



Tennessee Bar Journal

[Home](#) [Publications](#) [Journal](#) [Tennessee Bar Journal](#)

JULY/AUGUST 2023 | VOLUME 59 NO. 4

Aging in the Legal Profession: ‘The Silver Tsunami’

Posted by: J. E. "Buddy" Stockwell on Jul 1, 2023

Journal Issue Date: July/August 2023

Journal Name: Vol. 59 No. 4

A large portion of the Baby Boomer Generation has now reached retirement age. According to a 2022 *Forbes* magazine article, this “demographic group is 73 million people strong, with the oldest boomers just turning 75. Since 2010, about 10,000 of them have turned 65 per day, and they all will cross that age threshold by 2030. Once again, this — now aging — population [of Baby Boomers] will have a significant impact on everyday life, the economy and society.”¹



That means that the issue of aging and dementia will also continue to rise at unprecedented levels within our legal profession. At its peak, it is estimated that as many as one fourth of U.S. lawyers could be Baby Boomers navigating retirement age.

This challenge has been on TLAP's radar screen for over a decade. Lawyers Assistance Programs (LAP) across the nation know that the "Silver Tsunami" is upon us, and most LAPs are rendering effective help to address the many levels of cognitive decline and impairment impacting our aging lawyers and judges.

The questions are pretty simple: How do we detect the first symptoms of dementia and cognitive impairment? How do we support a person who is starting to experience symptoms? How do we determine the point at which the level of impairment prevents the safe practice of law? How do we balance compassionate help and protecting the public? And finally, when the time comes, how do we support a graceful transition into retirement? The questions are simple enough,

but the answers are tougher to come by.

In the April 2021 Bloomberg Law article “‘A Preventable Mess:’ How Dementia Takes a Toll on Aging Lawyers,” Holly Barker frames up the problem and also takes on some of these the topics:

Over the last 10 years, the number of lawyers practicing over the age of 65 has increased more than 50%. In 2020, roughly 14% of American lawyers were over 65, compared to 7% of workers generally. Meanwhile, more than one in nine people over 65 are diagnosed with Alzheimer’s, the most common type of dementia. The risk increases dramatically with age.

Recent, comprehensive data on how often disciplinary bodies and lawyer assistance programs confront the issue is non-existent, and there’s no way of knowing how often colleagues intervene without assistance from a professional organization.²

The article goes on to chronicle a young lawyer’s experiences after being hired by an elderly solo practitioner who was free-falling into dementia. It was an arduous journey of concern, fear, pain and frustration. The aging lawyer was initially successful in covering-up the impairment, but eventually it was too much and clients were harmed. Despite disciplinary involvement in the end, the lawyer remained in denial about having cognitive issues. Finally, and way too late, the lawyer was placed on disability inactive status. Soon after, the lawyer passed away at age 86.

It is a cautionary tale of what happens when un-checked dementia damages the lawyer, the profession and the public. The young lawyer involved felt badly about the impact on that aging lawyer’s legacy: “it all seemed like a preventable mess.”

The article also voices some frustrations about a lack of resources and support in that case. Here in Tennessee, in addition to interventions in drug and alcohol cases, our TLAP is fully prepared and experienced in conducting professional interventions that are specialized and focused on addressing cognitive decline early on.

In addition to the growing number of aging Baby Boomers, there is yet another

dynamic that has generated much larger numbers of lawyers working well beyond retirement age. Historically, large law firms relied on mandatory retirement policies to reduce the potential for lawyers practicing beyond their years. Now those policies are unenforceable against the backdrop of the 2007 litigation wherein 32 plaintiff partners, as forced retirees, sued and settled a discrimination lawsuit against Sidley Austin LLP, a Chicago-based law firm, for \$27.5 million.³ Enforcing an arbitrary retirement age is discriminatory.

Different practice settings can govern whether or not a senior lawyer presents a current risk. A large firm can provide support in the form of law partners and associates who effectively monitor an aging lawyer's practice and provide backup as needed. Conversely, without the support of lawyers in a firm, a solo practitioner with the same level of aging issues might make errors that go undetected and harm clients. In addition, paralegals and secretaries may cross a line into the unauthorized practice of law by doing too much to cover for their impaired solo practitioner.

The landscape is now case-by-case. 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 criteria can be utilized?

Some suggest 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, but the denial factor is problematic. If no one else has access to the test results, the person may very well ignore or hide problematic results and simply keep practicing.

The most reliable method of addressing these issues is for peers to take notice of cognitive decline in a fellow lawyer or judge and call TLAP confidentially for information and resources. Of course, the first step is spotting dementia. Here are 10 warning signs:⁴

1. Memory Loss That Disrupts Daily Life

Forgetting important dates or events, asking the same questions over and over and increasingly needing to rely on memory aids (e.g., reminder notes or electronic devices) or staff for things they used to handle on their own.

2. Challenges in Planning or Solving Problems

Changes in the ability to develop and follow a plan, remember facts or work with numbers.

3. Difficulty Completing Familiar Tasks

Finding it hard to complete daily tasks, driving to a familiar location, organizing a client's file or remembering basic rules of procedure, etc.

4. Confusion with time or place

Losing track of dates, seasons and the passage of time, or forgetting where they are or how they got there.

5. Trouble understanding visual images and spatial relationships

Difficulty with balance, trouble reading or judging distance while driving.

6. New problems with words in speaking or writing

Difficulty in a conversation, stopping in the middle of a conversation and not being able to continue or having trouble naming familiar objects.

7. Misplacing things and losing the ability to retrace steps

Putting things in unusual places or being unable to retrace their steps to find misplaced things.

8. Decreased or poor judgment

Demonstrating poor judgment when dealing with money, or a decline in personal hygiene.

9. Withdrawal from work or social activities

Withdrawal from hobbies, social activities or other engagements

10. Changes in mood and personality

Mood and personality changes such as becoming confused,

suspicious, depressed, fearful or anxious.

Legal professionals are extremely detail oriented and perfectionistic by trade. They must master complex fact patterns and demonstrate superior writing and verbal skills. Clients' money and the IOLTA account must be flawless. It would seem that early signs of dementia would be quickly exposed.

In truth, however, it is hard to draw a bright line between where normal aging ends and impairing dementia begins. As we get older, we might not recall names as quickly, for instance. That does not mean we are unfit to practice. But at some point, as the aging process progresses, dementia may start to develop in earnest. Peers and employees will see that the person has begun to lose their grip on the timely management of details and tasks.

Judges are especially well-positioned to detect behavioral changes in lawyers who practice in front of them. There may be a noticeable shift in the performance of the lawyer who may begin to forget hearing dates, make motions or objections that are either untimely or inapplicable, or even forget which client is in court with them. These incidents may be rare at first and discounted as aberrations, but when dementia is involved, these problems become more frequent and more troubling. Of course, law firms can also see these changes in behavior as well. It is solo practitioners who are at the highest risk of hiding dementia for way too long. Only their staff know the true level of concern and ringing any alarm bells might put their jobs at risk. It's a runaway freight train in some cases.

TLAP can help. If a peer seems to be struggling to function at the normal pace of law, let's talk about it. TLAP is fully equipped to provide totally confidential support in the form of facilitating interventions and appropriate cognitive testing. Sometimes, only practice and support plans are needed. If caught early, some forms of impairment are treatable. The best clinical path forward is set upon objectively establishing each individual's needs. By contacting TLAP's professional clinical staff, you can confidentially discuss aging concerns that you have about yourself, or a fellow practitioner, and discreetly and responsibly meet the challenges of aging in the legal profession. Call TLAP at (615) 741-3238, email at tlap@tlap.org, or visit TLAP online at www.tlap.org . |||



BUDDY STOCKWELL was appointed by the Tennessee Supreme Court in July 2020 as executive director of the Tennessee Lawyers Assistance Program (TLAP). He comes from south Louisiana where he has been a volunteer and program monitor for the state’s Committee on Alcohol and

Drug Abuse and the executive director of Louisiana’s comprehensive Judges and Lawyers Assistance Program (JLAP) peer professionals’ program. He is a certified clinical interventionist through “Love First” training at the Betty Ford Center and has personally been in recovery from alcoholism for over 38 years. Stockwell earned his law degree from LSU Law School in 1993. He practiced in both large and small firm settings, including a solo practice in Baton Rouge where he focused heavily on domestic litigation. Read more about him at tba.org/Stockwell.

NOTES

1. Deborah Wince-Smith. “Bracing for the Silver Tsunami.” *Forbes*. www.forbes.com/sites/deborahwince-smith/2022/02/25/bracing-for-the-silver-tsunami/?sh=655b30eb33e4. Feb. 25, 2022.
2. Holly Barker. “‘A Preventable Mess’: How Dementia Takes Toll on Aging Lawyers.” *BNN Bloomberg*. www.bnnbloomberg.ca/a-preventable-mess-how-dementia-takes-toll-on-aging-lawyers-1.1602171. May 11, 2021.
3. U.S. EEOC. “\$27.5 Million Consent Decree Resolves EEOC Age Bias Suit Against Sidley Austin.” www.eeoc.gov/newsroom/275-million-consent-decree-resolves-eeoc-age-bias-suit-against-sidley-austin-0. Oct. 5, 2007.
4. Alzheimer’s Association. “10 Early Signs and Symptoms of Alzheimer’s.” tinyurl.com/Alzheimer10signs (last visited June 27, 2023).