I. INTRODUCTION

Lawyers today are constantly inundated with tools intended to help us be at the top of our game. New phones, tablets, and computers promise to make our practices mobile and nimble. A constant stream of new software, programs, and apps helps us manage files, take notes, keep time, communicate with our teams and clients, and make trial presentations. High-caliber seminars allow us to stay on top of the most cutting-edge legal issues.

Some of these tools may be very necessary to manage a law practice today, but they cost a lot of money and frequently need to be upgraded. The single most important tool for any lawyer is something we can’t trade in or upgrade to a better model: our minds.

Think about it for a second. Everything you do as a lawyer flows from and through your mind. It is what you use to process the complicated factual scenarios your clients bring to you for help. It is what comes up with your brilliant legal strategies. It is what you use first to advocate on behalf of your clients in written or spoken form. In comparison, our minds are far, far more important to our law practice than any other tool we could purchase. In fact, if you review the rules of ethical conduct for attorneys, it is easy to see that taking care of our minds is part and parcel of our ethical duties as lawyers. But, how many of us know how to take care of our minds? You may be surprised to learn that there is a way and it is absolutely free: mindfulness.

This presentation is intended to introduce you to mindfulness concepts and strategies so that you understand how the practice of mindfulness 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 own mind and heart and a discussion of some common impediments that attorneys face in living up to these obligations. It will then explore some of the promising scientific studies relating to mindfulness. Next, it will explain three of the most common styles of meditation practice that any person new to mindfulness can try out. Finally, it will conclude with information about tools available that even the busiest of lawyers can try to begin a meditation practice of one’s own.

II. AN ATTORNEY’S ETHICAL OBLIGATION TO TAKE CARE OF ONE’S OWN MIND

You’ve probably never thought about it this way, but one of your jobs as an attorney is to take care of your mind. In other words, 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 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 LIVING UP TO THESE 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. SCIENTIFIC SUPPORT FOR BENEFITS OF MINDFULNESS

While the Kentucky Rules of Professional Conduct provide comments to illustrate their meaning and intent, they usually do not provide practical guidance or offer strategies that lawyers can use to overcome these impediments to ensure that their conduct remains ethical. On the other hand, numerous studies indicate that mindfulness practice may be a promising option. 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 has increased 300 percent over a five-year period. 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. As a result of these benefits, some doctors recommend meditation as one means of treating psychological disorders, such as anxiety, depression, and PTSD.

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

2 See https://www.mindful.org/10-things-we-know-about-the-science-of-meditation/.

daily practice. 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 on the United States Supreme Court, a regular meditator himself – would say lawyers should give meditation a try.

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

V. MINDFULNESS TOOLS YOU CAN START USING NOW

Because mindfulness is quite popular now, we hear this word frequently. Yet, there isn’t necessarily a unified theory of “mindfulness.” One of the earliest researchers of mindfulness in the West, Jon Kabat-Zinn, defines mindfulness as an intentional, current, and nonjudgmental awareness of one’s own mind. One can be mindful without meditating regularly, and in fact you can do numerous mindfulness exercises without even stepping on a meditation cushion. A regular meditation practice, however, will assist you in increasing mindfulness in your daily life because it trains you to pay attention to your thoughts in a nonjudgmental and compassionate way.

Just as there is no single definition of mindfulness, there is no singular way to practice meditation. In fact, a variety of traditions throughout the world include meditation practice, so there are countless ways to meditate. Many secular mindfulness strategies which have been researched in the West, as indicated above, are premised on meditation techniques derived from Buddhist methods. Three of the most common and effective styles of meditation derived from Buddhist meditation are (1) breath practice, (2) body scan, and (3) loving-kindness (metta). While it is often recommended that each practice initially be explored individually, many meditators often eventually learn to use or combine all three forms of meditation into their regular practices.

A. Breath Practice

Breath practice is what many people think of when they think of meditation. The instructions are as simple as the name suggests: you focus on the feeling of your breath going in and out and nonjudgmentally return your focus to your breath when you notice your mind drift. Though this sounds simple, you should be warned that this exercise can be frustrating and, at first, maddening. Many people get discouraged in the early phases because they worry that something is wrong with them if they can’t quiet their mind and relax. If you practice enough, however, you will start to see that the nature of the mind is to wander, to chatter, and to be distracted. In other words, you will realize that meditation exists because humanity – not


just you – is bad at focusing and not naturally suited to being in the present moment. Moreover, the more you practice meditation, the better your body and mind will associate relaxation and focus with the breath. Over time, therefore, the simple act of sitting and breathing for a few minutes will help you build calm and peace even on days when your focus is lacking.

If you are wondering what people mean when they say, “focus on the breath,” you may be relieved to know that is an excellent question. Different teachers recommend different focal points. Some traditions instruct students to focus on the tip of one’s nose to feel the flow of air in and out. Others recommend focusing on the feeling of rising and falling in the chest or belly as the air fills your lungs. In the early stages, the important thing is to establish a practice and do what helps you focus and doesn’t discourage you. In other words, pick the focal point that works best for you, and allow yourself to play with different options as your practice evolves.

Breath practice is an excellent place to start when you are first learning to meditate. It is infinitely scalable so you can start with sessions as short as one to two minutes and grow your practice to lengthier sessions over time. In addition, the breath is an ideal focal point for meditation because it is always “with” you. Lawyers today lead busy, active, and mobile lives, but no matter where you are or what you are doing, you can pause for a bit of mindfulness during your day to calm yourself and refocus on the most important issues in any given moment. Once you have developed a comfort level with breath practice, you can use it to begin exploring other types of mindfulness practices that can help you in your practice and in your life.

B. Body Scan

If breath practice is difficult for you, another good option to try is the body scan. With this practice, you focus on the sensations in your body in a systematic way rather than exclusively focusing on the breath. Generally, body scan meditations start at the crown of the head and proceed down to other parts of the body systematically. There are, however, many potential methods and starting points for body scans. Regardless of the particular method you try, the object of a body scan meditation is to feel the sensations in the body and notice what you feel, rather than to think about the body.

Body scan meditation can sometimes feel more manageable to new meditators because the practice is more active than breath practice. Because your mind has to work a bit more to stay focused on the sensations in the body, it may not seem as hard to keep the mind engaged with the focal point as it does in the early phases of learning breath practice. In addition, because you are paying attention to the physical condition of the body, you may notice areas of tension and learn to relax them during the meditation. In this way, body scan meditations can be deeply relaxing even in a short period of time.

Body scan meditations are very useful for attorneys because they remind us to pay attention to and take care of our bodies. In law school, we learn
to emphasize rationality in making decisions for our clients. While separating fact from emotion is critical, the reality remains that we are human beings first before we are lawyers. To do our best for our clients, we need to understand and respect the limitations of our own bodies so we can fulfill our responsibility to our clients.

Some of the most common bodily issues that can impede people, including lawyers, from doing our best work are represented in the acronym HALT, which stands for hungry, angry, lonely, tired. These symptoms are fundamental to the human condition, but in our fast-paced world it is easy to skip lunch, push our emotions to the side, miss out on social opportunities, and deprive ourselves of sleep. Body scan meditations are excellent for lawyers because they remind us that we are not merely brains filled with legal strategy, but people who must be fed, rested, and cared for. If you practice body scan meditation, you will develop the skills to notice the symptoms of various conditions and emotions in your body in the early and more subtle stages before they get to the point where they affect your performance, outlook, or demeanor. These skills are not only necessary to performing our ethical responsibilities as lawyers, but they are also beneficial for anyone who wants to be a top performer in a high-stakes environment.

C. Loving-Kindness (Metta)

Loving-kindness (or metta as it is traditionally referred to) meditation is a style of meditation that lawyers may find the most difficult but from which we likely can gain the most. Quite literally, it is a practice intended to help us practice opening our hearts to others. Loving-kindness practice is a blend of mantra-style practices and the focus practices discussed above. With this practice, one brings to mind different people or groups of people and, while focusing attention on one’s own body (usually in the area of the heart), sends kind wishes to each one. The most traditional form of this is to begin with oneself, call to mind a loved one, and then move to a benefactor (a teacher, mentor, or friend), a neutral person, and a difficult person. Most practices conclude with sending these same wishes to your local household, local community, region, nation, and the entire world.

Americans often report struggle with this practice because they feel it is unnatural to send love to themselves. Over time, however, this practice can transform how one relates to oneself and one’s own community. Part of loving-kindness practice is the premise that all humans must deal with suffering as a part of life. This acknowledgment can be particularly beneficial for lawyers because we are often in the position to help people through the most difficult times of their lives, whether it be guidance through complicated day-to-day business matters, civil litigation, family conflict, or even potential criminal penalties. Loving-kindness practice helps lawyers to keep in the front of our mind the value of our work to others because the object for all of us is to reduce suffering where we can.

Moreover, the practice of loving-kindness can be critical for lawyers because it reminds us that a critical precondition to caring for our clients is
caring for ourselves. Loving-kindness practice starts with oneself and thus forces the practitioner to honor one’s own suffering and nurture oneself before reaching out to others. This is a good reminder for most of us who went to law school with the objective of helping others. While this is undoubtedly a noble tendency, meditation practice will show you that the mind tends to forget that which is not the present object of focus. If we focus our practice on helping others, the tendency will be to forget ourselves. In the end, this is self-defeating, and so practices and habits that can help us remember to honor our own hearts, minds, and bodies can contribute to a happier, more ethical, and more sustainable law practice.

VI. HOW TO GET STARTED

Meditation with a community or in a group setting is an ideal way to practice. Many communities and facilities in Kentucky run introductory or one-day programs that will enable you to learn basic mindfulness meditation. You can explore these online if you are interested, and feel free to contact me with any questions.

Many of us do not have enough spare time to join a group or to work group meditation sessions into our calendars, however. This should not stop you from trying meditation for yourself. A number of high-quality mindfulness resources are available that can help you learn to meditate on your own. Here is a nonexhaustive list of some great resources that I recommend:

A. Books

1. 10% Happier by Dan Harris. This book is written by a lay person who was skeptical of all things spiritual. It is easy to read, approachable, and just a good story. Harris also has an app and podcast by the same name. Both are high quality. His latest book, Meditation for Fidgety Skeptics has practical tips for would-be meditators who struggle to begin a consistent practice. As the title suggests, it is also, at times, quite hilarious.

2. Wherever You Go, There You Are by Jon Kabat-Zinn. Written by a scientist who was one of the first in the West to research the benefits of mindfulness practice. Despite this background, this book explores basic mindfulness concepts in relatively easy to understand language.

3. Mindfulness in Plain English by Henepola Gunaratana. This text is one of the most popular and highly rated on Amazon. It contains more “lingo” than the others, but it has many worthwhile tips on meditation practice.

B. Apps/Websites

1. My blog is 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.

2. There are many apps 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.

3. 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. It has a lot of free content, but paid subscriptions are available. I have a publisher page on this platform with guided meditations for lawyers.

4. Self-compassion.org is the website of researcher, Dr. Kristen Neff. She has studied the impact of self-compassion in a variety of contexts. The website has a listing of her research, as well as free meditations and practice tips. She is also the author of several books, including Self-Compassion which is persuasive, comprehensive, and well-written.

C. Podcasts

1. Tara Brach.

Tara Brach is a trained psychologist and meditation teacher. She offers dharma talks (similar to sermons but which usually contain practical instruction) and guided meditations. She uses a variety of strategies but usually emphasizes the body scan. Brach has also authored numerous excellent books, including the newly released Radical Compassion, which provide strategies for dealing with difficult emotions.

2. Guided Meditations – One Mind Dharma.

Free guided meditations using a variety of practices, including basic breath, mindfulness strategies, loving-kindness and more. Available on iTunes.

3. Some of the apps you might already have.

Several apps available to address things other than meditation have now added guided meditations. For example, Audible had meditations available for members to use for free. Fitness apps, such as Aaptiv or Peloton, have guided meditations. YouTube also has a growing repository of video guided meditations, which include content from world-renowned teachers.
D. Gear

It is not necessary to purchase anything to begin a practice, but cushions are helpful if you choose to pursue a seated practice. I purchased mine from www.stillsitting.com and years later it is still in good condition. I recommend a hearty fill if you purchase a cushion to ensure that it provides adequate support.

VII. CONCLUSION

In today’s complex and fast-paced world, it can be difficult to live as an ethical person, let alone maintain a thriving, satisfying, and ethical law practice. While it is by no means a magic-bullet solution, a regular mindfulness practice can help busy attorneys to comply with their ethical obligations, grow as people, and manage their law practices. If you would like to start a meditation practice of your own, my best advice is to emphasize consistency over the length of any one meditation session. It is better to meditate daily for a short period of time rather than weekly or monthly for a long period of time. Start small and let your life and practice guide you as to the best ways to grow your practice.