Shades of Gray:
The Opportunities and Challenges of an Aging Bar

By Gary Toohey
Edward has been practicing law for so long that he can’t imagine his life without it. He goes to work every day – and sometimes on the weekends, too – at the small law firm he owns. He fills his day with the type of work he has always done as a general legal practitioner – a mix of family law, traffic tickets, contracts, and more. To him, life is as it has always been – full and satisfying.

What Edward doesn’t see is how rapidly his practice is falling apart. He often forgets clients for whom he did work just the week before. He is sometimes confused, and overlooks appointments and other responsibilities. The business coming in the front door has declined steadily, but Edward hasn’t noticed because work that he used to turn out in an hour now takes all day. He believes that he is just as busy as always.

His loyal staff has tried its best to look out for him, remind him repeatedly of obligations, and double-check everything he does in a so-far successful attempt to avoid harming a client. But they see the writing on the wall, and are slowly slipping away to jobs that offer more long-term security.

Edward is 82 years old, and badly in need of a retirement that he does not want and for which he has not prepared.

Some lawyers simply don’t know how to retire. Perhaps they enjoy the work. Perhaps they can’t afford to retire. Or perhaps they simply don’t have a workable plan to transition their practice – and their life – into retirement.

“I think that there are lawyers out there who realize that they are reaching the point where they ought to retire from the active practice of law, but circumstances just don’t permit them to cut back or they don’t know what steps to take in order to do that,” agreed Missouri Chief Disciplinary Counsel Alan Pratzel.1

In addition, there is “concern that incompetence due to declining skills, failure to keep pace or dwindling mental acuity may soon rise in the legal profession. It’s a highly sensitive issue in a profession that traditionally honors its elders for long careers.”2

“[M]any practicing lawyers remain sharp and effective well into their later years. When there are impairments, though, what’s at stake for clients can range from a botched defense or an unfair divorce settlement to a lost claim for personal injury.”3

A steady increase in discussion of these issues among bar organizations, disciplinary agencies and other entities underlines broader concerns “about how to deal with the physical and mental impairments likely to show up in an aging work force.”4

“We have a lot of lawyers out there who aren’t thinking about what is going to happen to their practices,” said Springfield lawyer Susan Appelquist, who chairs a task force addressing aging issues for the Advisory Committee of the Supreme Court of Missouri. “We all hope that we can close our practices gracefully, but in reality that isn’t always the case.”5

“I think all professional groups that have the public welfare at stake need to have some system in place,” said Dr. Murray Raskind, director of the University of Washington Alzheimer’s Disease Research Center. “We have a lot of people in both the medical and legal professions who are practicing into their 70s and 80s.”6

A 2007 report issued by the Joint Committee on Aging Lawyers – created by the National Organization of Bar Counsel (NOBC) and the Association of Professional Responsibility Lawyers (APRL) – noted “a widespread concern that a greater percentage of the coming generation of senior lawyers (the baby boomer generation) will remain in active practice, without adequate support or assistance, beyond the point when their health and abilities indicate professional changes are in order.”7

Seattle attorney Kurt Bulmer, who has a practice largely focused on defending attorneys who face disciplinary charges, sees a busy future for his practice. “There’s no question we’re going to have a lot more as the baby boomers work their way through.”8

“From a societal perspective, the issue becomes balancing the need to protect the public from a few aging lawyers who are no longer able to practice effectively, at least on their own, while trying to allow such lawyers to end their careers with dignity. The balance is not always an easy one to strike.”9

The Numbers Don’t Lie

By any reasonable measurement, law continues to be a draw for young people. Despite the weak economy, a shortage of employment opportunities and the prospect
of staggering student loan debt, law schools continue to attract and graduate large numbers of students. In the last five years, well more than a quarter of a million law school graduates have been admitted to practice across the United States – with nearly 5,000 of those in Missouri.

But, as impressive as these numbers are, they don’t come close to the size of the Baby Boomer lawyer population. As the leading age of this generation – those Americans born between 1946 and 1964 – reaches traditional retirement age this year, their sheer numbers are drawing attention to the opportunities and challenges they – and society – will face in the years ahead.

A recent analysis of The Missouri Bar’s membership finds that nearly 45 percent fall between the ages of 45 and 64. When one adds in those lawyers older than age 64 – themselves representing 11.2 percent of the membership – the overall percentage of members older than 45 climbs to 56 percent.

A further breakdown of the Missouri Bar data indicates that, despite the numbers of new law school graduates, only 17.5 percent of the organization’s members were admitted in the last five years – and only 31.8 percent in the last 10 years.

Missouri is not alone. Similar numbers are being reported nationwide:

Almost 10 percent of the Washington State Bar’s membership, or approximately 3,000 lawyers, is age 60 or older. In a 2006 survey, the New Hampshire Bar Association found that, over a five-year period, the percentage of members age 50 and older jumped from 31 to 40 percent. About 60 percent of Oregon’s lawyers are greater than 45 years of age, according to the Oregon State Bar. Statistics provided by the State Bar of Michigan show that between 1995 and 2005 the number of lawyers turning 70 remained roughly static at about 230-250. By 2011, however, that number is expected to triple.

However you slice it, the numbers clearly show that, both now and during the course of the next 20-25 years, the profession will be dealing with a massive wave of lawyers who are increasingly likely to work well beyond the traditional retirement age of 65.

“We’ll be dealing more and more with issues of aging,” said John T. Berry, director of the legal division at The Florida Bar, “both from a positive standpoint of being able to contribute to the profession longer and looking at health issues that affect the ability to practice.”

Hanging On

“Old lawyers do not retire,” said Terence Yuen, a research economist with Watson Wyatt Worldwide, Inc. in Toronto. “Lawyers are hanging on. They are staying a lot longer in the workforce.”

The reasons why lawyers are working beyond the traditional retirement age are many, but economic concerns are clearly a major factor.

“The triple whammy of the housing bust, the weakening economy and the turbulent stock market affects most Americans, but few are as shaken as leading-edge baby boomers on the brink of retirement. ‘There’s a lot of sheer panic out there,’ says financial planner Bert Whitehead of Cambridge Advisors.”

In the next decade, the number of lawyers continuing to practice beyond the traditional age of retirement is likely to increase dramatically. The factors contributing to this include: 1) the steady increase in the past fifty years in the number of lawyers admitted to practice each year; 2) the demographic shift in the elderly population; 3) dramatic improvements in health care, which have extended professional work lives; 4) the strong desire among senior lawyers to continue making positive contributions to society; and 5) economic necessity, which will compel lawyers to continue working because their pensions or savings are insufficient to support themselves and their families.

“With nest eggs shrinking, housing prices still falling and anxieties about their financial future growing, the oldest members of the baby-boom generation are putting the brakes on plans to leave the office.”

Recent polls of leading edge Baby Boomers indicate that maintaining good health – physically and financially – worries them most. Certainly concerns over stock market volatility, low rates of return on savings, and loss of company-funded pension plans in favor of worker-funded 401(k) plans is fueling anxiety about having enough money to retire in comfort. Paradoxically, the
more science promises to extend lives, the more Boomers worry about “outliving the money.”

Those concerns were recently amplified when The Missouri Bar released the results of its 2011 Economic Survey, which asked randomly-selected lawyers to provide confidential information on their 2010 employment, income and economic situation [see a summary of the Economic Survey responses on page 3]. The responses indicate a decrease in private practice income of 15 percent when compared with figures from the 2009 survey – the first time in the history of the survey that income has declined.

More than one-third of survey respondents were unsure when they would retire. [More than] 6 percent of those who are retirement age reported they are not considering retirement, and 2.2 percent reported delaying retirement due to the economy.

One attorney [wrote]: “I am eligible for early retirement now; however, due to economic conditions, and delayed benefits, I will continue working.”

But while economic concerns clearly play a part in a significant number of older practitioners deferring retirement, “[t]here are many other reasons why lawyers hang on to their shingle. Technology has helped lawyers work beyond their normal retirement age by making it easier for them to do their job, whether they are searching for information or writing briefs.”

Perhaps even more importantly, with increased longevity, many 55-70 year olds simply don’t feel ‘old enough’ for traditional retirement.

Clearly, for some lawyers the thought of impending retirement threatens their sense of identity and self-worth:

Why do so many lawyers (and judges) insist on working so long? … [W]e suspect it has to do with the fact that so many of them work so hard during their careers. They often neglect their families, fail to develop hobbies or other interests and generally struggle with leisure time. When faced with retirement, many lawyers see big blank swaths of nothing. Nothing. Nothing to occupy one’s time other than hand-wringing over their ever shortening days. Better to keel over at your desk than to pace around your house day after day after day feeling a shell of your former hard-charging self.

“I think there are a number of lawyers for whom what they’ve done for the past 50 years – helping people, helping clients, helping society – is so ingrained in them that it becomes very hard for them to say, ‘I’m going to step away from that now and do something else,’” Pratzel said. “Their identity is very much tied to what they’ve done for the past 50 years.”

Certified financial planner Ron Kelemen puts it more bluntly:

It’s taken many years of study, hard work, practice development, victories and defeats to get to where you are. If you are like many other lawyers, much of your identity is your profession. And all attorney jokes aside, there is still prestige and status attached to being one. How often when someone asks you, “What do you do?” you reply with “I am a lawyer.” Can you live without that identity? At some point, you have to be able to say, “I am not a lawyer.”

Transitioning Out of Law

In 2007, the American Bar Association passed a resolution calling on law firms to abandon their mandatory retirement policies. Despite this, “[t]he sheer volume of national attention being directed at law firms to ratchet up their transition planning would indicate that the law profession is rapidly becoming aware of the need to address this issue but is probably no more, or less, prepared than other professional groups.”

A retirement or succession plan is a logical first step toward addressing issues related to a lawyer’s exit strategy.

The plan can be simple and should be designed to protect your clients’ interests when you are unable to serve them. Voluntary advance designation of a transition or successor lawyer would be an excellent component of such planning. Advance planning is far more efficient and much less costly than starting with nothing following an unplanned exit.

“Frankly, it’s something all of us should have from the start of our practices,” Pratzel noted, “because things happen to people suddenly, and if you have the type of practice where someone is not going to be able to easily transition that practice, then everyone should have a transition plan, whether they’re 70 or 30.”
**Mid- to Large-Size Firms**

For mid- to large-size firms, transition planning should start before a lawyer reaches retirement age, as the transition phase lasts three to five years. Retiring partners require more time for transitioning. Senior lawyers and the firm may develop a contract that allows the lawyer to continue to practice law within guidelines established by the firm. This enables the shareholders to develop their retirement and transition phase, and it assures the firm of continuity for the development of its younger lawyers through mentoring. Reducing seasoned lawyers’ practice commitments enables them to contribute extended value in new ways, while minimizing the cost to the firm and ensuring a smooth transition for the clients. And, when clients are successfully transitioned from the retiring lawyer, they are assured that they can rely on the continued quality of legal services from the firm. A transition plan is beneficial to the firm financially, as some firms may not be able to pay out retiring partners in full and in a timely manner.

“Phased retirement is becoming more common nationwide. Innovative law firms are beginning to offer professional coaches who specialize in retirement planning to work with senior partners … to help set retirement goals and exit strategies.”

**Solo and Small Firm Practitioners**

“Few solo and small firm practitioners plot out what to do with their practice upon retiring. In the end, most will shut down or sell their book of business to another lawyer.” However, “[w]hen a solo practitioner wants to retire, having a successor in place to take over one’s law practice can mean a difference of $100,000 to $500,00 extra to spend in retirement, according to law firm consultant Dustin Cole.”

“We are facing a number of attorneys who are reaching the age of retirement and simply don’t have succession plans in place that would allow for an ordered transition of their law practice,” Pratzel said. “Regardless of how that attorney leaves the practice – whether it’s going to inactive status, sudden disability, death, or under a disciplinary order – we are faced a number of times each year with lawyers who simply leave the practice under any of these circumstances and don’t have a plan in place.

“This is not something that affects only certain members of the bar. Everyone – no matter if you’re in a small firm, medium or a large firm – everyone will reach the point when they’re going to have to address issues of transitioning their practice.”

**Impairment Issues**

“Several years ago, Webster’s New World Dictionary named ‘senior moment’ as its Word of the Year, defining the term as meaning a momentary lapse in memory, particularly one experienced by a senior citizen,” wrote Martin A. Cole, director of the Minnesota Office of Lawyers Professional Responsibility. “I’ve now reached the age where I no longer find that quite as amusing as I once might have. The legal profession has also reached a stage where ‘senior moments’ are increasingly likely to occur for many of its members.… They have gone well beyond the occasional ‘senior moment’ and have started to miss appointments and court dates, misplace client files and property, or repeat tasks they have already performed. . . . Therein lie a host of potential problems for individual lawyers, law firms, the profession as a whole and for protection of the public – the stated purpose of a lawyer discipline system.”

The Alzheimer’s Association estimates, in its statistical report for 2010, that 5.3 million Americans have Alzheimer’s disease. While most of those people are 65 or older, some 500,000 Americans younger than 65 suffer from younger-onset Alzheimer’s or other dementias, the association states in its report. And, with the first baby boomers due to reach age 65 in 2011, those numbers are bound to go up, the association predicts.

“Regardless of intelligence or education, age is the biggest risk factor for developing Alzheimer’s disease, which afflicts 10 percent of people older than 65 and up to half of those older than 85.”

Dementia involves “a generalized, pervasive deterioration of cognitive functions, such as memory, language, and executive functions, due to any of various causes.” This could manifest itself in several ways, including short-term memory loss, communication problems, comprehension problems, lack of mental flexibility, calculation problems, disorientation, significant emotional distress, delusions, and hallucinations.

Some attorneys afflicted with dementia are capable of recognizing and acknowledging its symptoms, and still possess the insight to wind down their practices accordingly. This is
particularly true in cases where the disability in question is the result of a series of strokes that have led to a “multi-infarct” or “vascular” dementia. More insidious – and often less likely to be recognized and admitted by the patient – may be those cases in which there is an “Alzheimer’s type” dementia brought about by less transparent causes.\textsuperscript{34}

Missouri Supreme Court Rule 4-8.3 requires attorneys to report to the Office of Chief Disciplinary Counsel any “violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects….”\textsuperscript{35} But Pratzel said the sensitive nature of such situations makes it difficult for other attorneys to address a problem.

“The fact is that this is not something that attorneys should ignore,” he said. “There are attorneys who make those reports to our office, but they do so, frankly, with reluctance. They want us to be the bad guys and go to that attorney and get them to withdraw from practice.”

“The other issue that comes into play is that you don’t always have help from others to help [attorneys] transition,” he added. “Their family won’t acknowledge it, their support staff won’t, their fellow partners won’t get involved because they don’t want to confront the issue, and then it just festers.”

Bar Organizations Respond

A growing awareness of the impact of Baby Boomers approaching senior status has impacted bar organizations at the local, state and national levels.

“Bar counsel in every state I’ve talked to have at least one, and usually many more, such stories about a very experienced attorney with a great reputation who has been put in a situation where they have harmed the public,” Berry said.\textsuperscript{36}

“Of greatest worry are older lawyers who aren’t ready to retire and who work alone or in very small firms with little oversight or backup to protect clients.”\textsuperscript{37}

According to the 2007 Joint Committee on Aging report, current regulatory rules and procedures are not well-suited to protect the dignity of senior lawyers who suffer from age-related changes in their professional responsibilities. Nor do they “adequately protect the clients who are likely to suffer adverse consequences when an age-related impairment significantly affects their lawyer’s ability to continue in active law practice.”\textsuperscript{38}

“Who wants to take someone who’s done nothing wrong, but getting older, and put him through the discipline system?” asked Bulmer.\textsuperscript{39}

Pratzel said that type of unfortunate situation can often be avoided by being sensitive to each attorney’s situation and working with the attorney in question.

“The issue of protecting the dignity of senior lawyers is something to which we’re sensitive, so long as it is congruent with our primary goal of protecting the public and the bar’s integrity,” he said. “The fact is, on a case-by-case basis, when our office becomes involved with a more senior attorney suffering from some sort of age-related disability, we do try to treat that attorney with some level of dignity while still keeping in mind our mission. We will try to, if possible, allow that attorney to withdraw … without the taint or cloud of a disciplinary action hanging over their head.”

“As long as we can accomplish what is necessary to protect the public,” he added, “and do it in a way that respects an attorney who has been practicing for years and years without a complaint, then hopefully we can do that as well.”

One option for such an attorney is to elect inactive status, which allows the attorney to retain his or her bar membership while ceasing the practice of law.

“The rules permit lawyers to go to inactive status,” Pratzel said. “As long as they’re willing to do that, we think in some cases that might be the appropriate way to approach the issue.”

Reflective of that option, The Missouri Bar’s Client Security Fund, which compensates clients financially harmed by certain types of wrongful attorney conduct, has modified its regulations to include conduct by attorneys who have “been medically diagnosed by an independent, licensed medical doctor as mentally incapacitated such that the attorney is unable to practice law and has entered into an agreement with the Office of Chief Disciplinary Counsel to voluntarily and permanently withdraw from the practice of law.”\textsuperscript{40}

In its 2007 report, the NOBC-APRL Joint Committee on Aging Lawyers urged “the development of new approaches which will better protect the public from lawyers whose age-related impairments threaten their ability to practice law. The number of lawyers who will reach advanced age in the coming decades lends urgency to this task.”\textsuperscript{41}

In response, some states “have created rules and alternatives to formal discipline in dealing with all kinds of impairments. They have trained staff on the symptoms of dementia, developed retirement counseling programs and offered assistance on closing a practice.”\textsuperscript{42}
Missouri is one of the states that have recognized the large number of attorneys who will be reaching retirement age in the next few years, and is responding. For example, the Supreme Court of Missouri — acting on a recommendation from its Advisory Committee — recently modified Supreme Court Rule 5.26. That rule allows the presiding judge of a circuit to appoint a trustee in the event of a lawyer’s death or disability.

“When an issue comes up suddenly involving an attorney who has died, becomes disabled, disappeared or been disciplined, oftentimes we’re the ones who get phone calls from clients saying, ‘Where’s my file? I know I have a court date coming up, my attorney has died, and I need my file,’” Pratzel said. “If there is no one available to transition that attorney’s practice, we often on an ad hoc basis are contacted to handle that matter and find somebody the presiding judge can have appointed as a trustee.

“Under the current rule, one of us picks up the phone and starts calling people whom we know and feel might be willing to do this,” he continued. “In a lot of cases, they are people who have served on one of the disciplinary committees or someone that our office feels might be willing to do it. It’s not a very effective way to find a trustee.”

In addition, Pratzel said, the search for a trustee can be hampered by the fact that the current rule does not allow compensation to anyone who agrees to serve in that capacity.

“We pay reasonable expenses, but right now we don’t have any authority to pay fees for the trustee,” he added. “As a result, you’re asking someone to basically drop everything they’re doing, jump into this lawyer’s office, see what the situation is, collect all the files, start going through them to find contact information and start contacting those people, going through trust accounts to see what money is there that needs to be returned to people, determine whether you can even figure out who the person is who gets that money back — and, by the way, you have to do that work pro bono. It’s a lot to ask.”

The revisions to Rule 5.26, which will become effective January 1, 2012, will:

- give judges the option to appoint more than one trustee;
- provide for assistance and monitoring of the trustee by the Office of Chief Disciplinary Counsel;
- establish provisions to protect client confidentiality and require that the trustee report professional misconduct to the disciplinary authority;
- require periodic and final reports to the court regarding the trustee’s activities;
- provide immunity for the trustee to the same extent as others involved in the attorney discipline system;
- allow the trustee to accept employment on behalf of a client of the attorney;
- establish liability on the part of the attorney or the attorney’s estate for fees, costs and expenses of the trustee; and
- provide for payment of reasonable fees and expenses to the trustee.

The Court’s modification of the rule, Ms. Appelquist said, will assist in creating “a body of trustees who are able to step in in an emergency situation to help the circuit courts.”

“Our hope is that, through the amended Rule 5.26, we can get the word out and create groups of people who are willing to serve in that capacity when called upon,” Pratzel said, “and have geographic groups around the state, so that if something happens to an attorney in Springfield, we already have a list of attorneys willing to serve in that capacity and trigger the process of appointing a trustee.

“It’s very important that we act quickly and get that attorney’s practice transitioned,” he added, “because that’s really where people are going to judge the profession as to how effective we are in protecting the public, and how effective we are in getting those files back to the people so they can go find successor attorneys.”

[Editor’s note: to the extent that any attorneys are interested in serving as a trustee in their locale, please contact Alan Pratzel at OCDC, 3335 American Avenue, Jefferson City, MO 65109.]

In addition to proposing the amendments to Rule 5.26, earlier this year the Advisory Committee created a task force to specifically address issues related to aging attorneys. As a result of that group’s labors, the Board of Governors of The Missouri Bar on November 18 approved a series of recommendations from the Advisory Committee, including:

- The Supreme Court should expand the scope and authority of the Rule 16 Intervention Committee – currently limited to impairments related to substance abuse – to include mental disorders and impairments.
- The Supreme Court should require attorneys to check a box on their annual enrollment form indicating whether they have a succession plan, as

[Precedent Fall 2011]
described in Supreme Court Rule 4-1.3. That rule reminds attorneys that “the duty of diligence may require that each practitioner prepare a plan … that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for immediate protective action.”

- The Missouri Lawyers Assistance Program (MOLAP) should establish a resource library and website similar to that of The Missouri Bar’s Law Practice Management Center [see list of services on this page]. That library would include access to audio, video, and print materials related to aging Missouri Bar members, including local resources and services.
- MOLAP should be adequately staffed to provide support for the expanded role of the Intervention Committee and to provide services as the bar membership ages and age-related issues increase.
- The Missouri Bar and other major CLE providers should offer CLE programming on succession planning, transitioning out of practice, and serving as a trustee under Rule 5.26.
- The Missouri Bar should create a Senior Lawyers Committee – similar to the ABA’s Senior Lawyers Division – that could be involved in implementation of some of the recommendations, such as the development of CLE programming and working with MOLAP.

“We need to provide publicity to lawyers so that they think about these issues,” Ms. Appelquist said. “We need to provide help to the circuit courts when someone passes away unexpectedly or someone is not able to handle their files anymore. The rules now allow courts to provide someone to wind down a practice in an emergency, but we need to get programs to train lawyers to handle those situations. Let’s create programs – something similar to MOLAP – that could also deal with dementia problems, so that when a family member discovers that a lawyer is having a problem, they will have a resource to turn to.”

Berry says these types of efforts must become a priority. “If we don’t do anything, it’s a disservice to the public and the individual attorney,” he explained. “If we just wait until something breaks, we get a serious discipline problem…. We already have problems, and it’s going to be so much worse in five or 10 years if we don’t do anything about it.”

**Resources for Age/Retirement Issues**

The Missouri Bar’s Law Practice Management Lending Library has a treasure trove of information for those who are contemplating retirement or wrestling with related issues. Relevant printed items include:

- **Withdrawal, Retirement & Disputes**
- **The Lawyer’s Guide to Retirement – Strategies for Attorneys and Their Firms**
- **50 Things to Do With the Rest of Your Life**
- **The Of Counsel Agreement – A Guide for Law Firm and Practitioner**
- **Selling Your Law Practice: The Profitable Exit Strategy**
- **The Lawyer’s Guide to Buying, Selling, Merging and Closing a Law Practice**
- **Partner Departures and Lateral Moves**
- **Being Prepared: A Lawyer’s Guide for Dealing with Disability or Unexpected Events**
- **Law Partnership: Its Rights and Responsibilities**
- **The Essential Formbook – Partnership and Organizational Agreements**

In addition, the Law Practice Management website (http://members.moabar.org/lpmonline.org) features the following resources:

- [http://members.moabar.org/lpmonline/changingfirms.html](http://members.moabar.org/lpmonline/changingfirms.html)
- [The Planning Ahead Guide](http://members.moabar.org/pdfs/lpm/planning_ahead.pdf)
- [http://www.moabar.org/lpmonline/howtoavoidburningbridges.html](http://www.moabar.org/lpmonline/howtoavoidburningbridges.html)
Impairment Crosses Generational Boundaries

While impairment issues related to older lawyers are a growing concern, it is clear that “impairment” is not something exclusive to that group.

“We have attorneys who are in their 60s who probably shouldn’t be practicing if you looked at their mental capacities or physical ailments they might be suffering from, and attorneys who are in their 80s who are absolutely fit as a fiddle and sharp as a tack and there’s absolutely no problem with their practicing,” Pratzel noted.

Indeed, a sound argument can be made that the degree to which older attorneys suffer from diminished mental capacity pales in comparison to other debilitating situations faced by attorneys.

Firms of every size regularly allow attorneys who are impaired due to substance abuse, depression and constant stress to continue working. Although denial is a typical response in these situations, and although it’s difficult to confront a colleague about perceptions of impairment, turning a blind eye to an impaired attorney who cannot possibly be adequately representing clients constitutes complicity.

Beyond substance abuse, why aren’t the effects of unremitting stress and lack of sleep not creating as much concern about the adequacy of client service as is the graying of the bar? Exhausted, multi-tasking attorneys make mistakes. Chronic stress impairs attention, concentration and memory. None of us wants to be operated on by a surgeon who’s been working continuously for the past 36 hours. How many clients want their business deals conducted or their child custody arrangements negotiated by an equally sleep-deprived attorney?

 “[W]e don’t need to wait for the majority of lawyers to age in order to be concerned about impaired lawyers depriving clients of adequate representation…. [A]larm about the ‘graying of the bar’ elicit exhortations about attorney responsibility and ethics. Yet the prevalence of substance abuse among attorneys is statistically higher than the prevalence of Alzheimer’s disease among 60 year olds.”

Indeed, though “dementia is commonly misunderstood to be an inevitable byproduct of aging, it is in fact a separate disease process that – while often associated with persons of advanced years – is actually attributable to any of a number of such factors as genetic predisposition, cerebrovascular accidents, or chronic substance abuse.”

Opportunities

Older lawyers who are still physically and mentally able to address the complexities of the law clearly have much to offer the profession, its members, and society in general.

“They’re walking gold mines of information,” said Kenneth J. Horoho, Jr., a former president of the Pennsylvania Bar Association. “I tell our younger lawyers, ‘Go buy them lunch and let them tell a few war stories.”

But the value of these experienced attorneys goes far beyond tales of past exploits. Their lasting value as mentors to younger lawyers or volunteer programs has barely been tapped. As more and more of these seasoned practitioners transition into retirement, they will find plenty of opportunities awaiting them.

“What we’re trying to do is allow people to see that they still have a lot of self-worth and still have a lot to give back,” Pratzel said, “but it can be done in other ways besides representing clients, going to court, and actively practicing law. It can be done by going to the law schools, or mentoring young lawyers who are just out into practice.

“One of the things we’re seeing,” Pratzel continued, “is that a lot of attorneys, because of the economy, are getting their licenses and simply going out and starting their own practices. Think what an asset it would be if they had someone to call – an elder member of the bar – to act as a mentor.”

Recognizing the value of these individuals, then-American Bar Association President Karen J. Mathis in 2007 established the Second Season of Service program for lawyers transitioning from full-time practice.

It is for lawyers leaving large firms and solo and small firm practitioners wanting to cut back on their practices, yet wanting to “share their skills, energy and training with their communities … or pursue new course of volunteer work.”

The Subcommittee on Member Benefits and Services provides products and services to help lawyers transition out of active practice. The ABA’s website also contains information about the pro bono dues waiver program, which allows a dues waiver to lawyers doing pro bono work.

The linking of pro bono opportunities with retiring
lawyers seems a marriage made in heaven, as “[m]ore than 80 percent of civil legal needs of low income persons are not being met,” and many retiring lawyers wish to continue practicing in some capacity. In fact, the ABA estimates that the 40,000 lawyers who annually retire or take major steps toward retirement “contribute nearly 80 volunteer hours per year on average, providing a potential of more than three million voluntary hours of service each year.”

Those numbers are sure to climb as the Baby Boomers approach and pass retirement age, bringing with them the potential of continuing to make a positive and lasting contribution to the legal profession, their communities, and society in general.

Endnotes
1 Interview with Alan Pratzel (October 27, 2011).
2 Marsha King, “Graying of the Bar” Fueling Concern in Court, SEATTLE TIMES (April 9, 2006).
3 Id.
4 Id.
5 Telephone interview with Susan Applequist (October 17, 2011).
6 Marsha King, “Graying of the Bar” Fueling Concern in Court, SEATTLE TIMES (April 9, 2006).
7 Richard Acello, Rising Tide: Ethics May Require Challenges to Alzheimer’s-Impaired Lawyers, ABA JOURNAL (May 1, 2010).
8 Marsha King, “Graying of the Bar” Fueling Concern in Court, SEATTLE TIMES (April 9, 2006).
10 Cynthia K. Heerboth, Surf’s Up, Way Up: Preparing for the Senior Tsunami, PRECEDENT (Summer 2009).
11 Richard Acello, Rising Tide: Ethics May Require Challenges to Alzheimer’s-Impaired Lawyers, ABA JOURNAL (May 1, 2010).
12 Oliver Bertin, Dealing With Aging Lawyers, CANADA LAWYERS WEEKLY (September 25, 2009).
17 Christine Simmons, Lawyers Recount Stark Financial Woes in Survey, MISSOURI LAWYERS WEEKLY (September 26, 2011).
18 Oliver Bertin, Dealing With Aging Lawyers, CANADA LAWYERS WEEKLY (September 25, 2009).

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