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The Role of Mindfulness in Effective and Ethical Lawyering

*Beyond Knowledge
And Good Intentions*

By **Brenda Fingold**

“No,” I replied almost 20 years ago, when the managing partner asked me to arrange an eight-week mindfulness training program for our lawyers. I was a litigator and the partner in charge of attorney training at a large Boston law firm, and I did not want my colleagues to think we were crazy. Fortunately, my forward-thinking managing partner won this standoff, and over 75 partners and associates had an opportunity to learn and practice mindfulness together. Fast forward to 2017, and you will find a growing number of law firms turning to mindfulness training as a foundation for professional excellence. My original “No” is now an emphatic “YES” as I witness first-hand the benefits of this practice for the legal profession.

A 2015 *Harvard Business Review* article, “Mindfulness Actually Changes the Brain,” concludes that “Mindfulness should no longer be considered a “nice-to-have” for executives. It’s a “must-have”: a way to keep our brains healthy, to support self-regulation and effective decision-making capabilities, and to protect ourselves from toxic stress.” That mindfulness is

continued on page 5

‘I Can’t Get No Satisfaction’ — Or Can I?

How Lawyers Can Maximize Job Satisfaction

By **Bruce Lithgow**

When Mick Jagger says, “I can’t get no satisfaction,” it is very difficult to believe. When a lawyer says it, it is a lot more plausible. Multiple studies suggest that lawyers are among the least satisfied of all professionals. What many lawyers fail to realize, however, is that satisfaction is not as elusive as it seems. If you are among the majority of attorneys who fall somewhere below 85% on the satisfaction scale, you can do something about it.

JOB SATISFACTION

I talk to lawyers all day every day. Many seem to believe that their dissatisfaction stems from something endemic to the practice of law. The hours, the drudgery, the quest for higher profits, increasing billing rates, firm politics and cronyism, conflicts, lack of support, and the drive to make law firms more like a business than a partnership are often cited as inescapable evils.

Having helped dozens of lawyers move from extreme dissatisfaction to significantly greater satisfaction tells me that taking control of your career and finding the right platform for your practice can help. Not all lawyers are the same, not all practices are the same, and not all law firms are the same. If they were, my job as a navigator of legal careers wouldn’t exist.

Job satisfaction derives from a number of factors, including such things as your relationship with your colleagues, work environment and culture, resources and support, compensation, growth opportunities, firm reputation, and the work you do on a daily basis. But arguably the most important factors are control and security — control over your own practice, clients and future, and the security to know they will not disappear overnight.

Is this even possible to achieve these days in the legal profession? In my experience, it is. But to achieve it, you must take control of your situation, your future and your career. Putting yourself in the best possible position to build and

continued on page 2

In This Issue

How Lawyers Can Overcome Dissatisfaction.....	1
Mindfulness and Effective Lawyering...	1
Changing Compensation Strategies	3
Private Investment In Law Firms Ban	7

Compensation

continued from page 4

The size of bonus pools is growing. Many firms set aside a percentage of their profits to distribute to a select group of partners who had a particularly good year. Consultants and firm leaders say they're seeing bonus pools grow and, as with shorter-term decisions on how to distribute profits, it's in part to keep rainmakers from leaving for rivals.

A typical bonus pool is between 5% and 15% of a firm's profits, says Lisa Smith, a consultant with Fairfax Associates. Some firms can go up to 20%, however.

Rewarding partners with a bonus, rather than moving partners to a higher tier on the pay scale, is easier for long-term planning purposes, says Jacqueline Knight, a recruiter at Major, Lindsey & Africa. If the partner is not as productive the following year, it's easier to simply not give them another bonus, than it is to demote them.

"I have seen an increase at many firms in the bonus structure," Knight says.

Firms are paying attention to the profitability of partners' practices, not just their books of business. Since the recession, consultants say, firms have been forced to operate

more like businesses in which every line item on their budget matters. That means simply making money isn't enough. Practices must be efficient and realization rates matter — a scenario only intensified in a low-growth market.

"Historically, most firms were, and still are, top-line oriented," says Altonji. "They look at your book of business [when determining compensation.] I have to tell you, not all dollars were created equal."

Profitability, in particular, has become a focus of compensation committees. Some firm leaders say they are generally taking more data into account when measuring a partner's performance.

"We are looking at using more analytics rather than anecdotal evidence," says McDermott Will & Emery chairman Ira Coleman. When determining compensation, the firm "look[s] at all the clients this person touched or all the lawyers and professionals this person brought in to help the clients."

COMPENSATION AND CULTURE

Having an open compensation system makes the firm's decisions about who makes what much more consequential.

"Because it's transparent, in addition to just deciding what each partner's compensation is, we're

sending messages to all the partners as to what is being rewarded," Weil's Wolf says.

But a chair whose firm has a closed system makes the case that if partners don't know their colleagues' compensation, they spend less time worrying about who makes what. A closed system is beneficial to culture because resentments are less likely to build, he says.

Decisions about every aspect of partner compensation from how to award points to who gets to see the final breakdown have an impact on another, more nebulous concept that law firm leaders love to talk about: culture.

"Compensation drives culture by far more than any other attribute," says the chairman of a top Am Law 100 firm.

Culture and that historical understanding of the definition of partnership are often what have kept law firms from radically altering compensation or partnership structures. But they have also contributed to overcapacity at many firms.

If an Am Law 200 firm started anew today, would it be structured like the rest? The shifting partner compensation models are testing the bounds of a law firm's culture in the face of the business realities of running a partnership akin to a Fortune 1000 enterprise.

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Mindfulness

continued from page 1

essential even for bright and well-trained professionals is an acknowledgement that there are factors beyond job knowledge, skill and good intentions that can trip us up, impair competence and diligence, cause us to unintentionally run afoul of an

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ethical rule and make it very challenging to sustain high achievement and well-being over a 40- to 50-year legal career.

MINDFULNESS AND LAWYERS

The practice of mindfulness can be defined as paying attention in a particular way: on purpose, in the present moment and without judgment. Have you ever driven somewhere, parked your car and then realized that you had little memory of what appeared along the way? Or been reading and became so distracted that you had to reread pages you thought you had already read? The ability to direct and sustain focus is essential for lawyers. Yet, a study at Harvard University

concluded that 47% of our waking hours are spent thinking about something other than what we are doing at the time. A human mind, even a well-disciplined legal mind, is wired for survival and "wandering" is simply a natural part of that system. However, it can lead us to operating on autopilot, reacting to situations in habitual and knee-jerk ways that compromise our ability to make skillful choices and to be fully present for ourselves, our clients, our colleagues and our work.

ENHANCING PROBLEM-SOLVING AND DECISION-MAKING

Neuroscience tells us that mind-
continued on page 6

Mindfulness

continued from page 6

fulness actually changes brain structure and circuitry in areas responsible for learning, memory, concentration, emotional regulation, communication and resilience. Of particular relevance for lawyers is how its practice strengthens our innate attentional capacities. Mindfulness increases our ability to pay attention, whether to a document, a client, or the issues being discussed in a meeting, and to sustain that attention for the time required. Mindfulness also supports cognitive flexibility and agility, allowing us to respond rapidly to change and new information and to flow easily between multiple perspectives so as to understand situations more fully. Prevention of errors is just one of the consequences of this enhanced ability to direct, shift and sustain attention.

AVOIDING ETHICAL PITFALLS

Mindfulness allows us to notice unhelpful thoughts, emotions and behaviors, and then intervene in order to support ethical action. Thus, we can become more aware of self-interest, bias, conditioning, and the unconscious habits and beliefs that drive less skillful behavior. In “In the Moment: the Effect of Mindfulness on Ethical Decision Making” from The Wharton Risk Center at the University of Pennsylvania, the author writes that because of the accepting and non-judgmental qualities of mindfulness, “Mindful individuals may feel less compelled to ignore, explain away, or rationalize ideas that might be potentially

threatening to the self, such as a conflict of interest or a potential bias.”

The most frequently violated ethical rules, those relating to competence, diligence and conflict of interest, are significantly impacted by lack of awareness. Mindfulness helps us to notice subtle signals that our performance might be compromised and allows us to pause and find clarity in the midst of situations that could go awry. Awareness also counters “ethical fading,” a phenomenon in which people allow ethical aspects of a decision to fade in the background and then literally cease to perceive them.

MITIGATING THE IMPACT OF STRESS ON QUALITY

Through human brain scans using fMRI technology, we know that chronic stress has a negative impact on parts of the brain responsible for executive functioning and higher-level thinking. Our legal minds, always on high alert, constantly issue-spotting, trained to look for all possible negative outcomes, and expecting perfection or close to it, may be the foundation for excellence. However, these qualities also make us more susceptible to the development of unhealthy coping strategies, which can lead to impaired judgment and mistakes.

We cannot always change the deadlines and pressures of the matters on our desk. We can, however, learn to relate to them in new and more productive ways. One of the concepts that I focus on with lawyers is the difference between habitual, autopilot-driven, stress

reactivity and responding to situations from a place of choice, using 100% of our innate coping capacities. To move from reacting to responding, we need to be aware of and own our reactive patterns and develop the mental muscles required to create new habits.

Following an eight-week mindfulness for lawyers program, a participant wrote, “When someone recently made a comment to me that struck a nerve, instead of responding immediately (in an angry manner), I paused for a moment and decided not to respond because what I would say would not be helpful.”

Another wrote, “It helped me to center down to the task at hand at work, following the occurrence of a frustrating or anger-producing event.” This increase in the capacity to sustain high function regardless of the situation is a hallmark of mindfulness practice.

AN EVIDENCE-BASED

PRACTICE FOR AN EVIDENCE-BASED PROFESSION

When we introduced mindfulness at my firm in 1998, there had been only eight studies on its benefits. Now, 3,000 published research studies, as well as advances in neuroscience, provide clear direction for how an inherently distractible mind can be trained to be more effective and efficient. You might think of mindfulness practice as boot-camp training for the mind. Just as with physical exercise, mindfulness practice strengthens and develops the mental muscle of mindfulness.

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Job Satisfaction

continued from page 2

- lunch a week with a new contact.”
- “One visit each month to a client or potential client.”
- “One meaningful conversation each week with a colleague about developing business together.”

- “One speech or article per quarter in my area of expertise.”
- “One visit per quarter to another office to build relationships with colleagues.”

The plan also should include a list of every contact you have who may be a source of business or referrals. This list should be constantly updated so you have a regular reminder

of the relationships you would like to maintain and build upon. Keep in mind that these relationships can be both external and internal.

A good business plan will also account for other things that are important to you. For example, if work-life balance is important, include the amount of time each day and each week you would

continued on page 7