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Restorative Lawyering: A Toolbox That Can Change the Profession

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RESTORATIVE LAWYERING: A TOOLBOX THAT CAN CHANGE THE PROFESSION

INTRODUCTION

*“Mentors at my first and only law firm taught me to focus on a single result: high-quality work for clients. If I accomplished that goal, everything else would take care of itself. Today, the business of law focuses school deans and practitioners in big law firms on something else: maximizing immediate profits for their institutions. That has muddied the profession’s mission and, even worse, set it on a course to become yet another object lesson in the perils of short-term thinking.”*¹

— Steven J. Harper,
The Lawyer Bubble: A Profession in Crisis (2013)

Serious issues plague the legal profession²—professional dissatisfaction³ and client dissatisfaction⁴ are two of the major ones. And these issues, if left unaddressed, will continue to negatively impact attorney-client relationships, employee retention rates, and ultimately, the efficacy of a given lawyer, firm, or legal organization—not to mention the bottom line of for-profit legal organizations and firms.

In this Comment, I will propose a way of lawyering—“restorative lawyering”—that effectuates Restorative Justice principles and addresses both professional dissatisfaction and client dissatisfaction. Restorative lawyering is a “toolbox”⁵—a set of practices and

1. STEVEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* ix (Basic Books 2013).

2. Steven J. Harper, *Unhappy Attorneys and the Expectations-Reality Gap*, LITIG., Winter 2015, at 1, 3, https://www.americanbar.org/content/dam/aba/publications/litigation_journal/winter2015/unhappy_attorneys.pdf [<https://perma.cc/GWK3-5JYS>] (“Attorneys are among the leaders in contests that no one wants to win: incidence of depression, alcoholism, substance abuse, and overall career dissatisfaction.”).

3. *Id.*

4. *See, e.g.*, Clark D. Cunningham, *What Do Clients Want from Their Lawyers*, 2013 J. DISP. RESOL. 143,151 (2013).

5. *See infra* Appendix A.

skills⁶—from which practitioners⁷ can select and apply to their specific context. Although the processes of Restorative Justice have been employed around the world for decades,⁸ the concept of “restorative lawyering” remains fairly new and undeveloped.⁹

In addition to addressing serious issues in the legal profession, the adoption of restorative lawyering practices would help re-root the profession in values it espouses. For example, restorative lawyering practices, if adopted by practitioners on a wide scale, would help achieve the official goals of the American Bar Association, such as promoting full and equal participation in the justice system by all persons¹⁰ and assuring meaningful access to justice for all persons.¹¹ In a similar vein, former President of the American Bar Association, Karen J. Mathis, stated:

Ultimately, lawyering is a delicate balancing between a constantly evolving world, and the fundamental principles that define our legal system. It calls upon your compassion as well as your intellect, your heart [as] well as your head. . . . [C]aring is as much a part of the legal profession as intelligence. . . . [I]t is every lawyer’s responsibility in every setting to serve others.¹²

6. See *infra* Part III.B.

7. I mostly refer or allude to lawyers “practicing” in the traditional sense of direct client representation, but every legal practitioner—professors, judges, lobbyists, politicians, impact litigators—can adapt restorative lawyering practices to their day-to-day actions and interactions.

8. “Since the 1970s, a variety of programs and approaches have emerged in thousands of communities and many countries throughout the globe.” HOWARD ZEHR & ALI GOHAR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 26 (2003), <https://www.unicef.org/tdad/little-book-rjpakaf.pdf> [<https://perma.cc/C2GY-KD8X>].

9. The resources that address “restoratively lawyering” on point include: Brenda Waugh, *A Restorative Justice Based Practice of Law*, WAUGH LAW AND MEDIATION (Aug. 5, 2018), <http://brendawaugh.com/blog/2018/7/31/a-restorative-justice-based-practiceoflaw> [<https://perma.cc/36UP-9LP4>]; Zehr Institute for Restorative Justice, *Restorative Justice and the Practice of Law*, YOUTUBE (Dec. 12, 2016), <https://www.youtube.com/watch?v=7lesnfvJnz0> [<https://perma.cc/S7K5-V5W5>]. I was not able to find anything else on point. There are additional sources that reference “living restoratively” generally. *E.g.*, Ted Wachtel & Paul McCold, *Restorative Justice in Everyday Life*, in *RESTORATIVE JUSTICE AND CIVIL SOCIETY* 114, 114–29 (Heather Strang & John Braithwaite eds., 2001); Howard Zehr, *10 Ways to Live Restoratively*, ZEHK INST. FOR RESTORATIVE JUST.: BLOG (Nov. 27, 2009), <http://zehr-institute.org/resources/10-ways-to-live-restoratively/> [<https://perma.cc/TDG4-HCJX>].

10. *ABA Mission and Goals*, AM. BAR ASS’N, https://www.americanbar.org/about_the_aba/aba-mission-goals/ [<https://perma.cc/VLZ8-H2HG>].

11. *Id.*

12. Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the “Heart” of Lawyering*, 87 NEB. L. REV. 1, 2 (2008) (citing Karen J. Mathis, American Bar Association President, Keynote Address at the Drexel University College of Law Inaugural Celebratory Dinner (Sep. 27, 2006)) (internal quotations omitted).

I will begin in Part I by delving into two serious issues in the legal profession—professional dissatisfaction and client dissatisfaction. Then, in Part II, I will provide a brief overview of Restorative Justice and three of its key principles: Heal the Harm, Honor and Respect, and Empathy. In Part III, I extrapolate from these three Restorative Justice principles to create a “toolbox”¹³ of restorative lawyering. I will then explain how restorative lawyering will decrease professional and client dissatisfaction, distinguish restorative lawyering from alternative models, and address possible critiques and concerns.

I. BACKGROUND

Professional dissatisfaction and client dissatisfaction are two widespread issues¹⁴ affecting the legal profession today. These issues stem from how lawyers have practiced their profession in recent decades.¹⁵

A. *Professional Dissatisfaction*

First, there is pervasive professional dissatisfaction among legal practitioners.¹⁶ In a recent study group of 4500 attorneys who graduated in 2000, researchers found that twenty-five percent of participants surveyed were dissatisfied with their decisions to become lawyers, which amounts to hundreds of thousands of lawyers.¹⁷

Surveys, reports, and other forms of research all reveal a disturbing trend: “[s]weeping changes in the way law is practiced, along with substantial changes in the environment in which lawyers operate, have given rise to well documented increases in job

13. See *infra* Appendix A.

14. There are other issues, of course, but those are outside the scope of this Comment.

15. Lawrence R. Richard, *Psychological Type and Job Satisfaction Among Practicing Lawyers in the United States*, 29 CAP. U.L. REV. 979, 979 (2002).

16. See *id.*; Jacquelyn Smith, *The Happiest and Unhappiest Jobs in America*, FORBES (Mar. 22, 2013), <https://www.forbes.com/sites/jacquelynsmith/2013/03/22/the-happiest-and-unhappiest-jobs-in-america/#1ccfa7632edd> [<https://perma.cc/Q858-M9AJ>]. But see Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L.J. 225 (2011).

17. Harper, *supra* note 2, at 1, 3 (citing Ronit Dinovitzer et al., *Buyers’ Remorse? An Empirical Assessment of the Desirability of a Lawyer Career*, 63 J. LEGAL EDUC. 211, 215, 222 (2013)).

dissatisfaction among attorneys.”¹⁸ And, professional dissatisfaction is worse among attorneys in big firms.¹⁹ Causes of this dissatisfaction include “long hours, no time for family, political intrigue and backbiting, reduced collegiality and increased incivility, and increasing competition.”²⁰

According to a 2012 Forbes.com report, the associate attorney is the unhappiest of all.²¹ It reveals, “[a]ssociate attorneys stated they felt most unhappy with their company culture[,] [...] [such as the focus] on billable hours,” and poor rewards structure.²²

In sum, many attorneys do not feel valued and appreciated in their workplaces. Many lawyers are dissatisfied with their careers, the reasons for which can be boiled down to a harsh professional culture, unrealistic expectations, and lack of collegiality.

B. *Client Dissatisfaction*

In addition to widespread professional dissatisfaction in the legal profession, many clients are also dissatisfied with their lawyers.²³ A 2006 report from the American Bar Association (“ABA”) found that seventy percent of big companies are dissatisfied with their primary outside counsel.²⁴

In the early 2000s, two major studies were conducted in an attempt to find out what clients and the public think about lawyers and the legal profession as a whole.²⁵ The first, a 2001 ABA study,

18. Richard, *supra* note 15, at 979.

19. HARPER, *supra* note 1, at 1.

20. Richard, *supra* note 15, at 979.

21. Smith, *supra* note 16 (“Employees all over the country were asked to evaluate ten factors that affect workplace happiness. Those include one’s relationship with the boss and co-workers, work environment, job resources, compensation, growth opportunities, company culture, company reputation, daily tasks, and control over the work one does on a daily basis. They evaluated each factor on a five-point scale and also indicated how important it was to their overall happiness. The numbers were combined to find an average rating of overall employee happiness for each respondent, and then sorted by job title to find which occupations had the happiest workers. A minimum of fifty employee reviews was required to be considered for CareerBliss’ 10 Happiest Jobs in America, and executive level jobs, like chief executive, were excluded from the study.”).

22. *Id.*

23. See, e.g., Cunningham, *supra* note 4, at 151 (“[T]he client survey information and social science data . . . suggest clients of lawyers in many settings are often fundamentally dissatisfied with the legal services they receive . . .”); see also Gerdy, *supra* note 12, at 7–10.

24. See Cunningham, *supra* note 4, at 143 (citing Sandra Prufer, *In-House Counsel Ax-ing Law Firms Survey: 70 Percent of Big Companies Dissatisfied with Outside Counsel*, ABA JOURNAL EREPORT (2006)).

25. See Gerdy, *supra* note 12, at 7, 9–10.

synthesized surveys of forty-five U.S. households, ten focus groups, and telephone surveys of three hundred U.S. households.²⁶ The results showed that “many survey respondents . . . viewed lawyers in general as greedy, manipulative, and corrupt, and some related experiences with lawyers who misrepresent[ed] their qualifications, overpromise[d], [were] not upfront about their fees, charge[d] too much for their services, [took] too long to resolve matters, and fail[ed] to return client phone calls.”²⁷

Additionally, a 2005 BTI Consulting Group study examined client satisfaction rates among the Fortune 1000, using recommendation rates and conducting more than 200 interviews with corporate counsel.²⁸ Twenty-seven of those surveyed were employed at a Fortune 100 company and nine percent at a Global 500 company.²⁹ The results found that “7 out of 10 clients do not recommend their primary law firms.”³⁰ The study’s most significant finding was that “[l]ow client satisfaction plagues today’s legal industry.”³¹

The next logical question is: what causes client dissatisfaction? The BTI survey results—as well as social science research—found that poor communication skills and lack of responsiveness are at the core of client dissatisfaction³²—and accounted for over half of general counsel complaints.³³ Specific complaints include failure to keep clients adequately informed, lack of client focus (i.e., failure to listen, nonresponsiveness, arrogance), making decisions without client authorization or awareness, and failure to give clear advice.³⁴

Michele DeStefano, a researcher who conducted 100 interviews of the general counsel of large international corporations and heads of innovation at firms,³⁵ elaborates on the causes of client

26. *Id.* at 9.

27. *Id.* at 10 (citing Leo J. Shapiro & Associates, *Public Perceptions of Lawyers: Consumer Research Findings*, ABA SEC. LITIG. (2002) (internal quotes omitted).

28. Cunningham, *supra* note 4, at 144.

29. *Id.* (citing BTI CONSULTING GROUP, *How Clients Hire, Fire and Spend: Landing The World’s Best Clients* (2006)).

30. *Id.*

31. Gerdy, *supra* note 12, at 10 (citing Marcie Borgal, *How to Prevent the Dreaded ‘Dissatisfied Client Syndrome,’* 2 COMPLETE LAW. NO. 2 (2006) (internal quotations omitted).

32. Cunningham, *supra* note 4, at 151.

33. *Id.* at 144.

34. *Id.*

35. Biography of Michele DeStefano, LAW WITHOUT WALLS, <http://lawwithoutwalls.org/destefano> [<https://perma.cc/52N2-WR63>].

dissatisfaction. She explains, “[c]lients want lawyers to learn how to communicate better and check in more often and provide and embrace feedback. It is a different level of client service than was required in the past, and lawyers are not providing it.”³⁶ In her research, “client interviewees also made clear their lawyers lacked the collaborative, creative problem finding and solving skills they needed. They wanted their lawyers to develop the skills that provide a collaborative mindset such as empathy, self-awareness, and humility because those skills are what turn a great lawyer into a great leader.”³⁷

Ultimately, client dissatisfaction stems from lack of desired skills,³⁸ mismanagement of client relationships,³⁹ and under-delivering on client needs and wants.⁴⁰ When lawyers cannot meet changing client needs, both individual lawyers and the profession as a whole suffer.⁴¹

II. OVERVIEW OF RESTORATIVE JUSTICE PRINCIPLES

The model of restorative lawyering presented in this Comment is rooted in Restorative Justice principles. Part II will provide an overview of Restorative Justice as well as the three principles I identify to develop a “toolbox”⁴² of restorative lawyering: Heal the Harm, Honor and Respect, and Empathy.

A. *Introduction to Restorative Justice*

Restorative Justice is a set of processes designed to address harm caused to individuals and communities by persons who commit unjust actions, including criminal offenses.⁴³ These processes

36. Michele DeStefano, *An Excerpt from Chapter 3 of Legal Upheaval: A Guide to Creativity, Collaboration, and Innovation in Law*, 27 U. MIAMI BUS. L. REV. v, xi (2018).

37. *Id.* at xii.

38. *E.g., id.* at xi–xii (e.g., empathy, self-awareness, and humility); Cunningham, *supra* note 4, at 144, 151 (effective communication skills).

39. *See, e.g.,* Cunningham, *supra* 4, at 144–45 (“failure to listen, non-responsiveness, arrogance”).

40. *Id.*

41. Client dissatisfaction increases the chance of malpractice claims, despite legal performance. *See* Gerdy, *supra* note 12, at 12 (citing Anne E. Thar, *What Do Clients Really Want? It's Time You Found Out*, 87 ILL. BUS. J. 331 (1999)).

42. *See infra* Appendix A.

43. 5 RUTH ANN STRICKLAND, RESTORATIVE JUSTICE 1 (2004).

include victim-offender mediation and circle processes, among others.⁴⁴ Restorative Justice aims to fill in where the current criminal justice system lacks, and is based on the idea that the criminal justice system does not effectively resolve criminal offenses.⁴⁵

Restorative Justice can also be conceived of as a set of values, or principles.⁴⁶ This Comment utilizes the “values conception” of Restorative Justice,⁴⁷ focusing on three specific principles: Heal the Harm, Honor and Respect, and Empathy. These provide the starting place for developing a model of restorative lawyering.

Additionally, it is important to recognize that Restorative Justice practices and processes exist along a continuum that spans from not restorative at all to fully restorative.⁴⁸ Questions that can be used to assess the restorative nature of a practice or process include: Does the process address harms, needs, and causes? Is it adequately victim-oriented? Are offenders encouraged to take responsibility? Are all relevant stakeholders involved? Is there an opportunity for dialogue and participatory decision-making? Does it address causes? Is it respectful to all parties?⁴⁹ The more “yes” answers, the more restorative a process or practice is.

In sum, Restorative Justice is a set of processes, informed by specific and deeply held principles, that vary in their restorative effect. In Part II.B, I highlight three Restorative Justice principles that I will later draw upon to describe a “toolbox” of restorative lawyering.⁵⁰

B. *Principles of Restorative Justice*

Although there are many principles of Restorative Justice,⁵¹ this Part will outline the three that this Comment focuses on: Heal the Harm, Honor and Respect, and Empathy.

44. Daniel W. Van Ness & Karen Heetderks Strong, *Encounter*, in *A RESTORATIVE JUSTICE READER* 83 (Gerry Johnstone ed., 2d ed. 2013).

45. See 5 STRICKLAND, *supra* note 43, at 2.

46. John Braithwaite & Heather Strang, *Introduction* to *RESTORATIVE JUSTICE AND CIVIL SOCIETY*, *supra* note 9, at 1–13.

47. *Id.*

48. See ZEHR & GOHAR, *supra* note 8, at 56; see also Waugh, *supra* note 9.

49. See ZEHR & GOHAR, *supra* note 8, at 56.

50. See *infra* Section III.B.

51. See, e.g., ZEHR & GOHAR, *supra* note 8.

1. Heal the Harm

First, healing what has been broken is a cornerstone of Restorative Justice.⁵² Harm is defined broadly—harm to the persons who were victimized, harm to the aggressors, and harm to the larger community.⁵³ Harm is thought of as broken relationships, broken trust,⁵⁴ and violations of one another’s humanity.⁵⁵ The goal of restoration through healing is to “take stock of where divisions have occurred in our communities and work toward balance, understanding and reconciliation.”⁵⁶

The harm is healed in Restorative Justice through participation of as many stakeholders as possible,⁵⁷ broad identification of needs and solutions—considering emotional as well as material losses to those impacted,⁵⁸ and seeking full and direct accountability from those who committed the harm.⁵⁹ Additionally, practitioners healing the harm with Restorative Justice should always have an eye toward preventing future harm—making sure to carry out any processes, dialogues, or consequences in a way that will lead to restoration rather than additional damage.⁶⁰

2. Honor and Respect

The principle of Honor and Respect “is an ethical attitude which recognizes the intrinsic value of the other.”⁶¹ Restorative Justice processes encourage practitioners and participants to “confron[t]

52. *E.g., id.*; Lode Walgrave, *From Community to Dominion: In Search of Social Values for Restorative Justice*, RESTORATIVE JUSTICE, THEORETICAL FOUNDATIONS 80 (Elmar G.M. Weitekamp & Jans-Jurgen Kerner eds., 2002); 5 STRICKLAND, *supra* note 43, at 1.

53. Howard Zehr, *Restorative or Transformative Justice?*, Blog, ZEHR INSTITUTE FOR RESTORATIVE JUSTICE (Mar. 10, 2011), <http://zehr-institute.org/resources/restorative-or-transformative-justice/> [<https://perma.cc/9BHC-5CGD>].

54. *See* ZEHR & GOHAR, *supra* note 8.

55. Erik Claes et al., *Digital Stories and Restorative Justice In Brussels*, CRITICAL RESTORATIVE JUSTICE 212 (Ivo Aertsen and Brunilda Pali eds. 2017); *see* Howard Zehr, *A Needle for the Restorative Justice Compass*, ZEHR INST. FOR RESTORATIVE JUST.: BLOG (Sept. 28, 2011), <http://zehr-institute.org/resources/a-needle-for-the-restorative-justice-compass/> [<https://perma.cc/PQU3-C4TW>].

56. Zehr, *supra* note 9.

57. 5 STRICKLAND, *supra* note 43, at 1–2.

58. Wachtel & McCold, *supra* note 9, at 114, 121.

59. *See* Walgrave, *supra* note 52, at 80; *see also* ZEHR & GOHAR, *supra* note 8, at 14–15.

60. ZEHR & GOHAR, *supra* note 8, at 44–48.

61. Walgrave, *supra* note 52, at 80.

and disapprov[e] of wrong-doing [sic] while supporting and acknowledging the intrinsic worth of the wrongdoer.”⁶² Honor and Respect are values already espoused by the profession, and include Honor and Respect of clients, colleagues, and court officials.⁶³

3. Empathy

Lastly, Empathy is the third key principle of Restorative Justice highlighted in this Comment.⁶⁴ Empathy can be defined as: “to share or at least understand a client’s feelings”⁶⁵ or “to imagine and thereby nonjudgmentally understand what it would be like to be in the client’s position.”⁶⁶ “Empathy is the ability to experience and relate to thoughts, emotions, or experience of others.”⁶⁷ “Empathy is more than simple sympathy, which is being able to understand and support others with compassion or sensitivity.”⁶⁸

Restorative Justice specifically reflects the value of Empathy by employing processes that seek to understand the various stakeholders’ perspectives and encouraging facilitators to acknowledge the emotional needs of the participants.⁶⁹

62. See e.g., Wachtel & McCold, *supra* note 9, at 128; see also Howard Zehr, *Core Capacities of Restorative Justice Practitioners*, ZEHR INST. FOR RESTORATIVE JUST.: BLOG (Feb. 10, 2010), <https://zehr-institute.org/resources/core-capacities-of-restorative-justice-practitioners/> [<https://perma.cc/2NEK-KNSY>].

63. *Lawyer’s Creed and Aspirational Statement of Professionalism*, STATE BAR OF GA. <https://www.gabar.org/aboutthebar/lawrelatedorganizations/cjcp/lawyers-creed.cfm> [<http://perma.cc/A5HD-55WH>] (“To the opposing parties and their counsel, I offer fairness, integrity and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one,” and “[t]o the courts, and other tribunals, and to those who assist them, I offer respect, candor and courtesy. I will strive to do honor to the search for justice.”); see also, *The Texas Lawyer’s Creed*, SUPREME COURT OF TEX. AND COURT OF CRIMINAL APPEALS (Nov. 7, 1989), https://www.legalethicstexas.com/getattachment/Ethics-Resources/Rules/Texas-Lawyer-s-Creed/Texas_Lawyers_Creed.pdf?lang=en-US [<http://perma.cc/95VA-3DED>]. See, e.g., *Professionalism Codes*, AM. BAR ASS’N (Mar. 12, 2019), https://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_codes/ [<http://perma.cc/YA5H-ARKP>].

64. See, e.g., Wachtel & McCold, *supra* note 9, at 128. See also Zehr, *supra* note 63.

65. Gerdy, *supra* note 12, at 18 (citing Robert Dinerstein et al., *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755, 758 (2004)).

66. *Id.*

67. WILLIAM A. GENTRY ET AL., *EMPATHY IN THE WORKPLACE: A TOOL FOR EFFECTIVE LEADERSHIP 2* (CENTER FOR CREATIVE LEADERSHIP 2016), <https://www.ccl.org/wp-content/uploads/2015/04/EmpathyInTheWorkplace.pdf> [<https://perma.cc/X472-74DH>].

68. *Id.*

69. Wachtel & McCold, *supra* note 9, at 114, 121.

III. DISCUSSION: RESTORATIVE LAWYERING, A SOLUTION FOR THE PROFESSION

Lawyers who practice restoratively employ and develop a variety of practices and skills that effectuate the principles of Restorative Justice: Heal the Harm, Honor and Respect, and Empathy.⁷⁰ Over time, and if adopted on a large scale, such practices and skills have the potential to reduce professional dissatisfaction and client dissatisfaction.

Part III will provide a working definition of restorative lawyering, outline a “toolbox”⁷¹ of practices and skills for a restorative lawyer, and briefly distinguish restorative lawyering from other alternative approaches. Part III will conclude by explaining how restorative lawyering reduces professional dissatisfaction and client dissatisfaction and, finally, by addressing possible critiques and concerns.

A. *Definition of Restorative Lawyering*

Restorative lawyering, as proposed in this Comment, is a “toolbox”⁷²—a set of practices and skills—from which legal practitioners can select and apply to their everyday workplace interactions and tasks. It is rooted in principles of Restorative Justice, such as Heal the Harm, Honor and Respect, and Empathy. Restorative lawyering is not a completely new way of practicing law; rather, it is a re-emphasis on the values and ideals of the profession. This Comment offers a set of practices and skills⁷³ from which practitioners can choose, as appropriate, to apply to a specific context and a specific lawyer-client relationship.

The next Part will provide a sampling of restorative practices and skills available for the selection, development, and implementation by every lawyer.

70. See *infra* Section III.B.

71. See *infra* Appendix A.

72. See *infra* Appendix A.

73. See *infra* Section III.B.

B. *A Restorative Lawyer's Toolbox: Practices and Skills*⁷⁴

To be an effective “restorative lawyer,” an attorney must be proficient at both practices and skills⁷⁵ that effectuate restorative principles.⁷⁶

In the next subsection, three Restorative Justice principles will be translated into discrete practices and skills of a restorative lawyer.

1. Heal the Harm

First, to practice restoratively, a lawyer must facilitate the healing of what has been broken, as much as possible and to the extent possible.⁷⁷ Healing the Harm involves participation of as many stakeholders as possible,⁷⁸ broad identification of needs and solutions,⁷⁹ seeking full and direct accountability from those who cause harm,⁸⁰ and the use of expanded metrics of success that account for alternative methods of resolution and future harm prevention.⁸¹ While these practices might seem unfamiliar to some practitioners, both full participation by clients and broad identification of needs

74. See *infra* Appendix A.

75. Although the words “practice” and “skill” might seem interchangeable, for the purposes of this Article they have discrete definitions. A “practice” is something someone does often or customarily. See Practice, MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/practice> [<https://perma.cc/AZ6J-WFGB>]. When someone routinely checks email as soon as they arrive at the office, it is a practice. Likewise, restorative lawyers will choose to employ certain practices. On the other hand, skills are the particular abilities or capacities a lawyer possesses. See Skill, MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/skill> [<https://perma.cc/48AY-KTGJ>]. For example, a lawyer may have effective communication or conflict-resolution skills. Skills may help a lawyer carry out certain practices more effectively but are distinct from the practices themselves. Without both restorative practices and skills, a restorative lawyer will not be effective.

76. See *supra* Section II.B.

77. ZEHR & GOHAR, *supra* note 8, at 21.

78. Paul McCold & Ted Wachtel, *In Pursuit of Paradigm: A Theory of Restorative Justice*, INT'L INST. FOR RESTORATIVE PRACTICES, 1–3 (2005) [<https://perma.cc/Y5RH-BCJL>].

79. 5 STRICKLAND, *supra* note 43, at 2.

80. See Walgrave, *supra* note 52, at 80. See also ZEHR & GOHAR, *supra* note 8, at 14–15.

81. 5 STRICKLAND, *supra* note 43, at 2.

and solutions are in line with American Bar Association Goals⁸² and Model Rules of Professional Responsibility.⁸³

Practices⁸⁴ to effectuate this principle include involving full client participation in the consultation and throughout legal representation (to the extent practicable),⁸⁵ encouraging and modeling taking responsibility for actions and errors, and identifying all needs and wants of a client including all possible solutions.⁸⁶

Skills required by practitioners wanting to Heal the Harm are varied and can be tailored to a specific context.⁸⁷ They include the ability to create and facilitate accountability by the wrongdoer(s), including self, as appropriate; the ability to apply a forward-thinking perspective and creativity to identify the needs and solutions of a client more broadly;⁸⁸ and the ability to think beyond the present circumstance and propose solutions to prevent the specific harm from recurring.

82. *Goal III, Eliminate Bias and Enhance Diversity, ABA Mission and Goals*, AM. BAR ASS'N (June 11, 2018), https://www.americanbar.org/about_the_aba/aba-mission-goals/ [<https://perma.cc/J436-YXGC>] (“Promote full and equal participation in the association, our profession, and the justice system by all persons.”).

83. *See* MODEL RULES OF PROF'L CONDUCT r. 2.1 (AM. BAR ASS'N 2019) (“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”); MODEL RULES OF PROF'L CONDUCT r. 2.1 cmt. 2 (AM. BAR ASS'N 2019) (“Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.”); *see also*, Angela Olivia Burton, *Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm Into the Clinical Setting*, 11 CLINICAL L. REV. 15, 16–17 (2004).

84. *See also infra* Appendix A.

85. ZEHR & GOHAR, *supra* note 8, at 24, 54.

86. 5 STRICKLAND, *supra* note 43, at 2.

87. *See infra* Appendix A.

88. *See infra* Appendix A.

2. Honor and Respect

Next, a lawyer who practices restoratively takes the Restorative Justice principle of Honor and Respect and applies it to every interaction in every context.⁸⁹ In practice,⁹⁰ this looks like taking relationships seriously,⁹¹ openness and responsiveness in communication,⁹² and communicating with civility, even with a difficult topic.⁹³

To begin, lawyers are able to convey that they take relationships seriously through the method and manner of communication. For example, taking time to listen to a client's concerns or communicating in a professional manner—tone, body language, etc.—are both ways to convey honor and respect. Next, to practice openness and responsiveness in communication, a lawyer should keep the client abreast of developments in the matter⁹⁴ and either inform the client or set up an away message on email when the lawyer will be out of the office for an extended period of time.⁹⁵ To practice civility in conversation, a lawyer should engage in difficult conversations with patience and generosity, remaining open to learning from another person's perspective.⁹⁶

Skills⁹⁷ that restorative lawyers may employ to show Honor and Respect for clients include the ability to develop a complex narrative of the conflict and avoid the “single story,”⁹⁸ the ability to recognize what the client brings to the relationship,⁹⁹ and the ability to solicit and incorporate client feedback.¹⁰⁰

89. See Zehr, *supra* note 9.

90. See also *infra* Appendix A.

91. See Zehr, *supra* note 63.

92. Zehr, *supra* note 9.

93. *Id.*

94. This is also required by the MODEL RULES OF PROF'L CONDUCT r. 1.4 (AM. BAR ASS'N 2019).

95. Terrie S. Wheeler, *How to Create Your 2017 Marketing Plan—Pillar I: Retain and Grow Relationships with Clients and Referral Services*, GPSOLO EREPORT, AM. BAR ASS'N, SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION (Feb. 1, 2017), https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2017/february_2017/create_2017_marketing_plan_part_2/ [<https://perma.cc/3XZH-PBB3>] (“The client survey, or audit, is a critical step in benchmarking the quality of service that your clients, prospective clients, and referral sources feel that they are getting.”).

96. Zehr, *supra* note 9.

97. See also *infra* Appendix A.

98. Waugh, *supra* note 9.

99. *Id.*

100. Julie Lawton, *Who is My Client? Client-Centered Lawyering with Multiple Clients*, 22 CLINICAL L. REV. 145, 149–50 (2015).

First, “[c]onflict often involves multiple narratives that can[not] be reconciled.”¹⁰¹ In seeking to show Honor and Respect for the client, colleagues, and opposing counsel, restorative lawyers “work to allow for multiple narratives,”¹⁰² avoiding the temptation to make assumptions, draw hasty conclusions, or simplify a situation to its legally operative facts. Although this skill might be more difficult for some to develop than others, it is important to show Honor and Respect nonetheless.

The next skill, the ability to recognize what the client brings to the table, is an important skill for a restorative lawyer to develop and master. By acknowledging the knowledge, expertise, or experiences of a client or colleague—whether directly or indirectly—a lawyer shows Honor and Respect. This could be as simple as “I know you have expertise in X. . . .” or “could you explain to me some more about your experience in Y?” or “what do you think?” It could also look like refraining from over-explaining a topic the client already has experience with or exposure to.

Lastly, the ability to solicit and incorporate client feedback is another valuable skill that allows a lawyer to demonstrate Honor and Respect. The exact dimensions and recommendations are outside the scope of this Comment, but as an introduction, common methods include a written survey, telephone survey, and in-person review.¹⁰³ Moreover, gathering client feedback and adjusting in response is now considered a best practice for firms and legal organizations.¹⁰⁴

In regard to colleagues specifically, a lawyer who shows Honor and Respect for colleagues will use the same practices, and develop the same skills, as are required to show Honor and Respect for clients. For example, a lawyer might exhibit Honor and Respect by explicitly acknowledging the expertise a colleague brings to a project, or taking time to solicit feedback from colleagues to see if there

101. Waugh, *supra* note 9.

102. *Id.*

103. Edward Poll, *Listening to Clients*, Attorney and Law Firm Guide to Business of Law, AM. BAR ASS'N, GPSOLO EREPORT FEBRUARY 2017 (Aug. 15, 2017), https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2017/february_2017/listening_to_clients/ [<https://perma.cc/F6D5-3JM5>].

104. *Id.*; see also Gail E. Silverstein, *All is Well that Ends Well*, 19 CLINICAL L. REV. 555, 576–77 (2013).

are ways to more effectively work together. These are all mechanisms by which lawyers can fully live up to the values of the profession.¹⁰⁵

3. Empathy

Empathy is the last Restorative Justice principle explored in this Comment. Lawyers who display Empathy effectively will engage in intentional practices and develop specific skills. Fortunately, Empathy can be learned and developed.¹⁰⁶

Practices that demonstrate Empathy include seeking nonjudgmental understanding of a client's feelings and positions, acknowledging and adhering to personal and professional boundaries, and refraining from micromanaging or stealing the decision-making power from clients.

First, Empathy requires a lawyer to develop the habit of imagining what it would be like to be in the client's position.¹⁰⁷ Professionals who consistently show Empathy put themselves in the other person's place.¹⁰⁸ There may, of course, be limits to how much one person can understand another, owing to differences in personality, culture, and life experiences. Nonetheless, seeking to understand with a learner's posture is important.

Second, a lawyer who practices Empathy effectively acknowledges and adheres to personal¹⁰⁹ and professional boundaries.¹¹⁰ Over-empathizing or over-identifying with a client at the expense of professional boundaries will severely decrease a practitioner's effectiveness. The same concept applies to colleagues.¹¹¹ A lawyer who is effective at practicing Empathy in the workplace will

105. See, e.g., *Preamble: A Lawyer's Responsibilities*, VA. STATE BAR, <http://www.vsb.org/pro-guidelines/index.php/rules/preamble/> [<https://perma.cc/4KJW-X9VX>].

106. GENTRY ET AL., *supra* note 67, at 6 (citing Shapiro, *How Do Physicians Teach Empathy in the Primary Care Setting?*, 77 ACAD. MED. 323–28 (2002)).

107. Gerdy, *supra* note 12, at 18 (citing Robert Dinerstein et al., *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755, 758 (2004)).

108. See GENTRY ET AL., *supra* note 67, at 7.

109. Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 CLINICAL L. REV. 135, 156 (2002).

110. See 2018 STATE OF WORKPLACE EMPATHY, BUSSINESSSOLVER.COM 15, <https://info.businessolver.com/hubfs/empathy-2018/businessolver-workplace-empathy-overview-ebook.pdf?hsCtaTracking=acdb6e17-74d4-4b17-b8e1-7a0e9e4ceed2%7C4ccff4e-9afc-4cf9-a6a8-79a6ec94556c> [<https://perma.cc/SL5S-3X43>].

111. See *id.*

acknowledge and adhere to both clients' and colleagues' boundaries.¹¹²

Third, a lawyer who shows Empathy refrains from micromanaging or stealing decision-making from clients.¹¹³ Lawyers, in attempting to feel and show Empathy to their clients, must resist "the natural inclination of most helpers to take power away from the client by making decisions or acting on behalf of the client."¹¹⁴ Such an action would be disempowering.¹¹⁵

Although lawyers who practice Empathy want to help, helping is harmful when it becomes micromanaging.¹¹⁶ The practice of refraining from stealing decision-making power from clients is not only essential to showing Empathy, but also reflected in professional ethics standards.¹¹⁷

Next, a lawyer who practices restoratively over time might be able to become more proficient at various skills that effectuate empathy. These skills include deep, active listening¹¹⁸ and emotional intelligence.¹¹⁹

Deep, active listening is "[l]isten[ing], deeply and compassionately, to others, seeking to understand even if you [do not] agree with them."¹²⁰ This involves listening for complexity and emotion, rather than just for content. Deep, active listening also involves asking questions to confirm comprehension and demonstrating interest with body language¹²¹ and reflective questions.¹²²

The second skill relating to Empathy is emotional intelligence. Emotional intelligence is a set of emotional capacities, including

112. *See id.*

113. V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 94–95 (2002).

114. *Id.*

115. *Id.* at 95; M. Joan McDermott & James Garofalo, *When Advocacy for Domestic Violence Victims Backfires*, 10 VIOLENCE AGAINST WOMEN 1245, 1248 (2004).

116. Enos & Kanter, *supra* note 113, at 95; McDermott & Garofalo, *supra* note 115, at 1248.

117. MODEL RULES OF PROF'L CONDUCT r. 1.4 (AM. BAR ASS'N 2019).

118. *See* GENTRY ET AL., *supra* note 68, at 7; *see also* Zehr, *supra* note 9.

119. *See* DANIEL GOLEMAN ET AL., PRIMAL LEADERSHIP: UNLEASHING THE POWER OF EMOTIONAL INTELLIGENCE 38 (2013).

120. Zehr, *supra* note 9.

121. *See* Zehr, *supra* note 63.

122. *See* GENTRY ET AL., *supra* note 68, at 7.

self-awareness, self-management, social awareness, and relationship management.¹²³ Emotional intelligence is a form of intelligence that can be taught and learned, and has been shown in the business context to be linked to increased ability to persuade, influence, and communicate.¹²⁴ Lawyers who develop emotional intelligence are better able to empathize with clients.¹²⁵

4. Toolbox in Summary

This is not an all-inclusive list of what it means to be a restorative lawyer, but if legal practitioners were to adopt Heal the Harm, Honor and Respect, and Empathy as key principles of their lawyering and, therefore, adopt practices and develop skills that carry out those principles, they would be practicing restoratively.

C. *How Practicing Restoratively Addresses Issues in the Legal Profession*

At this point, restorative lawyering is such a new, and almost undocumented,¹²⁶ approach to lawyering that there is not much data or literature available about its potential impacts. This Part will compile existing research on Restorative Justice, analyze the practices of restorative lawyering in isolation (e.g., Empathy), and provide predictions and proposals for the profession.

1. Professional Dissatisfaction

If practitioners adopt restorative lawyering practices, and start to develop the associated skills, professional dissatisfaction would—albeit slowly—begin to decrease. Workplace culture would improve, work expectations would be more realistic, and collegiality would increase. A Heal-the-Harm approach to conflict in the workplace will improve workplace culture overall. It would lead to an emphasis on accountability, participation, and prevention of unhealthy workplace conflict. Honor and Respect of colleagues, as well as their familial and personal obligations would help lessen issues that stem from negative aspects of professional culture.

123. GOLEMAN ET AL., *supra* note 119, at 38.

124. John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 326 (2008).

125. *Id.* at 337.

126. *See supra* Introduction.

Committing to Empathy, and the accompanying practices and skills, will increase conflict-management skills, encourage respect of personal and professional boundaries, and encourage deep, active listening. In fact, increased Empathy in the workplace has been shown to increase professional satisfaction in the medical¹²⁷ and business¹²⁸ professions and there is no reason the same would not be true for the legal profession.

If lawyers were to adopt restorative practices, and work to develop restorative skills, common grievances would be addressed: the workplace environment would be healthier and more enjoyable, work expectations would be more realistic, and collegiality between colleagues would increase. Such changes would ultimately, and over time, decrease professional dissatisfaction.

2. Client Dissatisfaction

As explained in Part I of this Comment,¹²⁹ client dissatisfaction stems from a lack of desired skills, mismanagement of the client relationship, and under-delivering on client needs and wants. Restorative lawyering practices and skills address each of these components.

To begin, employing Heal the Harm by involving clients in the process has the potential to increase satisfaction through enhanced understanding of the process and outcomes. Additionally, addressing needs more broadly will prevent under-delivery, as well as increasing client satisfaction with lawyer performance.¹³⁰

Next, practicing Honor and Respect for a client and their needs will help combat mismanagement and neglect of the client relationship, thereby targeting a common complaint from clients.¹³¹

127. Gerdy, *supra* note 12, at 13–14 (citing Kathy A. Stepien & Amy Baernstein, *Educating for Empathy: A Review*, 21 J. GEN. INTERNAL MED. 524, 524 (2006)).

128. According to Businessolver, which conducted surveys with 1000 employees, 100 Human Resource Professionals, 150 CEOs and 600 industry-specific employees from six different industries, “[t]he long-term payoff of empathy [. . .] [is not] just a happier employee or satisfied customer—it’s a stronger, more engaged workforce, and, ultimately, a healthier, more robust business.” 2018 STATE OF WORKPLACE EMPATHY, *supra* note 110, at 7.

129. See *supra* Part I.B.

130. Michele DeStefano, *An Excerpt from Chapter 3 of Legal Upheaval: A Guide to Creativity, Collaboration, and Innovation in Law*, 27 U. MIAMI BUS. L. REV. vii, xi–xii, xiv (2018).

131. See *supra* Part II.B.

Moreover, soliciting and incorporating client feedback is now a recommended practice¹³² for firms and legal organizations, and has been shown to lead to satisfied clients.¹³³

Furthermore restorative lawyering will improve a host of “people skills” and, as a result, likely increase client satisfaction.¹³⁴ An attorney who practices Honor and Respect will not overbook, make the client wait, take a casual attitude toward client complaints, be unresponsive, or act insensitively toward client concerns or emotions.¹³⁵

Third, demonstrating true, genuine Empathy for clients positively affects the lawyer-client relationship, and increases both client satisfaction and quality of services.¹³⁶ Increasingly, legal professionals are catching on to the idea that Empathy,¹³⁷ and its associated skills, matters. “Savvy firms . . . are now training their partners and marketing directors in optimum listening techniques, including active listening . . . and paying attention to nonverbal communication.”¹³⁸ Today, the mastery and demonstration of Empathy distinguishes one firm or legal organization from another,¹³⁹ and has a positive effect on client satisfaction.¹⁴⁰

132. Gail E. Silverstein, *All's Well that Ends Well: The Importance of Full and Effective Closure in Lawyer-Client Relationships*, 19 CLINICAL L. REV. 555, 576–77 (2013).

133. Poll, *supra* note 103.

134. Gerdy, *supra* note 12, at 14–15 (citing Kathy A. Stepien & Amy Baernstein, *Educating for Empathy: A Review*, 21 J. GEN. INTERNAL MED. 524, 524 (2006)) (internal quotations omitted).

135. *Id.*

136. *Id.* at 12–15.

137. Alexander C. Gavis & Mark E. Young, *A Need for Lawyers With Empathy*, CORPORATE COUNSEL (ONLINE), Aug. 7, 2018, LEXISNEXIS (“Whether in-house at a business, serving in government or working in private practice, lawyers today face immense challenges as they balance competing pressures on both the client service and client development fronts. Lawyers must constantly reassess how they can service clients better and, at the same time, look for ways to more purposefully align interests and advance mutual investment in each other. Critical to client service and development success is an understanding of core needs and unique definitions of value, together with immersive, forward-looking insight. And this cannot be done without empathy. Active focus here can open new avenues for today’s lawyers such as deepening client loyalty and relationships, driving new business opportunities and making closer connections with business teams.”).

138. Poll, *supra* note 103.

139. *Id.*

140. This is not to encourage disingenuous behavior, rather to show the positive effects of showing empathy through deep and active listening and demonstrating honor and respect for the client.

Lawyering must adapt to changing client demands,¹⁴¹ and employing the practices and skills of restorative lawyering is a step in the right direction.

D. *Possible Concerns and Critiques*

The following Part addresses a few of the possible concerns or critiques that may arise in response to this proposed way of lawyering.

1. Ambiguous Model

First, there may be concerns about the concreteness of the concept of restorative lawyering. Although restorative lawyering, like Restorative Justice, is a principles-based approach, and can seem vague or ambiguous, restorative lawyering is a set of concrete practices and skills.¹⁴² The concreteness of the model will help avoid the confusion that has plagued Restorative Justice.¹⁴³

2. Too Costly, Not Enough Financial Pay-Off

Some possible financial implications of adopting restorative lawyering practices include: more time spent on creative brainstorming and “non-legal” matters, elongated processes when trying to include stakeholders or address client needs fully, and less focus on litigation due to an acknowledgement of a variety of viable solutions. Although there is no data to prove this model currently, I argue that increased client satisfaction (and, therefore, retention) and less employee burnout will offset any possible financial drawbacks of employing restorative practices.

Business leaders are realizing the importance of interpersonal skills, such as Empathy, to their bottom line.¹⁴⁴ “Eighty-seven percent of CEOs believe a company’s financial performance is tied to empathy in the workplace,” according to Businessolver’s 2018 State of Workplace Empathy report.¹⁴⁵ Additionally, Empathy has

141. See Poll, *supra* note 105; see also DeStefano, *supra* note 130, at v (2018).

142. See *infra* Appendix A.

143. Howard Zehr, *Is Restorative Justice a Compass Without a Needle?*, ZEHR INSTITUTE FOR RESTORATIVE JUSTICE (Sept. 14, 2011), <http://zehr-institute.org/resources/is-restorative-justice-a-compass-without-a-needle/> [https://perma.cc/RW39-Z329].

144. 2018 STATE OF WORKPLACE EMPATHY, *supra* note 110, at 21.

145. *Id.*

been found to be essential to “recruitment and retention,”¹⁴⁶ both of which directly affect organizational expenses. The same results should be anticipated in the legal profession.

3. Honoring Clients’ Wishes

Additionally, some might raise the concern that restorative lawyering practices would negatively impact the lawyer’s ability to honor a client’s wishes. As Rule 1.2(a) of the ABA Model Rules of Professional Conduct outlines, the client has authority to decide the objectives of the representation, and the lawyer has some discretion about the means, but must still consult the client in many decisions.¹⁴⁷ Restorative lawyering practices will not detract from this arrangement, but rather emphasize it. When other stakeholders are consulted, it will only be to the degree permitted by professional ethics standards.

4. Effective Implementation

Lastly, practitioners might be hesitant about how to effectively implement these practices and skills of restorative lawyering. However, effective implementation will depend on each attorney’s discernment and comfort level. These practices and skills are available to each practitioner and valuable in all settings, so implementation will only be an issue to the extent that a practitioner is hesitant, unfamiliar with the practices, or has not yet developed the necessary skills.

CONCLUSION

In conclusion, restorative lawyering is a “toolbox”¹⁴⁸ from which every lawyer in every context can select practices and skills that are appropriate for their setting. It is not an all-or-nothing approach to practicing law—rather it is a choose-your-own-adventure “toolbox”¹⁴⁹ from which lawyers can choose practices and skills as they see fit.

Additionally, restorative lawyering is an approach of widespread and dynamic applicability that encourages legal practitioners to

146. *Id.* at 23.

147. MODEL RULES OF PROF’L CONDUCT r. 1.2(a) (AM. BAR ASS’N 2019).

148. *See infra* Appendix A.

149. *See infra* Appendix A.

think deeply about individual relationships and interactions, as well as broadly about their role in the legal profession and society.

APPENDIX A: A RESTORATIVE LAWYER'S TOOLBOX

Principle	Practices	Skills
Heal the Harm ¹⁵⁰	<ul style="list-style-type: none"> ● Involve full client participation, to extent possible¹⁵¹ ● Seek to identify and address all needs and wants¹⁵² ● Encourage and model responsibility-taking¹⁵³ 	<ul style="list-style-type: none"> ● Ability to facilitate accountability by wrongdoer ● Forward-thinking perspective ● Creativity ● Emotional intelligence
Honor & Respect ¹⁵⁴	<ul style="list-style-type: none"> ● Take relationships with clients and colleagues seriously¹⁵⁵ ● Openness and responsiveness in communication¹⁵⁶ 	<ul style="list-style-type: none"> ● Ability to develop a complex narrative of the conflict and avoid the “single story”¹⁵⁷ ● Ability to recognize what client brings to the table¹⁵⁸ ● Solicit and incorporate client feedback
Empathy ¹⁵⁹	<ul style="list-style-type: none"> ● Seek to nonjudgmentally understand client's feelings and position¹⁶⁰ ● Acknowledge and adhere to personal¹⁶¹ and professional boundaries¹⁶² ● Refrain from micromanaging or stealing decision-making from client¹⁶³ 	<ul style="list-style-type: none"> ● Deep, active listening¹⁶⁴ ● Emotional intelligence¹⁶⁵

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150. See generally Zehr, *supra* note 8.

151. Wachtel & McCold, *supra* note 9, at 114.

152. See 5 Strickland, *supra* note 43, at 2. Also required by MODEL RULES OF PROF'L CONDUCT r. 2.1 cmt. 2 (AM. BAR ASS'N 2019).

153. See Walgrave, *supra* note 52, at 80.

154. *Id.*

155. Zehr, *supra* note 53.

156. Preamble: *A Lawyer's Responsibilities*, *supra* note 107.

157. Waugh, *supra* note 9.

158. *Id.*

159. See, e.g., Watchel, & McCold, *supra* note 9, at 128.

160. Gerdy, *supra* note 12, at 18 (citing Robert Dinerstein et al., *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755, 758 (2004)).

161. Fletcher & Weinstein, *supra* note 109, at 156.

162. 2018 STATE OF WORKPLACE EMPATHY, *supra* note 110, at 15.

163. Enos & Kanter, *supra* note 113, at 95; see also McDermott & Garofalo, *supra* note 115, at 1248.

164. See Zehr, *supra* note 9; see also Poll, *supra* note 103.

165. GOLEMAN ET AL., *supra* note 119, at 38.

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