

LAWYERS Assistance

By J.E. (Buddy) Stockwell

AGING IN THE LEGAL PROFESSION

The Baby Boomer generation is now reaching retirement age and the issue of aging in the legal profession is coming our way in huge proportions never before experienced. In the 2009 Missouri Bar Association article, "SURF'S UP, WAY UP: Preparing for the Senior Tsunami," author Cynthia K. Heerboth states:

"They are called master attorneys, seasoned lawyers, and senior lawyers. They comprise the wave of Baby Boomers who will be reaching retirement age in the next few years. There are more than one million licensed lawyers in the United States, according to the American Bar Association. A quarter of those, 250,000, are expected to start the retirement process in 2011. That's not a wave. It's a tsunami."¹

With so many lawyers and judges at the threshold of retirement, our profession will soon be forced to face the challenges of aging as never before. The most difficult challenge will be how to determine when a member of our profession is no longer competent and should retire. At what point are a person's mental abilities negatively affected by the aging process such that he or she is no longer fit to practice law?

Perhaps more important: When that point is reached, how can the situation be handled respectfully and in a caring way that preserves the dignity of the individual while concurrently protecting the public and the profession from damage that can be caused by an impaired person?

The painful issue of aging and dementia is especially personal to me in that I still remember the day our family had to take away my mother's car keys. She was in the early stages of Alzheimer's disease and, as her dementia increased, I witnessed one of the most capable, independent and quick-witted people I have ever known fall victim to a disease that viciously destroyed her mental faculties and ultimately took her life.

Lawyers Assistance Program, Inc. (LAP)

Your call is absolutely confidential as a matter of law.

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I know all too well that the issue of aging and incompetency is extremely difficult to address straightforwardly and responsibly in our private, personal lives, much less in the public context of the licensure of professionals and the duty to protect the public from harm.

In the past, large law firms have relied on mandatory retirement policies to reduce the potential for lawyers practicing beyond their years, but now those policies have become problematic against the backdrop of recent litigation wherein 32 plaintiff partners, as forced retirees, sued and settled a discrimination lawsuit against Sidley Austin, L.L.P., a Chicago-based law firm, for \$27.5 million.

State bar associations and lawyers' assistance programs across the nation are trying to work in concert to establish voluntary services that can help identify and assist senior lawyers who need help transitioning out of the practice.

One of the barriers to formulating a uniform approach, however, is that different practice settings can govern whether a senior lawyer presents a risk. A large firm can provide support and backup in the form of law partners and law associates who can effectively buttress an aging lawyer's practice and allow him or her to continue to practice safely.

Conversely, an aging solo practitioner with the same level of competency might run afoul of disciplinary problems if he or she is not being supported by fellow practitioners but instead by paralegals, secretaries and law clerks that, despite not being licensed to practice law, are now making decisions about a client's representation.

Of course, all cases will have to be viewed independently. Aging lawyers are quick to point out that many in their ranks are sharper at 75 than some of their counterparts who are "burned out" at 50. But if age alone cannot establish when a lawyer should retire, what other mechanism can be utilized to detect and deal with the issue? Some have suggested that an anonymous online cognitive test should be made available so that aging lawyers can discreetly obtain feedback on where they stand—not compared to 25-year-olds but to their aging peers—so as to determine if they are experiencing any unusual difficulty. In the fullness of time, such tools may be available.

The Lawyers Assistance Program is already equipped to provide confidential help to aging members of our profession in the form of facilitating evaluations for those who are experiencing the adverse effects of aging or have otherwise become concerned about their ability to function. Also, it is important to know that some forms of dementia can be caused by conditions that are treatable.

By contacting the Lawyers Assistance Program, you can confidentially discuss concerns that you have about yourself, or a fellow practitioner, and discreetly and responsibly meet the challenges of aging in the legal profession. Call LAP toll free at (866)354-9334, email LAP@louisianalap.com, or visit LAP online at: www.louisianalap.com.

FOOTNOTE

1. To read the full article, go to: <http://tinyurl.com/aginginlegal>.

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