



## FLORIDA BAR NEWS

# THE MINDFUL LAWYER: MINDFULNESS AND THE MEDIATION WITHIN

By Scott Rogers ▶ Special to the News ▶ Columns

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The resolution of disputes often involves the mediation process. Many readers of this column will have participated in a mediation and a large number of attorneys and judges become certified mediators. The central role of mediator neutrality, and the challenge of maintaining both the appearance of neutrality and minimizing the influence of implicit and explicit bias, points to the importance of self-awareness and

the regulation of emotion. Perhaps not surprisingly, one of the most popular topics to appear in law review articles on mindfulness in law involves mediation. This month's question addresses some of the obstacles a mediator can experience, even when possessing a healthy dose of self-awareness. Paul inquires:

*When mediating a dispute, there are times that I get emotionally attached to a party's position which can interfere with my ability to fulfill my role as a third-party neutral. At other times, I can become impatient and want to move a case along when I know I should do more listening. And at times my beliefs can butt up against my being unbiased. My question is that I have a sense of these impediments, but that doesn't necessarily translate into getting past them. How might practicing mindfulness help and are there any specific tips for what kind of practice and when to practice?"*

I posed Paul's question to Emily Duskow who, for more than 20 years, has been integrating mindfulness into her family law and mediation practice. Emily replies:

*Thank you for your question, which identifies two challenges that many mediators face — challenges to our neutrality and to our patience. It is natural and common for a mediator to embrace desirable and resist undesirable aspects of a mediation, just as we embrace desirable and resist undesirable experiences in all aspects of our lives. As mediators we come face-to-face with facts, people, and issues that may lead to a complex array of feelings and thoughts, and these can impede our work and cause suffering — but so can the desire to “get past” them. One of the beauties of mindfulness practice is that it can liberate us from all these challenging states.*

*This begins with the awareness that is at the heart of mindfulness — the sense you already seem to have of these challenges arising in the midst of a mediation. What it sounds like you are adding to that awareness, though, is judgment — a view that the pull toward non-neutrality and impatience is wrong or bad. Certainly, as mediators our charge is to be neutral and our practice is enhanced by patience — but we can't expect perfection of ourselves. It is always a matter of degree.*

*I suggest adding compassion and kindness to your awareness of impatience and bias. Kristen Neff's work on self-compassion offers a powerful guide to the practice of allowing what is unwanted, unhelpful, or painful in our experience. In the circumstances you're describing, you might offer yourself compassion for the difficulty of remaining patient and unbiased, acknowledging both the impossibility of that and the admirable and natural desire you have to be effective in your work. Allowing the space for you to experience the uncomfortable thoughts and feelings, and acknowledging the suffering they cause you, may help alleviate the critical self-judgments. This, in turn, may allow you to see more clearly and offer more compassion to your clients, which in turn has the potential to mitigate the impatience and bias. I spend a few minutes before every mediation session in a brief meditation, wishing my clients well, offering the hope that their suffering might be relieved through our work, and centering myself in the knowledge that it can be immensely beneficial to the process if I can bring awareness and compassion to everything that happens in the room, including my own experience. I have found this enormously helpful, especially with the practices of patience and compassionate listening, which are a challenge to me as well. I hope it may prove helpful to you.*

What I find especially useful about Emily's response is that can be applicable across so many domains of life, both within and outside the practice of law. You can learn more about self-compassion practice from an interview with Chris Germer found in the [November 2018 issue](#) of The Mindful Lawyer column. I am grateful to Emily for taking the time to offer such a thoughtful response, and to integrate into the insights she shared the role of her own mindfulness practice. Emily Doskow teaches mindfulness to lawyers and law students, has authored numerous books on family law matters, and is a frequent speaker on LGBTI family issues.

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](mailto: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.*