**THE WAY OF THE PEACEFUL LITIGATOR**

Year in and year out, we in the legal field are constantly bombarded with stories about how stressful our jobs are – as if we need the stories to confirm what we already know: being an attorney can be stressful. Being a litigator can increase that stress due to the personal sense of responsibility that comes with practicing in court and the natural adversarial environment in which it occurs. Being a litigator in the immigration field can be even more stressful – your client faces potentially a lifetime banishment from their family if you bungle their case.

Sure, it is well understood that studies have consistently shown that being an attorney is one of the more stressful career fields. But what may not be as well understood is that many studies also find that attorneys suffer from depression, alcoholism and substance abuse at higher rates as compared to the general population. Worse, a study conducted by the Centers for Disease Control found that attorneys ranked fourth when the proportion of suicides in that profession is compared to suicides in all other occupations in the study population. Today, the concerns about the mental health of attorneys has caused eight states (Texas is obviously not one of them) to require a “mental health” component in the continuing legal education requirements. Despite the doom and gloom reports about our profession and the apparent acceptance within the legal community that this “is just the way things are,” practitioners can take steps to avoid, or at least minimize, all of these negative outcomes. And it ain’t complicated.

The purpose of this paper is not to provide a comprehensive plan on how to address stress, depression, suicide or problems with addiction. However, there are several techniques that practitioners can use over time and in the moment to reduce stress and anxiety. With that said, if you are suffering from depression or if friends, family or coworkers have expressed their concern about your well-being, you should consider speaking with medical professionals. Depression is a disease and it can be successfully treated. As an immigration attorney, by definition, your job is specifically designed to help others that truly need help. Take care of yourself -- the immigrant community needs your talent! Let’s consider two things you can do today to reduce the stress and anxiety you are dealing with.

**FOCUS ON THE PRESENT**

In law school, we are taught to “think like a lawyer.” No doubt, learning to think critically and scan the horizon to search for potential pitfalls in our clients’ case is a necessary skill. But it is important to remember that this is a skill for our job and not necessarily a “life skill.” Without any conscious effort, our minds are constantly oscillating between trying to anticipate and solve problems that haven’t occurred to reviewing events that have already occurred and questioning what could have been done differently. This back and forth can cause stress and anxiety. Engaging in mindfulness practices can help practitioners to focus on the present, which will help reduce stress in their lives. In the deportation context, there are several things that you can do to focus on the moment to help reduce stress associated with litigation cases.

* + Focus on one thing at a time but regardless, get going!

Everyday there are a million and one things that need to get accomplished both in your work and personal life. Not all of those million and one things must get done now. If you want to maximize your stress removing efforts, the trick is to determine what is most vitally important to complete. The three naturalization files on your desk shouldn’t take priority over the one file in which a response to a Notice of Intent to Terminate is due tomorrow or the case with a cross-service deadline the day after tomorrow. Yet, to those three naturalization clients, their cases are the most important. Thus, there is still a stress reducing benefit to focusing on completing even less pressing tasks. The key is to start a task – any task – and then focus on it.

When focusing, don’t get side tracked with distractions. Not every phone call must be answered at this very moment. Not every e-mail must be responded to now. Not every client that walks into your office without an appointment must be seen. These examples seem obvious, but everyday, attorneys will stop what they are doing to answer a phone call, to respond to an email that just pop’d up, or to go to the lobby to see a client who stopped by with a “quick question.” Many times these interruptions are brief – but even these small interruptions add up over time. Even when brief, these distractions impede your ability to focus and actually exacerbate the potential stress you may encounter. During Navy SEAL training, students are required to accomplish a certain task (often very simple tasks). However, throughout the training sessions, the instructors are constantly screaming at the students, pushing them, pulling them, spraying them with water, and firing weapons near them in an effort to cause as much stress as possible and to distract the student to the point of failure. Certainly we have nothing so extreme in our job, but learning to block out the noise and complete the task at hand is still crucial.

Trying to accomplish everything at once causes stress and stress causes us to make bad decisions. Bad decisions open the door to a poor reputation within the legal community and within your potential client market. It may even lead to legal liability. Focusing on the most pressing task is most helpful in alleviating stress, but the reality is that merely focusing on any one task can be beneficial.

* + Troubleshoot

Regardless of the relief you will be seeking in court, the requirements to qualify for each are readily available. It is not rocket science to figure out what testimony and evidence that you will need to present a prima facie case or more importantly, to reach an affirmative exercise of discretion by the judge. Less considered by many practitioners is what their adversary or judge might have to say about your case at any hearing. Failing to consider the pitfalls of your case is a mistake both tactically and as a failure to plan for contingencies.

Tactically, you should be putting yourself in the shoes of the Office of Chief Counsel attorney and the judge to prepare for what they may argue or question about your case. By giving their view point due consideration, you not only can plan how to respond (for example, how to put the bad facts in the best light), but planning for such contingencies naturally lowers the potential anxiety caused by your mind racing through the “what-if’s.” If you understand what the opposition might argue or attack, you will be calmer in the heat of the moment. In a real sense, you will alleviate the stress factors that would ordinarily hamper your ability to think and respond extemporaneously. Plan for the worst and you will go a long way to reducing an aspect of stress and anxiety in your life.

* + Prepare

We’re not breaking any news here. Like most everything else in life, when it comes to preparing for your appearance in court, the earlier you begin to prepare, the better. As soon as you are hired, you need to be communicating to your client what your expectations of them are. To be clear, **clients never get to set expectation levels**. Clients only get to decide what goal they hope to reach (for example, not being deported). It is your job to effectively communicate whether reaching that goal is possible and if so, how that might be accomplished. This is particularly important where, for instance, the client qualifies for relief, but experience tells you that being granted relief will be extremely difficult.

From the start, you need to be providing checklists of documents/evidence that will be needed for the case. While some clients will tell you they understand the gravity of their situation, they might not act accordingly. When you realize that your cross-service deadline is next week, and your client has not provided a single document, chances are, your stress level will be reaching new heights. Of course, you can’t control when your client gives you the documents you’ve requested nor can you control the quality of the material they provide you. Accepting this reality alone reduces stress and anxiety.

Communicating your expectations does not stop with clients’ cooperation in preparing for a hearing. You must also communicate your expectation about getting paid as well. You deserve to be compensated for the work you are doing for your client, and clients understand this. But if you don’t communicate your expectation for payment or don’t enforce your expectations, you will have no one to blame when the bills come due and you find that you’ve been working for free. At that point, it is all but certain you have unnecessarily increased your stress level. Worse, if you suddenly realize your client owes you several thousand dollars and the individual hearing is next week, good luck getting an immigration judge to grant your motion to withdraw. Reduce the stress levels that come with running a business by setting iron-clad deadlines for payment and make them early in the process (particularly for detained cases). If your client fails to abide by those deadlines, cut them loose. Your client is expecting you to perform certain work for their benefit as you have promised. You should expect them to pay for that work as they have promised. You don’t need the stress and anxiety that comes with litigation to be compounded with the stress and anxiety that comes with figuring out how to pay the bills.

Getting organized and scheduling a timeline of events for your case can also reduce stress and anxiety. Some attorneys find that creating a trial notebook is helpful. Some attorneys find that it is necessary to schedule multiple sessions to prepare the testimony of the respondent and witnesses. Just because these things works for some, does not mean it will work for you. You must find what works for you in general and what works for each case in particular. There are no “one size fits all” solutions for preparing for trial. Nevertheless, part of the reason to prepare well in advance is to allow for the opportunity for you to walk into court with confidence. It is this confidence – knowing what to expect – that will reduce stress.

With regard to each case, it is important for you to be at least as knowledgeable about the applicable laws as anyone else in court, but it is equally important that you be the expert on the facts of the case. Knowing the law and the facts as well as anyone else will provide an additional boost of confidence, which will reduce stress.

**BREATH**

It is shocking to most people that something as simple as the techniques of deliberate breathing can have so many physical and mental benefits. Breathing exercises have long been an essential element of yoga and more recently mindfulness practices. Deliberate or controlled breathing has a direct affect on the body’s involuntary nervous system – called the autonomic nervous system. In simple terms, the autonomic nervous system is responsible for the unconscious bodily functions including heart rate, digestion, and even the “fight or flight” response. There are several techniques of deliberate breathing, sometimes referred to as “pranayama breathing,” but all are designed to influence the body’s involuntary actions.

Obviously, our bodies function in many aspects without our conscious input. Indeed, many of these functions, like digestion, are uncontrollable – at this moment, your body will digest the coffee you’re drinking at whatever rate it wants and you can’t change that even if you wanted to. On the other hand, breathing is the one body function that you can voluntary regulated – up to a point. If you want to spend the next five minutes breathing very slowly and deeply, your body will happily comply. If you want to hold your breath, your body will happily comply, but will force you to take a breath at some point. We see examples of voluntary controlled breathing everyday in activities such as speaking, singing and playing certain instruments (particularly wind instruments). To understand why controlled breathing is so impactful in reducing stress, it is helpful to understand what your body is experiencing under stress.

So let’s say you have ignored my advice above. You didn’t bother learning all the facts of your deportation case. You are unfamiliar with a particular aspect of the law that could affect the case. You have waited until the last minute to prepare an evidentiary packet and you didn’t prepare your client for the hearing. Now you’re sitting in court and the judge has begun to grill you about the case. In all likelihood, you are now feeling stressed. In basic terms, the physical effects you are now feeling are occurring because one part of your involuntary nervous system has kicked in: the sympathetic nervous system has triggered your “fight or flight” response. Your heart rate involuntarily increases to pump oxygenated blood to your muscles just in case you feel the need to flee the courtroom. Your body also starts to flood with various hormones. One of these hormones, cortisol, is designed to counteract the inflammation that occurs when your muscles are injected with this overabundance of blood. Now, if the stress-inducing event is momentary – the judge decides to cut you a break and reset your case to allow more preparation time – the effects of this inflammation will rapidly dissipate.

However, stress that occurs over long the term can do real damage to your body. Other hormones that are designed to suppress certain body functions to save energy for the fight or flight response now begin to take a toll. For instance these hormones suppress your immune system making you more susceptible to infections. Eventually even the cortisol loses its effectiveness and the inflammation can cause heart disease, obesity, damage to your DNA, and damage to your brain. Studies indicate that stress seems to create more cells in the brain that form the fiber network between the neuron cells that store and process information. This results in an excess of networking cells, which disrupts the delicate balance and timing of communication within the brain. This imbalance can affect memory and emotions.

The good news is that controlled breathing can minimize and potentially help you avoid these physical harms. Controlled, deep breathing all by itself triggers a different part of the involuntary nervous system that is designed to counteract the fight or flight response. **The controlled breathing literally causes your body to release other hormones that decreases blood pressure and heart rate, which induces a relaxation response.** This relaxation response occurs automatically and without any conscious effort. As a result, in the short term, controlled breathing techniques will calm you. But, if you practice the controlled breathing techniques over the long term as is used in yoga, mediation or other mindfulness techniques, evidence suggest that you can actually rewire your brain!

Studies have found that mindfulness meditation decreases activity in the part of the brain that is responsible for “mind-wandering.” Since other studies have shown that mind-wandering is typically associated with depressive emotions, techniques that help reduce the mind-wandering are obviously beneficial. But the real benefit comes from the rewiring that occurs. It has been shown that regular practice of mindfulness techniques increases the brain cell mass of the part of the brain that governs learning and memory, and in other areas of the brain that affect emotion regulation and self-referential processing. Even better, there is also a decrease in brain cell volume in the part of the brain that is responsible for fear, anxiety, and stress. The idea that the brain can rewire itself is still a relatively new concept and the research is continuing to this day.

As mentioned earlier, there are several breathing techniques, and you are encouraged to research what works best for you. But the easiest technique I have encountered is called “square breathing.” While it can be used in conjunction with mindfulness practice, I have used it on clients that are freaking out before walking into court. It is simple and it works!

1. Breath in through your nose while you count to 4

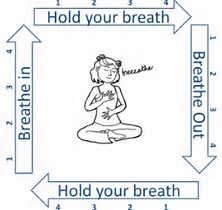
2. Hold your breath while you count to 4

3. Breath out through your mouth while you count to 4

4. Hold your breath while you count to 4

5. Repeat until you feel your heart rate start to slow

The chart below is good visual reference:



**MINDFULNESS APPS YOU CAN USE**

If your phone is glued to your hand, you might as well have the phone help you with your mindfulness practices. There are countless apps that are available and you should try several different ones until you find one that fits.

* **Mindfulness Daily** – Paid app that is highly rated. The app has a calendar to keep you on track.
* **Buddhify** – Paid app that has different modules to match how you are feeling with what activity in which you are engaged on any given day.
* **Headspace** – The first ten modules are free and provides a great introduction to basic breathing and meditation practices.
* **Calm** – A popular free app that contains meditation techniques, breathing exercise and techniques for better sleep.
* **Stop, Breath, Think** – Free app that helps you check in with your emotions, and contains guided videos.