the children show up to school in the same clothes they wore the day before and sometimes go days without bathing. One teacher noted that Jane appeared to be completely checked out during a recent parent-teacher conference. During a particularly challenging week, the children arrived to school extremely late, if at all. On the third day in a row this happened,

one child told his teacher that, "Mommy has been sleeping all day so she can't bring us to school." The teacher called for a welfare check to Jane's home and the responding officer found Jane passed out on the couch. When she awoke approximately 4 hours later, she appeared to be severely impaired. The officer made a hotline report to DCF and has taken the children into police protective custody.

What happens next?



CINC case

Domestic case

No court action

Likely, a child in need of care case, or a CINC case as they are known in Kansas, will be opened. A hearing will be held to determine if safety concerns will require the children be removed from the home.

Another option involves the children's father. If he is able to be found and notified, and he is willing and able to assume parental responsibility, then he might be given custody in lieu of opening a CINC case. If the children's father comes back into the picture, the case could exist only in the domestic courts which has significantly fewer resources to offer directly to the families involved.

In the alternative, there are options that don't involve the court, too. The Department of Children and Families and their subcontractors, such as KVC and St. Francis, can work with families directly to provide services that would help the family meet its needs through programs such as family preservation. However, given the facts of this hypothetical, it is possible that the children would not be allowed to remain in the home with Jane at this time.

Why should we care?



Family separation is harmful.

There are options other than separating the family that could be less traumatic.

Strengthening families model aims to decrease trauma by focusing on the unique strengths of each family.

The harm of separating families is very well documented in social science research and literature. The current precedent set out in CINC court and high conflict custody litigation can create a trauma inducing response for these families. This presentation argues that adopting a strengthening families model approach when dealing with these situations can decrease the level of trauma experienced by all involved.

Take Jane's case as an example. Separating the children from their mother vastly increases the likelihood of severe negative outcomes for these children. Jane is currently experiencing difficulty in taking care of herself and her children, but with help of services like substance use treatment, she can do so adequately. Under a strengthening families approach, we would recognize that the children are bonded with their mother and that removing them should be an absolute last resort if there is any way for the family to remain together safely. One way to keep this family together is to find substance use treatment options that allow for Jane's children to be with her during the process. If the children have to be removed, placement with family should be explored before placing the children in a traditional foster home away from everything they've ever known.

On the surface, this may not seem like something that Jane's attorney would, or should, be involved with, as social workers are the ones who primarily deal with connecting a family with services. Attorneys are not generally employed for preventative measures in family

cases. However, once attorneys get involved, how the attorney's decisions will impact how this family is viewed, which in turn will determine the actions taken during the rest of the case. Under the strengthening families model, all actors, including attorneys, involved should be working to decrease trauma. Looking at the strengths of each parent involved in the case is a great way to start.

Actors in the court case

Parent's
attorney

Guardian *ad*
litem

Agency
attorneys

Judges

Social
workers/CASAs

Mediators



There are many different actors involved in family court and child welfare court. These actors include parent's attorney, guardians ad litem or GALs, agency attorneys, judges, social workers/CASAs, and mediators. Each of these actors can promote the strengthening families model in their work with clients, children, and at-risk families.

Parent's attorneys

- The role of a parent's attorney is to pursue the goal established by the client.
- AAML standards consider parent's attorneys to be instrumental actors in custody disputes.
- Appointed counsel is only available in child welfare cases.



The role of a parent's attorney, whether in a custody or a CINC case, is to pursue the goal established by the client, according to KRPC 1.2(a).

The American Academy of Matrimonial Lawyers' standards view parents attorneys are an instrumental actor in maintaining harmony and protecting the children from malevolent parental behavior. This standard amplifies the importance of the attorney's role, as the lawyer must take into consideration the impacts actions on behalf of their client may have on the children. For example, if there is a history of domestic violence between parents, the attorneys may advocate for a variety services, such as supervised exchanges, in order to reduce the number of situations where the parents have to be directly interact with each other. This follows the strengthening families model because it allows the children to still have a relationship with both of their parents, but does provide adequate protection from the conflicts that exist.

In civil domestic cases such as divorce or parentage, there is no legal right to counsel. Many parents end up representing themselves in domestic issues because they cannot afford an attorney. Parents do have a constitutional right to any attorney in CINC cases and will be appointed one by the court if they cannot afford one.

Whether an attorney is representing a parent in a CINC or a domestic case, the attorney is ethically obligated to pursue the goals of their client.

Guardian *ad litem* (GALs)

- In Kansas, a GAL represents the best interests of the child
- In Kansas, GALs are governed by Supreme Court Rule 110A



Guardians *ad litem* are often called GALs for short. GALs are automatically appointed in every CINC case. Appointment is discretionary in domestic cases and they are usually only appointed in high conflict cases due to the increased costs of having another attorney involved.

Generally, they are appointed to represent children, though research has demonstrated that the role and exact responsibilities of a child's attorney is less clear due to jurisdictional differences.

In Kansas, GAL are referred to as "best interests attorneys" meaning that they do not necessarily represent the child's wishes. The American Bar Association defines a best interests attorney as a lawyer who provides independent legal services for the purpose of protecting the child's best interests without being bound by the child's directives or objectives. The GAL's role is to ascertain the best interests of the child and make recommendations based on their investigation. These recommendations will generally carry a considerable weight with courts. That means GALs must be very well educated on child welfare research and able to implement the strengthening families model in order to support the best possible outcomes for children.

In Kansas, GALs are governed by Supreme Court Rule 110A. This rule requires GALs to engage in continuing legal education regarding child development, lists the factors that should be taken into account when conducting an investigation and making recommendations, requires that the GAL disclose to the court the child's wishes if they are

different from the recommendations of the GAL.

*If more time is needed:

In other states, the role of a GAL differs slightly, as the GAL is a child's attorney. The ABA defines a child's attorney as a lawyer who provides independent legal counsel for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation as are due to an adult client. Child's attorneys are bound by their client's wishes the same way that adult clients are.

Agency Attorneys

- State agencies such as DCF also have attorneys that represent their interests.
- Can be prosecutors, private attorneys, or both.
- Agency attorney's role is not as clearly defined as others in the system.



State child welfare agencies also have attorneys that represent their interests. Agencies such as DCF may be represented by the prosecutors that prosecute CINC cases or they can have private attorneys representing the agency or both. The role of the agency attorney is not always clear, as prosecutors will often represent "the people" or "the state" as opposed to the agency. This can lead to disagreement about whether the attorney or the caseworker is actually speaking for the agency. It can often seem as if the prosecutor in a CINC case and the social workers staffing the case have different goals based on their actions which further convolutes this issue.

Judges

“He is to put himself in the position of a ‘wise, affectionate and careful parent’ . . .”

Roles of a judge include protecting children and parents’ rights.



Judges are neutral decision makers who preside over cases. They are required to make decisions based on the information that is presented to them in court, so they may not always be aware of the full extent of the parties' situation.

In uncontested litigation where the parties coparent well and work together well, they likely will not have to be in front of the judge very frequently. In high conflict and contested situations, the parties will likely be in front of the judge more regularly. When discussing the duties of a judge, former United State Supreme Court Justice, Benjamin Cardozo once said: He is to put himself in the position of a wise, affectionate and careful parent, and make provision for the child accordingly. The doctrine of *parens patriae*, which is the legal authority for a judge to step in to protect those who cannot protect themselves, such as children, is still extremely prevalent in child welfare courts.

Litigants may become frustrated during the court process that a person who has never met their child will be determining what is in that child's best interests. Although judges are neutral decisionmakers, their experiences and personal beliefs can impact their decision making. Additionally, judges are compelled to consider the passage of time from a child's perspective which can have more severe implication in CINC cases. In CINC cases, a judge has two distinct roles: to fulfill the community caretaking function of protecting children, and ensuring that the parents' constitutional right to parent their child is respected.

Social Workers and CASAs

- Every CINC case will be assigned at least one social worker that helps connect families with services.
- CASAs are volunteers appointed by the court to advocate for the child's best interests.



Social workers and Court appointed special advocates (CASAs) are not attorneys, but they are still very important to the legal process.

Every CINC case will be assigned at least one social worker that works directly with the family to address that family's needs. There are different types of workers depending on the needs of the specific family and the jurisdiction the case is in. Most commonly there are prevention workers, protective service workers, family support workers, and adoption workers. Social workers are responsible for helping connect families with services such as substance use treatment, mental health treatment, parent classes, and family therapy. CASAs are volunteers who receive training and are appointed by the court in complex cases to help advocate for the child's best interest. CASAs are usually assigned to CINC cases as well, but a few counties (Wyandotte and Johnson) in Kansas will appoint them to domestic cases.

Social workers have a different code of ethics than attorneys do and we will explore some of the differences in more depth.



Mediators

- Third party neutrals that use their knowledge and skill to try to facilitate a compromise that both parties can live with.



Mediators and conciliators are usually attorneys serving as neutral third parties. This means they aren't representing the parties, but they are trying to facilitate an agreement between them. Mediation is a viable option in domestic cases, such as contested custody issues, but is not an option for CINC cases. Mediation is generally more cost-effective and timely, which makes it more accessible to the populations who use this service. Mediation is also more flexible than litigation which usually allows the parties to come up with creative solutions that meet the needs of their specific family. Additionally, the rules of evidence that apply to litigation do not apply to mediation, which means that parties can bring up anything that may be relevant to the issues they are trying to resolve. Conciliation is a very similar process to mediation, except that the conciliator will provide a report to the court detailing what happened if the parties are unable to come to an agreement. It is becoming increasingly common for some sort of ADR to be mandated before a trial is held. Both of these forms of alternative dispute resolution embrace the strengthening families model because it encourages resolution outside of a court room.

Though mediation and conciliation are great tools for family disputes, it is important that those facilitating these services understand that these options do not provide a level playing field for everyone who uses them. One example of this would be a relationship involving domestic violence and/or coercive control. This topic is another one explored in this series and we encourage you to watch that presentation for a more in depth discussion.

How do these actors work together in family court?

- Research has demonstrated common responses to family law issues create trauma for the families involved.
- Attorneys have the power to evoke positive changes in these systems.



Comparing contested custody litigation to CINC cases is kind of like comparing apples to oranges but there is a lot of overlap. The two systems are inextricably intertwined and both can benefit from a model that is less trauma inducing than the current ones.

Research has demonstrated that even the most amicable divorces are hard on children and the more contested the issues are, the more detrimental the effects are.

The negative effects of removing children from the home and growing up in foster care are also well documented.

We're talking about attorney's ethical obligations because they have a ton of power in these cases and should be using it to create the best possible outcome – one that strengthens families.

We can't go back in time, but we can do better moving forward. We have already mentioned a few of the other topics in this series, but being aware of these issues is important because they will be part of your case and your advocacy can help promote positive outcomes for children and families.

How does this impact ethical responsibilities?

- Become well versed in social science
- Recognize issues facing a family



Using a strengthening families model impacts attorneys ethical responsibilities because it requires that attorneys are well versed in social science research. This includes staying up to date on current literature and having a specific concentration on advocating for the best interests of you client over the lifetime of the case, not just advocating in that moment. Ways to do that include promoting stability through continuity of representation and making decisions that decrease trauma and increase family reunification. In order to fulfill these obligations, attorneys must be able to recognize the issues that a family is facing, such as domestic violence and the impacts of adverse childhood experiences so that they can advocate for that client's needs appropriately. We are now going to explore what this means in the context of the Kansas Rules of Professional Conduct.

Comparison of ethical obligations in child welfare law

Attorneys

- Confidentiality
 - Very few exceptions
- Loyalty
 - Singular duty to client
- Objectivity
 - No pretense of objectivity

Social Workers

- Confidentiality
 - Community need is greater than client duty
- Loyalty
 - Must balance child safety and family preservation
- Objectivity
 - Strive to be objective



As we just mentioned, lawyers and social workers have different codes of ethics that they must follow. Before we dive into attorneys ethical obligations to their clients, it is important to note some of the differences that exist between attorneys and social workers. We have already briefly discussed the limitations of domestic courts and those should be kept in mind throughout this presentation.

The first area to discuss is Confidentiality: there are very few exceptions when a lawyer may disclose confidential information and it is one of the oldest professional privileges. Social workers, however, must disclose information anytime the duty to the community is greater than their duty to their client. One example of this difference is that social workers have a duty to warn if a client is in danger or has made threats toward another, whereas attorneys may disclose this information.

Loyalty is another example. Attorneys have a singular duty to their client, even when the client's interests differ from that of society. Social workers on the other hand must balance child safety and family preservation in decision making. The strengthening families approach lends itself to the social workers definition of loyalty in this case because the focus is on the family.

The last thing we are going to talk about in this section is objectivity. Lawyers have no duty

of objectivity, in fact, they are ethically obligated to zealously advocate for their client's interests, regardless of what the opposing party is advocating for. In the alternative, social workers use a variety of tools in an effort to remove subjectivity from the decision making process. When attorneys and social workers are advocating for the same thing, this difference is likely to not matter. However, particularly in the child welfare world, attorneys will argue that children should be reunited with their parents, and social workers will argue that for one reason or another, reunification is not an option.

Diligence

Rule 1.3:

- A lawyer shall act with reasonable diligence and promptness in representing a client.



Rule 1.3 of the Kansas Rules of Professional Conduct, and the Model Rules of Professional Conduct states, "A lawyer shall act with reasonable diligence and promptness in representing a client." The dictionary defines diligence as "careful and persistent work or effort."

So what does diligence look like? It includes things such as conducting prompt and thorough investigations, responding to emails and phone calls in a timely fashion, and the like. But, it also includes advocating for your client based on their strengths. The strengthening families approach affects an attorney's obligation to be diligent because it encompasses determining what the family's strengths are, trying to find ways to keep the family together, and understanding how the client's background, including things like adverse childhood experiences, could be impacting the situation they are in now.

The American Association of Matrimonial Lawyers takes diligence one step further under standard 2.23 by stating, "every lawyer should consider the welfare of children when representing a parent in a custody dispute."

Loyalty

- Clients should feel like their attorney is on their team.
- Recent studies indicate that attorneys are failing in this area more than any other.



Clients may not always be happy with their lawyers or the advice that their lawyer is giving them. It is important to remember that part of being diligent and following your ethical obligations is to make sure your client knows that you are on their side. Recent studies indicate that attorneys are failing in this duty more than any other.

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Building a successful relationship with your client

- Building rapport.
- Establishing loyalty.
- Explaining the legal process in detail.
- Eliciting and obtaining pertinent information.



Particularly in child welfare cases, where an attorney may be appointed to represent a client, instead of the client being able to choose who represents them, it is important the attorney know how to create a relationship with their client. Research indicates that the following steps can be extremely useful in doing just that.

Build a relationship with the client

Build rapport

Establish loyalty

Explain the hearing, and

Elicit and obtain pertinent information

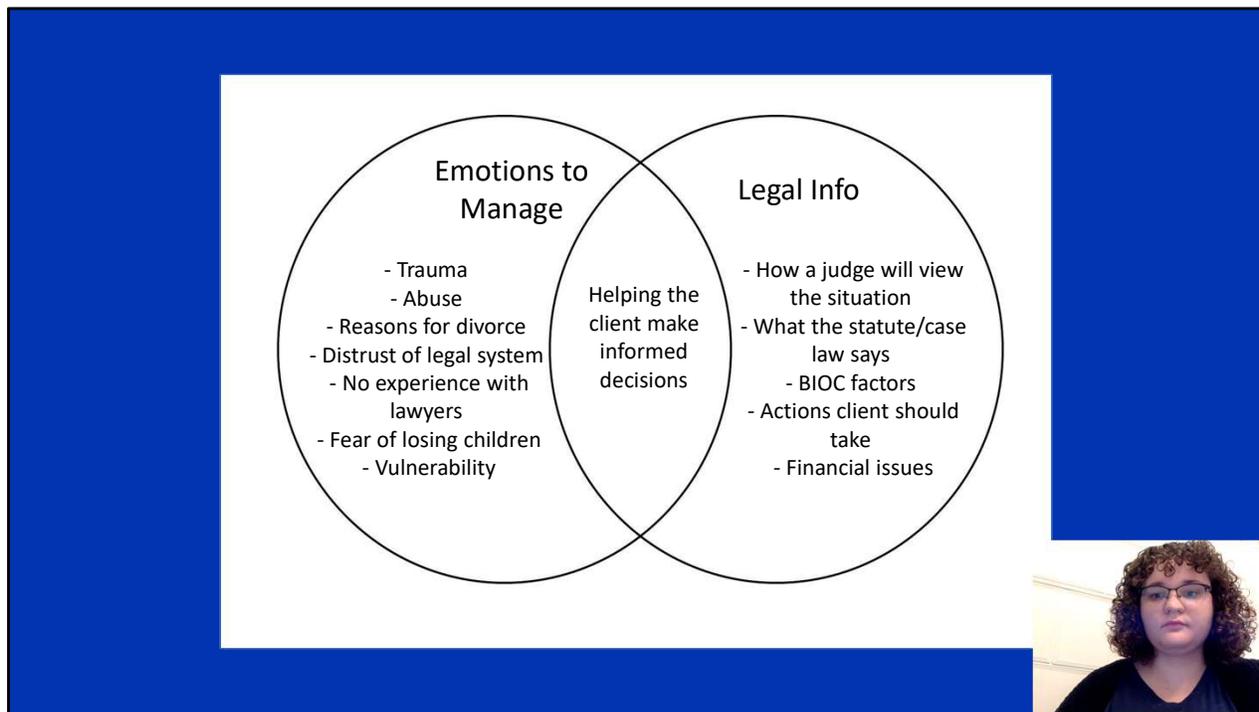
First steps in representing a parent accused of abuse or neglect Fraidin, M. (2016). First Steps in Representing a Parent Accused of Abuse or Neglect. *Child Law Practice*, 35(6), 81–89.

Communication

Rule 1.4(b): "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."



Rule 1.4 of the Kansas Rules of Professional Conduct and Model Rules of Professional Conduct state "a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Across all areas of law, the most frequent ethical complaints involve an alleged inability to communicate. Most of these complaints fall into issues of failing to return client phone calls or failing to inform clients of important developments in their case, but ethical duties in communication extend beyond these procedural failings. In law school, we are taught to look at legal issues objectively and technically, but in family law litigation this is not a realistic perspective to have. Family law involves intense emotions and personal issues, and a lawyer must be knowledgeable in how to effectively communicate under these circumstances.



Lawyers have a duty to ensure that clients are making informed decisions, and this is difficult when clients are emotional. Some lawyers may decide to view a client's emotions as a distraction from the legal issues at hand, and this is contrary to the practice of upholding the strengthening families model. It is imperative to improving the lives of children that parents are uplifted and provided resources in order to manage their difficulties. For example, a lawyer who sees a client's emotions as a burden may not pick up on the fact that the client may need therapy in order to be the best parent they can and reduce the childhood trauma that comes with divorce or a CINC case. A client may have trauma around divorce or child in need of care cases because they are a child of divorce or foster care. Their reasons for getting a divorce might be sensitive and hard to share. They may have a distrust of the legal system based on prior bad experiences or a historical distrust of the legal system in their community. It may be their first time talking to a lawyer, and it may feel very vulnerable. If a lawyer has not navigated these emotions, she cannot ensure that the legal information she is communicating will help her client come to any informed decisions.

Additionally, an attorney who chooses to focus on what is legally relevant rather than emotionally relevant may end up coming across as condescending to a client, such as explaining in depth the divorce process to a client who has been through a divorce before. Another example is preparing a client for court who is a domestic violence survivor. This client may have significant anxiety about seeing her abuser in court, and needs to be walked

through the process a few times before a hearing. Treating this client like a client without a background of trauma may cause the client to have a breakdown in court, or not show up at all.



Cross-Cultural Communication

It is important to understand a client's cultural background and trauma they have been through in order to best communicate.



It is also important to understand a client's cultural background and trauma they have been through in order to best communicate. For example, during an initial interview a client may avoid eye contact and give short answers to broad questions. An attorney who is not informed of the client's cultural background may assume the client is lying about something, when in reality they come from a culture where avoiding eye contact is a sign of respect and it is frowned upon to overshare with strangers. This client may choose not to share their culture at all, but simply knowing that it is a possibility that the client's behavior is due to cultural differences is a solid start to building the relationship.

Managing client expectations

Clients are going through tumultuous periods in their lives which can be impacted by their past experiences.

Managing client expectations can change your perspective of difficult clients.

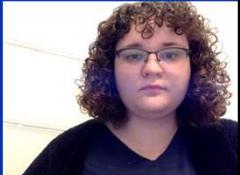


Dealing with your client's expectations falls primarily under an attorney's ethical obligation of communication. *Clients in family law situations, whether it is child welfare litigation or contested custody, are usually going through a very tumultuous period in their life. This particular season may be compounded by past experiences as well. It is imperative that attorneys take the time to talk through the situation with their client, so that they can accurately and adequately understand and address the expectations their clients have. Many clients will feel that they have been wronged and be frustrated by the magnifying glass placed on their lives, particularly in CINC and child welfare litigation. Further, they are likely to be seeking immediate relief. It is essential that attorneys explain the limits of the legal system and any potential bars or complications to the client getting what they want. Being transparent with your clients about statutes and case law is another tool that you can give to your clients to help them fully understand the process they are participating in. *A strengthening families approach to managing you clients' expectations can actually change your perspective of difficult clients.



Confidentiality

- Rule 1.6(a):
 - A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).



Rule 1.6(a) of KRPC and MRPC state:

- A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in an order to carry out the representation or the disclosure is permitted by paragraph (b).
- Paragraph b then proceeds to list all of the situations where you are permitted to disclose information and paragraph c states that a lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of information relating to the representation of a client
- Lawyers are typically only permitted to share confidential information if they believe it will prevent harm to the client or someone else.

Using a strengthening families approach affects confidentiality because the relationship will be established that allows the client to be completely open and honest so that the attorney can advocate to the fullest possible extent. It is important that clients feel attorneys are focusing on helping clients instead of judging them.

This obligation is rooted in the beginning of the relationship and encompasses explaining the difference between confidentiality and attorney-client privilege, and that both prevent

the attorney from being able to share information about the case. Working with an attorney is often an invasive experience, as attorneys are probing into their clients' innermost worlds. It is important to explain to your client why all of the information you are asking for is relevant and pertinent.

Competence

Rule 1.1 requires "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Staying up to date on social science is essential for competent representation.

Cross-cultural lawyering – representing a client with a different cultural background than yourself.



Rule 1.1 of the KRPC and MRPC requires that attorneys have "the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." There are obvious requirements to follow this Rule- stay up to date on the law, keep up with deadlines, and proofread any agreements carefully. But there are a few less obvious factors to keep in mind when working towards using a strengthening families perspective.

*First, an attorney needs to be aware of the social science surrounding divorce. Being able to back up advice to a reluctant client by showing them solid research could be an effective way to manage client expectations and reduce family trauma. An attorney representing a parent in a CINC case can use their knowledge on social science to best understand what affects the litigation will have on children—for example, in Jane's scenario, it would be very important for an attorney to understand what concrete resources Jane needs to recover, as this itself is a protective factor. The lawyer who is aware of these resources can use them to help advocate to the judge for an evidence-based approach.

An attorney should also be knowledgeable of human emotions and how to best navigate them, particularly when they are dealing with clients they don't always see eye to eye with.

*Cross-cultural lawyering ties in nicely with the language of Rule 1.1: an attorney needs knowledge of how his client's culture will affect the representation, must have the skills to navigate this cultural difference, and must be thorough with researching the ways a client's culture intersects with the issue at hand. For example, let's consider Jane's situation again, but assume she is Black. 65% of social workers are white, 85% of lawyers are white, and

73% of judges are white. It is very likely that the people making decisions about her family are not the same race and/or culture as her. Research shows that due to the criminal justice system's long and systemic discrimination against Black people, Black people tend to be distrustful of all legal institutions, including civil justice. Jane's white attorney may label her as a "difficult" client for choosing not to disclose all relevant information about her substance abuse and her children, when in reality, cultural differences make Jane reluctant to disclose everything. Due to a disproportionate number of Black children in foster care, perhaps Jane has a friend or family member who has had their children taken away regardless of compliance with attorneys and social workers, therefore increasing her distrust of the actors in the legal system.

Vicarious Trauma

- The experience of a professional developing and reporting personal symptoms of trauma as a result of responding to traumatized clients.



Now let's shift gears into another factor that can affect competence. *Vicarious trauma is the experience of a professional developing and reporting personal symptoms of trauma as a result of responding to traumatized clients. The symptoms do not always rise to the diagnostic level of PTSD, but can still interfere with day-to-day life. Symptoms include: a decreased sense in energy; no time for one's self; increased disconnection from loved ones; social withdrawal; increased sensitivity to violence, threat, or fear; a generalized sense of despair and hopelessness; increased fears for the safety of oneself and loved ones; avoidance of violent stimuli in the media; difficulty listening to client's accounts of events; and emotional numbing and disassociation. An attorney is especially vulnerable to vicarious trauma if they have experienced trauma themselves. There is no question on whether family law attorneys will be exposed to vicarious trauma/secondary trauma. The question is how the legal profession deals with the effects. A 2017 study compared vicarious trauma in mental health professionals and attorneys, and found that while both groups were exposed to vicarious trauma, mental health professionals were better equipped to deal with the trauma due to trauma-specific training and access to peer support.

Why does Vicarious Trauma matter?

- If an attorney has not learned to manage their own emotional and psychological responses to clients, they will struggle to provide competent representation.
- Self-care = competence.



So why does VT matter? *If an attorney's VT forces them to become disconnected and hopeless, they are not in a place to best help their clients. If an attorney has not learned to manage their own emotional and psychological responses to clients, they will struggle to provide competent representation. The issue of compassion fatigue can also arise—an attorney being numb to very emotional issues due to fatigue that comes from dedicating so much time and energy to helping others. An attorney may choose to overlook or minimize a client's traumatic experiences because the attorney simply does not have the emotional capacity to process it. We will discuss later in the presentation where to find support for these issues, and these support systems could help an attorney come up with methods of self-care.

*Self-care is easier said than done, which is why support services are vital to maintaining mental health. Examples of daily self-care include getting 7-8 hours of sleep, eating healthy foods, exercising, taking up positive hobbies, reducing alcohol consumption, maintaining connections with friends and family, and participating spiritual activities. All of these things may be pretty difficult for a lawyer experiencing depression or anxiety or burnout, but taking it a day at a time and not putting the burden only on yourself to deal with this will help over time. It is not an easy process, but it is doable, and taking care of yourself will help you take care of your clients. The Kansas Lawyer's Assistance Program is a great resource for managing these issues, and we will discuss this in more detail later in the presentation.

<https://www.linkedin.com/pulse/ways-lawyers-minimise-vicarious-trauma-mary-louise-hatch/>

GAL Ethics & Strengthening Families Model

It is important for a GAL to understand child development.

Best interests of the child should be based in a family's strengths, not their weaknesses.



Now let's move on to guardian ad litem ethics. There are many schools of thought on GAL ethics, but the goal of this presentation is to view the ethics in terms of the strengthening families model. A GAL in Kansas is a best interests attorney, and thus has different ethical obligations than a child's attorney. A best interests attorney is not bound to the same confidentiality ethics, as it is their duty to report all relevant information to the court. *Making recommendations that are in the best interests of the child means that a GAL must be familiar with child development and the strengthening families model. The goal of the recommendations should be to reduce childhood trauma and to do so by uplifting the family system. In Kansas, there are 18 factors to be considered by judges and GALs when determining the best interest of the child. Some of these factors include: each parents role and involvement with the child before and after separation, the child's preferences, the emotional and physical needs of the child, the presence of domestic violence, the willingness of each parent to respect and appreciate the bond between the child and the other parent, the location of the child's school, and the ability of the parents to communicate. *The strengthening families model impacts the evaluation of these factors because each family should be viewed based on their strengths rather than their weaknesses. A 1997 study introduced on the next slide surveyed child psychologists and asked them to rank different best interests of the child factors, which provides us with an excellent view of how strict legal criteria actually manifests from a psychology perspective.

BIOC Factor	Scale from 1-7 (1: irrelevant, 7: essential)	
The desires of the child's parents as to custody and residency	4.47	
The desires of the child	Age 15+: 6.19	Age 12-14: 5.97
	Age 9-11: 5.46	Age 6-8: 5.00
	Age 0-5: 4.40	
The psychiatric history of the parents	4.60	
The physical needs of the child	5.45	
Willingness to allow child contact with the other parent	5.53	
Level of conflict between parents	5.50	
Academic needs of the child	4.61	
Each parent's financial sufficiency	3.61	



This study surveyed 88 child psychologists and custody evaluators and asked them to rate on a scale from 1-7 (1 being irrelevant and 7 being essential) 60 different factors that play into "best interests" determinations. The tables on this slide and the next show the means of the responses for each factor. The factors in this chart loosely correspond with some of the KS best interests of the child statutory factors discussed on the previous slide. One of the purposes of including this chart in a presentation on legal ethics is to provide an example on how staying informed on social science can impact our ethical decision making. For example, "each parent's financial sufficiency" is closer to irrelevant than essential, according to child psychologists. A legal actor who was not aware of similar research may place significant weight on poverty when deciding the best interests of the child, when in reality there are many other factors that require more attention. An attorney could also act ethically by refraining from bringing up an opposing party's poverty when advocating for their client's child's best interest.

BIOC Factor	Scale from 1-7 (1: irrelevant, 7: essential)
Keeping a young child and mother together	3.73
Each parent's religious orientation	2.23
Domestic violence	5.96
Each parent's ability to maintain child's daily routine	4.63
Sexual abuse of the child by the parent	6.83
Physical abuse of the child by parent	6.69
Each parent's current alcohol or drug use	5.85
The emotional needs of the child	6.11



Now let's look at these factors in relation to our hypothetical of Jane. Recall that her primary struggle in providing for her children was a dependency on substances. In this study, substance abuse is a factor ranked at 5.85. The emotional needs of the child is ranked 6.11. Research shows that separating a child from their parents has a significant impact on their emotional well-being and needs. Compared to children not in foster care, children in foster care are five times as likely to have anxiety, six times as likely to have behavioral problems, and seven times as likely to have depression. Now, a caveat to these statistics is that many children in foster care experienced trauma before entering state custody which could account for these high rates of mental health issues, but recall that Jane's substance abuse was the primary reason for removing her children. The best interests of Jane's children are not met by putting them in foster care, and it is imperative that a strengthening families approach be adopted in order to reduce the likelihood of childhood trauma.

Strengthening families model and client centered lawyering

- Attorneys evaluate risk and reward when determining how to best advocate for their client's interests.
- Clients involved in family court are usually going through some of the worst experiences in their lives.
- Differentiating between poverty and neglect is crucial for changing the way we view families involved with the court system



*Attorneys evaluate risk and reward when determining how to best advocate for their client's interests. Under the strengthening families model, working to prevent unnecessary family separations is rooted in an ethical argument when risk is prioritized because we have an obligation to avoid the worst possible risk. With that, we also have an obligation and the ability to address issues in a way that does the least amount of harm to the family. Using this models allows us to better identify issues and understand how we can provide each family with help and support. Additionally, when you change the way you work with your clients, it will change your ability to handle difficult cases, increase empathy, and you'll likely start to apply this model of thinking in your own life.

*People don't tend to get involved with the court system because everything is going well. There is usually one or more major issues impacting a family's ability to function when lawyers get involved. Viewing a case through that lens allows the attorney to objectively evaluate situational aspects that would influence their client's ability to navigate the difficult circumstances they are in. This is especially important when the situation involves domestic violence or coercive control because the trauma makes maintaining a relationship with the abuser more difficult and dangerous. You might have a client who wants 50-50 parenting time and will not be happy until that occurs. However, there are many practical considerations such as the distance between the parents homes and work schedules that prevent 50-50 from being feasible. It is exponentially more challenging when there has

been coercive control in the relationship between the parents. Another example that attorneys will commonly face is allegations of parental alienation. Although the research does not empirically support the idea, one parent will often allege alienation in an attempt to regain control of some kind over the other parent.

*Another crucial aspect of client centered lawyering in family law is differentiating between poverty and neglect. Although many state statutes, Kansas included, specifically state that being unable to provide financially for a child is not grounds to remove them from the home, a number of situations that bring children into state custody can be traced back to poverty issues. It will take changes on a societal level to truly fix these issues, but attorneys can still make a difference by drawing this distinction early and often in the representation of their clients. Rarely is there a winner in family law, but the strengthening families model can help families move forward. The model that we are proposing focuses on providing supports for these families instead of separating them.

Where to get support in performing your role

Kansas Lawyers Assistance Program (KALAP) provides several resources that can help with vicarious trauma, stress, over-functioning, and compassion fatigue.

Rule 1.6, com 8: "A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility" to comply with the KRPC



To wrap things up, let's talk about support. The Kansas Lawyers Assistance Program, or "KALAP" is an excellent resource for lawyers experiencing vicarious trauma or burnout. Recall that a competent lawyer practices self-care and reaches out for help when needed in order to best serve their client. KALAP can refer attorneys to therapy and treatment and even offer several free therapy sessions. There are peer mentoring groups, support groups, and resiliency groups—recall that social workers are able to manage vicarious trauma more effectively than attorneys in part because they have peer support.

*If an attorney is facing an ethical dilemma outside of their own self-care and mental health, the ethical rules allow the attorney to seek advice from a colleague by only giving as much information necessary to explain the ethical dilemma.

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