SPEED MENTORING:

SWAPPING CIVILITY & PROFESSIONALISM STRATEGIES

American Inns of Court

Robert E. Jones Chapter

Team 3

January 22, 2020

ATTACHED

- **PowerPoint Slides**
- **Legal Ethics Article #1:** *Conflict of Interest; Judicial Campaigns*, ISBA Advisory Opinion on Professional Conduct, Opinion No. 90-25, March 9, 1991
- **Legal Ethics Article #2:** *Conflict; Appearance of Impropriety*, ISBA Advisory Opinion on Professional Conduct, Opinion No. 724, April 30, 1981
- **Civility Article #1:** *Lawyer speech triggers both civility and constitutional concerns*, by David L. Hudson, Jr., ABA Journal, September 1, 2019
- **Civility Article #2:** *Incorporating Civility into Your Law Practice*, by FindLaw Attorney Writers, Findlaw.com
- **Attorney Wellness Article #1**: *Mindfulness for Lawyers: A Short Handbook*, by Jon Krop, mindfulnessforlawyers.com
- **Attorney Wellness Article #2:** *The Benefits of Meditation Await You Counselor*, by Stephanie Villinski, Illinois Supreme Court Commission on Professionalism 2Civility.org, March 13, 2018

SPEED MENTORING: SWAPPING CIVILITY AND PROFESSIONAL STRATEGIES

FUN ROUND

- FIND SOMETHING IN COMMON WITH YOUR PARTNER

PROFESSIONALISM

- CONFLICTS WITH CLIENTS OR OTHER ATTORNEYS

PROFESSIONALISM

- TIME MANAGEMENT

LEGAL ETHICS

- CONFIDENTIALITY ISSUES

LEGAL ETHICS

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FUN ROUND

- WHAT DO YOU DO FOR FUN?

CIVILITY

- (IN)CIVILITY AND HIGHLY CHARGED SITUATIONS

CIVILITY

- DIFFICULT CLIENTS

DIVERSITY/ INCLUSION

- DIVERSITY AT WORK

DIVERSITY/ INCLUSION

- HOW TO INCREASE DIVERSITY/ INCLUSION IN LAW

WELLNESS/ MENTAL HEALTH

- WORK/LIFE BALANCE

WELLNESS/ MENTAL HEALTH

- RECOGNIZING SUBSTANCE ABUSE/ MENTAL HEALTH ISSUES AT WORK

ILLINOIS STATE BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

This Opinion was WITHDRAWN as to Digest 1, and AFFIRMED as to Digests 2 and 3 by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.6(a), 1.7, 8.4(f), 6.2(a), and 8.4. The portions of this opinion were affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

Opinion No. 90-25
March 9, 1991

Topic: Conflict of Interest; Judicial Campaigns

Digest: ~~1. It is improper for an attorney, whose firm represents an insurance company in most of the company's insurance defense work, to be appointed the administrator of a decedent's estate and settle a wrongful death claim with the insurance company, absent full disclosure to the heirs of the estate and to the insurance company and absent their consent to such appointment.~~

2. It is improper for attorneys to sign a surety bond on behalf of another attorney from the same firm, when the firm has been hired by the attorney to represent him in his capacity as administrator of a decedent's estate.

3. It is not necessarily improper for a judge to appoint an attorney as administrator of an estate, even though that attorney has made financial contributions to the judge's campaign committee, and another attorney from the same firm served on the judge's campaign committee when the judge sought to be elected to his present judicial post; whether the attorney should accept such appointment depends upon whether the appointment is likely to result in a violation of the Rules of Professional Conduct or other law, and ultimately

whether the acceptance of the appointment will be prejudicial to the administration of justice.

Ref.: Illinois Rules of Professional Conduct, Rules 1.6(a), 1.7, 3.5(h), 6.2(a), 8.4;
ISBA Opinion Nos. 802, 866, 85-11, 86-15, 87-6, 88-5, 89-3;
In re Estate of Nuyen, 111 Ill.App. 3d 216, 443 N.E.2d 1099 (2d Dist. 1982)
In re Estate of Phillips, 3 Ill. App. 3d 1085, 1099, 280 N.E. 2d 43 (2d Dist. 1972)

FACTS

The Trust Us Insurance Co. provides insurance coverage to a municipality located in central Illinois. This insurance coverage includes defense of the municipality in a wrongful death claim filed by the administrator of the estate of a deceased individual. The ABC Law Firm in central Illinois concentrates in insurance defense work and is employed by the Trust Us Insurance Co. for most of the company's insurance defense in central Illinois. However, it appears that ABC does not represent the Trust Us Insurance Co. in its defense of the wrongful death claim against the local municipality.

A dispute arose among the heirs and creditors of the decedent's estate regarding the capabilities of the estate's administrator. As a result, certain heirs and creditors filed a petition for removal of the administrator. The trial court granted the petition and suggested that a particular partner of the ABC Law Firm be appointed as successor administrator. Certain heirs objected to the partner's appointment as successor administrator and filed a notice to produce various information concerning the past business dealings between the partner, the ABC Law Firm, and the Trust Us Insurance Company. The partner refused to provide this information and the circuit court appointed the partner of the law firm as successor administrator over the heirs' objection.

Upon his appointment, the partner hired the ABC Law Firm to represent him in his capacity as administrator. The partner also filed a surety bond with respect to his appointment as administrator of the estate. This surety bond was secured by the signature of two of the partner's co-partners at ABC. Also in his capacity as administrator, the partner filed a petition to compromise the estate's wrongful death suit against the municipality based upon a settlement offer from the Trust Us Insurance Co. in its defense of the municipality.

The same circuit court judge has presided over both the probate action and the wrongful death suit. The ABC partner who was
appointed administrator has made financial contributions in the past to the campaign committee of the circuit court judge in the judge's candidacy for seats on the circuit and appellate courts. In addition, another attorney of the ABC Law Firm served on the judge's campaign committee when the judge campaigned for his present judicial position.

QUESTIONS

~~1. Whether it is proper for an attorney, whose firm represents an insurance company in most of the company's insurance defense work, to be appointed administrator of a decedent's estate and settle a wrongful death claim with the same insurance company?~~

2. Whether it is proper to allow attorneys to sign a surety bond on behalf of another attorney from the same firm, when the firm has been hired by the attorney to represent the attorney in his

capacity as administrator of a decedent's estate?

3. Whether it is proper for a judge to appoint an attorney as administrator of an estate, when that attorney has made financial contributions to the judge's campaign committee, and another attorney from the same firm served on the judge's campaign committee when the judge sought to be elected to his present judicial post?

OPINION

I. With respect to the first question, the Committee notes that the relationship between an administrator and a decedent's estate is not generally one of an attorney to his client per se. In re Estate of Nuyen, 111 Ill. App. 3d 216, 443 N.E.2d 1099 (2d Dist. 1982). However, in his capacity as administrator of the decedent's estate, the partner of ABC owes a fiduciary duty to the heirs and creditors of the estate, and may be removed where there exists "a conflict of interest which interferes with the objective administration of the estate." In re Estate of Phillips, 3 Ill. App. 3d 1085, 1099, 280 N.E. 2d 43 (2d Dist. 1972). In order to preserve the integrity of the fiduciary duties owed by the administrator to the heirs and creditors of the estate, and in order to ensure respect for the ethical considerations underlying the Illinois Rules of Professional Conduct, the Committee concludes that the partner of ABC, in his capacity as administrator of the decedent's estate, is governed by the Illinois Rules of Professional Conduct in his relations with the heirs of the estate.

Illinois Professional Conduct Rule 1.7 provides that a lawyer shall not represent a client if the representation of that client will be directly adverse to or materially limited by the lawyer's responsibilities to another client. If the lawyer reasonably believes that representation will not adversely affect or limit his relationship with another client, the attorney must nevertheless obtain the consent of each client following disclosure. "Disclosure" is defined in the Illinois Rules of Professional Conduct as "communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question."

In light of Rule 1.7 the partner appointed administrator of the estate is not permitted to act as administrator if such appointment will be directly adverse to or materially limited by the interests of the Trust Us Insurance Company. In addition, if the partner reasonably believes that his appointment will not adversely affect or limit his relationship with the Trust Us Insurance Company or the heirs and creditors of the estate, the partner must obtain the consent to this appointment, following disclosure, from both the heirs of the estate and the Trust Us Insurance Company.

Some of the heirs of the estate objected to the partner's appointment as administrator of the estate. The partner refused to disclose information requested by the heirs regarding the involvement of the partner and the ABC Law Firm in their past representation of the Trust Us Insurance Company. Under this fact situation because the partner failed to provide disclosure to or obtain consent from the heirs under the wrongful death act, the Committee concludes that the partner's acceptance of the appointment violates Rule 1.7 of the Illinois Rules of Professional Conduct.

The partner's appointment as administrator of the estate is also governed by Rule 1.6(a), which states that a "lawyer shall not, during or after termination of the professional relationship with the client, use or reveal confidence or secret of the client known to the lawyer unless the client consent after disclosure." Numerous ISBA Opinions have noted the potential conflict of interest, and possible divulgence of client secrets or confidences, presented by circumstances analogous to the

~~instant matter.~~

~~For example, an attorney must be sensitive to the possibility that he "might be tempted or required to use confidential information obtained from the *** client," and the "lawyer must have no doubt as to [his] ability to exercise independent professional judgment on behalf of the client ***." ISBA Opinion No. 85-11; see also ISBA Opinion 88-5. Also, if the clients consent following full disclosure, "the adequacy of this representation must continuously be monitored, and if the circumstances become such that the adequacy of the attorney's representation on behalf of either client becomes less than obvious, he must withdraw from each such representation." ISBA Opinion No. 86-15. "Moreover, his disclosure to the clients prior to undertaking the representation must refer to the possible necessity of such subsequent withdrawal." Id. The ultimate inquiry is whether the rights of all clients are fully protected regardless of the outcome of the various claims involved. See, e.g., ISBA Opinion Nos. 87-6 and 89-3.~~

~~In the instant fact pattern, the partner's appointment risks that he might use confidential or secret information with respect to either the estate or the insurance company. The attorney appointed administrator cannot guarantee his full and adequate legal representation of the estate, or the complete protection of the rights of both the estate and the insurance company. Under these circumstances, the Committee concludes that the partner's appointment violates Rule 1.6.~~

II. With respect to the second question, in ISBA Opinion No. 802, the Committee concluded that it "is professionally improper for an attorney, representing the personal representative of an estate, to act as surety on the personal representative's bond." Relying upon disciplinary rules now codified in Illinois Professional Conduct Rules 1.7 and 1.8, the Committee concludes that the "combination of the potential for conflict, the guarantee of financial assistance and the business nature of the relationship must be avoided by attorneys representing the personal representative of an estate, and that the attorney for the personal representative of the estate is precluded from acting as surety on the bond of his client."

The Committee reaffirms its adherence to this conclusion in the instant matter.

III. The final question raises the issue of whether it is proper for a judge to appoint an attorney as administrator of an estate, when that attorney has made financial contributions to the judge's campaign committee, and another attorney from the same firm served on the judge's campaign committee when the judge sought to be elected to his present judicial post.

Illinois Professional Conduct Rule 3.5(h) permits an attorney to make financial contributions to the campaign committee of a judge, and to provide volunteer services to a political committee. In ISBA Opinion No. 866, the Committee determined that an "attorney who has contributed to and/or participated in a judge's election campaign is not precluded from appearing before that judge in subsequent judicial proceedings." Nevertheless, Rule 6.2(a) provides that an attorney shall decline appointment by a tribunal "for good cause, such as *** representing the client is likely to result in violation of these Rules or other law ***." Also, Rule 8.4(a)(5) stated that a lawyer shall not "engage in conduct that is prejudicial to the administration of justice ***."

In light of these provisions of the Illinois Rules of Professional Conduct and the Committee's prior ethical opinion, the Committee concludes that it is not necessarily improper for a judge to appoint an attorney as administrator of an estate, when that attorney has made financial contributions to the judge's campaign committee, and another attorney from the same firm served on the judge's campaign committee when the judge sought to be elected to his present judicial post. However, the attorney should decline to represent a party if this appointment is likely to result in a violation of the Rules of Professional Conduct or other law, and if acceptance of the appointment will be prejudicial to the administration of justice. The instant fact pattern reveals that the attorney appointed administrator faces a conflict of interest as detailed in the previous sections of this Opinion. Given these circumstances, the Committee believes that the appointment was improper and should have been declined by the attorney.

* * *

ILLINOIS STATE BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

ISBA Advisory Opinions on Professional Conduct are prepared as an educational service to members of the ISBA. While the Opinions express the ISBA interpretation of the Illinois Rules of Professional Conduct and other relevant materials in response to a specific hypothesized fact situation, they do not have the weight of law and should not be relied upon as a substitute for individual legal advice.

This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.7 and 1.9. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

Opinion Number 724
April 30, 1981

Topic: Conflict; appearance of impropriety.

Digest: There is no conflict involved in Lawyer A representing a client in a matter against the client of Lawyer B where Lawyer A has previously represented Lawyer B.

Ref: Supreme Court Canon 5; Rule 5-101(a); Rule 5-105 (a) and (b); Illinois Supreme Court Canon 9

QUESTION

Lawyer A has represented Lawyer B in the past in a matter now concluded and asks:

1. Whether it is proper for him and Lawyer B to represent respective opposing clients and, if so, is informed consent of the clients necessary?

2. Whether the answer would be the same if Lawyer A's representation of Lawyer B has not been concluded?

OPINION

The answer to the first question is yes. The answer to the second question is no.

Canon 5 and its Rules as adopted by the Illinois Supreme Court effective July 1, 1980, admonished that a lawyer should exercise independent professional judgment on behalf of a client.

Rule 5-101(a) provides:

> "(a) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial business, property, or personal interests."

and Rules 5-105(a) and (b) provide:

> "(a) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under Rule 5-105(c)."
>
> (b) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under Rule 5-105(c)."

Canon 9 provides that a lawyer should avoid even the appearance of professional impropriety, but there are no Rules under Canon 9 relating to the questions here presented.

The lawyer's professional function is by necessity one of an adversarial nature. He must deal with other lawyers at arm's length on behalf of his clients. He must also work with other lawyers whose client's interests are not adverse to those of his clients. In addition, because they are thrown together in the work of their profession, the natural tendency is for lawyers to develop deep social relationships with other lawyers. None of these factors, however, should have any bearing on the exercise of independent professional judgment by a lawyer on behalf of his client. In the isolated instances where a lawyer may have such a close relationship with another lawyer who represents a party whose interest is adverse to that of his client that he sincerely feels his independent professional judgment would or might be affected, then he should, of course, divorce himself from the matter. Otherwise, he is not fulfilling his professional obligation as a lawyer. This, however, is a matter of personal judgment and no rules can be written to adequately cover the situation.

We feel that the fact that Lawyer A has represented Lawyer B in the past in a matter now concluded does not per se require either refusal of or withdrawal from employment, nor does it require disclosure. If the situation is dictated by personal conscience or discretion, it will not be changed by disclosure.

* * *

ETHICS

Lawyer speech triggers both civility and constitutional concerns

BY DAVID L. HUDSON JR. (HTTP://WWW.ABAJOURNAL.COM/AUTHORS/64785/)

SEPTEMBER 1, 2019, 12:50 AM CDT (/MAGAZINE/ISSUE/2019/09/)

Photo by Shutterstock

Under ethics rules, there's a fine line between zealous advocacy of a client and sanctionable conduct. As jurisdictions nationwide put an emphasis on lawyer civility, it's important for attorneys to understand proscribed behavior that can run afoul of ethics rules and trigger sanctions.

In the 1985 case *In Re Snyder*, U.S. Supreme Court Justice Warren Burger noted that everyone involved in the judicial process owes a duty of courtesy to all other participants. And as officers of the court, "the license granted by the court requires members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of justice." When lawyers fail to follow this standard, they not only lower the bar for the profession, but they set themselves up for disciplinary action.

"A lawyer's freedom of speech should not include the right to sling personal insults at opposing counsel or the opposing party," notes ethics expert David Grenardo, who teaches professional responsibility at St. Mary's University School of Law.

There are plenty of examples of what not to do in the professional discipline records. Inflammatory speech directed at judges, opposing counsel and others happens frequently in the courtroom and has been sanctioned. For example:

- In *Florida Bar v. Norkin*, one attorney wrote opposing counsel several inflammatory emails, including: "When is your unprofessional, ludicrous, downright unintelligent conduct going to stop? Before or after you are directed to pay my bills?"
- *In re Madison*: Counsel informed a judge in a letter that "I do have profound doubts concerning your fitness to preside fairly over cases."
- An attorney in *Florida Bar v. Abramson* told a jury that "the judge was the one that was completely disrespectful, lacking in respect, lacking in professionalism."
- A lawyer disparaged a judge as a "clown" and a "bully" in *Hancock v. Board of Professional Responsibility.*
- Counsel called one judge a "lawless judge" and another "a weak man and corrupt judge" in *Attorney Grievance Commission v. Frost*.

The ABA Model Rules of Professional Conduct promote courteous and respectful behavior and limit offensive attorney speech. Rule 3.5(d) prohibits lawyer conduct "intended to disrupt a tribunal," while Rule 8.2(a) prohibits a lawyer from "making a statement that the lawyer knows to be false" or with

"reckless disregard" as to truth or falsity about a judge. And then there's the catchall, Rule 8.4(d), which prohibits lawyers from "engag[ing] in conduct that is prejudicial to the administration of justice."

"Some lawyers may argue that they should be able to say whatever they want in the name of zealous advocacy," Grenardo says. "Lawyers should know that their conduct and speech are regulated by the state bar and court rules because the practice of law is a privilege, not a right."

The push for civility

H. Scott Fingerhut, a law professor at Florida International University, explains that incivility can be traced to the adversarial nature of law practice in the U.S. "Civil and criminal litigation are both so perversely incentivized in America, and the practice of law so increasingly, stressfully competitive, bordering on cannibalistic, that perhaps civility is the best we can hope for—because the truth is both sides want to win, period, and too often do whatever it takes to do so."

State bars have addressed the problem in myriad ways. Michigan has a special provision in its rules of professional conduct requiring lawyers to be professional and courteous to all in the legal system. Many states have so-called professionalism creeds. The New York State Bar Association hosts an annual conference titled "Lessons on Ethics and Civility." The Utah State Bar has an Office of Professional Conduct and contains an ethics hotline and an ethics school. Illinois created a professionalism and mentoring program with the name 2Civility. The Illinois Supreme Court Commission on Professionalism 2014 statewide survey of Illinois lawyers found more than 90% of lawyers described their colleagues as generally civil/professional or very civil/very professional, while 85% said they experienced at least one incident of uncivil or unprofessional behavior in the prior six months.

"Civility and professionalism are bedrock principles essential to the legal profession," says Jayne Reardon, who directs the 2Civility program and is the commission's executive director. "We need judges to set firm boundaries with lawyers and not reward bad behavior."

Making the pledge

Some jurisdictions require lawyer oaths with civility clauses. South Carolina's civility oath reads: "To opposing parties and their counsel, I pledge fairness, integrity and civility, not only in court but also in all written and oral communications." In 2014, the California Supreme Court amended the lawyer oath to include a civility clause. Texas followed suit in 2015. In her book *Voice of Justice: Reclaiming the First Amendment Rights of Lawyers*, Indiana University Robert H. McKinney School of Law professor Margaret Tarkington writes that "courts continue to require attorneys to promise compliance with rules enacted by the judiciary (even ones of dubious constitutionality) as a condition of observing or maintaining a law license."

Some experts believe that more should be done to ensure that civility is increased in the profession.

"Since civility is that important, states should follow jurisdictions like South Carolina and Arizona and make civility mandatory," Grenardo says. "Because incivility runs rampant in society and occurs too often in the legal profession, state bars need rules to change behavior on a large scale to fight the incivility epidemic that permeates the legal profession. Some lawyers are stubborn and will only refrain from attacking others personally or will only treat others with dignity and respect if there is a rule that requires them to refrain from those personal attacks or a rule that requires them to act civilly."

Others worry that civility codes chill free speech and may not be applied evenly. "There are significant problems with mandating civility," says Daniel Horwitz, a Nashville, Tennessee-based constitutional lawyer who handles professional discipline cases. "For one thing, even if mandating civility were compatible with the First Amendment—and it is not—subjective and abstract notions of civility will never be applied evenhandedly, and as such, civility campaigns both invite and guarantee selective enforcement."

Criticizing judges

Insulting or criticizing judges is a common breach that prompts disciplinary action. "In many jurisdictions, there is no faster way to generate a speech-based disciplinary complaint than to criticize or insult a judge—even when a judge has badly erred," Horwitz says.

Tarkington's book offers a similar perspective: "Courts and disciplinary authorities have used civility codes or rules that require courtesy to punish attorneys for speech critical of the judiciary."

Indiana University Bloomington School of Law professor Charles Gardner Geyh, who teaches courses on the legal profession and judicial conduct, warns of the pitfalls that can occur when notions of civility are applied subjectively. The concepts "can be misunderstood and misused to preserve homogeneity in an increasingly diverse profession," Geyh notes.

"As the profession rejects its traditional niche as a white men's club and opens its doors, spirited disagreement and dissent among its ranks are inevitable and essential, and are in no sense incompatible with basic notions of professionalism and civility."

But Horwitz cautions against the idea that judges should be insulated from all oversight: "The notion that labeling private lawyers 'officers of the court' is a legitimate basis for disciplining lawyers who criticize judges is farcical."

Nonetheless, lawyers are subject to the jurisdiction of the courts where they practice and need to be aware of the ethics rules that hold them to a higher standard, subjecting them to discipline and sanctions when they abuse the process, commit misconduct or go too far.

This article ran in the September-October 2019 issue of the ABA Journal *with the headline "I Pledge to Be Civil: Lawyer speech triggers both civility and constitutional concerns."*

Give us feedback, share a story tip or update, or report an error.

Incorporating Civility into Your Law Practice

This article was edited and reviewed by FindLaw Attorney Writers (https://www.findlaw.com/company/company-history/findlaw-com-about-us)

As I slogged through the mandatory legal education classes a few months ago, a consistent concern emerged from both attorneys and judges. Without fail, they all mentioned a lack of civility in the practice of law -- with opposing counsel, with the tribunal, and with the process.

The Model Rules of Professional Conduct (https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html) address civility by including general requirements that attorneys be fair to opposing parties and opposing counsel, maintain the decorum of the tribunal, and refrain from engaging in conduct that is prejudicial to the administration of justice.

In addition, many states and local bar associations have enacted voluntary codes of civility that go beyond the minimum requirements of the Model Rules. However, these voluntary codes are just that -- voluntary. They are guidelines and do not have enforcement mechanisms attached to them. Only a few jurisdictions have mandated civility (https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/39th_conference_session_14_mandatory_civility_rules.authcheckd either through rules or attorney oaths.

Lawyer jokes aside, despite these rules and guidelines, the practice of law does not have the best reputation for respectful behavior. How can that be changed and where in their practice can attorneys incorporate this much needed civility?

Here are our tips for specific ways to incorporate civility into your law practice:

1 . Act like a courteous human being to others. This one isn't rocket science, and obviously includes clients, opposing parties, opposing counsel, court staff, judges, and anyone else with whom you have professional interactions. "Effective representation does not require antagonistic or acrimonious behavior," says the New York Standards of Civility (http://www.nycourts.gov/press/old_keep/stnds.shtml). Zealous representation will no doubt include disagreement with others, but it can be done in a respectful manner.

2. Return all communication within 24 hours. If you are in trial or deposition, or otherwise unavailable, have someone else in the office do it, even if it is just to let the person know that you will get to it upon your return.

3. Call opposing counsel's office before scheduling depositions or hearings. Provided there is no prejudice to your client, work with opposing counsel's schedule to find a mutually agreeable date. There will come time when you will need someone to return the favor.

4. Pick up the phone and speak to opposing counsel if a war of words is beginning to escalate via email or letter. It is easy to misinterpret tone and meaning in emails and letters. It is also easy to get carried away in emails and letters. If an issue is heading to the court for resolution, demonstrate to the judge that you tried to work it out with a phone call.

5. Grant requested courtesies. Unless it adversely affects your client's interests, accommodate requests for extensions of time and waivers of certain formalities. You will gain the respect of opposing counsel, and there may come a time when you need the same courtesy.

6. Abide by agreements and promises that you make. Your reputation and your integrity will be gone in an instant if you fail to keep your word.

7. Show the court respect. Argue persuasively but refrain from using demeaning or disrespectful language. In appearances, address the judge and not opposing counsel.

8. Advise clients and associates of their duty to be respectful in any proceeding or professional interaction. Not only does it reflect poorly on you if they fail to do so, it disrespects the court and the legal process.

9. If you are going to impeach a witness, be respectful about it. One judge advised that he and the jury were impressed by attorneys who would advise the witness that they didn't enjoy this aspect of the job, but that they needed to ask these questions.

10. Don't violate court orders. This may seem obvious but it can arise if the meaning of compliance becomes muddied, or the reason for the ruling has changed. Deal with modifying court orders through the appropriate process and in the appropriate manner. This can come up particularly with motions in limine (https://dictionary.findlaw.com/definition/motion-in-limine.html). There is a reason that motions in limine are dealt with prior to trial and outside the presence of the jury. If new facts become apparent, or the other side has opened the door such that the ruling should be reconsidered, ask to approach the bench to discuss the matter.

The California Attorney Guidelines of Civility and Professionalism (http://www.saccourt.ca.gov/local-rules/docs/guidelines-civility-professionalism.pdf) emphasize that "civility in the practice of law promotes both the effectiveness and the enjoyment of the practice and economical client representation." Not only does civility improve the quality of life for practitioners (https://careers.findlaw.com/law-career-management/work-life-balance.html), but engaging in disrespectful tactics reflects poorly on the profession and causes practitioners to risk losing credibility with their clients, the judge or the jury.

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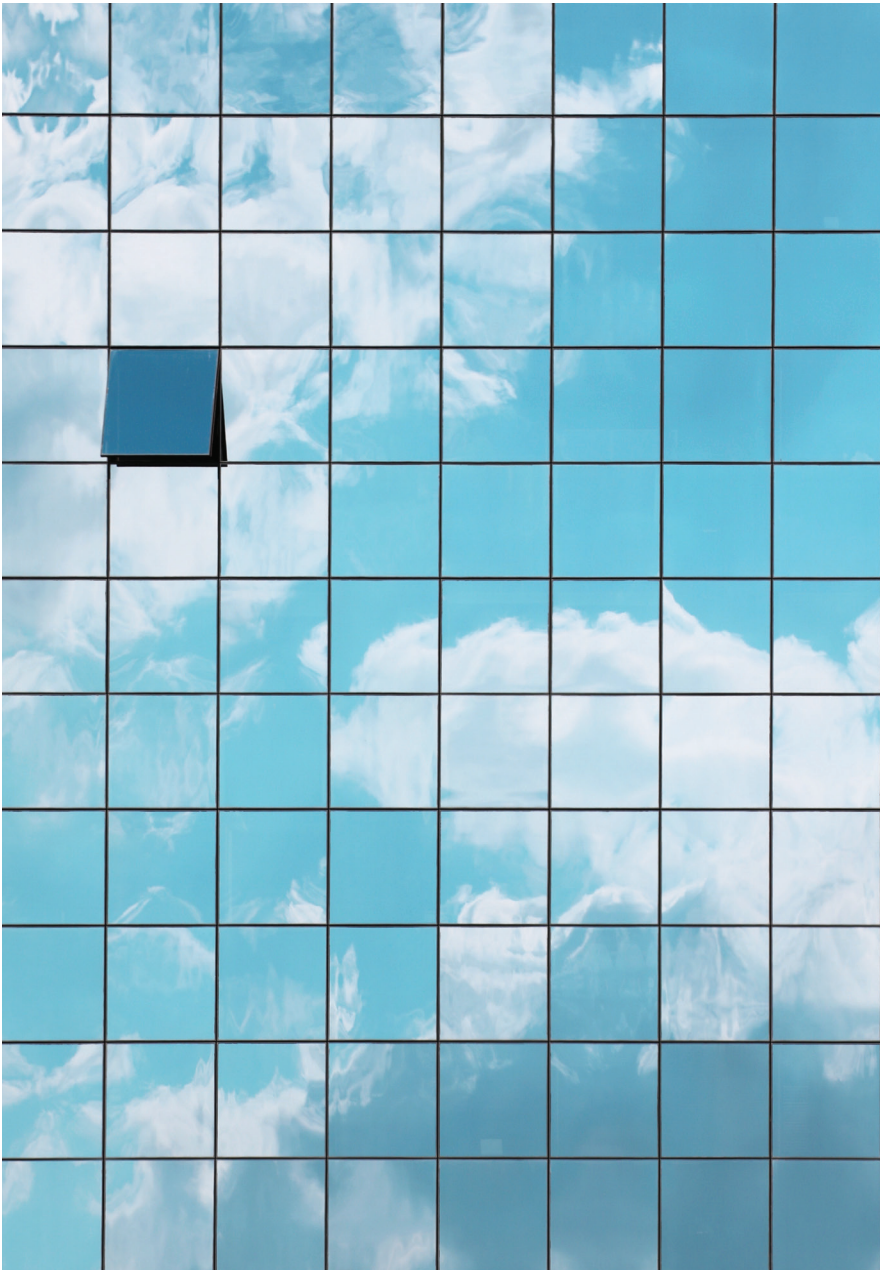

MINDFULNESS FOR LAWYERS

A short handbook by Jon Krop, J.D.

mindfulnessforlawyers.com

Pain is inevitable.
Suffering is optional.

—M. Kathleen Casey

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01 INTRODUCTION

It's not easy being a lawyer. Our work can be fascinating and often rewarding, but it can also be stressful, exhausting, and overwhelming.

This handbook can help. It contains simple methods to help you manage your stress, enjoy your work, and perform at your best. These methods draw on mindfulness, a mental practice derived from ancient meditation techniques and validated by modern science.

I stumbled onto mindfulness during law school, and it's kept me sane, successful, and happy throughout my legal education and career. It's been my privilege to share these methods with thousands of lawyers and, now, with you.

I've kept this handbook short and straightforward so you can easily put these methods into practice. At the same time, I've been careful not to omit anything essential for a beginner, and I've tried to be as clear and precise as possible within this concise format.

I hope these mindfulness methods enrich your life and work the way they have mine.

Be well,

Jon Krop, J.D.


“
Be here now.
—Ram Dass
”

03

PRINCIPLES OF MINDFULNESS

Being in the present moment and out of your head.

Observing your experience as it is—without judgment.

- Seeing thoughts as thoughts rather than getting lost in them.
- Paying attention to sensory experience as a gateway to the present moment.
- Turning toward present experience rather than resisting, even when it's unpleasant.

04 BENEFITS OF MINDFULNESS

Reduced stress.
Overall increased job satisfaction.

Improved focus.
Example: a lawyer is able to research and draft motion papers well before the deadline, with few distractions.

Improved attention to detail.
Example: a lawyer is able to notice unfavorable nuances in proposed contract language.

Greater emotional resilience.
Example: a lawyer earns the judge's favor during oral argument by remaining calm, clear-headed, and civil while opposing counsel makes unreasonable allegations.

Enhanced interpersonal skills.
Example: a lawyer is able to facilitate collegial, effective two-way communication with junior lawyers and support staff, even when the team is under time pressure.

05 SITTING MEDITATION

THE POSTURE:

- Straight spine.
- Feet under the knees, flat on the floor.
- Try sitting toward the edge of the chair.
- For more, Google “posture-pedia” to find Stephanie Nash’s thorough posture guide.

THE TECHNIQUE:

- Rest attention on the sensations of breath at the nose.
- When you notice attention has wandered, gently return to the breath.
- Breathe normally.

06

SITTING MEDITATION: POINTERS

- Meditation is not about emptying the mind. Let the whole rich landscape of sounds, sensations, and thoughts continue in the background.
- Your mind will wander, and that's okay. This isn't about stopping the wandering; that's impossible. It's about noticing and gently guiding the mind back.
- When you notice you've wandered, briefly savor that recognition before returning.
- Apply gentle effort. No need to strain.
- There is no failing at this, no doing well or poorly. There's only practicing or not.
- Optional: apply a light mental label to a distraction (e.g., "thinking," "itching").

07

MAINTAINING A SITTING PRACTICE

DAILY PRACTICE WILL TRANSFORM YOUR DAY-TO-DAY EXPERIENCE FOR THE BETTER.

- Daily consistency trumps length of sit. Sitting for even one minute is fantastic.
- Sit first thing in the morning. It's the easiest way. If that's not workable, aim for the same time every day.
- If resistance arises, mentally shrink the session length until the resistance fades.

  ("Could I do 15 minutes? No, too much resistance. What about ten? Still too long; the thought puts me off. Okay, five? Hm, I feel like I could sit for five.")

- Use a timer (e.g., "Insight Timer" app).

Practice now.
Don't think you will
do more later.

—Dipa Ma

09 MINDFULNESS METHODS FOR DAILY LIFE

Rest attention on the **breath at the nose**.

Mindful walking (walking meditation): rest attention on sensations in soles of the feet.

Mindful eating: eat slowly, experiencing the food with all of your senses.

Rest attention on an **entire sense field** (e.g., sound, body sensations).

If you get lost in thought: use the mental label **"thinking"** to let go of story mode.

The Mindful Pause (p. 17).

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STRESS IN THE LEGAL PROFESSION: STATISTICS

IN A 2016 STUDY OF 12,825 LAWYERS:

61% of participants reported concerns with anxiety in their careers.

46% of participants reported concerns with depression in their careers.

23% were experiencing mild or higher levels of stress at the time of the study.

33% were problem drinkers.

A 2013 STUDY OF 2,226 BRITISH LAWYERS FOUND THAT LAWYERS' PRIMARY CAUSES OF STRESS WERE:

60% | Workload

42% | Client expectations

18% | Number of hours

11 THE CONSEQUENCES OF STRESS

Stress causes cognitive and physiological impairment. You can't "power through."

EFFECTS ON JOB PERFORMANCE:

- Tendency to miss important details and make mistakes
- Trouble focusing, working efficiently, and meeting deadlines
- Tendency to react without thinking, leading to communication problems with adversaries, clients, and others.

EFFECTS ON WELL-BEING:

- Headache
- Fatigue
- Sleep problems
- Depression

All of humanity's problems stem from man's inability to sit quietly in a room alone.

—Blaise Pascal

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STRESS AND ANXIETY: THE USUAL APPROACH

Our intuitive coping method: avoid or resist the way we feel.

THE MOST COMMON STRATEGIES:

- Distract ourselves: social media, TV, food, socializing, etc.
- Dull ourselves: alcohol, drugs, etc.
- Ruminate: dive into our anxious thoughts.

You can't stop the waves, but you can learn to surf.

—Jon Kabat-Zinn

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STRESS AND ANXIETY: THE MINDFUL APPROACH

Resisting or avoiding unpleasant feelings only exacerbates them.

THE KEY: ACCEPTANCE, NOT AVOIDANCE.

- Emotions manifest partly as sensations in the body.
- Instead of flinching away from those sensations, tune into them.
- Let the feelings stay; be willing to feel them.
- Resist fleeing into anxious thinking.

Accept the present moment as if you'd invited it.

—Pema Chodron

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THE MINDFUL PAUSE

A 30-second "spot treatment" for stress and anxiety.

If attention wanders at any point, gently guide it back to the step you are on.

---

1. Take a slow, deep breath.
2. Tune into whatever sensations you notice in your body, especially sensations that seem related to stress or anxiety. *(Duration: one in-breath or out-breath, or longer if you like.)*
3. Rest attention on the breath at the nose *(Duration: one in-breath or out-breath, or longer if you like.)*
4. Carry on with your day, but in an unhurried way.

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USING THE MINDFUL PAUSE

- No need to adopt a special posture.

- Practice the Mindful Pause when you are not stressed. Then, when you are stressed, you will remember to use it.

- Do not expect the Mindful Pause to make anxiety-related sensations or thoughts vanish. The problem is not that those sensations and thoughts are there; the problem is that we resist them.

- Useful for: inserting breaks into research, writing, and doc review, getting centered before a deposition, negotiation, meeting, or oral argument.

- If you get stressed during a meeting, you can use a "Mindful Mini-Pause." Take a slow, deliberate breath in. As you exhale, tune into sensations in your body.

19 THE MINDFUL WORKDAY

Use a **Mindful Pause (p. 17)** or other **mindfulness methods (p. 9)** at defined points in your daily routine: when you first sit at your desk in the morning, before you get up for lunch, etc.

Eat lunch mindfully (p. 9). The mental rest and rejuvenation will help your productivity more than working while you eat.

When you need to walk somewhere—a partner's office, the bathroom, the water cooler—practice **mindful walking (p. 9)**.

Try alternating timed work sessions with short, timed breaks. Use breaks to take a **Mindful Pause (p. 17)** or practice another **mindfulness method (p. 9)** in a relaxed way. **Mindful walking (p. 9)** is especially good.

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GETTING BETTER SLEEP

As with anxiety, resisting sleeplessness only exacerbates it.

Being less concerned with falling asleep will help you sleep better.

- You can't will yourself to become sleepy.
- If you're not falling asleep, don't lie there and keep trying. It will only stress you.
- Get up, do something relaxing for about 30 minutes, then go back to bed. The relaxing activity should not involve digital screens. Repeat as needed.
- If you become sleepy, great. If not, don't worry about it.
- Remember: missing sleep is very common and isn't a big deal.

Many things—such as loving, going to sleep, or behaving unaffectedly—are done worst when we try hardest to do them.

—*C.S. Lewis*

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ABOUT THE AUTHOR

Jon Krop, J.D., has taught mindfulness at Harvard, Yale, the Pentagon, the world's top law firms, Fortune 100 companies, the Southern Poverty Law Center, and many other organizations.

After graduating from Harvard Law School, Jon clerked on the U.S. Court of Appeals for the Ninth Circuit and worked as a litigator at firms in Los Angeles and New York City.

Jon has practiced mindfulness for over thirteen years and studied with masters from around the world. In 2014, Jon completed a seven-month silent meditation retreat.

TO BRING JON TO YOUR ORGANIZATION, EMAIL:

jon@mindfulnessforlawyers.com

Our Mission To promote a culture of civility and inclusion, in which Illinois lawyers and judges embody the ideals of the legal profession in service to the administration of justice in our democratic society.

The Benefits of Meditation Await You Counselor

Posted on March 13, 2018 by Stephanie Villinski

Meditation is for lawyers. Yes, I said it and no, I have not lost my mind. In fact, I will even go a step further and say, “Lawyers are exactly the group of people who would benefit from meditation.” Before you scroll to the next article, hear me out.

Legal Minds Need Training

As lawyers, we are regularly “in our heads.” Right? Before we stepped foot into law school, we wrapped our brains around those “fun” LSAT logic games. Then in law school, we learned how to think critically, analyze, analyze, and analyze some more. It’s why we are so fun to hang out with at parties! By the time we actually start practicing law, our minds have become one of our most valuable assets.

Doesn’t it then make sense that we as lawyers need to continue to exercise and train our minds like professional athletes need to train their bodies? And by training, I don’t mean just reading new statutes and case law. I mean meditation as training for the mind.

Although the brain is only three pounds of soft tissue, it has 1.1 trillion cells. The brain is two percent of our body weight, but it uses 25% of the body’s oxygen. Our minds have about 50,000-70,000 thoughts per day. As lawyers, we don’t have time to waste on all those thoughts. We need to have our minds focused on our clients’ issues, the contract we are drafting, the brief we are writing, regulations we are analyzing, etc. The more we allow all our many thoughts to interrupt us,

the less successful we will be. You know as well as I do that as Type A people, we lawyers do not deal well with a lack of success.

Science Proves the Benefits of Meditation

So how can I be so sure about the benefits of meditation? My own personal experience confirms it as well as science. Science shows that meditation actually changes the way the brain functions. Here are a few scientific examples that backup my claims about the benefits of meditation:

- **Enhances Concentration and Memory:** A Harvard study on meditation found that after 8-weeks in a mediation program, there were measurable changes in the brain regions associated with memory, sense of self, empathy, and stress;
- **More Flexible to Change:** A neuroscientist, Richard Davidson who has studied the brains of Buddhist monks that regularly meditate found "high-amplitude gamma-oscillations in the brain, which are indicative of plasticity." This means that the brain of someone who regularly meditates is more resilient and capable of change than the brain of someone who does not meditate;
- **Reduces Stress and Burnout:** A study published in the *Evidence-Based Complementary and Alternative Medicine Journal* found that full-time workers who spent a few hours each week practicing meditation reported a significant decrease in job stress, anxiety, and depressed mood; and
- **Feel better:** A large body of research has established that the mental and physical benefits of meditation include:
  - Decreased blood pressure and hypertension
  - Lowered cholesterol levels
  - Reduced production of "stress hormones," including cortisol and adrenaline
  - More efficient oxygen use by the body
  - Increased production of the anti-aging hormone DHEA and
  - Improved immune function.

What lawyer would not benefit from increased concentration, resiliency, calmness, and physical health? None come to mind. Instead, what comes to mind is how lawyers who regularly meditate could have a positive ripple effect in the legal profession. Lawyers who do not let their thoughts get the best of them have the potential to satisfy more clients, their employers, and ultimately themselves.

Time to Exercise the Legal Mind

Now that I have backed up my claim about the benefits of meditation with scientific evidence, it is time for the legal profession to give meditation a try. Take a deep breath; I am not asking you go sit on a mountaintop or under a tree with your legs crossed. What I am asking is that you dedicate

five minutes per day to meditate for the next seven days. That is only 35 minutes out of the 10,080 minutes in your week.

Here is what to do:

1. Set aside the same five minutes each day for the next seven days. So, it could be when you get up in the morning, at lunch, after work, before bed, etc. Put this in your calendar with a reminder;
2. Find a comfortable place to sit. It could be at your desk, your favorite chair at home, etc.;
3. Once you have found a comfortable seat, close your eyes or keep them open if that works better for you. Begin to notice your breathing;
4. Set the alarm on your phone for 5 minutes and start; and
5. For the next 5 minutes, focus on the breath. When you take an inhale, say “inhale” to yourself and when you take an exhale, say “exhale” to yourself.
6. If thoughts arise as you meditate, that is ok. Just come back to your breath and focus on the inhale and exhale. You probably will have to do this several times throughout the five minutes and that is totally normal. Remember, you are not trying to “get rid” of all thoughts with mediation; rather, you noticing and managing them.

Experience the Benefits of Meditation

After you finish your five minutes of meditation, see how you feel and whether you experience any benefits of meditation similar to the above scientific findings over the next seven days. If you do, keep going with the meditation. If you don’t, you could keep going and continue to pay attention to the impact or decide it is not for you.

Give it a try. You have nothing to lose. We all regularly spend more than 35 minutes per week on social media or in front of a TV. Break your routine for a week and exercise that legal mind. The benefits of meditation await you. Please share your experiences in the below comment section.

Share this:

for lawyers and by extension, better service to their clients. In her free time, Stephanie enjoys yoga, meditation, watching sports, and time outdoors.

CATEGORIES: Wellness

One thought on “The Benefits of Meditation Await You Counselor”

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