



FLORIDA BAR NEWS

THE MINDFUL LAWYER: MINDFULNESS AND THE DECISION-MAKING PROCESS

By Scott Rogers ▶ Special to the News ▶ Columns

January 18, 2019



Lawyers and judges make decisions that have consequences. The decision-making process is a complex and fascinating one, and many factors can influence the quality of our decision making and our confidence and comfort with the decisions we make.

Mindfulness practices have been found to be of benefit to the decision-making process in a variety of ways, allowing us to remain more focused amid challenging moments, to be better able to attend to the arising of emotions that can influence decision making, and even being more creative in seeing possibilities and fashioning solutions.

Not infrequently, because of the mind's tendency to ruminate on past experiences, the impact of a decision can linger longer with a decision maker than on those directly affected by the decision itself. While such reflection can be of benefit, as when we learn from the past, often rumination is neither intended nor desired. It all too readily can lead to self-criticism and doubt, negatively impact mood, and can compromise our ability to focus on the task at hand, whether it is work related, or even involves time dedicated to relaxing and reflection.

This month's question is posed by David, a judge who taps into one of the consequences of such rumination, one many lawyers and judges can relate to on an ongoing basis.

David asks:

You awake at 3 a.m. and find yourself going over and over again in your mind a matter you decided earlier that day, questioning whether you really made the right decision and questioning each decisional step you made. In what ways might mindfulness be helpful?

I shared David's question with Judge Alan Gold, who offers guidance that brings together mindfulness meditation and insight.

He replies:

We all have been there. We all have made important decisions only to wake up later in the night to question if the decision was the correct one. So, where does mindfulness “fit” in such a situation?

Actually, the practice of “mindfulness” can begin before the decision is made. It is necessary to stop, reflect, and meditate about a decision to be made, after considering all of the circumstances and the appropriate precedents. During the meditation, it is time to check in with your intuition. “What is my ‘gut’ telling me?” There are a variety of mindfulness and other meditative practices that can be useful at this time.

Once the decision is made, it is then time to “let it go.” When the 3 a.m. hour next arises, meditate again, reminding yourself that you have done your best. To get stuck over a decision, and to constantly reassess, is to become immobile. It is a useless waste of energy. So many more important decisions await you. Take a deep breath and realize that, in being mindful, you cannot guarantee results, only your best efforts.

Judge Gold offers an important reminder that the practice of mindfulness, and of being more mindfully aware, is an ongoing opportunity, one that is part of a life’s journey. He zeros in on several insights that we can reflect on during challenging times — “let it go” and “remember we have done our best” — which practicing mindfulness can help us more naturally and spontaneously appreciate.

Among the different exercises that can be helpful at night is the “body scan,” a practice that involves focusing attention on the sensations arising in different parts of the body. It is an exercise that can help direct attention away from a racing, doubtful mind, as it becomes immersed in the sensations arising in the body, with a gently nod to whether the sensations are pleasant, unpleasant, or neutral. It is a practice that helps cultivate equanimity, which can be especially useful and thus is an important practice to consider for daily use.

Thank you, David, for submitting a pragmatic question and for the work you do on the judiciary. We are grateful to Judge Gold for offering his guidance and expertise. Judge Gold, a Senior United States District judge for the Southern District of Florida, is a nationally recognized voice on the value of mindfulness in the law, has spoken extensively to judges and attorneys on the value of mindfulness, and has written

several key articles on the topic, including “The Art of Being Mindful in the Legal World: A Challenge for Our Times,” and “Mindfulness: A Challenge for our Times.”

If you have a question about integrating mindfulness into the practice of law that you would like answered in this column, send it to srogers@law.miami.edu.



*Scott Rogers, M.S., J.D., is a nationally recognized leader in the area of mindfulness in law and founded and directs the University of Miami School of Law’s Mindfulness in Law Program where he teaches mindful ethics, mindful leadership, mindfulness and negotiation, and mindfulness in law. He is the creator of Jurisight, one of the first CLE programs in the country to integrate mindfulness and neuroscience and conducts workshops and presentations on the role of mindfulness in legal education and across the legal profession. He is author of the recently released, “**The Mindful Law Student: A Mindfulness in Law Practice Guide**,” written for all audiences.*