

**AS THE PROFESSION AGES - PRACTICAL
APPROACHES AND A CLIENT PROTECTION
PERSPECTIVE**

2019 NCPO Regional Workshop

Princeton, NJ

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WHY ADDRESS A “NICHE” ISSUE?

Client Protection/Security Funds are increasingly facing decisions on how to resolve claims in which the attorney has **not** engaged in dishonest conduct, but has failed to complete the tasks for which consulted due to

- Loss of cognitive abilities
- Other age-related health issues that impact their ability to handle client matters



PUTTING THE ISSUE IN PERSPECTIVE...

While it is important that Bar Associations, Boards of Bar Examiners and Client Funds be mindful of “the graying of the profession,” it is important to recall many impairment issues occur not due to aging, but because

- Exhausted, multi-tasking attorneys make mistakes
- Chronic stress impairs attention, concentration and memory
- No client wants his/her business deals conducted or their custody case negotiated by a sleep-deprived attorney

APPROACH TO CLIENT PROTECTION..

No one wants to see a client harmed by the actions of a lawyer who is neurologically impaired, regardless of whether the impairment is caused by

- Age
- Alcohol
- Drugs
- Stress
- Exhaustion

THAT NOT WITHSTANDING, ...

With lawyers practicing longer, one noted trend among Client Security/Protection Funds is claims which, after investigation, are driven by lawyers' diminished capacity.

If a jurisdiction's rules require establishment of dishonest conduct as a basis for a claim, loss because the lawyer no longer has the capacity to manage the cases for which retained may be left without recourse.



THE BALANCE THAT MUST BE RECALLED...

On one hand, where there are losses that are believed to be due to an attorney's age-related issues, addressing the cases in the same manner as, for example, cases of impairment, is somewhat problematic

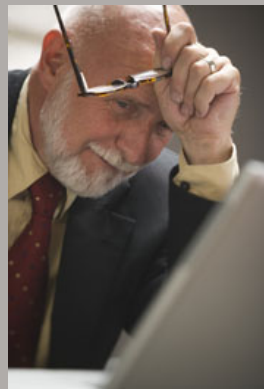
- Age-related issues are complex and require a different approach than addiction and most mental health issues
- In most instances, unlike cases of addiction or substance abuse, “intervention” is unlikely to produce a different future.



POTENTIAL OUTCOMES OF TYPICAL AGE-RELATED PROBLEMS...

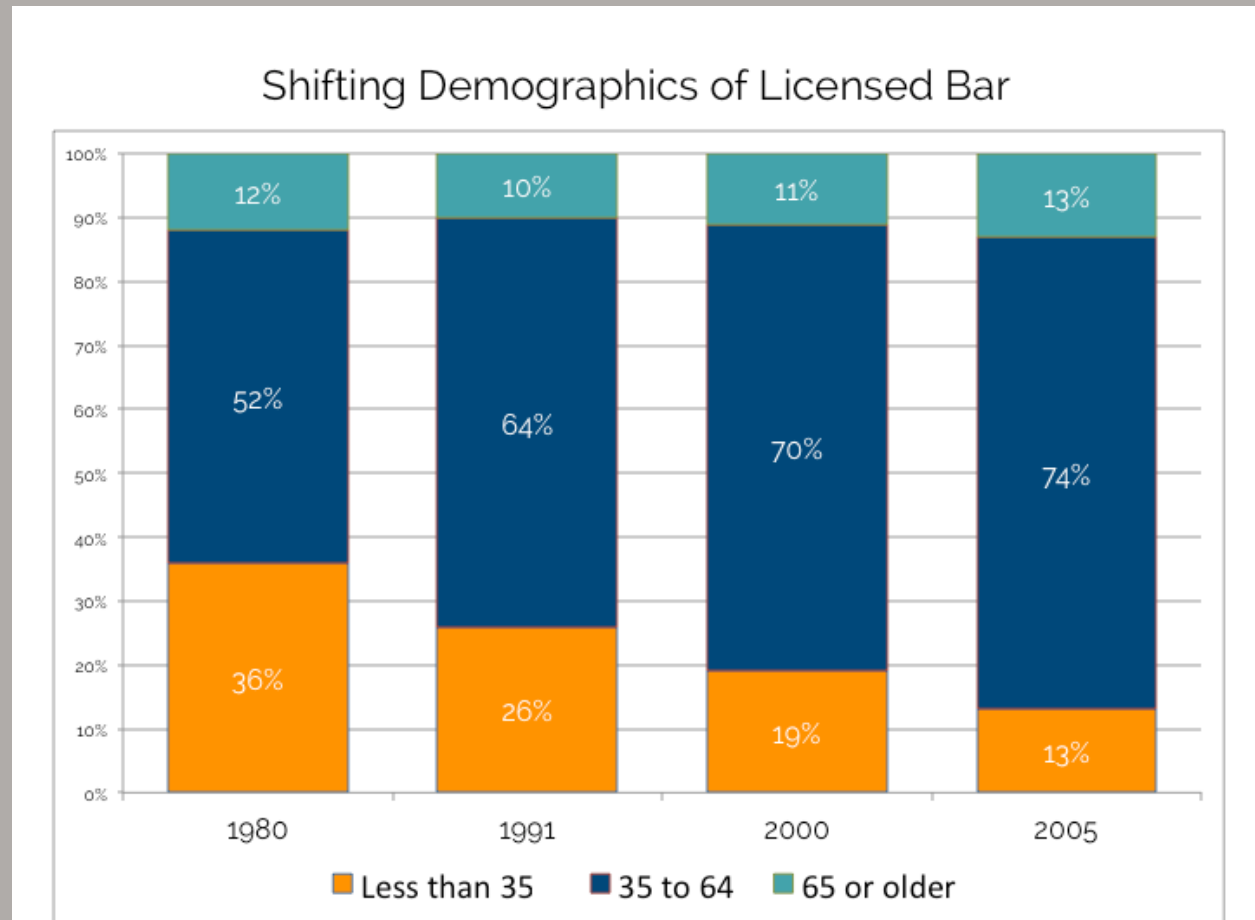
Age-related problems that have resulted in disciplinary complaints about lawyers and Fund claims have included attorneys

- Missing deadlines
- Forgetting court dates
- Losing case files
- Failing to comprehend facts
- Being unaware of changes in the law



“AGING OF THE BAR” IS NOT NEW...

From an October 2014 Law Professor Blog Network (LPBN) entry focused on fewer young lawyers:



REFLECTED IN THE PREVIOUS SLIDE...

Noteworthy in the data from 2005 in which 74% of attorneys were between the ages of 35 to 64, the April 2014 NOBC-APRL-CoLAP *Second Joint Committee on Aging Lawyers Final Report* a greater percentage of lawyers has moved into age classes typically associated with “senior citizen.” The report notes having an aging bar presents

- A greater number of lawyers with tremendous experience, insight, and wisdom
- An opportunity for lawyers to devote themselves to valuable public service and improvement of the profession

MORE ATTORNEYS ARE PRACTICING LONGER...

More attorneys are practicing law well past typical retirement age (which is generally considered to be in a range between 65-70 years) due to, among other reasons,

- Financial necessity
- The desire to keep helping people
- The work of a lawyer is intellectually challenging



TO BE NOTED BY THE PROFESSION...

“There . are, and will be more, senior lawyers who have no desire to sit on the sidelines and let their legal talents go to waste...”

*“The Legal Profession in Transition – Solo Practitioners and Their Future,” Jim Calloway
(March 14, 2018)*



AS AN ASIDE...

The need to pay greater heed to the importance of keeping track of the number of senior lawyers may be illustrated by the failure of the ABA Profile of the Legal Profession (2019) to include, among its demographic sections, information on the ages of practitioners...

(<https://www.americanbar.org/content/dam/aba/images/news/2019/08/ProfileOfProfession-total-hi.pdf>)



FROM THE TASK FORCE ON LAWYER WELL-BEING REPORT...

The Report of the National Task Force on Lawyer Well-Being recommended (#9) that stakeholders

- Create programs for detecting and addressing cognitive decline in lawyers
- Develop succession plans for aging lawyers
- Develop orientation programs to support lawyers facing retirement

**THE PATH TO
LAWYER WELL-BEING:**

Practical Recommendations
For Positive Change

SPECIFICALLY, AS RELATED TO DEMOGRAPHICS...

In the Appendix to Recommendation 9: Guide and Support The Transition of Older Lawyers, the Task Force recommended gathering demographic information about the lawyer population, including

- Years in practice
- The nature of the practice
- The size of the firm in which the lawyer's practice is conducted
- Whether the lawyer has engaged in any formal transition or succession planning for the lawyer's practice.

WHY IS THE AGE DEMOGRAPHIC IMPORTANT?

Lawyers, like the general population, are moving into an older demographic profile *while remaining in practice*.

The most recently provided statistics reported that in 2005

- 34% of practicing attorneys were age 55 or older, as compared to 25% in 1980
- The median age of a practicing attorney in 2005 was 49 as compared to 39 in 1980.

AS LAWYERS PRACTICE LONGER...

As lawyers practice longer, funds are more likely to, after investigation, determine that the claims are driven by lawyers' diminished capacity.

- If a jurisdiction's fund rules require establishment of dishonest conduct as necessary for payment of claim, loss because the lawyer no longer has the capacity to perform, a claimant may be left without recourse.
- Funds are reluctant to label losses attributed to an attorney that result from problems experienced due to aging as somehow "dishonest"



PROACTIVE STATE BAR EFFORTS...

Among proactive efforts being made to recognize the importance of addressing senior lawyers as part of the Lawyer Well-Being movement are those of the State Bar of New York sponsoring a series of webinars:



SENIOR LAWYER'S DIVISION

The NOBC-APRL-CoLAP report noted, for example, the Florida survey noting a desire of senior lawyers in having a senior division that would help in

- Finding employment
- Obtaining details on closing or selling a law practice
- Learning about technology

RESOURCES

“A Wellness Guide for Senior Lawyers and their Families, Friends and Colleagues, <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Senior-Lawyers-Resources/Publications/Wellness-Guide>

NOBC-APRL-CoLAP Second Joint Committee On Aging Lawyers Final Report – April, 2014
https://cdn.ymaws.com/www.inbar.org/resource/resmgr/Conclave/Grey_Matters_ls_colap_nobc_a.pdf

Lawyer Well-Being website
<https://lawyerwellbeing.net/>

National Task Force on Lawyer Well-Being Report

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/lawyer_well_being_report_final.pdf