



# Planning for Attorneys: Selected Ethical Implications

**Jonathan L. Booze, JD, MBA, CFP<sup>®</sup>, AIF<sup>®</sup>**

**Executive Vice-President**

# SPEAKER



**Jonathan L. Booze**  
**JD, MBA, CFP<sup>®</sup>, AIF<sup>®</sup>**

## Biography

Jon is a co-founder of ONE Advisory Partners, LLC, a registered investment advisor with over \$250 million under management (as of Dec 31, 2019). His background includes over 20 years of experience in the financial and legal fields, including advising high net worth private practice attorneys and in-house counsel on personal wealth management and assisting law firms and other 401(k) plan sponsors with fiduciary and plan design issues. ONE Advisory Partners, LLC manages over \$100 million of assets on behalf of law firms, attorneys and their families. Prior to co-founding ONE Advisory Partners, LLC (and its predecessor firm), Mr. Booze was an attorney in the Employee Benefits and Executive Compensation Group with Husch Blackwell (then Blackwell Sanders Peper Martin LLP).

Jon is a graduate of the University of Kansas School of Law, where he was a member and Business Manager of the Kansas Law Review, awarded the Hinkle Elkouri Prize in Tax Procedure, and a recipient of the Edmonds Prize in Corporate and Securities Law. Jon also holds a M.B.A. with an emphasis in finance from the University of Missouri - Kansas City Henry W. Bloch School of Business. Jon graduated Summa Cum Laude from William Jewell College (with study at the University of Cambridge, England with honors) with a degree in Oxbridge Institutions and Policy. In addition to being a licensed attorney in both Kansas and Missouri, Jon is a Certified Financial Planner<sup>®</sup> and Accredited Investment Fiduciary<sup>®</sup>.

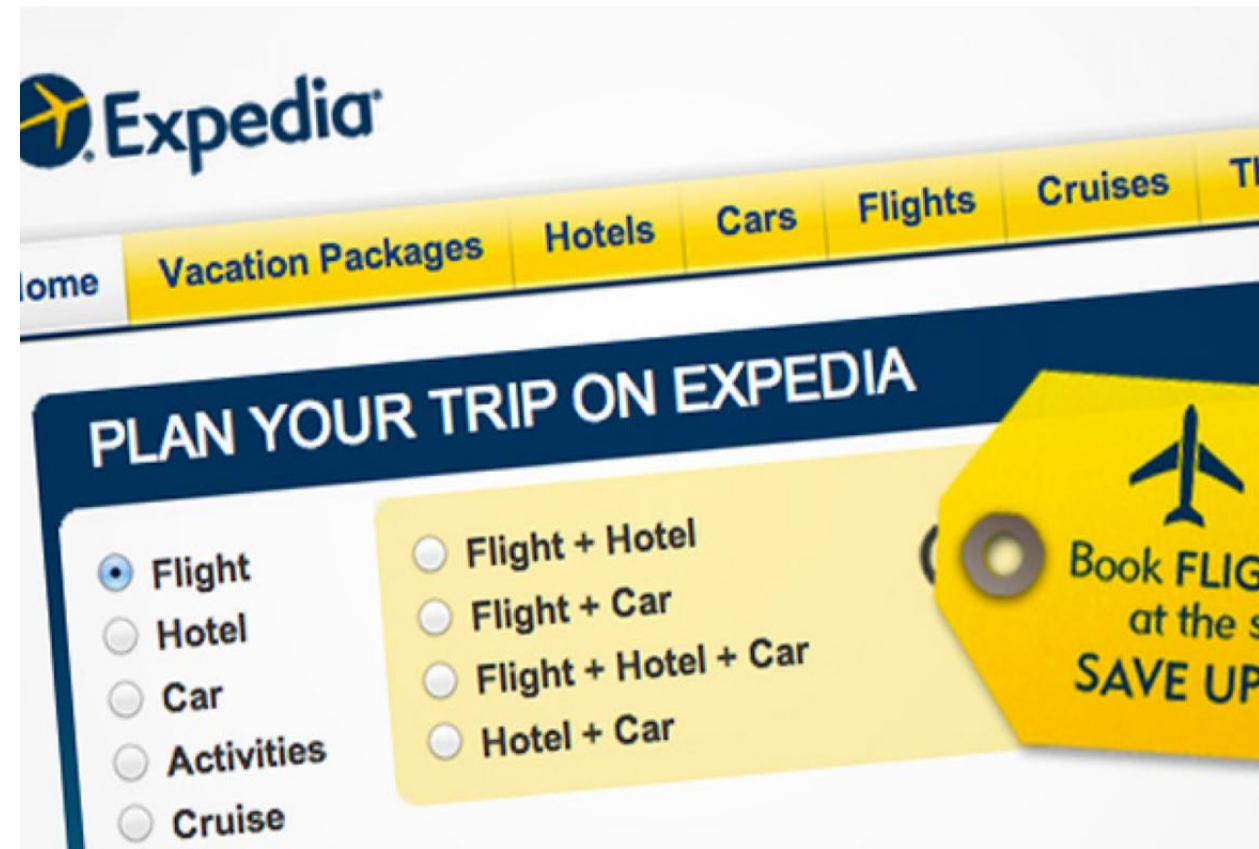
# Agenda

- **We plan it when it matters**
- **A word about intent**
- **Lawyers have many reasons for working longer**
- **Failure to plan has ethical implications**
- **Selected ethical issues**
- **Planning methods**
- **Benefits of planning/Attorney transitions**
- **Conclusion**

# We Plan It When It Matters!



# We Plan It When It Really Matters!



# We Plan It When It Really, Really Matters!

Don't Be A **Bridezilla**

## Wedding

Planning Checklist

### 10-12 months (or earlier)

#### Choose a date

You may choose a special date, meaningful occasion or engage a geomancer/fengshui master.

#### Budgeting

Keep your budget within your ability, it's not worth being in debt for a wedding.

#### Guestlist

No. of guests determines your wedding venue. Invite only people who feels happy for you instead of feeling obligated to attend.

#### Book The Venue

Popular venues are usually fully booked 1 year or longer in advance. Venue determines your theme too.

#### Research for Vendors

Research and book videographer, photographer, entertainment and makeup artist to avoid disappointment.

### 7-9 months

#### Sign A Wedding Package

Wedding package usually includes gowns rental, photoshoot, actual day doll up and florist services.

#### Your Dream Gown

Off the rack? Customization? Start choosing the gowns for your pre-wedding shoot too. Don't forget to engage tailor for groom's suit and bridesmaids' dresses.

### 5-6 months

#### Send Invitations & Finalize Guestlist

Time to inform your friends and relatives to save the date with your thematic invitation cards.

#### Pre-Wedding Photoshoot

These photos should align with your theme, and be useful for your wedding website and invitations.

#### Marriage Preparation Course

Learn about the challenges faced by newly-wed, and what you and your partner feel/ think about the future.

### 3-4 months

#### Choose Wedding Bands

After months of researching, it's time to get your perfect rings.

#### Wedding Favours

Customize your wedding favours and thank you cards to show appreciation to your guests.

#### Finalize Menu

According to your confirmed guests' dietary requirements.

#### Confirm All Vendors

Discuss all details with your AD photographers, do trial makeup, food tasting, cake design, florist etc.

#### Register Your Marriage & JP

File notice of marriage with ROM and book Justice of Peace.

### 1-2 months

#### DIY Decorations

If you are going to DIY poms poms or paper rosettes, start 2 months ahead.

#### Accessories Shopping

Prepare accessories to go with your gowns (make sure they fit!) and look for the perfect shoes.

#### Wedding Customs

Guo Da Li aka Betrothal, presenting dowry, distributing wedding cakes etc.

#### Rehearsal

Rehearse your wedding with your parents and bridesmaids/bestmen to avoid hiccups on wedding day.

### 1 Day

#### Chill and Relax

Calm each other, relax and sleep early for the big day tomorrow!

#### Write Your Vows

Best time to write your vows because you feel the most emotional today.



# Professional Responsibility Really, **Really** Matters!

- Professional Responsibility really, really matters:
  - MO/KS Bars require annual education in Ethics.
  - Basis for complaints by clients.\*
  - Basis for complaints by attorneys and judges.\*
  - Can result in sanctions up to and including disbarment.\*

\*See The Anatomy of a Complaint, Stanton A. Hazlett, Disciplinary Administrator, The Kansas Disciplinary Administrator's Office, April 22, 2016 (Outline for Presentation at Return to Green) 2016.

# A Word About Intent

“At the outset, any discussion of an aging lawyer population carries with it the risk that some will review the discussion as an offensive attack on senior lawyers. That is not the intent or focus of this Committee or this report. The fact is that we are all aging and any discussion about the possible problems and risks that entails necessarily, and obviously, involves our collective interests and obligations. **A thirty year old lawyer who has not begun planning for retirement is facing an aging-lawyer issue because some day that lawyer will likely want to retire and should be planning for it now.**”\*  
(emphasis added by presenter)

\*See Second Joint Committee on Aging Lawyers Final Report, NOBC-APRL-CoLAP, April 2014, p. 3.



# Lawyers Have Many Reasons for Working Longer

- **Lawyers increasingly work past traditional retirement age.\***
  - Factors include:
    - Demographic shift in the population, combined with dramatic improvements in health care and technology.
    - Strong desire by many attorneys to “make positive contributions” to society.
    - Economic necessity.

\*See The Opportunities and Challenges of an Aging Bar, Gary Toohey, Journal of the MO Bar, Jan-Feb 2018, p. 25; See also Preparing for the Senior Tsunami: Cognitive Decline in Aging Lawyers, 28 Geo. J. Legal Ethics 471, Part 1A.

# Lawyers Have Many Reasons for Working Longer



Lawyer, 99, will retire 'when they carry me out of here'

September 30, 2018 01:36 PM  
Updated September 30, 2018 01:38 PM

BY PAT EATON-ROBB  
*Associated Press*

HARTFORD, CONN. — Attorney Morton Katz, 99, recalls just one client assigned to him as a special public defender who made an issue of his age.

That man, charged with stealing a car while on probation, was unhappy about how long it was taking to resolve his case.

\*See Kansas City Star, "Lawyer, 99, will retire 'when they carry me out of here'", Pat Eaton-Robb, Associated Press, Sept 30, 2018.

# Lawyers Have Many Reasons for Working Longer



David Warner, the supervisory public defender in Hartford, said nobody that he knows of has ever questioned Katz's competence to practice law.

"He tells some amazing stories about his career, about the war," Warner said. "I thought he was joking when he first told me his age. You'd never know it from talking to him."

As a special public defender, Katz is paid \$350 per case, no matter how much work he puts in, unless the case goes to trial, and then he gets an hourly wage. Katz also serves as a magistrate for small claims cases, does free legal work on civil cases for Statewide Legal Services and provides free legal assistance to veterans.

He dedicated himself to public service after an uncle, who put Katz through college, refused his offer to pay him back.

\*See Kansas City Star, "Lawyer, 99, will retire 'when they carry me out of here'", Pat Eaton-Robb, Associated Press, Sept 30, 2018.

# Lawyers Have Many Reasons for Working Longer

- But for many lawyers, the retirement plan is to just keep working:
  - “Nearly half (49.8 percent) of respondents to Missouri Bar’s 2017 Economic Survey indicated that they are unsure what they will do when they reach retirement age, do not plan to retire, or are of retirement age but not currently considering retirement.”\*
  - 2.3% of respondents indicated delay due to economic reasons.\*
  - In an admittedly unscientific on-line poll by American Lawyer Media, 29% of 200 attorneys said they would work longer to make up for shortfalls in their retirement plans.\*\*

\*See The Opportunities and Challenges of an Aging Bar, Gary Toohey, Journal of the MO Bar, Jan-Feb 2018, p. 25.

\*\* See ABA Journal, For many lawyers, retirement plan is to keep working, By Debra Cassens Weiss, Feb 22, 2016, ([http://www.abajournal.com/news/article/for\\_many\\_lawyers\\_retirement\\_plan\\_is\\_to\\_keep\\_working](http://www.abajournal.com/news/article/for_many_lawyers_retirement_plan_is_to_keep_working)).

# Failure to Plan has Ethical Implications

- **For attorneys, a failure to plan has ethical implications.\***
- **If attorneys do not properly prepare for disability and retirement:**
  - They must continue to practice for economic necessity.
  - In situations where attorney is mentally impaired, they run the risk of violating the rules of professional ethics.
  - They may put their firms and supervising attorneys at risk as well.
- **For attorneys, there is, individually and collectively, a lot more at risk than in many other vocations.**

\*See The Opportunities and Challenges of an Aging Bar, Gary Toohey, Journal of the MO Bar, Jan-Feb 2018, p. 25; See also Preparing for the Senior Tsunami: Cognitive Decline in Aging Lawyers, 28 Geo. J. Legal Ethics 471, Part 1A.

# Selected Ethical Issues Potentially Implicated by Failure to Plan

- Duty of Competence
- Duty to Decline Representation
- Duty of Managing Attorneys
- Duty to Report

*Note: This presentation does not deal with issues that might arise under the Americans with Disability Act of 1990.*

See Preparing for the Senior Tsunami: Cognitive Decline in Aging Lawyers, 28 Geo. J. Legal Ethics 471, Part II; see also ABA Formal Opinion 03-429, June 11, 2003.

# Selected Ethical Issues Potentially Implicated by Failure to Plan

- **Duty of Competence**
- Duty to Decline Representation
- Duty of Managing Attorneys
- Duty to Report

See Preparing for the Senior Tsunami: Cognitive Decline in Aging Lawyers, 28 Geo. J. Legal Ethics 471, Part II; see also ABA Formal Opinion 03-429, June 11, 2003.

# Duty of Competence

**“It is no accident that the first Model Rule requires competence, for the drafters of the Model Rules believed that the first rule of legal ethics is competence.”\***

\*See Legal Ethics: The Lawyer’s Deskbook on Professional Responsibility, Ronald D. Rotunda and John S Dzienkowski, 2017, Section 1.1-1 Competence: The First Rule of Ethics.



# Duty of Competence

**“Simply stated, mental impairment does not lessen a lawyer’s obligation to provide clients with competent representation.”\***

\*See ABA Formal Opinion 03-429, p. 2, June 11, 2003.

# Duty of Competence

Kansas Rules of Professional Conduct	Missouri Rules of Professional Responsibility
<p style="text-align: center;">1.1 Competence</p> <p style="text-align: center;">A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.</p>	<p style="text-align: center;">RULE 4-1.1: COMPETENCE</p> <p style="text-align: center;">A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation</p>
<p style="text-align: center;">See <a href="http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=54">http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=54</a></p>	<p style="text-align: center;">See <a href="https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/20fd60132de3411886256ca6005211b4?OpenDocument">https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/20fd60132de3411886256ca6005211b4?OpenDocument</a></p>

# Duty of Competence

<h2>Kansas Rules of Professional Conduct</h2>	<h2>Missouri Rules of Professional Responsibility</h2>
<p style="text-align: center;">Note 5</p> <p>[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 elaborate treatment than matters of lesser consequence.</p>	<p style="text-align: center;">Note 5</p> <p>[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. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 4-1.2(c).</p>
<p style="text-align: center;">See <a href="http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=54">http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=54</a></p>	<p style="text-align: center;">See <a href="https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/20fd60132de3411886256ca6005211b4?OpenDocument">https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/20fd60132de3411886256ca6005211b4?OpenDocument</a></p>

# Duty of Competence

- As Note 5 explains, for an attorney to be competent, the attorney must inquire into and analyze the factual and legal elements of the problem. Cognitive impairments make that difficult or impossible.
- Cognitive impairments can result from:
  - Substance abuse (beyond the scope of this presentation)
  - Accidents
  - Sickness
  - Age-related:
    - Cognitive impairments such as dementia typically begin to appear at age 60 or older.\*
    - At age 65, the risk of developing the disease doubles every five years.\*
    - 25 to 50% of 85 and older population exhibits some signs of Alzheimer's or age-related dementia.\*

\*See Second Joint Committee on Aging Lawyers Final Report, NOBC-APRL-CoLAP, April 2014, p. 7.

# Duty of Competence

“The unavoidable conclusion is that as lawyers age and remain in practice, statistically a greater number will experience cognitive impairments, as well as other significant medical problems, such as heart disease and strokes . . . . While any impairment may affect a lawyer’s ability to function at full and optimum capacity, diseases of the brain strike at the core of what many lawyers do on a daily basis - think, analyze, evaluate, and advise.”\*

\*See Second Joint Committee on Aging Lawyers Final Report, NOBC-APRL-CoLAP, April 2014, p. 7.

# Duty of Competence



Former Supreme Court Justice John Paul Stevens revealed Monday that he stepped down after experiencing a small stroke in 2010.

- Justice Stevens suffered a mini-stroke.\*
- In an interview, he recalled how he stumbled over and mispronounced several words while delivering a dissent from the bench.\*
- “That was it” he told the [New York] Times over the phone. “I made the decision that day. After I went to see the doctor, I sent a letter to the president right away.”\*

\*See, “John Paul Stevens says he decided to leave Supreme Court after suffering ‘mini-stroke’: ‘That was it’”, by Megan Keller, The Hill, Nov 26, 2018 at <https://thehill.com/homenews/news/418257-john-paul-stevens-reveals-he-decided-to-leave-supreme-court-after-suffering>.

# Duty of Competence

POLITICS

## Sandra Day O'Connor, First Woman on Supreme Court, Diagnosed With Dementia

The justice, who is withdrawing from an influential post-retirement career, wielded the court's deciding vote for two dozen years



Justice O'Connor said she probably has Alzheimer's disease—which also claimed her husband, John, and the president who appointed her, Ronald Reagan. PHOTO: KAREN BLEIER/AGENCE FRANCE-PRESSE/GETTY IMAGES

By Jess Bravin

Updated Oct. 23, 2018 3:04 p.m. ET

\*See “Sandra Day O'Connor, First Woman on Supreme Court, Diagnosed with Dementia”, Wall Street Journal, Oct 23, 2018 by Jess Bravin.

# Selected Ethical Issues Potentially Implicated by Failure to Plan

- Duty of Competence
- **Duty to Decline Representation**
- Duty of Managing Attorneys
- Duty to Report

See also Preparing for the Senior Tsunami: Cognitive Decline in Aging Lawyers, 28 Geo. J. Legal Ethics 471, Part II.



# Duty to Decline Representation

**“The lawyer must withdraw from a case: (1) if continued employment would result in violating the disciplinary rules or other law; (2) if the lawyer’s physical or mental condition results in a material adverse impact on the client . . . .”\***

\*See Legal Ethics: The Lawyer’s Deskbook on Professional Responsibility, Ronald D. Rotunda and John S Dzienkowski, 2017, Section 1.16-2(b)(1) Mandatory Withdrawal.

# Duty to Decline Representation

<p style="text-align: center;"><b>Kansas Rules of Professional Conduct</b></p>	<p style="text-align: center;"><b>Missouri Rules of Professional Responsibility</b></p>
<p>1.16(a)(2) Client-Lawyer Relationship: Declining or Terminating Representation</p> <p>(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:</p> <ul style="list-style-type: none"> <li>(1) the representation will result in violation of the rules of professional conduct or other law;</li> <li>(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client . . . .</li> </ul>	<p style="text-align: center;">RULE 4-1.16: DECLINING OR TERMINATING REPRESENTATION</p> <p>(a) Except as stated in Rule 4-1.16(c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:</p> <ul style="list-style-type: none"> <li>(1) the representation will result in violation of the rules of professional conduct or other law;</li> <li>(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client . . . .</li> </ul>
<p style="text-align: center;">See <a href="http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=39">http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=39</a></p>	<p style="text-align: center;">See <a href="https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/202f47458d8080c986256ca6005211aa?OpenDocument">https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/202f47458d8080c986256ca6005211aa?OpenDocument</a></p>

# Duty to Decline Representation

- Rule and comments do not define or give examples of physical or mental conditions that materially impair the lawyer's ability to represent the client.
- ABA Formal Opinion 03-429 provides some helpful commentary:
  - The lawyer who suffers from the impairment may be unaware or in denial concerning the impairment's affect on his/her ability to represent clients.\*
  - "Certain dementias or psychoses may impair a lawyer's performance on "bad days" but not on "good days" during which the lawyer behaves normally."\*
  - It may be helpful for attorney, partners, and/or supervising attorney to consult with an appropriately trained mental health professional.\*
- While little specific guidance for attorneys in this area, attorneys that have a sound plan for impairments (however caused) should be better prepared.

\* See ABA Formal Opinion 03-429, p. 3, June 11, 2003.

# Hypothetical Example

- Attorney, age 40, is involved in a catastrophic car accident, which was not attorney's fault.
- Attorney's recovery takes six to twelve months, and settlement of attorney's accident claims take over two years.
- Attorney suffers from physical and mental impairments, including loss of memory and cognitive impairments during attorney's recovery.
- Attorney has significant medical expenses, as well as loss of income.

# Hypothetical Example

With Planning	Without Planning
Attorney has adequate cash reserves to fund short-term living expenses (three to six months of living expenses)	Attorney does not have adequate cash reserves. Immediately experiences increased economic pressure to return to practice as soon as possible
Attorney has adequate medical coverage to handle the catastrophic medical expenses attorney incurs until settlement is reached	Attorney does not have adequate medical coverage to handle the catastrophic medical expenses. Attorney has more economic pressure to return to practice as soon as possible
Attorney has sufficient disability insurance to sustain attorney and family as long as medically necessary without causing significant financial disruption	Attorney does not have sufficient disability insurance to sustain attorney and family as long as medically necessary. Attorney now has intense economic pressure to return to practice as soon as possible

# Selected Ethical Issues Potentially Implicated by Failure to Plan

- Duty of Competence
- Duty to Decline Representation
- **Duty of Managing Attorneys**
- Duty to Report

# Duty of Managing Attorneys

<h2>Kansas Rules of Professional Conduct</h2>	<h2>Missouri Rules of Professional Responsibility</h2>
<p>5.1 Law Firms and Associations: Responsibilities of Partners, Managers and Supervisory Lawyers</p> <p>(a) A partner in a law firm and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct.</p> <p>(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct.</p>	<p>RULE 4-5.1: RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS</p> <p>(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.</p> <p>(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.</p>
<p>See <a href="http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=21">http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=21</a></p>	<p>See <a href="https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/bd6e7a3e97c8948186256ca600521234?OpenDocument">https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/bd6e7a3e97c8948186256ca600521234?OpenDocument</a></p>

# Duty of Managing Attorneys

Kansas Rules of Professional Conduct	Missouri Rules of Professional Responsibility
<p data-bbox="631 596 825 625">Comment 2</p> <p data-bbox="198 686 1258 1075">[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.</p>	<p data-bbox="1727 596 1921 625">Comment 2</p> <p data-bbox="1314 686 2349 1075">[2] Rule 4-5.1(a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.</p>
<p data-bbox="354 1225 1098 1282">See <a href="http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=21">http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=21</a></p>	<p data-bbox="1302 1225 2349 1310">See <a href="https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/bd6e7a3e97c8948186256ca600521234?OpenDocument">https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/bd6e7a3e97c8948186256ca600521234?OpenDocument</a></p>



# Duty of Managing Attorneys

- I found little specific guidance on what constitutes reasonable efforts.
- ABA Formal Opinion 03-429 notes that what is reasonable depends upon the firm's size, structure and practice but makes the following suggestions.\*
  - First, confront the impaired lawyer with the the facts of the impairment and insist upon action to assure that clients are represented appropriately notwithstanding the lawyer's impairment.\*
  - Other options include “forcefully urging the impaired lawyer to accept assistance” or “limiting the ability of the impaired lawyer to handle legal matters or deal with clients.”\*

\* See ABA Formal Opinion 03-429, p. 4, June 11, 2003.

# Selected Ethical Issues Potentially Implicated by Failure to Plan

- Duty of Competence
- Duty to Decline Representation
- Duty of Managing Attorneys
- **Duty to Report**

See also Preparing for the Senior Tsunami: Cognitive Decline in Aging Lawyers, 28 Geo. J. Legal Ethics 471, Part II.

# Duty to Report

<h2>Kansas Rules of Professional Conduct</h2>	<h2>Missouri Rules of Professional Responsibility</h2>
<p>8.3 Maintaining the Integrity of the Profession: Reporting Professional Misconduct</p> <p>(a) A lawyer having knowledge of any action, inaction, or conduct which in his or her opinion constitutes misconduct of an attorney under these rules shall inform the appropriate professional authority. . . .</p> <p>(c) This rule does not require disclosure of information otherwise protected by Rule 1.6. In addition, a lawyer is not required to disclose information concerning any such violation which is discovered through participation in a Substance Abuse Committee, Service to the Bar Committee or similar committee sponsored by a state or local bar association, or by participation in a self-help organization such as Alcoholics Anonymous, through which aid is rendered to another lawyer who may be impaired in the practice of law.</p>	<p>RULE 4-8.3: REPORTING PROFESSIONAL MISCONDUCT</p> <p>(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate professional authority. . . .</p> <p>(c) This Rule 4-8.3 does not require disclosure of information otherwise protected by Rule 4-1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.</p>
<p>See <a href="http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=3">http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=3</a></p>	<p>See <a href="https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/4f930e097a3384ea86256ca60052123e?OpenDocument">https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/4f930e097a3384ea86256ca60052123e?OpenDocument</a></p>

# Duty to Report

- Duty varies somewhat based on jurisdiction.
- Kansas Rule:
  - KBA Legal Ethics Opinion No. 14-01 provides guidance with respect to the duty to report possible cognitive degeneration of law firm partner.
  - Facts
    - Law firm partner had “possible cognitive degeneration” evidenced by memory lapses.
    - No violations of Kansas Rules of Professional Conduct reported, but firm “believes that the subject lawyer’s perceived memory lapses “could impact clients.””

\*See KBA Legal Ethics Opinion No. 14-01, July 1, 2014 obtained from [https://cdn.ymaws.com/www.ksbar.org/resource/resmgr/files/898595\\_1.pdf](https://cdn.ymaws.com/www.ksbar.org/resource/resmgr/files/898595_1.pdf).

# Duty to Report

- Observations from KBA Legal Ethics Opinion No. 14-01:
  - Kansas rule “contrasts strikingly with the Model Rule adopted in most of the other states.”\*
  - “In Kansas, lawyers have a duty to report themselves, and they have a duty to report even KRPC violations that do not implicate the lawyer’s honesty, trustworthiness or fitness.”\*
  - “But, the duty to report only extends to a situation in which the reporting lawyer has “knowledge” of acts or omissions which constitute a violation of KRPC.”\*

\*See KBA Legal Ethics Opinion No. 14-01, July 1, 2014 obtained from [https://cdn.ymaws.com/www.ksbar.org/resource/resmgr/files/898595\\_1.pdf](https://cdn.ymaws.com/www.ksbar.org/resource/resmgr/files/898595_1.pdf).

# Duty to Report

- Conclusions from KBA Legal Ethics Opinion No. 14-01:
  - “(a) A lawyer has no duty to report another lawyer for perceived memory lapses which have not resulted in acts or omissions which, in the lawyer’s opinion, represent violations of the KRPC.”\*
  - “(b) Consideration should be given to a referral of the subject lawyer to KALAP for such evaluation and assistance as may be indicated.”\*

\*See KBA Legal Ethics Opinion No. 14-01, July 1, 2014 obtained from [https://cdn.ymaws.com/www.ksbar.org/resource/resmgr/files/898595\\_1.pdf](https://cdn.ymaws.com/www.ksbar.org/resource/resmgr/files/898595_1.pdf).

# Summary

- Attorneys have a duty to be competent (regardless of impairment).
- Attorneys must decline representation if physical or mental condition results in a material adverse impact on the client.
- Managing and supervising attorneys have to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct.
- Attorneys have a duty to report professional misconduct, but the obligation may vary by jurisdiction.

# Implications and Takeaways

- Attorneys plan for things that really matter.
- Compliance with the standards of professional conduct matter.
- If attorneys do not properly plan, economic necessity may unwisely cause attorneys to practice *even* if they are impaired.



# Implications and Takeaways

- Attorneys can mitigate impairments due to unexpected disability:
  - Disability insurance can be secured from a number of sources.
  - Review benefit level on periodic basis relative to income and lifestyle.
- If attorneys continue to practice past traditional retirement ages, statistically a greater number will suffer cognitive impairments, as well as other significant health issues:
  - While attorneys may desire to continue practicing, proper planning can mitigate or eliminate delayed retirement due to economic necessity.
- Both attorneys and firms have ethical duties that are impacted by attorney impairment and a vested interest in their attorneys being financially prepared (e.g. retirement, disability, etc.).

# Planning Methods

- **Basic (back of the envelope) planning, typically DIY**
- **Holistic planning, typically done with a professional**

# Basic Planning

- Estimate your “guaranteed” income in retirement:
  - Social Security Income
  - Pension Income
  - Annuity Income
- Determine what your investments plus contributions might return during retirement:
  - How much you currently have saved.
  - How much you will contribute until you retire.
- Estimate how much you will spend during retirement.
- Calculate the difference between your expected income and expenses.

# Basic Planning

- Tools:
  - Financial calculator
  - Spreadsheets
  - On-line calculators (make **sure** you understand the assumptions).
    - Google search for “retirement calculator” on June 15, 2019 returned about 657,000 results.

# Holistic Financial Planning

- Includes retirement planning, but also may include:
  - Liability management/debt reduction strategies
  - Risk management (life, disability, long-term care, asset protection)
  - Education funding
  - Major purchase funding
  - Tax-advantaged contributions and distributions
- Utilizes more sophisticated analytical tools.
- Can utilize other assets as source of retirement funding (e.g., sale of practice, real estate, business, or other asset).
- Typically done by a financial professional such as a CFP® Professional.

# Holistic Financial Planning

## Retirement Analysis

Use of a detailed retirement analysis tool is important to help determine whether you are on track for a successful retirement. Monte Carlo simulations, stress tests, and viewing specific scenarios can help you evaluate your retirement plans and see the impact of potential changes.

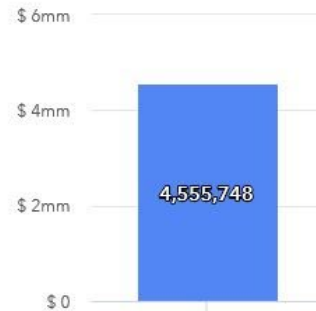
Probability

Confidence

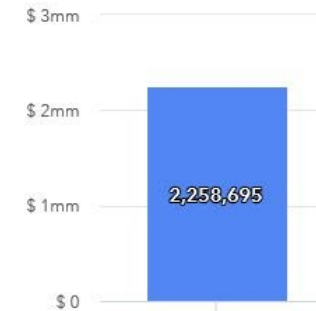
Comparisons

Income

Proposed plan



Current plan



ACTION ITEMS

# Holistic Financial Planning

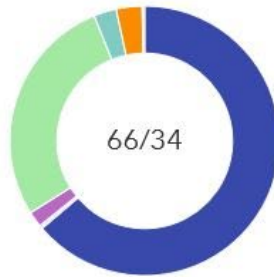
## Asset Allocation

Summary

Detail

Current allocation

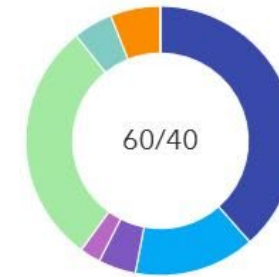
All Accounts



Annual return: 7.1%  
Standard deviation: 11.5%

Target allocation

Moderate



Annual return: 6.9%  
Standard deviation: 10.2%

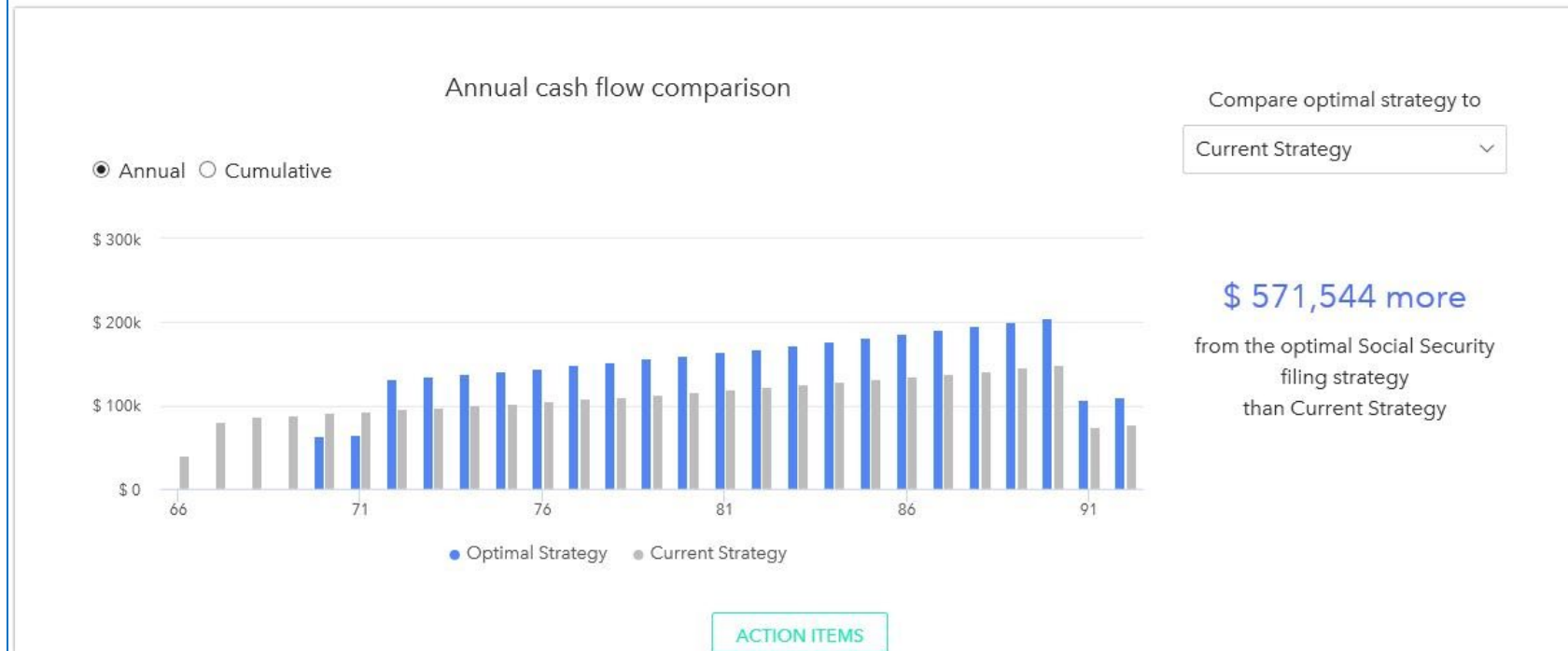
63.7%	● U.S. Equities	38.5%
0.2%	● International Equities	14.5%
0.2%	● Emerging Markets	4.5%
1.9%	● Real Estate	2.5%
27.8%	● U.S. Bonds	29.3%
2.7%	● International Bonds	4.8%
3.1%	● Cash	6%
0.3%	● Other	0%

ACTION ITEMS

# Holistic Financial Planning

## Optimal Social Security Strategy

There are as many as 700 different Social Security filing strategies that can be tested in order to identify the optimal Social Security benefit for your specific retirement needs. Compare your optimal strategy to others to see the potential benefit of optimization.



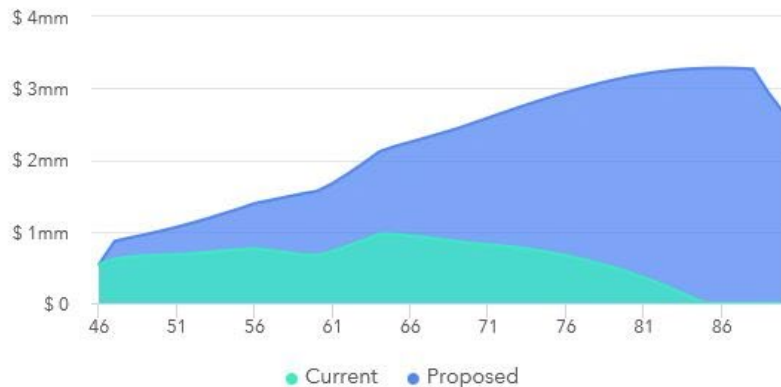


# Holistic Financial Planning

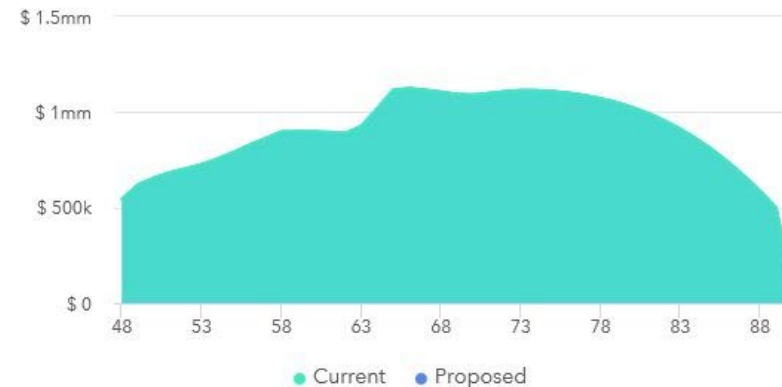
## Life Insurance Analysis

Most financial plans are considered incomplete without life insurance protection. The need for life insurance is analyzed by projecting all future cash flows for an individual's survivors. The objective is to provide a life insurance coverage level so that the survivors have a positive portfolio value at the end of the planning horizon.

What-if scenario - Bill dies next year



What-if scenario - Mary dies next year



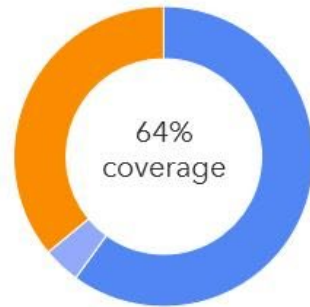
ACTION ITEMS

# Holistic Financial Planning

## Disability Insurance Analysis

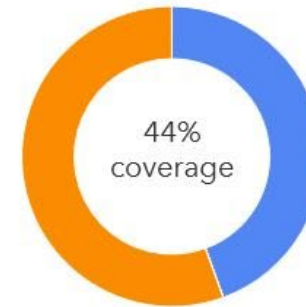
According to the Social Security Administration, the chance of becoming disabled before you retire are is 1 in 4 - and for most people, disability will result in a lower living standard due to the loss of income. Having a disability insurance policy can replace lost earnings.

Bill's disability coverage analysis



- Current monthly income coverage
- Proposed additional coverage
- Uninsured monthly income

Mary's disability coverage analysis



- Current monthly income coverage
- Proposed additional coverage
- Uninsured monthly income

ACTION ITEMS

# Holistic Financial Planning

## Student Loans

A proper student loan strategy can help minimize your payments or take advantage of the Public Service Loan Forgiveness program.

Summary

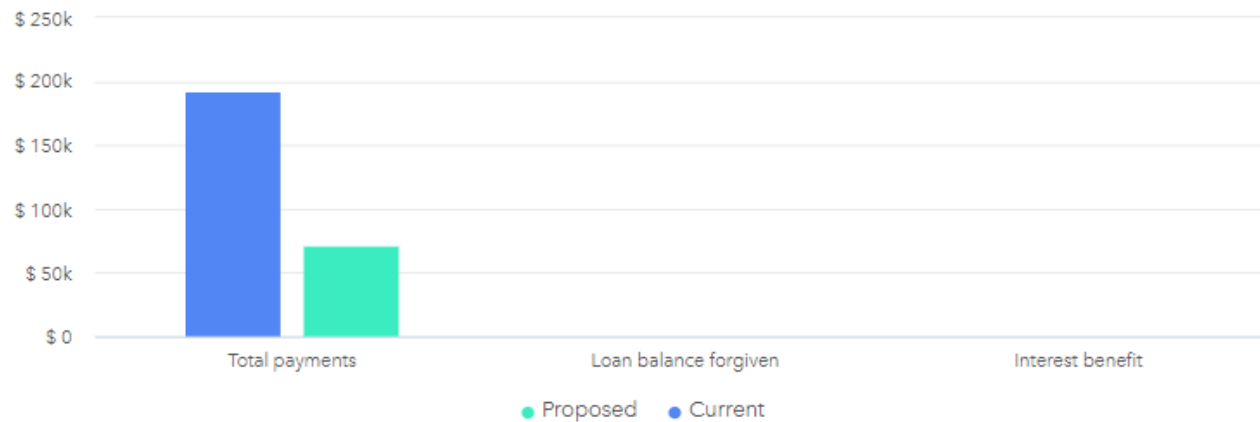
Loans

Strategy

Details

### Student Loans Analysis

Summary



Total savings of  
**\$ 121,093**  
Loan balance forgiven  
**\$ 0**  
Interest benefit  
**\$ 0**

ACTION ITEMS

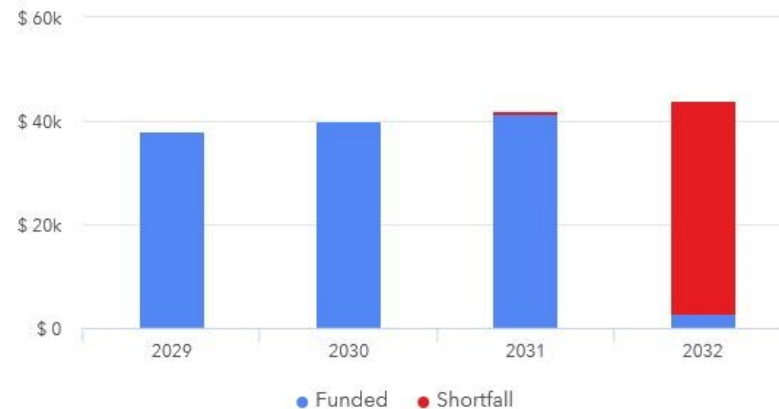
# Holistic Financial Planning

## College Funding Analysis

The cost of college education has risen substantially over the years. Projecting the future cost of education, as well as your current funding level, will help you in determining the proper course of action based on your goals, the type of funding you are using, and your time horizon.

Sam Smith

Sam Smith' Projected College Cost of \$ 164,103



ACTION ITEMS

# Holistic Financial Planning

## Distribution and Conversion

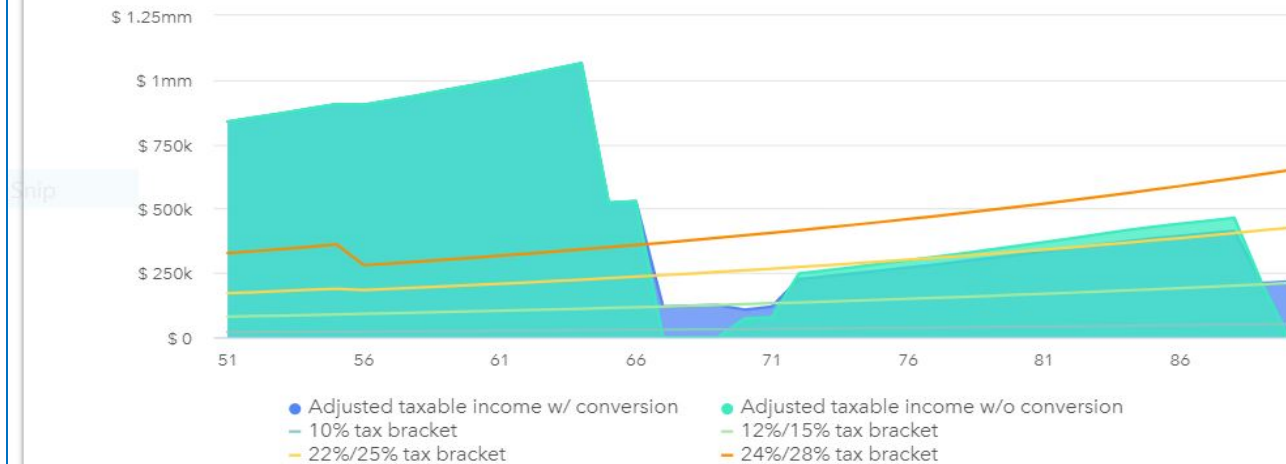
Calibration

Comparison

Details

### Adjusted taxable income and tax bracket

● Tax bracket ● Key tax components



Proposed Strategy

**\$ 379,438 more**

tax adjusted ending portfolio than  
a pro-rata withdrawal strategy w/o  
conversion

ACTION ITEMS

# Closing the Performance Gap

## Variables

## Potential Improvement

Suitable Asset Allocation (ETFs)

> 0 bps

Expense Ratios

40 bps

Rebalancing

35 bps

Behavioral Coaching

150 bps

Asset Allocation

< 75 bps

Spending Withdrawal Order

< 110 bps

Total Return vs. Income Investing

> 0 bps



~3%

# Hard Benefits of Planning

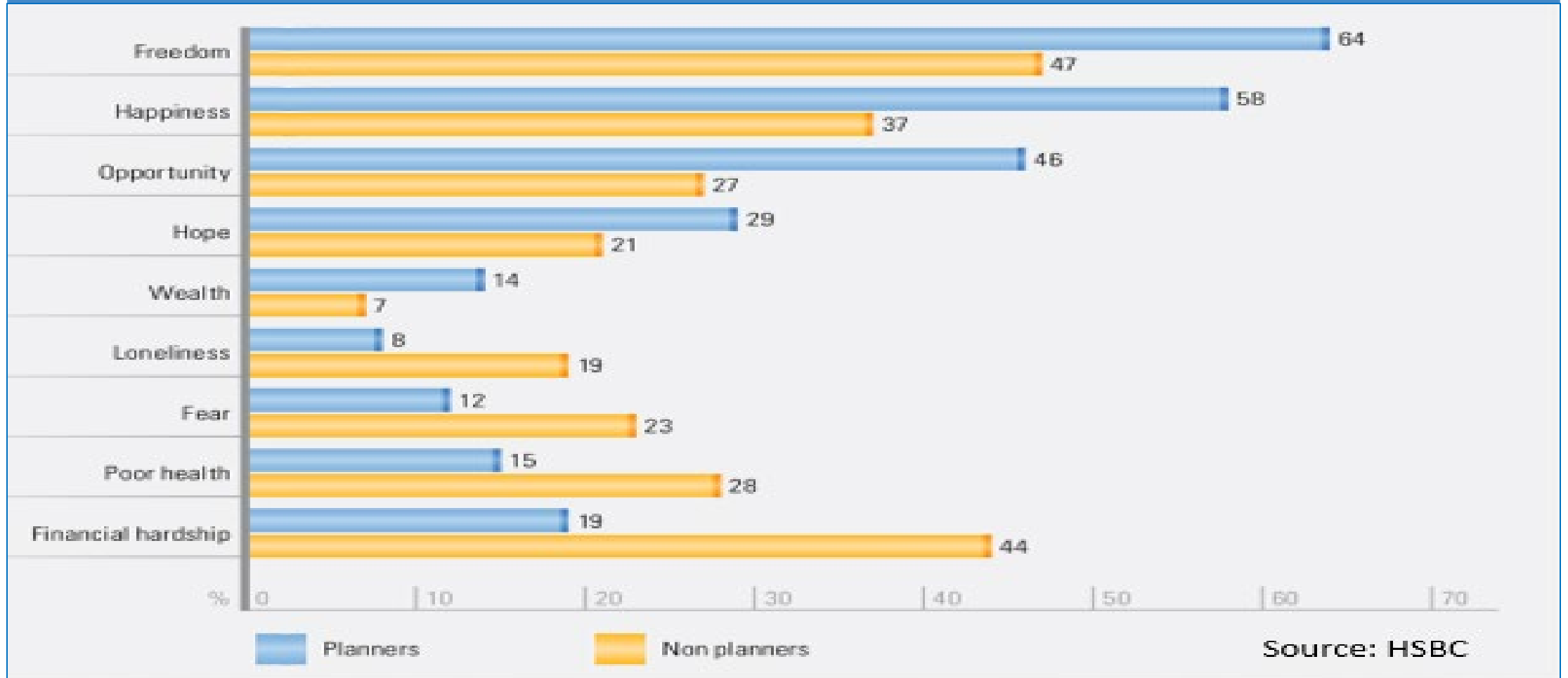


**17,849 People Surveyed**

## **The Planning Premium**

- **Planners have higher participation rates in defined contribution plans**
- **73% said not having to worry about money is the single biggest key to achieving a happy retirement**
- **69% increase in retirement savings**
- **552% more total assets for Planners over Non-Planners**

# Soft Benefits of Planning





# Extreme Example: Attorney Sylvia Hall

- **Took a literal hurricane (Katrina) for Sylvia to change her approach:**
  - **She was a 25 year old New Orleans resident in 2005.**
  - **Temporarily lost a home and a paycheck as first payments came due on \$101,600 in law school debt.**
- **Due to the uncertainty, began planning and made significant financial changes:**
  - **Instituted a strict budget and took a second job.**
  - **Saved half of her \$50,000 law firm salary.**
  - **Began paying \$2k/month on student loans, so had that down to \$35k by 2009.**
- **Moved to Seattle in 2012, increased savings to 70% of her after-tax proceeds (\$100k):**
  - **Has \$1.5 million in assets at 38.**
  - **Wants to retire at age 40 with \$2 million.**
- **The point is not necessarily to save like Sylvia, but that most attorneys have the resources to adequately prepare for retirement (and disability).**

# Attorney Transitions

“Everyone - no matter if you’re in a small firm, medium or a larger firm - everyone will reach the point when they’re going to have to address issues of transitioning their practice.”\*

Missouri Chief Disciplinary Counsel Alan Pratzel

\*See The Opportunities and Challenges of an Aging Bar, Gary Toohey, Journal of the MO Bar, Jan-Feb 2018, p. 25

# Attorney Transitions

- Every attorney needs a successor:
  - “Frankly, [a retirement or succession plan is] something all of us should have from the start of our practices,” [Missouri Chief Disciplinary Counsel] Pratzel noted, “because things happen to people suddenly and at any age. Everyone should have a successor attorney in place to transition their law practice, whether they’re 70 or 30.”\*
- Benefits:
  - Each firm can develop a customized transition strategy.
  - Can be financially beneficial to both the attorney and the firm.
  - Successor for a solo practice can mean a difference of \$100,000 to \$500,000 for seller, according to law firm consultant Dustin Cole.\*

\*See The Opportunities and Challenges of an Aging Bar, Gary Toohey, Journal of the MO Bar, Jan-Feb 2018, p. 25.

# So, Are You Heading in the Right Direction?

EUROPE

## GPS Mix-Up Brings Wrong Turn, and Celebrity, to an American in Iceland

By DAN BILEFSKY FEB. 4, 2016



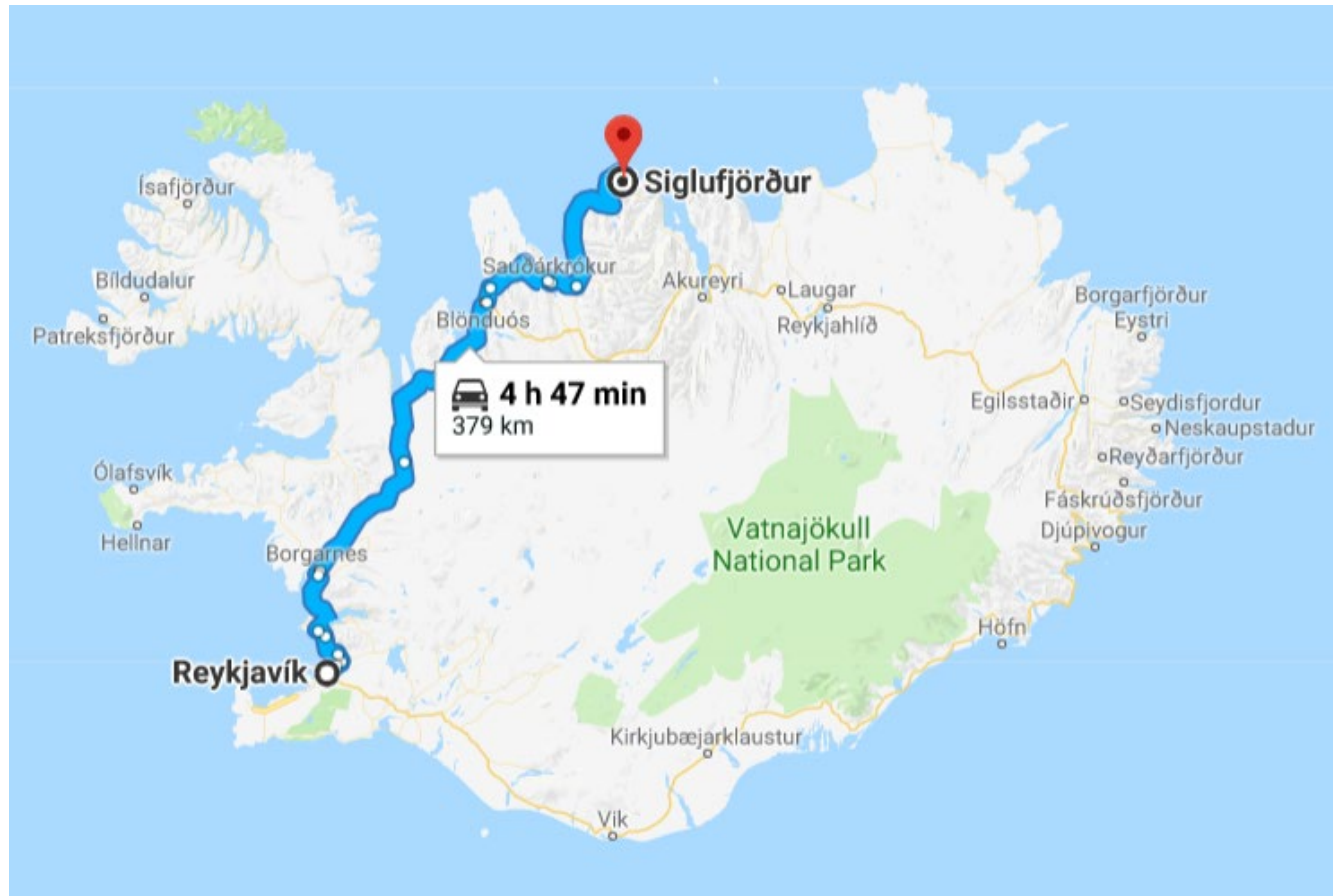
# So, Are You Heading in the Right Direction?

## Iceland's Lost Tourist

- **Noel Santillan, an American from NJ**
- **Flies to Iceland and rents a car**
- **Intends to go to hotel on Laugavegur St about 30 minutes away**
- **Puts address in GPS**
- **But adds an extra r . . . .**
- **And starts driving**



# So, Are You Heading in the Right Direction?



## Iceland's Lost Tourist

- And, driving and driving . . .
- Trip takes around 6 hours
- Finally starts thinking something is wrong
- Indeed, something was wrong.
- He arrived in Siglufjordur, a remote fishing village in northern Iceland that is about 270 miles, from the airport
- It has a road named Laugarvegur.

# Conclusion

- Noel was fortunate:
  - His failure to adequately prepare impacted only himself.
  - And he became an international celebrity.
- For attorneys, failure to adequately prepare has far more serious consequences:
  - Our failure to prepare can impact clients, colleagues, and family.
  - Unlikely our lack of planning will result in international fame.
- Just like good GPS directions, good financial planning can help get you safely to your desired destination:
  - Encourage you, your colleagues, and your firm to consider proper planning so that are you well positioned to handle these ethical issues.
  - And, when using a GPS, please remember to put in the right address!

# THANK YOU!



**Jon Booze**

## Contact Information

**Email:**

[Jon.Booze@oneadvisorypartners.com](mailto:Jon.Booze@oneadvisorypartners.com)

**Phone:**

913-827-1739

**Address:**

ONE Advisory Partners, LLC  
10851 Mastin, Suite 270  
Overland Park, KS 66210



# Important Disclosures

- **This presentation is designed to provide accurate and authoritative information in regard to the subject matters covered. It is presented with the understanding that in delivering this information that Jonathan L. Booze, ONE Advisory Partners, LLC or any affiliate thereof are not engaged in rendering investing, legal, accounting or tax advice or services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. (Derived from a Declaration of Principles jointly adopted by a committee of the American Bar Association and a committee of Publishers and Associations.)**
- **ONE Advisory Partners, LLC is an independent SEC-registered investment advisor. Services may only be rendered after the delivery of the appropriate FORM ADVs and the execution of an agreement. No investment strategy is without risk and may lose value. Past performance is no guarantee of future returns.**
- **The views contained in this presentation are those of ONE Advisory Partners, LLC, may change at any time, and should not be construed as personalized investment, legal, accounting or tax advice. Any economic and performance information is historical and not indicative of future results. Different types of investments involve varying degrees of risk, and there can be no assurance that the future performance of any specific investment, investment strategy, or product made reference to directly or indirectly in this presentation will be profitable, equal any corresponding indicated historical performance level(s), or be suitable for your portfolio.**
- **Different types of investments and/or investment strategies involve varying levels of risk, and there can be no assurance that any specific investment or investment strategy will be either suitable or profitable for a client's or prospective client's portfolio or retirement plan and may result in a loss of principal.**
- **This information has been compiled from sources believed to be reliable, but the accuracy of the information is not guaranteed.**