

# Key to Competence: Be Mindful of Your Well-Being

## [Outline]

*Recent studies have demonstrated that deliberate practices, paying attention to one's moment-to-moment experiences, compassion, resiliency and self-care behaviors can reduce the many unintended consequences of lawyering such as burnout, vicarious trauma, and compassion fatigue.*

*To be a good lawyer, one has to be a healthy lawyer.*

### 1. The Numbers

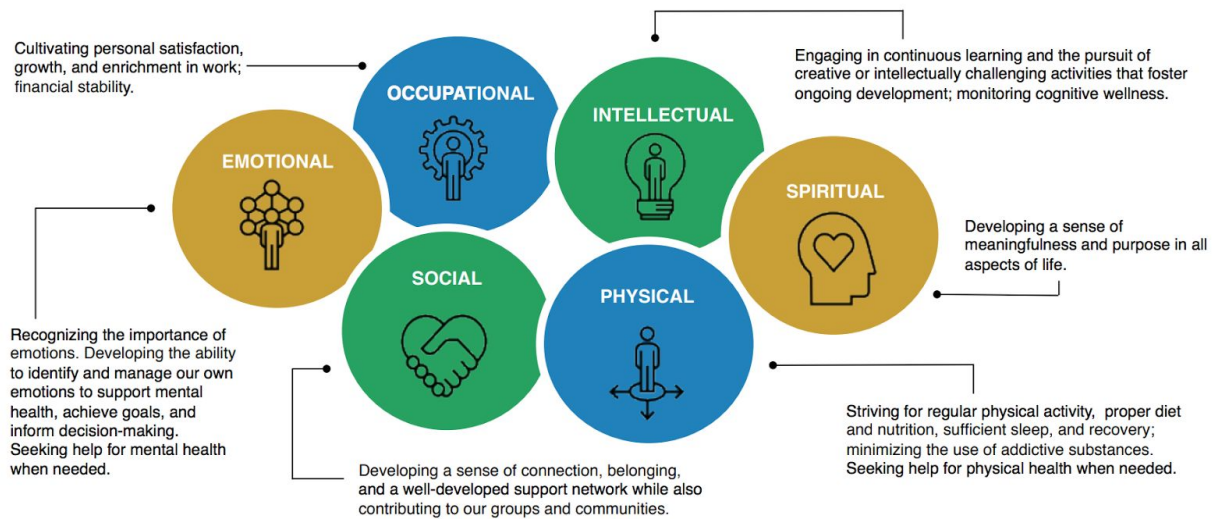
- **Review the findings of the ABA Study: Depression, anxiety, stress, problem drinking**
- **According to ABA Study, released Feb, 2016:**  
**Surveyed 13,000 attorneys**  
**Experiencing:**
  - **Depression: 28%**
  - **Anxiety: 19%**
  - **Stress: 23%**
  - **Problem drinkers: 21%**

**Attorneys experience problematic drinking that is hazardous, harmful, or otherwise generally consistent with alcohol use disorders at a rate much higher than other populations. These levels of problematic drinking have a strong association with both personal and professional characteristics, most notably sex, age, years in practice, position within firm, and work environment. Depression, anxiety, and stress are also significant problems for this population and most notably associated with the same personal and professional characteristics.**

*The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys (Krill, Patrick R. JD, LLM; Johnson, Ryan MA; Albert, Linda MSSW)*

## Defining Lawyer Well-Being

A continuous process in which lawyers strive for thriving in each dimension of their lives:



## 2. Rule 3-110

- Failing to act competently

(B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.

## 3. Understanding Why? *Why* are lawyers suffering from such high rate of stress, anxiety, depression, substance/alcohol abuse?

- Adversarial system, lack of civility, lack of collaboration, low resilience
- Fear of making a mistake and being on guard — Must master statutory law, case law, rules of evidence and rules of procedure — to name but a few areas of knowledge
- Time pressure — pressure to bill more time, lack of work-life balance
- Financial pressure — high student loan debt, keeping up with the Joneses, measuring sense of success with external
- Difficult to maintain emotional and cognitive balance in the practice of law

## 4. Stress and Anxiety (What is it and why do lawyers struggle?)

- Immense pressures and stresses
  - Preparing for deposition, hearings, and trial
  - Constant distractions including telephone messages and email

- Pressure to keep up with the latest case law, technology, the business of practicing law
- Difficult clients
- Difficult opposing counsel, judges, co-workers
- Balancing family obligations with work
- The demands on attorneys to stay “tuned in,” to be focused on work, respond to issues more rapidly and manage a growing number of complex matters increases
- Stress and Anxiety
  - Loss of appetite, or overeating
  - Use of alcohol/ drugs to self-soothe
  - Headaches, stomach aches, other physical symptoms
  - Increased blood pressure
  - Burnout
  - Vicarious Trauma
  - Compassion Fatigue
- Common signs of impairment are:
  - A change in work habits or patterns
  - Forgetfulness or lapses in judgment
  - Lateness or leaving work early
  - Failure to meet deadlines or to be accountable
  - Failure to appear for meetings, court dates, depositions
  - Diminished quality of work product
  - Personal use of trust account funds or trust account overdrafts
  - Personal credit problems, tax problems, liens
  - Difficulties working with clients, colleagues or staff
  - Emotional unevenness, irritability or impulsivity
  - Signs of intoxication, smell of alcohol or marijuana
  - Increased isolation or secrecy

## **5. Example: Telephone with difficult person**

- Imagine yourself sitting at the office. The phone rings. On the caller ID, you see it is someone you have great difficulties with. How does it impact your mind? What do you notice in the body?
- The practice of mindfulness — noticing what is happening in the present moment can help to keep you calm in the fight-or-flight response
- Understanding the Fight-or-Flight Response:

To produce the fight-or-flight response, the hypothalamus activates two systems: the sympathetic nervous system and the adrenal-cortical system.

The sympathetic nervous system uses nerve pathways to initiate reactions in the body, and the adrenal-cortical system uses the bloodstream. The combined effects of these two systems are the fight-or-flight response.

When the hypothalamus tells the sympathetic nervous system to kick into gear, the overall effect is that the body speeds up, tenses up and becomes generally very alert. If there's a burglar at the door, you're going to have to take action -- and fast. The sympathetic nervous system sends out impulses to glands and smooth muscles and tells the adrenal medulla to release epinephrine (adrenaline) and norepinephrine (noradrenaline) into the bloodstream. These "stress hormones" cause several changes in the body, including an increase in heart rate and blood pressure.

**6. Mindfulness: *Why* is this conversation with your opposing counsel, client, judge, etc triggering stress and anxiety reaction?**

Letting go of unproductive, unhelpful thoughts.

- Get off the phone with an opposing counsel then replay what she said to you over and over again in your mind
- Ever have a judge criticize you or fumble over a question at a hearing and replay that in your mind like a broken record?
- After the opposing counsel makes a snarky comment, you come up with the perfect clever comeback, and then proceed to beat your up for not thinking of it on the spot

These types of thoughts, what are referred to as “unproductive, unhelpful thoughts.” Mindfulness allows you to identify these thoughts then choose your response.

- Calm the anxious mind — Ever wish you can just press the “power off” button for your mind and get your brain to shut down? Do you suffer from regular insomnia because you’re stuck in looping thought patterns?

Mindfulness practice allows you to recognize that your mind’s job is to constantly produce thoughts and not to get so caught up in your thoughts. The metaphor often used is to learn to observe your

thoughts like looking at clouds in the sky. Thoughts will come and go. You learn to watch your thoughts without getting emotionally triggered. Instead of constantly having your mind racing at 150 mph, worrying about your hearing that's 6-months away, you can slow it down so that you can gain clarity and focus. It's the "off button" for your brain for shutting off unproductive, unhelpful thoughts. An obviously valuable skill for lawyers.

## 7. Mindfulness Can Reduce Lawyer Anxiety

- Mindfulness as a place to retreat.

Lawyering is difficult. We all have days where it feels as though the ground beneath us is about to give and we're spiraling out of control. When you feel this way, what coping mechanism do you use to feel grounded again? Practicing mindfulness allows us to pause, reflect, and respond from a place of calm rather than reacting.

Most of us have had a situation where we immediately regret hitting the send button on an email or said something we shouldn't have said. What we are training our brain to do is to reduce the activities in the part of the brain responsible for fight or flight response and activate the parts of our brain responsible for executive functioning so that we can respond appropriately in difficult situations.

## 8. Work/Life Balance

- Using mindfulness as corrective measure.

Each day, we're given 1,440 minutes. Not a single minute more. Work-life balance is all about allocating those precious minutes. How do you start your day? Do you start by checking your email? Or do you align your day with what is important to you – eating right, exercise, connecting with people you love, practicing self-care? Are you clear about what really matters to you and are you consistently orienting your life towards those values?

With the constant demand on our time, the ever growing to-do lists, the constant distractions, it's easy to go about your day with your mind in a state of constant fog, not really aware of what you're

spending your time on. Ever have an experience where you look up and it's already 3:00 P.M. and you wonder where the day went? Being mindful is all about being present to each moment of your day.

It helps you to focus on what is truly important — for example, when working on a Motion, you can fully pay attention to the research assignment rather than rumination.

## 9. Unintended consequences of lawyering

Lawyers are in the suffering business. Clients *rarely* come to us with happy news. This has an impact on us. Here are some of the “unintended consequences” of lawyering.

- Burnout
- Compassion Fatigue
- Vicarious Trauma

## 10. Burnout

- Occupational burnout is thought to result from long-term, unresolvable job stress.
- Set of symptoms that includes exhaustion resulting from work's excessive demands as well as physical symptoms such as headaches and sleeplessness, "quickness to anger," and closed thinking.
- Burned out lawyers "looks, acts, and seems depressed".
- Risk Factor for Burnout:
- Evidence suggests that the etiology of burnout is multifactorial, with dispositional factors playing an important, long-overlooked role. Cognitive dispositional factors implicated in depression have also been found to be implicated in burnout. One cause of burnout includes stressors that a person is unable to cope with fully. For example, not having control over an outcome of a case, how the judge will rule, what the witness will say on the stand, etc.
- Occupational burnout often develops slowly and may not be recognized until it has become severe. When one's expectations about a job and its reality differ, burnout can begin.

## 11. Vicarious Trauma

- Example: Client loses a case, get an unfair result, experiences tragedy, suffering, etc.

- The symptoms of vicarious trauma align with the symptoms of primary, actual trauma. When lawyers attempt to connect with their clients/victims emotionally, the symptoms of vicarious trauma can create emotional disturbance such as feelings of sadness, grief, irritability and mood swings.
- The signs and symptoms of vicarious trauma parallel those of direct trauma, although they tend to be less intense.
- Common signs and symptoms include, but are not limited to, social withdrawal; mood swings; aggression; greater sensitivity to violence; somatic symptoms; sleep difficulties; intrusive imagery; cynicism; sexual difficulties; difficulty managing boundaries with clients; and core beliefs and resulting difficulty in relationships reflecting problems with security, trust, esteem, intimacy, and control.
- Contributing factors  
Interaction between lawyers and their situations/ cases. This means that the lawyer's personal history (including prior traumatic experiences), coping strategies, and support network, among other things, all interact with his or her situation (including work setting, the nature of the work s/he does, the specific clientele served, etc.), to give rise to individual expressions of vicarious trauma. This in turn implies the individual nature of responses or adaptations to VT as well as individual ways of coping with and transforming it.

## 12. Compassion Fatigue

- Compassion fatigue, also known as secondary traumatic stress (STS), is a condition characterized by a gradual lessening of compassion over time
- Common among lawyers that work directly with trauma victims — prosecutors, public defenders, family lawyers, bankruptcy lawyers, etc.
- Lawyers exhibit several symptoms including hopelessness, a decrease in experiences of pleasure, constant stress and anxiety, sleeplessness or nightmares, and a pervasive negative attitude. This can have detrimental effects on individuals, both professionally and personally, including a decrease in productivity, the inability to focus, and the development of new feelings of incompetency and self-doubt.

## 13. Understanding the mind

- Focus, moderately distracted and distracted states
- How to have more focus

#### **14. Self-Care**

- Key to decreasing stress/anxiety, avoiding lawyer burnout
- Relaxation exercises are one of the most effective techniques for reducing tension and the physical effects of stress. In studies conducted at Harvard Medical School, researchers monitored subjects who achieved a relaxed state through meditation and noted that relaxation stimulates biochemical responses in the body which are nearly the opposite of stress, the fight-or-flight response. Relaxation gives the body an opportunity to rest and rebuild its resources. Relaxation is particularly helpful in managing stress when practiced regularly. Methods of relaxation are as individual as what constitutes stress. The key is to find and participate in those activities which create a feeling of relaxation.
- This can be as simple as deep breathing exercises for a few minutes or as involved as regular programs of exercise, meditation or biofeedback.

#### **15. Basics/ Foundational Practices**

- Sleep, breaks, connecting with allies, yoga, healthy meals, exercise, letting go and laughter