

**Mindful Legal Ethics:
Integrating Professional Responsibility and Mindfulness
into the Law School Curriculum**

**5th International Legal Ethics Conference
Banff, Alberta, Canada
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Room KC206: 9:00am-10:30am**

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Program Handout Materials

THE SECOND VIGNETTE

Professional Responsibility Themes:

Pedro's foray into solo practice and his use of outsourcing, listservs, and blogging is the vehicle for debating outsourcing and exploring the use of technology and social media in the practice of law. Outsourcing, a cutting edge issue, provides a wonderful way to revisit the fundamental rules of competence, diligence, communication and confidentiality, while introducing the concepts of conflict of interest and the unauthorized practice of law.

"OUTSOURCING EVERYTHING BUT YOUR LICENSE"

Having been asked to leave the firm, Pedro considers various options and decides to go solo and hang out his shingle. He has a few clients who appreciate the reduced fees and extra attention. Mindy, a loyal friend through it all is excited for Pedro and remains in close contact with him.

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Pedro continues to share his career thoughts and feelings on his blog and others often join the discussion. The blog continues to be a source of support and encouragement for Pedro in his new venture. However, support and encouragement do not pay the bills, so Pedro commits himself to increasing his book of business.

Friends begin to look to Pedro for help with small matters and old friendships begin to lead to promising clients. One day while Pedro is having lunch with Derrick, a college roommate and good friend, Derrick mentions that his wife, Samantha, has decided to start her own business. She needs assistance with forming a corporation and will need representation with other legal matters. Pedro excitedly offers to help, noting that he had drafted and filed incorporation documents while servicing some of the firm's smaller clients. He meets with Samantha and she becomes his first corporate client. He incorporates her company and she calls him regularly for basic legal advice.

Although Pedro feels fortunate that his friends and colleagues are sending him business, he is also frustrated because of the missed opportunities for

additional business; he has turned away potential clients because he felt that the work was over his head. He begins to take CLE classes to learn new areas of the law hoping that he will not have to turn anyone else away.

One day someone from his former firm, remembering that Pedro worked on a big patent case, refers a client to Pedro because the firm has a conflict. The client has a new matter that is likely to be huge.

This is a great opportunity for Pedro; however, he really doesn't know much about patent law and he does not have any staff to assist him. That big case is just a blur now and most of the work he did was not substantive in nature. Pedro has signed up for a solo practitioner "listserv" named MYSHINGLE and asks the group whether he should accept the case. An attorney responds, "Are you serious? You can figure out how to handle any case. Why would you throw away all that money?"

Pedro posts his dilemma on his blog, "P.R. Blawg" and someone suggests that Pedro use outsourcing to solve his problem. Pedro does some research and learns that there is a company in India that can do any aspect of a case for you. He reads a testimonial about the company and is sold. He is ecstatic! Pedro accepts the client's case and outsources much of the legal work to LegalAssist, the company in India.

LegalAssist conducts the necessary research and prepares the pleadings. Pedro studies the motion for summary judgment provided by LegalAssist and is able to win the case for the client. Pedro bills the client at Pedro's regular rate, which is much less than the large firm, and the client is thrilled. Pedro has his overhead covered and has learned another way to use the digital age to succeed.

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 Excerpted from S. Rogers and J. Jacobowitz, *Mindfulness and Professional Responsibility: A Guide Book for Integrating Mindfulness into Law School Curriculum* (2012)

THE FOURTH VIGNETTE

Professional Responsibility Themes:

The marital difficulties of Pedro's friends, who are characters previously introduced to the students, reflect Pedro's conflicts of interest from both a personal and professional standpoint. Obligations to prospective, current and former clients along with the ethics of mediation are the basis of this vignette.

"CONFLICTS AND CONFIDENCES:**THE MINDFUL PATH TO CLARITY AND COURAGE"**

One day while having breakfast with Derrick, Pedro learns that Derrick and Samantha are going through a rough time. Derrick shares that Samantha's business is extremely successful, but she is never home and they have grown apart. Pedro sympathizes, offering him words of comfort. As they leave, Derrick asks if he can count on Pedro's support and help, to which Pedro replies, "Of course."

The next week Derrick calls to explain that he read one of Samantha's emails to her best friend and learned that she is planning on getting an attorney to file for divorce. Derrick is clearly upset and says that he wants to file first. He asks Pedro to file whatever is necessary so that Samantha doesn't get the upper hand. Pedro replies that he is not sure that it is a good idea for him to get in the middle of the case since he is a friend of both Derrick and Samantha.

Derrick bemoans his situation and pleads for Pedro to represent him, saying that he thought Pedro had agreed when they last met for lunch. Also, Derrick confides, that he trusts no one, but Pedro. Derrick begins to break down as he shares his sadness over the prospect of getting divorced and Pedro relents, agreeing to represent Derrick on the condition that the situation "remains cordial." Pedro says, in a serious tone, that if Derrick decides that he wants a bulldog, then he will have to retain someone else. Derrick agrees and expresses his gratitude.

That afternoon, Pedro receives a call from Samantha who says that she is planning to divorce Derrick. She requests an appointment with Pedro and a

recommendation for a competent family law lawyer. She says that she would not ask Pedro to represent her because he and Derrick are such good friends. Pedro says that he is uncomfortable providing a recommendation. Samantha becomes irritated saying that she only wants to meet to discuss lawyer options and nothing else. Pedro apologizes, but remains firm.

Samantha exclaims, "You have been my lawyer for years. I have paid and confided in you. You are not going to abandon me now. I trust you and only you."

Her voice becomes so loud that Pedro has to move the phone away from his ear. Pedro responds: "I need to think it through and will call you back."

Pedro discusses the matter with Mindy, who suggests that Pedro may have an attorney-client relationship with Samantha that precludes his representation of Derrick.

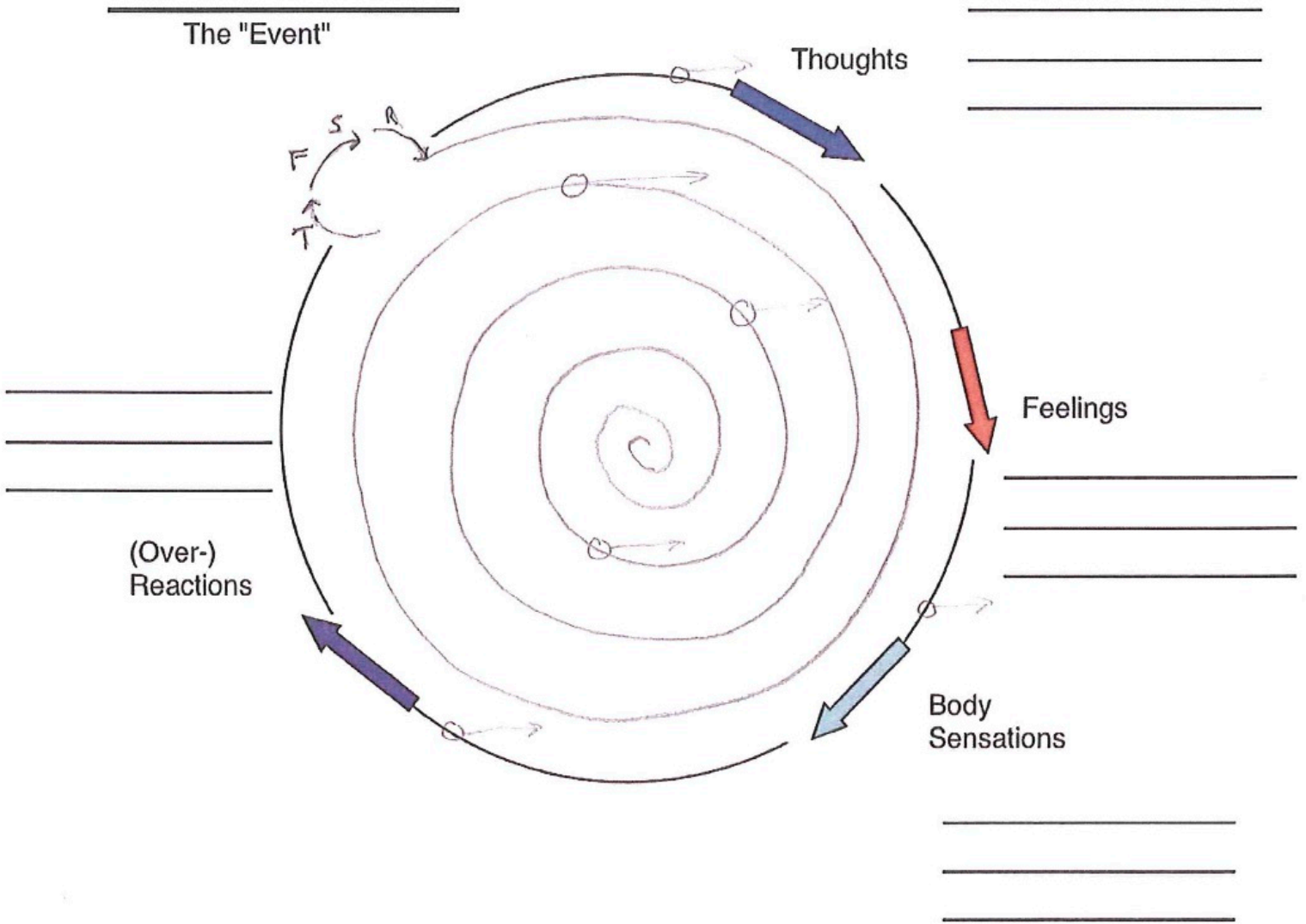
Pedro calls Derrick and explains, "I would really love to help you, but because I have represented Samantha, it could create a messy situation."

A dejected Derrick laments his woes on the phone and in the ensuing silence Pedro comes up with an idea. "How about this," he says. "I am a certified mediator in family law. If Samantha is game, I will try to mediate your divorce. We can all get together and try to work out the terms." Derrick agrees and says he'll ask Samantha..

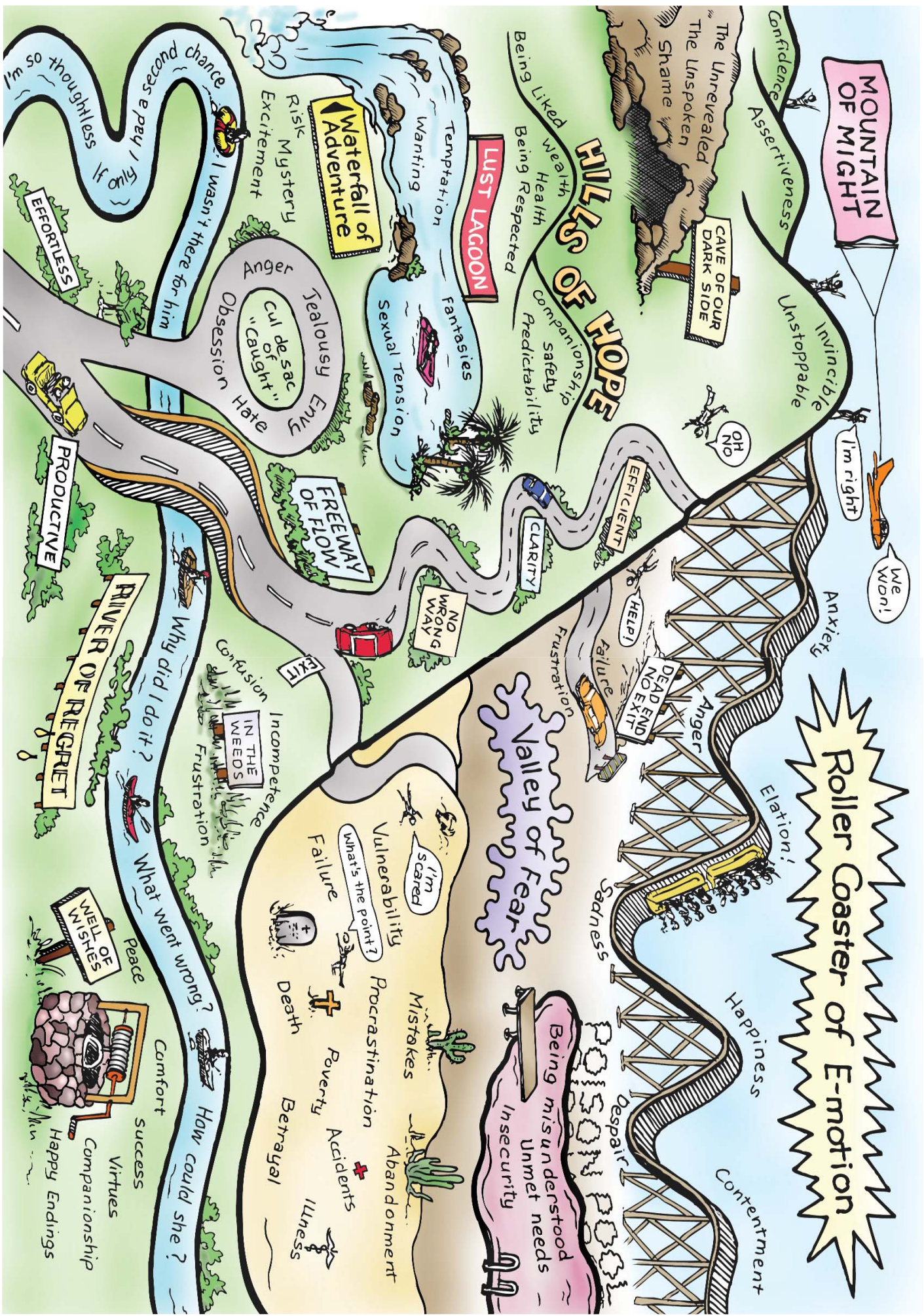
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"The Spiral"



Roller Coaster of E-motion



Landscape of the Mind

Resources

Articles

Hölzel, B.K., et. al., "Mindfulness practice leads to increases in regional brain gray matter density." *Psychiatry Research: Neuroimaging*, 2011;191, 36-42.

Jha, A., et. al., "Examining the Protective Effects of Mindfulness Training on Working Memory and Affective Experience." *Emotion*, 2009;10(1): 54-64.

Magee, R., "Educating Lawyers to Meditate? From Exercises to Epistemology to Ethics: The Contemplative Practice and Law Movement as Legal Education Reform," 79 UMKC L. Rev 535 (2011)

Books

Begley, S., "Train Your Mind, Change Your Brain: How a New Science Reveals Our Extraordinary Potential To Transform Ourselves" (2008).

Kabat-Zinn, J., "Wherever You Go, There You Are: Mindfulness Meditation in Everyday Life" (1990).

Rogers, S., "Mindfulness for Law Students: Using the Power of Mindful Awareness to Achieve Balance and Success in Law School" (2009).

Rogers, S., & Jacobowitz, J. "Mindfulness and Professional Responsibility: A Guidebook for Integrating Mindfulness into the Law School Curriculum (2012).

Websites

www.mindfulethics.com

Mindful Ethics

www.mindfullawyerconference.org

The Mindful Lawyer Conference

www.mindfulness.law.miami.edu

Miami Law Mindfulness in Law Program

www.marc.ucla.edu/

Mindful Awareness Research Center (MARC)

www.umassmed.edu/cfm

Center for Mindfulness, UMass Medical School