



FLORIDA BAR NEWS

THE MINDFUL LAWYER: MINDFULNESS AND DEALING WITH THE UNEXPECTED

By Scott Rogers ▶ Special to the News ▶ Columns

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The trials and tribulations of life flow effortlessly into the practice of law. While some circumstances and challenges appear to be reserved for one domain or the other, a closer look often reveals an underlying quality, inherent in life itself, that is connected with the disquieting moments that lawyers and judges experience time and again. Chief among them is uncertainty and the inevitability of change.

Implicit in the bedrock legal principle of *stare decisis* is a tendency toward certainty. It is perhaps not a coincidence that many of us have turned to a profession that values certainty and, with it, predictability. At the same time, Heraclitus, the Greek philosopher, reminds us of ever-present change as being fundamental to the world in which we live.

Mindfulness practice can be helpful in more skillfully relating to the ever-changing landscape of law practice by helping to establish a more tranquil state of mind and body from which to be able to respond to changing circumstances and unexpected events and outcomes. This month's question is posed by Greg, who has been immersed in the important and intense work of criminal prosecution for the last three years.

Greg, asks:

Trial law is full of uncertainties. Are there ways you have used mindfulness when in front of a jury questioning a witness and things do not go the way you expect?

I shared Greg's question with Karen Gifford, former counsel and officer in the Litigation and Enforcement Group of the Federal Reserve Bank and Special Advisor for Global Policy and Regulatory Affairs of Ripple Labs. Karen replies:

You touch on a classic and very real aspect of legal practice. Anyone who has done trial work has experienced surprising events while in court: a witness suddenly remembers things differently; a judge

announces she is going to rule on a central issue in the case; a power outage or glass of water spilling makes it impossible to read your notes. These events are especially challenging because you have to respond to them in real time, with an audience, one or more of whom are the decision-makers in your case.

In my own experience, having a meditation practice really helps in coping with these kinds of surprises. Sitting quietly every day, even for a relatively short time, creates a kind of reserve calm — the mind naturally becomes less reactive. Less time spent reacting leaves more time to respond thoughtfully.

When something unexpected happens in court, it's important to stay connected to what is actually happening. You can't respond appropriately if you are fighting reality. For example, in the situation you raise, you may need to minimize the damage of a witness' confused testimony by getting that person off the stand quickly. Or you may need to set aside arguments that you spent hours or days preparing, because the judge is going to rule your way without them. In the pressure of a courtroom, it can be surprisingly difficult to take these kinds of steps, and I have seen experienced lawyers fail to follow them. Coming to court with a mind that is a little bit calmer helps.

A calmer mind is more realistic, and that can also give you space to be less hard on yourself when things don't go the way you planned. Realizing you are a human being doing your best in a difficult situation and not a caricature, omnipotent lawyer may even help you relax and deal with whatever is happening more creatively.

How to connect with this calm and thoughtfulness in the heat of the courtroom? In the moment, you can reconnect with a calmer mental state by taking a few slow, deep breaths, noticing the feeling of your feet on the floor or your hands on the lectern. Anything that connects you with your body will bring your mind back into the moment. Of course, the best way of all is simply to have a daily meditation practice. Your meditation practice will very naturally change the way you respond to the world — including the courtroom — over time.

Karen's thoughtful response points both to the ways we can establish a more relaxed and steady state in the midst of challenge, as well as the importance of a regular mindfulness practice. Importantly, the relaxing potential of the *few slow, deep breaths* she advocates when in the heat of the courtroom are a

prelude to *noticing the feeling of your feet on the floor or your hands on the lectern*. We are interested in being more relaxed both as an end in itself, and to be able to more readily apprehend what is actually taking place. Doing so we seize upon opportunities often overlooked, realize the larger perspective at play, and are less likely to be distracted by an anxious mind. Readers may benefit from reading *The Anxious Lawyer: An 8-Week Guide to a Joyful and Satisfying Law Practice Through Mindfulness and Meditation*, a book co-authored by Karen and published by the ABA.

Thank you, Greg for submitting such an important question, and Karen, for your thoughtful reply.

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.*