

**The Del-Chen-O Women's Bar Association  
a Chapter of WBASNY  
Is Pleased to Announce a Virtual CLE Offering**

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**“MINDFULNESS FOR LAWYERS”  
Ethics and Attention  
1.5 Credit Hours**

**Presented By: Leonard Simmons, Esq.  
January 15, 2021  
12:00-1:30p.m. on ZOOM**

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*Mindfulness describes a series of practices that develop our ability to bring attention to the present moment and to meet daily challenges as they arise. As attorneys, the ability to maintain our attention is especially important as we are called upon to navigate intellectually complex and emotionally difficult challenges at work. In this program, we will learn skills and practices that allow us to improve our focus by noticing when we have become distracted by thoughts and emotions. By viewing these practices through the lens of the New York Rules of Professional Conduct, we can learn how to bring these skills to bear on our everyday legal work.*

**Del-Chen-O Member and WBASNY Member Price: Free  
Non-Member Price: \$10.00**

**Registration and Payment:** To register, please follow the link in the email. Payment can be made by Venmo @Susan-Lettis or by mailing a check payable to Del-Chen-O Treasurer Larisa Obolensky, PO Box 494, Delhi, NY 13753, by January 12, 2021. If you have any questions please don't hesitate to contact DCO CLE Chair Willa Payne by email at [wpayne@lscny.org](mailto:wpayne@lscny.org).

\*\*\*This program has been approved in accordance with the requirements of the New York State Continuing Legal Education Board for a maximum of **1.5** transitional credit hour, of which **1.5 credit hours can be applied toward the *toward the Ethics component*.**

\*\*\*\*Full and partial scholarships for these programs based on financial need are available. A written request must be forwarded to Del-Chen-O CLE Chair, Willa S. Payne, Esq. at [wpayne@lscny.org](mailto:wpayne@lscny.org). All requests are confidential. Additionally, the cost of this CLE program (excluding food) will be waived for up to ten (10) attorneys employed by a non-profit organization in New York State that provides legal services to victims of domestic violence. Please email [wpayne@lscny.org](mailto:wpayne@lscny.org) for more information and how to register.

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A chapter of WBASNY Presents:**

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**TIMED AGENDA**

Introduction of Presenter and CLE

00:00-00:05: Mindfulness in the Law

00:05-00:10: Observations on Ethics

00:10-00:20: Competence and Diligence

00:20-00:35: Mindful Breathing

00:35-00:45: Science of Mindfulness

00:45-00:55: Ethics of Communications

00:55-01:15: Mindful Listening and Speaking with Discussion

01:15-01:30: How to Incorporate Mindfulness into Life and Legal Practice and Q&A

**FACULTY BIOGRAPHY**

**Leonard Simmons** is a senior attorney with Mental Hygiene Legal Service where he represents clients committed to psychiatric facilities as well as developmentally disabled individuals across Manhattan. Leonard received his mindfulness teacher training accreditation in 2016 from Warrior One. He leads Brooklyn Law School's ongoing mindfulness program, now in its fourth year, which includes presentations on topics relating to mindfulness and well-being. Leonard also provides mindfulness programming for other law schools, private firms and non-profit organizations.

# NEW YORK RULES OF PROFESSIONAL CONDUCT

Effective April 1, 2009

As amended through June 1, 2018

With Commentary as amended through June 1, 2018

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**RULE 1.1:  
COMPETENCE**

**(a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.**

**(b) A lawyer shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.**

**(c) A lawyer shall not intentionally:**

**(1) fail to seek the objectives of the client through reasonably available means permitted by law and these Rules; or**

**(2) prejudice or damage the client during the course of the representation except as permitted or required by these Rules.**

**Comment**

**Legal Knowledge and Skill**

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to associate with a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances. One such circumstance would be where the lawyer, by representations made to the client, has led the client reasonably to expect a special level of expertise in the matter undertaken by the lawyer.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kinds of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] [Reserved.]

[4] A lawyer may accept representation where the requisite level of competence can be achieved by adequate preparation before handling the legal matter. This applies as well to a lawyer who is appointed as counsel for an unrepresented person.

### **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. An agreement between the lawyer and the client may limit the scope of the representation if the agreement complies with Rule 1.2(c).

### **Retaining or Contracting with Lawyers Outside the Firm**

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and should reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. *See also* Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(g) (fee sharing with lawyers outside the firm), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the needs of the client; the education, experience and reputation of the outside lawyers; the nature of the services assigned to the outside lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[6A] Client consent to contract with a lawyer outside the lawyer's own firm may not be necessary for discrete and limited tasks supervised closely by a lawyer in the firm. However, a lawyer should ordinarily obtain client consent before contracting with an outside lawyer to perform substantive or strategic legal work on which the lawyer will exercise independent judgment without close supervision or review by the referring lawyer. For example, on one hand, a lawyer who hires an outside lawyer on a per diem basis to cover a single court call or a routing calendar call ordinarily would not need to obtain the client's prior informed consent. On the other hand, a lawyer who hires an outside lawyer to argue a summary judgment motion or negotiate key points in a transaction ordinarily should seek to obtain the client's prior informed consent.

[7] When lawyer from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other about the scope of their respective roles and the allocation of responsibility among them. *See* Rule 1.2(a). When allocating responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations (*e.g.*, under local court rules, the CPLR, or the Federal Rules of Civil Procedure) that are a matter of law beyond the scope of these Rules.

[7A] Whether a lawyer who contracts with a lawyer outside the firm needs to obtain informed consent from the client about the roles and responsibilities of the retaining and outside lawyers will depend on the circumstances. On one hand, if a lawyer retains an outside lawyer or law firm to work under the lawyer's close direction and supervision, and the retaining lawyer closely reviews the outside lawyer's work, the retaining lawyer usually will not need to consult with the client about the outside lawyer's role and level of responsibility. On the other hand, if the outside lawyer will have a more material role and will exercise more autonomy and responsibility, then the retaining lawyer usually should consult with the client. In any event, whenever a retaining lawyer discloses a client's confidential information to lawyers outside the firm, the retaining lawyer should comply with Rule 1.6(a).

[8] To maintain the requisite knowledge and skill, a lawyer should (i) keep abreast of changes in substantive and procedural law relevant to the lawyer's practice, (ii) keep abreast of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit confidential information, and (iii) engage in continuing study and education and comply with all applicable continuing legal education requirements under 22 N.Y.C.R.R. Part 1500.

**RULE 1.3:  
DILIGENCE**

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.**
- (b) A lawyer shall not neglect a legal matter entrusted to the lawyer.**
- (c) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but the lawyer may withdraw as permitted under these Rules.**

**Comment**

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. *See* Rule 1.2. Notwithstanding the foregoing, the lawyer should not use offensive tactics or fail to treat all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled diligently and promptly. Lawyers are encouraged to adopt and follow effective office procedures and systems; neglect may occur when such arrangements are not in place or are ineffective.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated, as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. If a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, Rule

1.16(e) may require the lawyer to consult with the client about the possibility of appeal before relinquishing responsibility for the matter. Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. *See* Rule 1.2.

[5] To avoid possible prejudice to client interests, a sole practitioner is well advised to prepare a plan that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action.

**RULE 1.4:  
COMMUNICATION**

**(a) A lawyer shall:**

**(1) promptly inform the client of:**

**(i) any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(j), is required by these Rules;**

**(ii) any information required by court rule or other law to be communicated to a client; and**

**(iii) material developments in the matter including settlement or plea offers.**

**(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;**

**(3) keep the client reasonably informed about the status of the matter;**

**(4) promptly comply with a client's reasonable requests for information;**  
**and**

**(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by these Rules or other law.**

**(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.**

**Comment**

[1] Reasonable communication between the lawyer and the client is necessary for the client to participate effectively in the representation.

**Communicating with Client**

[2] In instances where these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with the client and secure the client's consent prior to taking action, unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, paragraph (a)(1)(iii) requires that a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously made clear that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. *See* Rule 1.2(a).

[3] Paragraph (a)(2) requires that the lawyer reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations — depending on both the importance of the action under consideration and the feasibility of consulting with the client — this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases, the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Likewise, for routine matters such as scheduling decisions not materially affecting the interests of the client, the lawyer need not consult in advance, but should keep the client reasonably informed thereafter. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer or a member of the lawyer's staff acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications, or arrange for an appropriate person who works with the lawyer to do so.

### **Explaining Matters**

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interest and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(j).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. *See* Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to those who the lawyer reasonably believes to be appropriate persons within the organization. *See* Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

## **Withholding Information**

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

# EVERYDAY MINDFULNESS PRACTICES FOR LAWYERS



## STOP Practice:

An excellent practice for when we notice that we are caught up in our thoughts and emotions.

Provides us with a timely way to refocus, recenter, and resume our work.

S: Stop what you are doing. Whether you are walking in the street or working at a desk, take a few moments to physically pause.

T: Take a deep breath. Notice the sensation of that breath.

O: Observe your thoughts and feelings. Without judging them, notice the thoughts in your mind and the emotions across your body.

P: Proceed through your activity with a greater sense of presence.

## Mindfulness of Breath:

Take a seat and close your eyes, then relax your body, especially any tension in the jaw, neck, shoulders and hands. Take a long, slow, deep breath in through the nose, hold that breath for three seconds, then exhale through the mouth. Repeat this process five times, then settle into the regular rhythm of the breath. Notice the sensation of the breath on the tips of your nostrils—the slight cooling sensation on the inhale, and the slightly warmer sensation on the exhale. Rest your attention here and breathe normally. Each time you notice that you have become distracted, gently place your attention back on the breath.

## Body Scan:

Take a seat or lay down in a comfortable position, then close your eyes. Bring your full attention to your forehead, noticing any sensations present there. After thirty seconds, bring your attention down to your eyes, noticing the feeling of having your eyes shut, as well as any other sensations present there. After another thirty seconds, move down to the nose, noticing the sensation of the breath as well as any other feelings in that part of the body. Continue in thirty second increments down the body, gently returning your attention to this practice each time you become distracted by thoughts.

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## Outline:

### I. Mindfulness, Law and Ethics

- A. The Mindfulness in Law movement has quickly developed over the last twenty years, reaching law schools and legal organizations across the nation. *See, e.g.*, the Mindfulness in Law Program at the Institute of Miami.
- B. Mindfulness has been used specifically in the context of ethics and professional responsibility to provide attorneys with practical tools to assist them with reflecting on difficult ethical situations. *See* Scott L. Rogers and Jan L. Jacobowitz, *Mindfulness And Professional Responsibility: A Guide Book For Integrating Mindfulness Into The Law School Curriculum* (2012).

### II. Observations on Ethics

- A. Implications of Rules of Professional Conduct and aspirational ethical legal practice.

### III. Competence and Diligence

- A. Competence- Rule 1.1: Thoroughness and Preparation
- B. Diligence- Rule 1.3: Diligence and Promptness
  - a) Comment 1- Person Inconvenience, Commitment and Dedication
  - b) Comment 3- Procrastination
- C. The importance of concentration in Competence and Diligence. *See, e.g.*, Scott. L. Rogers & Jan L. Jacobowitz, *Mindful Ethics and the Cultivation of Concentration*, 15 Nev. L. J. 730 (Spring 2015).

### IV. Mindful Breathing

- A. Mindfulness of Breath Practice
- B. Deep Breathing “Bridge” Practice

### V. Science of Mindfulness

- A. fMRIs and Measuring the Effects of Mindfulness
- B. The Default Network
- C. The “Mindfulness Muscle” of prefrontal cortex neural connections

## VI. Communication

- A. Rule 1.4- “Reasonably Consult,” “Reasonably Informed,” as “Reasonably Necessary.”
- B. Comment 6- Communication as tailored to the client
- C. Importance of Mindful and Open Communication

## V. Mindful Listening

- A. Mindful Listening and Mindful Speaking Exercise

## VI. Incorporating Mindfulness into Life and Legal Practice

- A. “STOP” Method
- B. Daily Sitting
- C. Mindful Walking and Mindful Activities
- D. Resources