

Ethics and Mindfulness: Why They Work So Well Together

Materials prepared and presented by:
Sheryl L. Randazzo, Esq.

I. The Relevance of Mindfulness to an Attorney's Ethical Obligations

A. Ethical Obligations for Attorneys - the Sources

1. Rules of Professional Conduct - Title 22 NYCRR Part 1200

* Disciplinary Rules promulgated as joint rules of the Appellate Divisions of the Supreme Court, effective April 1, 2009, replacing the Disciplinary Rules of the Code of Conduct

full text http://www.nysba.org/Template.cfm?Section=Attorney_Resources

2. Respected Peers

- a. Business Affiliations
- b. The Value of Association

- Professional Ethics Committees - NYSBA and County Bar Associations
- Committees re: Substantive Practice Areas

3. Common Sense

* trust your instincts

B. Mindfulness and Intention

1. Intention is a decision to do something.

2. Through law school, intention was relevant as we learned about criminal intent.

3. Relative to mindfulness, intention is one of its three components, with the other two being attention and attitude.

Intention is a necessary component of mindfulness in that –

- It is our intention that guides us in where we place our attention
- It is our intention that guides us in our attitude or the mindset we are in as we meet the moments of our day

4. For lawyers, who operate daily in an interruption-rich environment, it is intention that can help us maintain our course in who we are professionally and beyond.

C. Intention and Ethical Obligations

1. From the practice management perspective, every law practice must be organized for two purposes:

- a. to provide legal services to our clients, and
- b. for its internal management.

2. Sound business practices are necessary in order to practice law in an ethical and professional manner; effective law practice management (LPM) is about relevant business practices as they relate to the practice of law.

3. The development of good management practices is vital to the success of any law practice.

4. Maintaining good management practices can reduce the risk of professional failure.

5. Management, generally, is the art of achieving desired objectives by using available resources. For practicing lawyers, management is the art of a lawyer making the most efficient use of their time and skills.

6. Management within a legal practice, particularly in a small firm or practice setting, is largely a function of a lawyer's own self-control and self- management.

D. Mindfulness and The Rules, Generally

II. Competence and Mindfulness

A. The Competence Requirement

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, ...*

B. Mindfulness as Part of Competence

1. Intention is required for -

- a. Legal knowledge
 - b. Skill
 - c. THOROUGHNESS
 - d. Preparation
 - e. Awareness about what a lawyer knows or *should* know
2. To be “competent” requires perpetual intention.

C. Suggestions to Support and Enhance Competence Mindfully

- 1. Benefits of specialization or limiting practice area
- 2. Fulfill CLE obligations meaningfully
- 3. Take CLE’s from varying sources
- 4. Instruct in an area of expertise
- 5. Refresh and recharge
- 6. Or at least step away
- 7. Connect with colleagues – substantive practice committees, practice groups
- 8. Do what you love (or at least enjoy)
- 9. Figure out what you love (or at least enjoy)

III. Diligence and Mindfulness

A. The Diligence Requirement

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...[with statutory exceptions].*

B. Mindfulness as a Component of Diligence

- 1. Intention is required for –
 - a. reasonable diligence
 - b. promptness
 - c. being attentive (the opposite of being neglectful)
 - d. fulfilling all contracts of employment
entered into with a client for professional services

- 2. To be diligent and prompt requires intention, particularly to be consistently diligent and prompt.

C. Suggestions to Sustain Diligence Mindfully

1. consider your own patterns of time utilization that are consistent with who you are and your lifestyle and, to the extent you are able, make a commitment to build your schedule around them
2. maintain systems that work for you, including:
 - a. your calendar
 - b. checklists for reoccurring “projects”
 - c. how you organize your space
3. maintain one master to-do list¹
4. pick three must-do’s for each day
5. unitask
6. don’t procrastinate
7. learn to say “no”

IV. Other Ethical Requirements and Mindfulness

A. The Requirement to be an Advisor

1. The Rule

Rule 2.1- Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, psychological and political factors that may be relevant to the client’s situation.

2. The Suggestions

- Be present
- Put everything else aside
- Listen attentively
- Remind yourself of who you are to each client
- Remember – the practice of law is a service-related profession
- Golden Rule +

¹ This to-do list should contain only activities that relate to your own unique personal and professional goals, with those goals being tied specifically to your intentionally selected roles. However, effective goal setting is an entire topic unto itself which cannot be appropriately covered within today’s limitations. If you are interested in setting effective goals, based upon intentional roles and building your to-do list and daily activity around them, I highly recommend Stephen R. Covey’s *Seven Habits of Highly Effective People: Powerful Lessons in Personal Change* (Free Press 1989).

B. The Communication Requirement

1. The Rule

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 ... 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) *[A lawyer shall] reasonably consult with the client about the means by which the client's objectives are to be accomplished;*
 - (3) *[A lawyer shall] keep the client reasonably informed about the status of the matter;*
 - (4) *[A lawyer shall] promptly comply with a client's reasonable request for information; and*
 - (5) *[A lawyer shall] 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.*

2. The Suggestions

- don't procrastinate
- when communicating orally, avoid arguing and pontificating and be conscious of who you are speaking with and their particular sensitivities
- be aware of your non-verbal communication
- when e-mailing, avoid being reactive
- develop a "system" with respect to phone calls, e.g., when you return calls, when you call a client with an update, etc.
- CALL with updates
- make time to be available
- communicate your availability with those who need to know
- be present
- be an active listener
- capture the content
- write that letter (or e-mail, maybe)
- if applicable, record your time contemporaneously

C. The Confidentiality Requirement

1. The Rule

Rule 1.6 - Confidentiality of Information

(a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, unless:

(1) the client gives informed consent, as defined in Rule 1.0(j);

(2) the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community; or

(3) the disclosure is permitted by paragraph (b).

“Confidential information” consists of information gained during or relating to the representation of a client, whatsoever its source, that is

(a) protected by the attorney-client privilege,

(b) likely to be embarrassing or detrimental to the client if disclosed, or

(c) information that the client has requested be kept confidential...

(b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;...

(3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed to be relied upon by a third party, where the lawyer has discovered that the opinion or representation was based upon materially inaccurate information

2. The Suggestions

- remember, a client’s business is a client’s business
- know, or develop, the office policy on confidentiality
- adhere to it
- remain mindful of the privilege of a client’s trust

V. Conclusion

A. Self-Knowledge

B. Remember Your “Why”

C. There is No One Right Way

D. Breathe (anywhere that you may be)

Mindfulness Techniques You Can Do NOW!

Elizabeth Eckhardt, LAP



Why Mindfulness?



What is Mindfulness?

Mindfulness—Practices aimed at helping us to cultivate moment-to-moment awareness of ourselves and our environment.

The ability to stay in the present moment and to focus your thoughts on what is happening in the here and now. It's our ability to not think about the past or the future but to instead observe what is happening in the moment.

Does Mindfulness Really Help?

The Science of Mindfulness

- **Counters *habituation*, the tendency to stop paying attention to new information in our environment.**
- **Reduces mind-wandering and improve problem solving abilities**
- **Helps the brain to be less reactive to stressors and to recover better from stress when we experience it.**
- **Mindfulness practices help with anxiety works as well as using a standard drug treatment, with fewer side effects.**

Mindfulness Helps Relationships

- Enhances compassion (for self and others) and likelihood to help others.
- Recover from conflict faster.
- Less likely to act impulsively
- Makes breakup and divorce easier.
- Better relationships with kids.
- Practicing mindfulness can reduce psychological bias.
- Mindfulness probably reduces sunk-cost bias, our tendency to stay invested in a losing



The Art of Breathing

3 Breathing Exercises to Relieve Stress and Improve Health - The New York Times (nytimes.com)

4-4-8 breathing .Try this exercise if you are feeling anxious or scared. Several studies have found that purposefully extending your exhale to last longer than your inhale — which is what this exercise aims to do — can quickly slow heart rate and bring down blood pressure. 3 or more times.

What to Do: With one hand on belly to feel it rise and fall, take a breath in through nose for count of four, hold your breath for count of four and then exhale through mouth for count of eight. Repeat.

The Art of Breathing

Alternate nostril breathing. This exercise, borrowed from yoga practices, can help improve focus.

The right nostril is connected to the sympathetic system — our fight or flight mode — while the left nostril is connected to the calmer parasympathetic system. At the very least, consciously switching between the two nostrils helps you tune out racing thoughts and focus on the moment.

What to Do: Close your right nostril and breathe in through your left nostril for a count of four. Now close your left nostril and breathe out from your right nostril for a count of four. 3-5 times

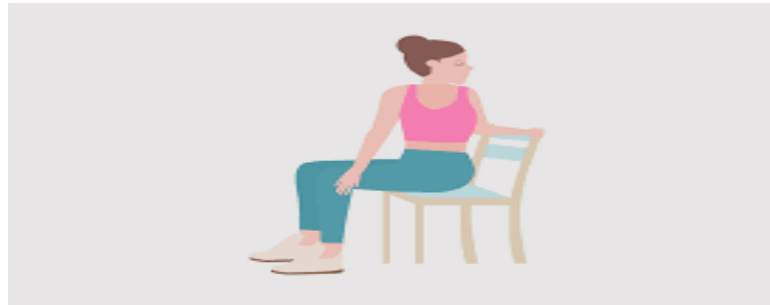
The Art of Breathing

Box breathing. Enhances focus and improves energy. The US NAVY SEALs use this technique to prepare for trainings, and even before combat, because it can enhance cognitive focus.

What to do: With one hand on belly and one hand on chest, Breathe in for a count of four, hold your breath for a count of four, exhale for a count of four and hold your breath again for a count of four. 3 times.

Stretch for Stress Relief

Spinal Twist: You can easily perform this right in your chair at work for a much-needed break during a busy workday. A spinal twist combines a deep breath with a twisting motion, like wringing the stress out of your spine as you would wring water out of a wet towel.



How to Do It: Sit toward the edge of your chair with your feet flat on the floor. Place your right hand at the back of the seat, by the backrest, and place your left hand on your right thigh. Inhale, lengthen your spine, then exhale and rotate your torso to the right, gazing over your right shoulder. Repeat on the other side.

Stretch for Stress Relief

Chest Open Stretch:

This is a great at-your-desk stretch when you need a quick release. “This stretch promotes proper posture and releases tension through your chest to maximize oxygen and circulation,” Ducker explains.



How to Do It: Clasp your hands behind your back, squeeze your upper shoulder blades toward each other behind you, and push out through your chest.

Stretch for Stress Relief



Rotational Neck Stretch:

Reacting to stress by tensing up your neck and scalp muscles can trigger a tension headache, according to the National Institutes of Health. To keep healthy flexion in your neck and let go of tightness, Decker recommends this simple and effective neck stretch, which targets the muscles in the back of your neck.

How to Do It: Bring your chin to your chest and rotate your chin toward an armpit. If you need more of a stretch, Decker suggests placing your hand on the back of your head and pushing your head closer to your armpit. Repeat, rotating your chin to the other armpit.

Sleep for Wellness



Sleep is one of the building blocks for maintaining our physical and mental health. Health Sleep Habits include:

- Exercise regularly.
- Get out in the sunlight.
- Drink less alcohol and caffeine close to bedtime.
- Set a sleep schedule.
- Don't look at your electronics 30-60 minutes before bed.
- Try meditation or other forms of relaxation at bedtime.

YOGA

Yoga can help reduce stress because it promotes relaxation.

Regular yoga practice:

- creates mental clarity and calmness
- increases body awareness
- relieves chronic stress patterns
- relaxes the mind
- sharpens attention and concentration



YOGA

7 Calming Yoga Poses For Stress Relief

Standing forward bend.

Cat-Cow Pose.

Easy Pose.

Head to knee forward bend.

Bridge pose.

Corpse pose.

Childs pose.



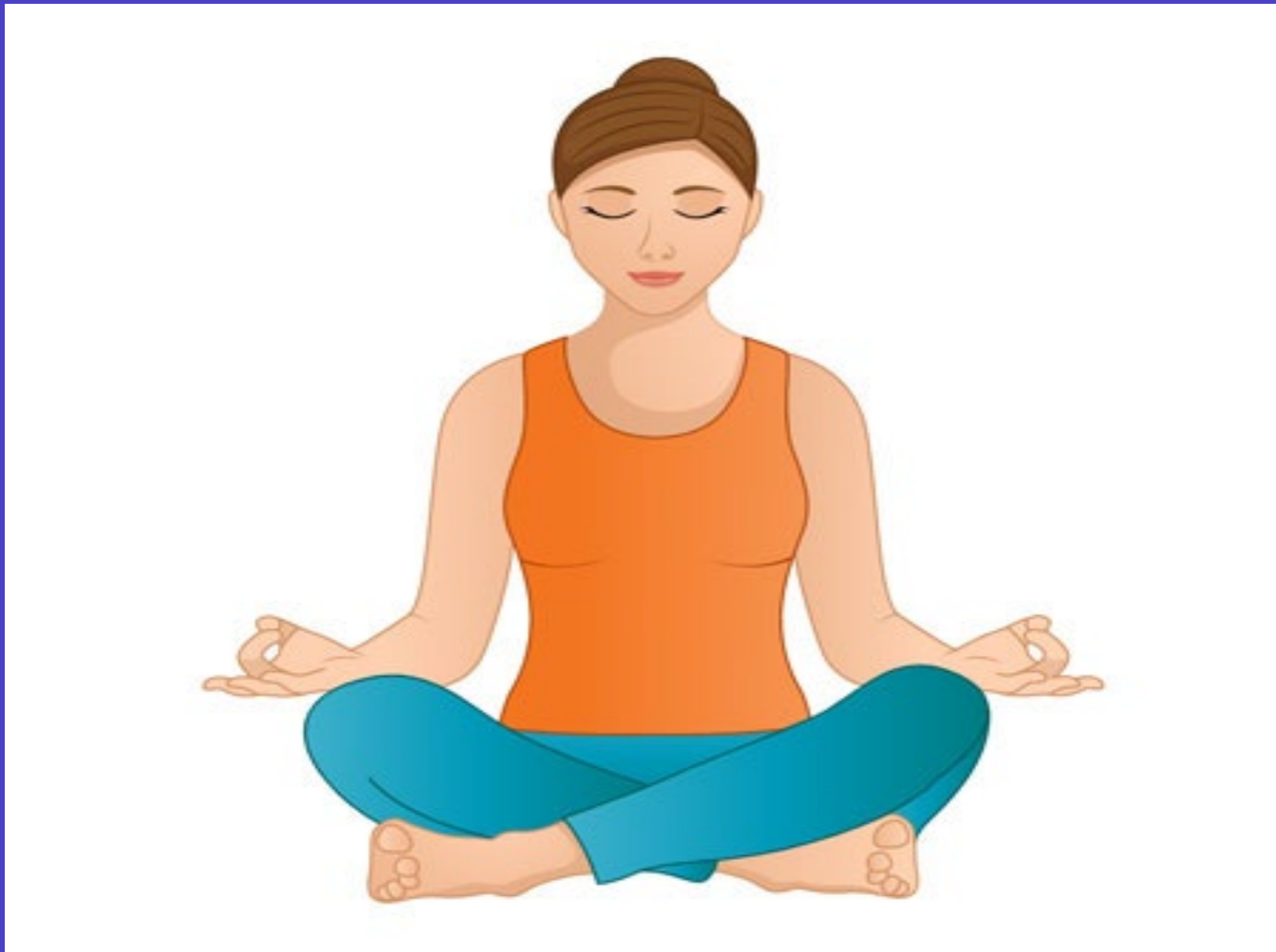
Standing Forward Bend





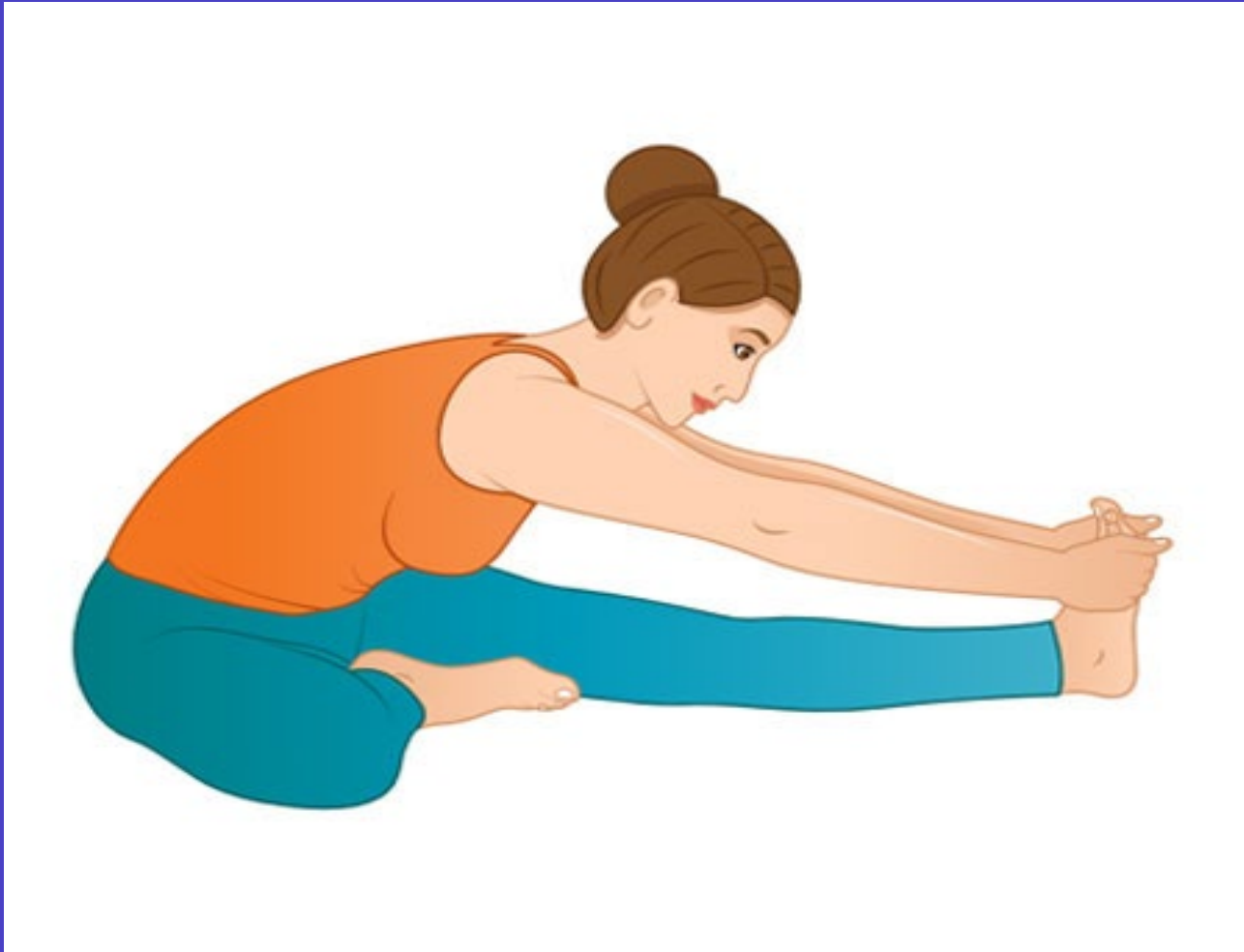
Cat-Cow Pose





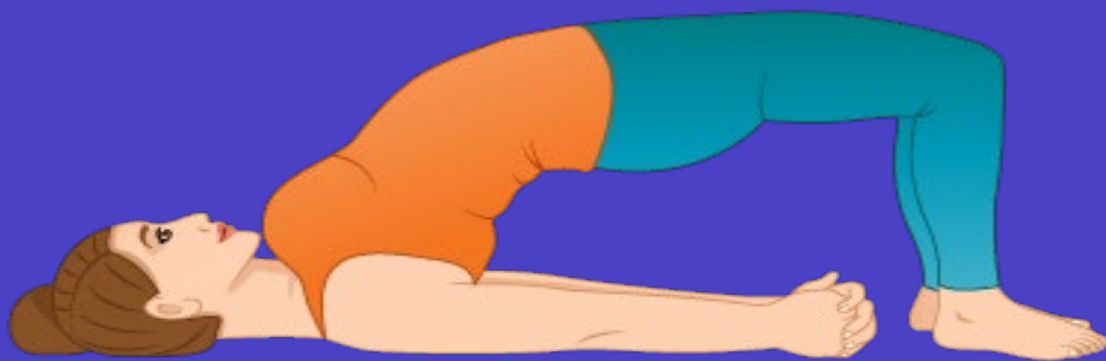
Easy Pose





Head to Knee Forward Bend





Bridge Pose





Corpse Pose





Child's Pose



TAI CHI

Tai chi is an ancient Chinese tradition that, today, is practiced as a graceful form of exercise. It involves a series of movements performed in a slow, focused manner and accompanied by deep breathing.



TAI CHI

- Decreased stress, anxiety and depression
- Improved mood
- Improved aerobic capacity
- Increased energy and stamina
- Improved flexibility, balance and agility
- Improved muscle strength and definition



TAI CHI

- Enhance quality of sleep
- Enhance the immune system
- Help lower blood pressure
- Improve joint pain
- Improve symptoms of congestive heart failure
- Improve overall well-being
- Reduce risk of falls in older adults



Netflix: HeadSpace Guide to Meditation Series

1. **How to Get Started: What is meditation?** Begin your journey toward a calmer, clearer mind by learning the basics and try a guided meditation that *focuses on the breath*.
2. **How to Let Go: Drop that baggage** — and let go of anger, frustration and longing. This effortless guided meditation takes an easygoing approach to visualization.
3. **How to Fall in Love with Life:** Pause for a moment of gratitude and learn to listen to the mind. Andy explores ways to fall in love with life and introduces a reflection meditation.
4. **How to Deal with Stress:** Overwhelmed? It often begins within. Change this relationship to anxiety and cope with stress using a simple, powerful meditation technique: noting.
5. **How to be Kind:** Release resentment toward others — and oneself — and learn to live with greater compassion. Andy guides a *loving kindness meditation*.
6. **How to Deal with Pain:** How do we experience pain? Be present without the suffering that feels unbearable and bring the body and mind together with a *body scan meditation*.
7. **How to Deal with Anger:** Transform your anger into something positive. Andy discusses how a shift in perspective can be a life-changing tool when relating to others.
8. **How to Achieve Your Limitless Potential:** Open your mind. Andy explores why the possibilities are limitless with a consistent mindfulness practice and leads a resting awareness meditation.



Lawyer Assistance Program

Elizabeth Eckhardt, LAP Director

516-512-2618

eckhardt@nassaubar.org

Jackie Cara, Esq., Chair: Lawyer Assistance Committee

jc32412@gmail.com

