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**DEALING WITH EMOTIONAL AND GRIEVING CLIENTS**

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## 1. Introduction

As lawyers, the services we provide are often sought by clients who have experienced trauma of some sort or another. Wills, Trusts and Estates law, Family law and Criminal law, to name a few, are practice areas rife with high conflict and emotion. The source of high emotion in our clientele can come as a result of experiencing the death of a loved one/a family member, from accident, medical interventions, abuse and neglect, witnessing or experiencing acts of violence such as physical, emotional, or sexual abuse, as well as war.<sup>1</sup> More often, death of a loved one or abuse of an older adult parent by a child or other can cause unexpected emotions of grief, loss, guilt, remorse, regret, sibling rivalry, amongst others.

Lawyers can encounter clients with a myriad of emotional problems across their varied and complex work.<sup>2</sup> Lawyers often serve clients at times that may be some of the darkest of the clients' lives due to traumatic events.<sup>3</sup>

Emotionally vulnerable clients have expectations and needs that are not purely centered on legal results. Interacting with family often distracts clients from a purely legal focus which inevitably tends to cloud their reason and ability to navigate legal processes effectively. Clients who are driven by emotion often place a greater reliance on their lawyer for objectivity and support. It is trite to flag that a lawyer must be aware of and understand that their clients are often guided by emotion. An experienced lawyer will have

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<sup>1</sup> [The Legal Burnout Solution: Strategies for a Trauma-Informed Law Practice](#)

<sup>2</sup> [Working with Emotionally Vulnerable Clients – Tips and Strategies](#)

<sup>3</sup> [The Legal Burnout Solution: Strategies for a Trauma-Informed Law Practice](#)

learned the importance of developing techniques to help their clients deal with taking the emotion out of the legal process and in managing their expectations.

In this short presentation, we aim to address some of the ways in which lawyers can effectively deal with emotional and grieving clients. We will include a brief overview of types of grief, and a proposed toolkit for lawyers to optimize and build effectively upon client-lawyer relationships in complex circumstances.

## **2. Emotional Clients**

When dealing with emotional clients, lawyers invariably perform heavy emotional labor in addition to their customary legal work.<sup>4</sup> This emotional labor refers to the efforts involved in dealing with and managing the feelings of their clients while simultaneously regulating their own emotions in the discharge of their work.<sup>5</sup>

Learning how to communicate effectively, understand the client's mindset, build trust, manage emotional responses, and consider the client's overall aptitude for the litigation are critical components of a legal retainer.<sup>6</sup>

## **3. Grieving Clients**

When an estate lawyer serves a grieving client in their practice, a deep understanding of grief can be invaluable. Lawyers ideally will develop experience over time and will benefit from understanding that grieving is individual. Lawyers, however, are not specifically trained to recognize the often paralyzing symptoms of grief, much less to respond effectively when they do.<sup>7</sup> It is important to educate oneself and hence become familiar

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<sup>4</sup> [Working with Emotionally Vulnerable Clients – Tips and Strategies](#)

<sup>5</sup> [Working with Emotionally Vulnerable Clients – Tips and Strategies](#)

<sup>6</sup> [A Guide For Lawyers Dealing With Stressed and Traumatized Clients](#)

<sup>7</sup> [Responding to the Grieving Client](#)

with the different types of grief and loss so as to better understand clients' needs and how to address them.

### **3.1 A Brief History of Grief Theory**

Grief reflects the person and their relationship with who or what has been lost.<sup>8</sup>

The chronicling of the journey of grief can be tracked back to Sigmund Freud ("Freud") (1856-1939) in 1917 when he published his paper, *Mourning and Melancholia*. Freud stated that, "grieving is a natural process that should not be tampered with."

In 1969, Elisabeth Kubler Ross identified the five stages of grief in her book, "*On Death and Dying*". The stages include denial; anger; bargaining; depression; and acceptance. This theory was originally based purely on anecdotal evidence, rather than empirical scientific study.

Decades later David Kessler introduced a sixth stage of grief, that of, "meaning".

In 1999, Margaret Stroebe and Henk Schut developed the Dual Process Model (DPM) of grief. This model suggests that a grieving person engages with stress when dealing with a loss as well as when returning to normalcy.

An instrumental part of the Dual Process Model, is the concept of oscillation. According to Stroebe and Schut, healthy grieving means engaging in a dynamic process of oscillating between loss-oriented and restoration-oriented coping. A griever will oscillate between confronting the loss and avoiding the loss.<sup>9</sup>

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<sup>8</sup> Eleanor Haley, MS and Litsa Williams, MA, LCSW-C, What's your grief? Lists to help you through *any loss* at page 9

<sup>9</sup> [Grief Theory 101: The Dual Process Model of Grief](#)

An analysis of the three grief theories alone reveals the complexity of the grieving process. Grief is a natural response to any significant loss, whether, for example, as a result of the death of a loved one; a miscarriage, the end of a long-lasting relationship, or a job lost.<sup>10</sup> It is a natural and normal human process.

There is no “right way” to grieve, nor is there a “wrong way” to grieve. Everyone reacts differently and uniquely.

### **3.2 Types of Grief**

Yet another analysis of grief is offered by Eleanor Haley, MS and Litsa Williams in their book, *“What’s Your Grief”* speak to seven different types of grief and loss as follows:

#### **1. Anticipatory Grief**

Anticipatory grief is also referred to as anticipatory loss, or preparation grief. It is the type that normally occurs before a potential loss. It is important to highlight that any type of change may bring anticipatory grief, even if the change is exciting.<sup>11</sup>

Dr. Allison Werner-Lin, Ph.D.<sup>12</sup>, stated, anticipatory grief, “is the experience of knowing that a change is coming and starting to experience bereavement in the face of that.”<sup>13</sup>

This term was originally used to explore the experience of caregivers.<sup>14</sup> In the 1940s, Erich Lindemann, a psychiatrist, who studied grief, described the grief that begins before

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<sup>10</sup> [The Impacts of Delayed Grief](#)

<sup>11</sup> [Anticipatory Grief: What It Is And How To Cope](#) (Forbes Heath); contribution by [Allison Werner-Lin](#) who is an Associate Professor at the School of Social Policy and Practice

<sup>12</sup> Licensed clinical social worker and associate professor at the University of Pennsylvania’s School of Social Policy and Practice in Philadelphia

<sup>13</sup> [Anticipatory Grief: What It Is And How To Cope](#) (Forbes Heath); contribution by [Allison Werner-Lin](#) who is an Associate Professor at the School of Social Policy and Practice

<sup>14</sup> Fulton R, Fulton J (1971) [A psychosocial aspect of terminal care: anticipatory grief](#). *OMEGA J Death Dying* 2(2):91–100. 10.2190/WE4J-9CJG-GJH5-R3VA

a loss as widely applied to explain the experiences of caregivers for loved ones with Alzheimer's disease, in recognition of their high caregiving burden and burn-out.<sup>15</sup>

Anticipatory grief may affect the caregiver, the patient or both. A recent Canadian study showed that when dealing with end-of-life processes, caregivers experience grief and bereavement, and 42% of bereaved individuals obtained some type of bereavement support.<sup>16</sup>

## 2. Ambiguous Grief

Ambiguous grief refers to the loss that lacks resolution. In the 1970's, Dr. Pauline Boss coined the term, "ambiguous grief" to describe loss without closure.<sup>17</sup> Ambiguous grief is a different grief since it happens when something, or someone, profoundly changes or disappears. It happens when the person is grieving someone who is still living.<sup>18</sup>

Dr. Boss outlined two main categories of ambiguous loss: physically present but psychologically absent (such as when someone has dementia); and, physically absent but, psychologically present (such as when a person goes missing and there is ambiguity surrounding whether they are alive, or dead).

The first category describes when someone is physically present but has changed, whether emotionally, cognitively, or both.<sup>19</sup> Examples include, changes caused by dementia, traumatic brain injury, depression, or other chronic mental illness.

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<sup>15</sup> Chan D, Livingston G, Jones L, Sampson EL (2013) [Grief reactions in dementia carers: a systematic review](#). *Int J Geriatr Psychiatry* 28(1):1–7. 10.1002/gps.3795

<sup>16</sup> Wilson DM, Cohen J, Eliason Cet al. et al. [Is the bereavement grief intensity of survivors associated with their perception of the quality of death for their loved one?](#) *Int J Palliat Nurs*. 2019;25(8):398-405.

<sup>17</sup> Cleveland Clinic, [What Ambiguous Loss Is and How To Deal With It](#)

<sup>18</sup> [7 Types of Grief You Should Know Right Now](#)

<sup>19</sup> [7 Types of Grief You Should Know Right Now](#)

The person grieves the loss of what that person used to be and what their relationship was.<sup>20</sup> Dr. Boss observes that whenever a person has an identity change and is still treated as the person they used to be, this can constitute ambiguous loss.<sup>21</sup> It can help when a person transitions from their birth-assigned gender, joins or leaves a religious group, is early in addiction recovery, or experiences a significant loss or trauma and is expected to go back to who they were before.<sup>22</sup>

The second category occurs where a person grieves someone who is no longer part of their day-to-day life. The main event of this loss is the absence of that person, and the thinking, wondering, and worrying about that person without knowing what is happening and sometimes if that person will ever be seen again.

Common examples include divorces, separations, or break-ups, family separations for instance, as seen in the foster care system, military deployment, incarceration, estrangement, and immigration.<sup>23</sup>

### **3. Non-finite Grief**

Non-finite grief occurs when life falls short of the person's expectations. People dream about their lives, and when that expectation does not match up, non-finite grief might occur.

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<sup>20</sup> Eleanor Haley, MS and Litsa Williams, MA, LCSW-C, What's your grief? Lists to help you through *any loss* at page 29

<sup>21</sup> Eleanor Haley, MS and Litsa Williams, MA, LCSW-C, What's your grief? Lists to help you through *any loss* at page 29

<sup>22</sup> Eleanor Haley, MS and Litsa Williams, MA, LCSW-C, What's your grief? Lists to help you through *any loss* at page 29

<sup>23</sup> Eleanor Haley, MS and Litsa Williams, MA, LCSW-C, What's your grief? Lists to help you through *any loss* at page 30

It happens when the loss is non-tangible, and the person watches their imagined future dissolve.<sup>24</sup> Usually, it is a negative life event, or episode which leads to a loss, and the loss has an ongoing presence in that person's life.<sup>25</sup>

Elizabeth Bruce PhD, a psychologist in private practice, and Cynthia Schultz PhD, honorary associate, at LaTrobe University, exemplified 'non-finite loss' as the ongoing sense of grief experienced by parents caring for children with severe disabilities.<sup>26</sup>

Other examples include when a person does not have children, a partner, a job or other lifestyle that they imagined or hoped for.

#### **4. Cumulative Grief**

Cumulative grief is also known as "bereavement overload," or, "grief overload". It is the experience of multiple losses in quick succession, where a new loss happens on top of an existing loss.<sup>27</sup>

It happens when the person does not have time to process one loss before experiencing another. If the first loss is not fully healed, the subsequent loss can be more challenging to recover from. It is common for new losses to bring up memories and emotions about past losses.<sup>28</sup> Usually, it can become overwhelming and as a result it triggers an incredibly powerful defense mechanism, avoidance.<sup>29</sup> It is important for the person experiencing cumulative grief to consider professional support.

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<sup>24</sup> [Grieving the Life You Expected: Nonfinite Grief and Loss](#)

<sup>25</sup> [Grieving the Life You Expected: Nonfinite Grief and Loss](#)

<sup>26</sup> [Non-finite loss and challenges to communication between parents and professionals](#), Schultz & Harris, 2011

<sup>27</sup> Eleanor Haley, MS and Litsa Williams, MA, LCSW-C, What's your grief? Lists to help you through *any loss* at page 31

<sup>28</sup> [7 Types of Grief You Should Know Right Now](#)

<sup>29</sup> [7 Types of Grief You Should Know Right Now](#)



## 5. Delayed (Absent) Grief

Delayed/absent grief occurs where a person experiences minimal emotion after a significant loss.<sup>30</sup> In the beginning there can be confusion since the loss might have come as a shock, and hence, overwhelming.

There is no single cause for this type of grief. It normally occurs when the person does not deal with their grief reaction right after their loss. The emotions associated with this type of grief can surface unexpectedly. When a person delays the grieving process, the emotional impacts of this grief can be stretched out over time, with symptoms intensifying.<sup>31</sup>

## 6. Prolonged Grief

Prolonged grief disorder involves intense, painful emotions associated with a lack of adapting to the loss of a loved one that persists for more than 1(one) year in adults and more than 6 (six) months in adolescents or children.<sup>32</sup> This condition is estimated to affect as many as 7% of bereaved individuals.<sup>33</sup>

In 2022, prolonged grief disorder (PGD), sometimes called complicated grief, was added to the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), a volume published by the American Psychiatric Association that defines and classifies mental disorders.<sup>34</sup> It

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<sup>30</sup> Eleanor Haley, MS and Litsa Williams, MA, LCSW-C, What's your grief? Lists to help you through *any loss* at page 31

<sup>31</sup> [Delayed Grief: Definition, Signs, & How to Cope](#)

<sup>32</sup> [Grief Reaction and Prolonged Grief Disorder](#)

<sup>33</sup> [Grief Reaction and Prolonged Grief Disorder](#)

<sup>34</sup> Eleanor Haley, MS and Litsa Williams, MA, LCSW-C, What's your grief? Lists to help you through *any loss* at page 32

is a mental disorder consisting of a distinct set of symptoms following the death of a family member or close friend.

## **7. Disenfranchised Grief**

Disenfranchised grief occurs where a person does not receive the support or validation needed. This term was coined by Dr. Kenneth J. Doka in 1989<sup>35</sup>. Dr. Doka is a licensed mental health counselor and pre-eminent expert in grief and explains that disenfranchised grief occurs where a person feels denied the right to grieve by family, friends, community members, or society.<sup>36</sup>

As a result, it becomes more challenging for the person to overcome and understand their grief feelings. This often happens when the relationship with the deceased is one that society interprets as more distant and not worthy of grief.<sup>37</sup> Societal rules often dictate that we grieve “blood” relatives and as we get beyond that circle, we find lesser acknowledgment of the impact of a death.<sup>38</sup>

## **4. Lawyer’s Role**

The lawyer’s role, whether dealing with an emotional or grieving client, or both, is to assist the client in making their possible best legal decision. This can understandably be more difficult with emotional or grieving clients. Managing client expectations in the legal process is key. Often, this means that a lawyer must be firm and redirect the client to the remedies available in the circumstances of the legal proceedings. Reminding a client from time to time that the lawyer can only assist with legal remedies and with suggesting there

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<sup>35</sup> [Resume](#)

<sup>36</sup> [7 Types of Grief You Should Know Right Now](#)

<sup>37</sup> [7 Types of Grief You Should Know Right Now](#)

<sup>38</sup> [7 Types of Grief You Should Know Right Now](#)

are other types of professionals who may be better able to assist and support the client with emotional needs, including therapy may be a required step.

Legal professionals can consider a softer approach where required and engage in mindful communication, empathy, and connection.

While engaged empathy is certainly beneficial to a lawyer's practice with clients, caution should be exercised. To be an effective lawyer, requires that a lawyer be able to, "step back from the client's situation, in ways that perhaps a client cannot, in order to provide a critical examination/assessment of the situation and so as to fulfil the lawyer's obligation to the client"<sup>39</sup>.

A certain amount of empathy is simply a way of interacting professionally with clients. Although situationally too much empathy may cause problems, so too, will a lack of empathy.<sup>40</sup>

#### **4.1 Lawyer's Toolkit**

As a lawyer retained in dispute resolution concerning wills, estates, trusts, guardianships, substitute decision making, powers of attorney (including misuses and abuses) with an intersection of capacity, undue influence, fraud, misappropriation, asset depletion and abuse, guiding clients through the murky landscape of legal and practical remedies requires a spirited and resilient approach.

The lawyer cannot and must not fall into a pattern of taking on the client's emotion.

#### **KIM'S TOP 6 Considerations in Navigating Clients through Contentious Proceedings in Complex Emotional Circumstances:**

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<sup>39</sup> The Heart of Lawyering: Clients, Empathy, and Compassion by Kristin B. Gerdy

<sup>40</sup> The Heart of Lawyering: Clients, Empathy, and Compassion by Kristin B. Gerdy

1. **COMMUNICATE:** Clearly communicate the legal goalposts or parameters of the retainer with the client both from a legal and practical perspective. Communicate to the client what it is you are able to do to assist with concerning the matter consulted, or retained on as well as any limitations, including that which you cannot assist with. Repeat regularly - as often as is necessary - orally and in writing.

2. **EDUCATE:** Educate the client as thoroughly as possible on the legal processes involved and the law as it relates to the subject matter of the client dispute. Ensure the education includes the perspective of other litigants to the dispute. Teach the client about the pros, cons, and risks associated with their goals from a legal, practical, and consequential perspective. Help the client understand through the dissemination of information and importing of knowledge. Help the client identify whether or not their goals can be achieved within the legal system and importantly at what cost, both emotionally, and financially. Constantly report orally to the client and prepare reporting letters to the client for their ongoing reference.

3. **INFORM:** Keep the client informed on all dialogue as between you as their lawyer representative and all communications with opposing lawyers and self-represented litigants. Explain the consequences of actions and steps taken by other parties whether aligned or opposed in interest. Explain the impact on your client of actions taken, and whether and how they will be affected. Resist a client's plea to you to not answer or address counsel and self-represented communications and remind clients of your duty as

an officer of the Court and under the Law Society of Ontario *Rules of Professional Conduct* (“**Rules**”)<sup>41</sup>.

4. **IDENTIFY:** Delineate amongst legal and non-legal support demanded by the client. Identify and explain the consequences of time spent on matters which are not strictly legal, may plague the retainer (ie., with unnecessary cost, effort, steps) and consider whether to suggest to the client that other professional assistance be sought alongside your retainer. Often clients in high emotion and high conflict situations have difficulty extricating their emotional goals from their legal goals. Remember all families are unique in their relationships with one another. Some are very high conflict, dysfunctional, and come from a long history of struggle and suffering. A lawyer cannot fix all of the difficult events that an individual has suffered within a familial context since often the rationale behind a client’s actions or motives is directed by their personal experience. Retribution, getting-even, infliction of suffering as a way of getting-back-at a parent, sibling or other, are common in retainers in this practice area. Be live to these clients and their motives and take a firm approach to the retainer. Identify issues and create barriers to time spent unnecessarily or that will not advance the client’s legal goals. Establish boundaries within the retainer relationship by identifying and redirecting goals, motives, and behaviours. Be firm. Be consistent. Report always and often.

5. **MANAGE EXPECTATIONS:** Constantly reiterate to the client what you can do within the legal processes and the governing rules of professional conduct to assist in the furtherance of their legal proceedings. Manage your client and their position in the Court

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<sup>41</sup> <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>

system. Resist getting caught up in using the court system inappropriately where the client wishes to use the process to exact retribution, cause financial, or reputational ruin/harm. Remember that a client who is not objective, who is not rational in their legal goals, and who cannot listen to reason, is a dangerous client. A dangerous client is more likely to turn on you, and make claims of negligence against you, that you mislead them in the results that could be achieved, who will not pay you, or will assess your accounts rendered, who will commence litigation against you, who will report you to your regulatory body for professional misconduct. Do not get duped by your client. Do not be used as a pawn. Always prepare your client, respecting the actions they wish to take and the consequences of such actions, or that are implicit in the process. Take instructions regularly orally and in writing - document them to the client. Solicit their acknowledgement of your communications. Practice defensively in managing client expectations. Listen. Advise. Take Instructions. Report especially when you have given advice that is refused, not taken and is contrary to their interests and actions in the proceeding.

**6. KNOW WHEN TO TERMINATE A RETAINER:** Finally, sometimes clients will want to take matters too far as demonstrated by their conduct. They will instruct you to take action, make communications, launch proceedings which you do not feel comfortable with, or which you have advised they will not succeed in. There is a simple answer: DON'T DO IT. Maintain your professional integrity. You are not a hired gun, and not a paid mudslinger! You are not helping your client's legal initiatives when you agree to strategize and launch a scorched earth attack. Always add value through subjective and objective

approaches. Take responsibility for the discharge of your professionalism. Be familiar with Rules – all of them<sup>42</sup>. Here a few to consider:

- **Rule 2.1-1:** A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honorably and with integrity.
- **Rule 3.7:** “Withdrawal from Representation”, a lawyer cannot withdraw their services except for good cause and upon appropriate notice to the client. However, in certain circumstances the lawyer will have a positive duty to withdraw. Examples outlined in the Rules are:
  - instructions inconsistent with your duties to the court;
  - if the client is guilty of dishonorable conduct in proceeding;
  - if the client is taking position solely to harass or maliciously injure another; and,
  - if it becomes clear that the lawyer’s continued employment will lead to breach of professional conduct rules (ie., conflict of interest).

As always, a lawyer must first inform your client of your intention to withdraw.

- **Rule 5.1-1** When acting as an advocate, a lawyer shall represent the client resolutely and honorably within the limits of the law while treating the tribunal with candor, fairness, courtesy, and respect.
- **Rule 5.1-5** A lawyer shall be courteous, civil, and act in good faith to the tribunal and with all persons with whom the lawyer has dealings.

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<sup>42</sup> <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>

- **Rule 5.6-1** A lawyer shall encourage public respect for and try to improve the administration of justice.
- **Rule 7.2-1** A lawyer shall be courteous, civil, and act in good faith with all persons with whom the lawyer has dealings in the course of their practice.

## 5. Concluding Comments

All lawyers throughout their legal career will face an emotional and/or grieving client at some time for Estates lawyers, it is routine. While addressing complex client circumstances, lawyers can use these 6 (six) tools to assist in the resolution of client issues and in protecting a lawyers' professionalism, integrity, duty to the client, and duties, as officers of the Court. In certain circumstances, it may be best to terminate the retainer and move on, but, practicing defensively throughout the retainer is a key component in navigating difficult retainers in complex circumstances.

*This paper is intended for the purposes of providing information only and is to be used only for the purposes of guidance and is not intended to be relied upon as the giving of legal advice and does not purport to be exhaustive.*

*Whaley Estate Litigation Partners*

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