



FLORIDA BAR NEWS

MINDFULNESS AND SUMMARY JUDGEMENTS

By Scott Rogers ▶ Special to the News ▶ Columns

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Last year Florida adopted the federal standard for evaluating motions for summary judgment. To prevail, the moving party must show “that there is no genuine dispute as to any material fact.” You’re probably asking what reference to the summary judgment standard has to do with mindfulness. Plenty!

A popular shorthand for mindfulness is “non-judgmental awareness,” meaning the stronger our mindfulness the less likely we are to be judgmental toward others (and ourselves). In this context “judgmental” is different than being discerning and able to keenly assess situations and people to adjudicate guilt or innocence or otherwise advance justice. Rather, it involves the gratuitous and often harsh evaluations that readily flow when we resist something about a person as when they do not meet our expectations. It also can apply to the opposite; something about the person or situation prompts us to extend the benefit of the doubt or to assume the best. In both cases, our view can be clouded by preconceptions, biases, and assumptions.

Most of us know what it is like to quickly form a judgment of another only to reverse ourselves after we gather more information. At the time, we are pretty sure we are right, trusting our intuition and ability to quickly read another person. Yet, it turns out we were mistaken. So too when we judge ourselves; often unduly self-critical or aggrandizing only to realize later we weren’t seeing things clearly. This takes place so often and so quickly it can pass by unnoticed. It rarely is useful and sometimes there is a serious price to pay for this miscalculation.

SUMMARY JUDGMENTS IN DAILY LIFE

So where does mindfulness come in? We are prone to blindly accept our thoughts and feelings when we are not aware of them in the first place. *The value of knowing “thoughts are not facts” is lost when we are unaware of the thoughts we are having.* By practicing mindfulness we become more aware of our thoughts and, with that awareness, better able to assess their usefulness and make better decisions. In

the Florida Bar News column "[Four Mindfulness Practices for these Times](#)," you can learn about various mindfulness practices.

In addition to practicing mindfulness as a meditative exercise, you can consider the insights and tips offered by the social psychologist, Ellen Langer, in her classic book "Mindfulness," where she explores mindfulness without turning to meditation. Langer notes just how frequently we fall into automatic pilot, or mindlessness. She highlights the value of paying attention — of continuing to *notice new things*. In the *Harvard Business Review* she comments:

"Mindfulness is a simple process of noticing new things — and as you notice new things, that puts you in the present, makes you sensitive to context and perspective, and it's a process of engagement — it's the essence of what we're doing when we're having fun."

So, the next time you meet someone or interact with a counter party, client, new hire or colleague, or have that first encounter with a new family member, neighbor, co-worker, or acquaintance and notice a quick judgment forming, treat it as helpful data — but do not overstate its usefulness. It is, after all, but one data point. Blindly accepting it can adversely affect the subtle ways we treat another and bias how we interpret additional information about them. Doing so, we can act unfairly, be misunderstood, and miss opportunities. At the very least, when you detect the formation of a summary judgment, take the matter under advisement.



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.