



FLORIDA BAR NEWS

THE ELEMENTS OF A MINDFULNESS PRACTICE

By Scott Rogers ▶ Special to the News ▶ Columns

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Mindfulness practices and the law have [a lot in common](#). Both are pathways for moving from confusion and conflict to clarity and calm. The former we tend to regard as an internal process; the latter we regard as external. Yet bringing greater clarity and calm into an environment (be it the courtroom, boardroom, or deposition) loaded with conflict and confusion is no easy task and our ability to self-monitor and regulate our thoughts and emotions can go a long way.

In this month's column we'll look to a parallel between the elements of legal causes of action and of mindfulness practices with an eye to how these elements/instructions are important and worth reflecting upon.

A MEETING OF THE MINDS

Just as there are elements to a legal cause of action, there are elements to a mindfulness practice. And just as there are different causes of actions (Breach of Contract, Negligence), so too there are different types of mindfulness practices (Focused Attention, Open Monitoring). All of them tend to carry the same aspiration—to help avoid and resolve conflict.

The Law of Contracts developed to help resolve disputes around promises and commitments and the classic elements of what constitutes a contract help us navigate this terrain:

1. Offer
2. Acceptance
3. Consideration

Mindfulness practices, like the Focused Attention practice also helps us to resolve disputes — both within ourselves and with other people. How it does this is rather intuitive and the elements to a Focused Attention practice are just as easy to remember:

1. Focus

2. Notice
3. Return

Fleshing this instruction out a bit, “focus” refers to directing your attention to a chosen object (often the breath), “notice” involves observing the object, and “return” refers to returning attention to the object when you notice that your mind has wandered.

The pragmatics of both are clear. If you wish to enter into an agreement that is more likely to be fair, minimize the likelihood of a dispute, and, if need be, that the courts will enforce, ensure the elements are in place. If you find that an agreement seems shaky, look to the elements and assess the extent to which they are integrated into the relationship.

Similarly, if you wish to enter into a period of planning, negotiating, litigating, conversing, or collaborating, it can be helpful to notice and monitor the activity of the mind. A practical and immensely useful instruction when doing any of these things is to (1) focus attention on the person or the subject being explored with the intention to remain attentive, (2) listen, observe, generate ideas, and learn, and (3) when you notice your mind wandering off, return to the person or subject. None of this should be a surprise. It is common sense, and it tends to be what we implicitly set out to do anyway.

Of course, even with a solid game plan, such interactions (with ourselves and others) can go awry when we lose focus, get lost in thoughts of past and future, experience emotional agitation, and forget our intention and what matters most. It is for moments such as these that we may choose to practice the focused attention mindfulness exercise ([or one of the other mindfulness practices such as the body scan, open monitoring, or connection](#)).

Below is a brief reminder of the practice, applying the elements of focus, notice, and return, along with [a link](#) to a series of 6-, 12-, and 18-minute mindfulness practices.

THE FOCUSED ATTENTION PRACTICE

Begin by bringing yourself into a comfortable posture, lower or close your eyes, and:

3. Rest attention on the sensations of the breath with the intention to remain attentive to the breath (or another object of attention you may select),
4. Notice the sensations of breathing (or the subtleties of the object you’ve selected),

5. When you detect mind wandering, return to the sensations of the breath (to the object).

This classic practice has been found to help improve focus, reduce mind wandering, regulate emotions, improve sleep, manage impulses, and improve working memory. It can help us to navigate our interior to bring clarity and calm out of moments of confusion and conflict. And, in so doing, it can help us to bring a greater measure of clarity and calm [into the environments](#) in which we work and live.

If you are interested in a humorous and thoughtful look at some reasons to practice mindfulness and take another look at the focused attention practice, watch Dan Harris's 15-minute Nightline segment on his exploration of mindfulness, or as he refers to it, [The Long Journey to Become 10% Happier](#).

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



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