

# **The Mindful (and Ethical) Approach to Stress Management for Lawyers**

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# Biography of the Presenter

Claire Parsons is a Partner at Wood + Lamping LLP. For 15 years, she has practiced in the areas of employment law, litigation, and municipal law. During this time, she has managed an active practice, prolific writing and speaking on legal and other topics, a growing family, and a long history of community leadership. Claire attributes her ability to balance these many functions to her meditation practice that she began years ago and has fine-tuned with careful study and meditation retreats.

For more than 5 years, Claire has shared her knowledge of mindfulness and compassion with other lawyers and professionals across the country. She is certified to teach meditation, yoga, and compassion and founded the blog, Brilliant Legal Mind, to offer instruction, practical tips, resources, and guided meditations to help lawyers and professionals bring mindfulness into their life and law practice. More recently, Claire has published two books on the topic of mindfulness, including *How to Be a Badass Lawyer* and the children's book, *Mommy Needs a Minute*. You can follow Brilliant Legal Mind on Wordpress, Facebook, Instagram, Twitter, LinkedIn and YouTube and follow Claire on LinkedIn.

# **The Mindful (and Ethical) Approach to Stress Management for Lawyers**

## **I. Introduction**

Many lawyers might assume that stress is an inevitable part of our jobs. To some degree, this may be true. But is all the stress we experience as lawyers truly something we have no ability to control? Lawyers are commonly chided about managing our stress and told scary stories about the consequences that might befall us if we fail to do so. This seminar is different.

You will learn about stress and its potentially negative effects on your mind, body, and work performance, but you'll also learn something that may surprise you: stress is not all bad. In fact, some stress is good. What separates the two kinds of stress?

As we'll explore in this seminar, it is our response to stress that matters and it is the only aspect of stress that we can control. In this seminar, we will explore ways that you can respond to stress in a healthy way and how mindfulness practices can help you live up to your ethical obligations as an attorney and enhance your practice and life.

It will begin with an overview of the many ways that the Kentucky ethical rules include a duty to manage one's stress levels and a discussion of some common impediments that attorneys face in living up to these obligations. It will next explore the stress response and some of the promising scientific studies relating to mindfulness practices. Finally, it will conclude with information about tools available that even the busiest of lawyers can explore to manage stress in a healthy and effective way.

## II. An Attorney's Ethical Obligation to Manage Our Stress

You've probably never thought about it this way, but one of your jobs as an attorney is to learn how to manage your own stress. This is because, part of your job is to make sure your mind is clear, sharp, and able to work for your client. The Kentucky Rules of Professional Conduct implicitly require this in several ways.

Our ethical rule #1, found in Kentucky SCR 3.130(1.1), requires lawyers to represent clients competently. It mandates that all lawyers "shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Most often, we tend to think of this rule as a matter of knowledge and experience, but Comment 5 to the rule makes it clear that an appropriate investment of an attorney's *attention* is part of the duties imposed in SCR 3.130(1.1):

Thoroughness and Preparation (5) Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence.

In short, under Rule 1.1 attorneys must make sure their mind is able to function properly so that they can pay adequate attention to the case.

Related to competence is the duty to act with "reasonable diligence and promptness" under Kentucky SCR 3.130(1.3). Comment 1 explains that this rule requires attorneys to "act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." Yet, ethical lawyers must find the happy medium deployment of zeal since they must "exercise professional discretion in determining the

means by which a matter should be pursued.” And, of course, we are obligated to treat “all persons involved with the legal process with courtesy and respect.” To manage this, comments 2 and 3 require that attorneys manage their workload and avoid delay to ensure that they do not impair client interests. Thus, to comply with Rule 1.3 an attorney’s mind is critical to managing his or her life and workload so as to be appropriately diligent in representing clients.

As hard as it is sometimes, the ethical rules for attorneys even require us to control our emotions and rein in some of the baser instincts that are part of being a human being. Under Rules 3.4 and 3.5, attorneys must show fairness to opposing counsel and parties and decorum with tribunals. Comment 4 to Rule 3.5 specifically instructs attorneys that

Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate.

Thus, attorneys have an ethical obligation to monitor and keep in check their own behavior and emotions in order to show due respect to other attorneys, litigants, and the courts where they practice. As Comment 4 shows us, this is true even in incredibly difficult situations, and the duty is not relaxed because other parties fail to live up to their own obligations.

When one considers the obligation of attorneys to manage other aspects of our practice, the crucial role of one’s own mind becomes clearer still. In addition to managing ourselves, attorneys have ethical obligations to pay close attention to our communications with clients, third parties, and the public (*see* SCR 3.130(4.1–4.5, 7.01–7.50)); the very structure of our law practices and our use of support staff in them (*see* SCR 3.130(5.1–5.7)); and the complex and ever-changing web of relationships that we must navigate to avoid any variety

of conflicts of interest. *See* SCR 3.130(1.5–1.20). In other words, unwavering, objective attention to a variety of subtle facts in an ever-changing environment is part of the ethical obligation of being an attorney in Kentucky today.

In countless ways, therefore, the Kentucky Rules of Professional Conduct implicitly require that attorneys manage stress levels to ensure that our minds are clear, focused, and ready to work for clients and that we manage our lives, practices, and emotions while we do so.

### **III. Impediments to Fulfilling Ethical Obligations**

Many of the ethical obligations stated above are foundational to living as a good person, and so it may initially seem that compliance with these obligations should be simple. In an ideal world, it would be. As most of us know, however, we do not live in a perfect world and most attorneys do not report experiencing a perfect practice. To the contrary, attorneys face many challenges every day that can make compliance with our ethical obligations a challenge.

First, our jobs are not easy. Attorneys often must make sense out of complicated factual scenarios. We often must apply and attempt to interpret complicated laws that are more gray than black and white. We are required to negotiate between the differing personalities, backgrounds, and perspectives of a variety of people to do our jobs. Thus, while the ethical course of action is usually clear, times inevitably will arise when one must carefully consider one's ethical responsibilities while practicing law.

Second, attorneys often have limited time. Litigation attorneys especially are constantly confronted with a never-ending stream of deadlines and emergencies. On top of this, many attorneys work on a billable hour system. Thus, at least in theory, the more we work, the

more money we can make. It doesn't take much to understand that an overworked body and mind are not ideal circumstances for perfection when it comes to ethical behavior.

Third, many attorneys work in high-stress, competitive, and adversarial environments. As some of the studies discussed below will indicate, a mind in stress is less rational and less functional than a calm mind. The long-term effects of stress can even produce permanent harm. In this way, the unavoidable fact of stress in our practice can make it more difficult to behave in an ethical way as a lawyer.

Fourth, attorneys are often subjected to a number of pressures that weigh in on our decision-making. Economic issues are often front and center, not only in our personal lives but in our law practice also. Likewise, our clients may face the economic stresses of paying for legal services, which in turn can put more pressure on attorneys. Another pressure is the myriad interpersonal relationships that law practitioners are subject to, including those with clients, co-workers, court staff, and other parties. These relationships can assist attorneys to perform ethically, but if they become toxic, strained, or unhealthy, they can create temptations to engage in unethical behavior.

Given these challenges, it is not surprising that attorneys report higher levels of stress and job unhappiness in comparison to many other professions and that symptoms associated with this stress and unhappiness, such as substance abuse or even mental health problems, occur within the legal profession at alarming rates. All of these conditions are potential impediments for attorneys to behave ethically in representing our clients.

#### **IV. Why Stress Affects Lawyers So Much**

Stress makes the lives of attorneys more difficult because our bodies and minds are integrally connected. When we experience stress in our bodies, our minds automatically react and can trigger the fight, flight, or freeze response. In such circumstances, our mid-brains are activated and the amygdala may take over or “highjack” our experience, so that we react to life rather than respond to it. In such circumstances, our prefrontal cortex, which houses the higher level functions of the brain, such as communication, collaboration, and creative thinking, is diminished. If this experience goes on for long enough, it can lead to brain damage and physical health problems.

Though this is very scary news, this isn’t the full story. New research has shown us that there is more than one way to respond to stress and that stress does not necessarily have to impede performance. In addition to fight, flight, freeze, our bodies are also wired to respond to stress in two other ways: challenge and tend and befriend. When we activate the challenge response, we look at the stressor as an opportunity to rise to a new challenge instead of focusing on the negative aspects of it. When we utilize tend and befriend, we learn ways to care for our stress and connect with others in our community for support. Both of these responses to stress can help us build happy and meaningful lives and strong social connections and research shows that the health consequences of these responses are very different from the fight, flight, freeze response to stress.

## **V. Why Mindfulness Practices Can Help Lawyers Manage Stress**

Now, you may be wondering what mindfulness has to do with stress management. Numerous research studies indicate that mindfulness practices (including meditation and other mind-body practices) is a promising avenue for stress management. Mindfulness meditation is one of the fastest growing trends in the United States. One recent study



indicated that the number of people who reported regularly meditating increased exponentially in the last decade. Numerous websites, books, podcasts, and apps exist now that can help even the most inexperienced student to start a meditation regimen in minutes. These products exist only because demand for meditation keeps increasing. This high demand can be attributed to numerous scientific studies in recent years which make a case that meditation is good for the human body and mind.

Studies indicate that regular meditation improves focus and reduces stress. In fact, some studies show that meditators are more resilient to stress. It is also associated with improved immune functioning and other physical side effects, but the precise impact is still being studied. In addition, loving-kindness meditation, which will be more fully explained below, has been shown to increase compassion, which in turn has been shown to result in more positive interpersonal relationships. *See* <https://www.mindful.org/10-things-we-know-about-the-science-of-meditation/>. As a result of these benefits, some doctors recommend meditation as one means of treating psychological disorders, such as anxiety, depression, and PTSD. *See* <https://news.harvard.edu/gazette/story/2018/04/harvard-researchers-study-how-mindfulness-may-change-the-brain-in-depressed-patients/>.

As a result of this data, many top performers and companies (such as Apple, Google, and P&G) in the United States have adopted meditation as part of their daily practice. *See* <https://chopra.com/articles/corporate-meditation-how-and-why-big-businesses-are-promoting-meditation>. If top companies adopt mindfulness programs to help their bottom line and foster ethical living in a constantly changing world, then why shouldn't attorneys? Indeed, at least one very famous attorney—Justice Stephen Breyer formerly of the United

States Supreme Court, a regular meditator himself—would say lawyers should give meditation a try. See

<http://thechart.blogs.cnn.com/2011/05/11/seeking-serenity-when-lawyers-go-zen/>.

Many lawyers may assume that mindfulness is so promising because the practice itself is relaxing and helps you cultivate calm. This is certainly true for many who engage in mindfulness practices, such as yoga, tai chi, or meditation. But this is not the sole reason that mindfulness practices help with stress. One of the reasons that they help is that they help individuals cultivate comfort with and clear awareness of discomfort. Quite literally, the practices help you stay present with an experience rather than reacting to it. Over time, this means you can more clearly see the situations in your life and choose your response. Since the response to stress is the most critical for our health, mindfulness is an essential skill for lawyers to build, whether it is from meditation or other practices.

Therefore, while attorneys face many challenges in their daily practice to manage stress in the midst of practice, the research of mindfulness practices shows that it is a promising tool for attorneys to use to take care of their minds as they practice law.

## **VI. Resources to Explore Stress Management Further**

Stress is a broad and pervasive topic for lawyers. It may not be realistic for us to limit our stress, but we can learn better ways to manage it. Here is a list of some great resources that I recommend:

### **A. Books**

1. *The Upside of Stress* by Kelly McGonigal. This is a wonderful guide to understanding the true impacts of stress and how to manage it in a healthy way. McGonigal explains research on the subject in an approachable way and identifies workable interventions for better stress management. I did a review of the book on my blog here:

<https://brilliantlegalmind.com/2022/09/06/book-review-the-upside-of-stress-by-kelly-mcgonigal/>.

2. My book, *How to Be a Badass Lawyer: The Unexpected and Simple Guide to Less Stress and Greater Personal Development Through Mindfulness and Compassion* is a four-week guide to develop a meditation practice of your own. In addition to that, it explains why mindfulness and compassion matter when it comes to stress and applies the concepts to the lives of lawyers. You can learn more about the book here: <https://brilliantlegalmind.com/books-and-merch/how-to-be-a-badass-lawyer/>.
3. Books to help you think more holistically about stress management. If you want to consider the impact of personal habits and build a structure for success, you may want to check out *Atomic Habits* by James Clear, which I reviewed here: <https://brilliantlegalmind.com/2022/01/25/book-review-atomic-habits-by-james-clear/>. If time management is a stressor for you, I highly recommend Laura Vanderkam's work and reviewed her latest book, *Tranquility by Tuesday* here: <https://brilliantlegalmind.com/2022/11/27/tranquility-by-tuesday-can-change-how-you-feel-about-your-time/>. Finally, since social connection is an essential component to combatting unhealthy stress, we must remember that loneliness is a major concern in the legal profession and our society. Surgeon General Vivek Murthy has written a book on this topic, *Together*, which explains the impact of loneliness but identifies responses to it. You can check out my review of it here: <https://brilliantlegalmind.com/2021/03/15/brilliant-book-recommendation-together-by-vivek-h-murthy-m-d/>.

## **B. Apps/Websites**

1. My blog is [www.brilliantlegalmind.com](http://www.brilliantlegalmind.com) and it includes tips, instruction, articles, resources, and guided meditations made for lawyers and professionals. It is crafted to be practical and approachable in nature and will feature recommendations to other great resources and teachers each month. You can follow the blog on Wordpress, Instagram, LinkedIn, Twitter or Facebook and find guided meditations on Insight Timer or YouTube. I have a series of downloadable resources available on the blog, but of particular interest to the topic of stress management is the personal well-being worksheet here: <https://brilliantlegalmind.com/resources/lawyer-well-being-worksheet/>.
2. Rethink Stress: Stanford University has a website with intervention materials, video courses, and more to help people understand how to manage stress in a healthy way. You can find it at

<https://mbl.stanford.edu/resources/intervention-materials/rethink-stress-intervention>.

3. US Surgeon General's Framework on Workplace Mental Health: This framework will help you understand the impact of stress and mental health as a societal issue and identify what we can do in the workplace to make positive change. I summarized and analyzed the framework here: <https://brilliantlegalmind.com/2022/11/01/analysis-of-workplace-mental-health-framework/>.
4. Tons of apps are out there relating to meditation. Most have introductory courses, and many have free, limited options available. At this point, most are subscription based or require in-app purchases. Here are a few names for you to try: 10% Happier, Headspace, Meditation Studio, and Stop, Breathe and Think.
5. Insight Timer: This app is unique because it has a social component where you can connect with friends and it integrates with video and other content available on the internet. This app has a lot of free content but paid subscriptions are available. I have a publisher page on this platform with guided meditations for lawyers.

## **VII. Conclusion**

Stress is a part of life for lawyers but it can be part of a happy, healthy, and meaningful life. Ultimately, the goal of life is not for lawyers to achieve a totally stress free existence, but instead to develop skills for managing the ebbs and flows of life and law practice while caring for themselves and finding meaning and connection in their work. This seminar was offered to help you understand stress better so that you can explore practices and supports that may help you. It was not intended, however, to create the idea that you should be managing stress all on your own. Ultimately, connection with others is our greatest tool as humans for managing stress, so please use this seminar and resources offered here as a guide to finding the support you need, including from your community.