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Print

"Graying of the Bar" fueling concern in court

By **Marsha King**
Seattle Times staff reporter

The client complained that the older lawyer wasn't paying attention to the case — that he didn't file court papers in time, open mail or return phone calls.

The state bar association asked the lawyer to respond. When he didn't, a face-to-face meeting was set up. But the confused lawyer got lost and had to be helped to the appointment. He showed up wearing an old suit and graying T-shirt.

After talking with him for an hour, "It was clear also to me that this gentleman needed further assistance," said Jennifer Favell, a mental-health professional with the state bar association's lawyer-services department. "That was very sad and troubling for all of us."

Historically, cases such as this — of an older, mentally impaired lawyer still practicing — have been uncommon enough, or managed well enough behind the scenes, not to pose a significant risk to the public.

But "the public is starting to bring some of these things to our attention," Favell said.

The so-called "Graying of the Bar" — officially under way this year as the first wave of baby boomers turns 60 — is fueling 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.

And, in fact, many 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.

Firms have their own legal liability to consider, and an aging attorney may face a black mark at the end of an otherwise unblemished career.

"We've had a few cases here in Washington," said Seattle attorney Kurt Bulmer, whose practice is largely devoted to defending attorneys who have been brought up before the bar. "There's no question we're going to have a lot more as the baby boomers work their way through."

Of the state bar's nearly 26,000 active members, about 66 percent are age 41 or older, and almost 10 percent are older than 60.

The fledgling debate is part of a broader issue about how to deal with the physical and mental impairments likely to show up in an aging work force.

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"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."


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The biggest risk factor

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.

Over the past few years, Bulmer has handled several cases where age and dementia were factors, including the case of an elderly lawyer with advanced Alzheimer's who was going to the office every day.

A family member sought advice on how — short of having his license taken away — to get him to stay home.

"Who wants to take someone who's done nothing wrong, but getting older, and put him through the discipline system," said Bulmer, who got the bar to take away the attorney's license but also to transfer him to honorary status.

Given the impending demographic boom, two national lawyers' groups are studying how state jurisdictions that regulate lawyers can best deal with age-related impairments.

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.

A few states, including Washington and Oregon, 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.

Seattle attorney Art Lachman, who advises law firms on ethics and liability issues, said it's a delicate matter. While lawyers must be treated with dignity, "We do have a duty to make sure people who are serving clients are serving them well."

Most attorneys don't want to practice beyond the time they're capable, said Dudley Panchot, head of the state bar's senior lawyers section, who recently celebrated 50 years in practice. He has told his colleagues: "If I start to slip my cogs, be gentle, but show me the door."

Still, he's not persuaded that any cataclysm is near because a lot of lawyers are getting older. "I will argue that the population is better served by having lawyers around who've spent some years in practice."

At age 76, Murray Guterson believes he's the oldest criminal-defense attorney still practicing in King County. Certainly he's one of the most distinguished, with a career spanning 53 years.

Guterson says he'll know it's time to retire if his health becomes a problem or if it gets down to having no cases.

"I think my mind is as good as ever," said Guterson, who still takes a few cases, though not near the 30 or 40 cases he once managed at the same time.

Often, people he runs into will ask: "How's retirement going?"

"Well, I'm not retired," replies Guterson, who loves criminal law so much he wishes he could start over again.

Rewriting the rules

A few years ago, the state bar rewrote its rule about how to deal with incompetent or impaired lawyers, in some cases allowing a guardian to make decisions regarding a license or related disciplinary proceedings.

Recently, the bar began to refer some lawyers who have come to the attention of the bar's disciplinary department to a mental-health professional to diagnose any age-related impairment so the bar can decide if disability status was warranted.

Last year, the disciplinary staff received training for the first time on how to recognize symptoms of dementia. And a lawyers-assistance program offers confidential mental-health and chemical-dependency counseling to judges, lawyers and third-year law students.

In 2001, Oregon — where 60 percent of the state bar's members are baby boomers — started offering lawyers intensive retirement-preparation workshops, motivated in part by reports about the declining functions of older lawyers, said Mike Long, attorney counselor for the Oregon Assistance Program.

Historically, larger law firms have retirement mechanisms in place or quiet ways to deal with impaired older lawyers. And most lawyers decide for themselves when it's time to quit.

One of Seattle's most respected attorneys, Fred Betts, finally tried his last case at age 85, recognizing that he could no longer give it his best. Even so, Betts came to the office nearly every day until just a year before he died at 94 in 2002.

The firm protected itself and watched out for Betts by occasionally having other attorneys review his work, said senior partner John Braislin. "If you want to talk about fading into the sunset, that's basically what he was able to do."

However, as tradition holds, Betts' name is still on the law firm's door.

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