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Should Auld Lawyers Be Forgot, and Never Brought to Mind?

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For the first time in U.S. history, four generations are working side by side. Do the benefits of this multigenerational environment outweigh the "graying of the bar" as expressed in a Seattle Times article?

When each year draws to a close, it's hard to avoid the same images of doddering old Father Time and bright, bouncy Baby New Year. As a lawyer of a "certain age" – who still attends cycling camps with Lance Armstrong's coach – I tend to ignore generational stereotypes. This past year, however, two items on the topic of age and the practice of law caught my eye and led me to speculate a bit on whether a lawyer can be too old to practice.

An article in *The Seattle Times* about the "graying of the bar," was noticed by blawgers around the country. Noting that 66 percent of the members of the Washington State Bar are 41 or older, and that 10 percent are over 60, the article declared that "incompetence due to declining skills, failure to keep pace or dwindling mental acuity may soon rise in the legal profession." That seems overblown enough, but a second item described a new regulation in India (where legal work is increasingly being outsourced) stating that if you are not licensed by the age of 45 you cannot become an advocate. "We don't want the Bar to become parking lots for retirees," one official was quoted as saying.

The natural conclusion seems to be that older lawyers are more careless, have too many pressures in their lives that distract their attention and cause them to make errors leading to discipline. By implication, younger lawyers have neither so much business nor such complicated matters as do older lawyers ... and therefore stay out of the "system."

I disagree. Young lawyers are just as likely to have both large caseloads and sophisticated matters ... at least the young lawyers that I see. Young lawyers are closer to the teaching of the rules of professional conduct than are the older lawyers. But, with MCLE requirements, even the older lawyers know generally what the rules are. So what is the difference?

One difference is that it is the older lawyers who tend to be running the "business" side of the practice. The younger lawyers tend to be the followers. Given the "eat what you kill" compensation systems at many firms, senior partners may not want to share information on clients or prospects with the next-generation lawyer who might "steal" business before the first attorney is ready to step away from active practice – a problem that I discuss at length elsewhere in this issue. The point here is not one of competency but of client service. Age is only incidental to the situation.

Of more direct relevance is the fact that older lawyers should plan for successfully transitioning their practice well before the time comes that they choose to retire or are forced by ill health to retire. Failure to plan for how your clients will be taken care of as you approach the age of retirement can, according to some authorities, be construed as reckless disregard for client welfare – a true ethical violation. Planning options can include simply closing or selling the practice, but other options are just as viable: for example, grooming a successor by hiring an associate to learn the practice, or merging with or hiring a lateral with the option to sell the practice to him or her.

With a succession plan in place, older lawyers who keep up with evolving professional rules and trends through MCLE should have no trouble remaining in practice as long as desired.

All of these concerns about process still do not address the real problem that, regardless of lawyers' ages, the majority of the complaints against them relate to the careless dealings with clients ... poor service, failure to return phone calls, inaccurate arithmetic on the billing statements. These are all management issues, not technical or substantive issues of law. Poor client service is a problem at any age. Older lawyers who continue to apply the client service lessons presumably learned throughout their careers ought not to be in jeopardy on this issue. Nevertheless, especially in a sole practice, aging lawyers or lawyers committed to closing their practices may emotionally leave their clients long before they close their doors. This can result in less effective representation well before the lawyer retires, and it is a danger to guard against. Large firms have less of a problem: the older lawyer simply receives the designation of "special counsel" or "emeritus partner," and another lawyer in the firm takes over his/her client list.

A final point: Creativity does not have to be an age issue. For example, people over the age of 40 may know and understand computer technology, but they remain more comfortable with the use of books and paper records as creative tools. With the free association that is made possible by glancing through printed pages, facts and concepts emerge quickly and can be processed in different ways readily. Computer screens allow only linear searching and processing; developing a new concept is much harder when you have to follow the logic of the search program. Is this a generational prejudice? Perhaps – but no more so than the idea that age equals incompetence.

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