

The Emerging Issue of Cognitive Impairment among Attorneys
By: Robert Thornhill, MS, LPC, Director
Alabama Lawyer Assistance Program

The Alabama Lawyer Assistance Program is committed to providing confidential services and support to attorneys, judges and law students who may be struggling with alcohol or drug abuse, or mental health issues such as anxiety disorder, depression, or bipolar disorder. However, with the aging of our society and the tendency for many in the legal profession to delay retirement, the issue of cognitive impairment is becoming a major concern. While much effort continues to be made to educate those in the legal profession regarding the inevitably worsening negative consequences of undiagnosed and untreated addiction or mental health issues, little has been done thus far to address the increasingly prevalent issue of cognitive decline and cognitive impairment.

Age-based changes in cognition and cognitive abilities are normal for all of us as we get older. Declines in reaction time and processing speed can become evident as early as the late 20's, while other cognitive functions show decline in later decades. As we age, it is normal for information to be processed more slowly, retrieval of information to be less accurate and efficient, and learning of new information to be more challenging. In addition, the ability to multi-task and to perform complex problem-solving declines. On the positive side, our store of knowledge, emotional functioning, vocabulary, and acquired wisdom can remain stable or even show improvement over time! These are all examples of normal cognitive aging.¹

Abnormal cognitive changes that are not age-appropriate are biologically based and are referred to as dementia, cognitive disorder, or cognitive impairment. This kind of impairment manifests as problems with thinking abilities that represent a change or decline from a previous level of functioning, or cognitive deficits that cause significant impairment in occupational and/or social function. Examples include Alzheimer's disease, vascular dementia (poor blood flow to the brain due to multiple small strokes, diabetes, hypertension, etc.), Parkinson's disease dementia, Traumatic Brain Injury (impact to the head or other mechanism of rapid-movement displacement of the brain within the skull), Huntington's disease and so on. Other behaviors and disorders that can negatively impact the brain and lead to cognitive impairment include Multiple Sclerosis, tobacco use, hypertension, heart disease, diabetes, brain tumor, elevated cholesterol, vitamin B 12 deficiency, and alcohol/drug abuse.²

The most common cognitive disorders are neurodegenerative diseases that involve progressive deterioration of the brain over time. They generally have an insidious onset and progress gradually. The most commonly recognized is Alzheimer disease, but Frontotemporal dementia, Diffuse Lewy Body disease, and Parkinson's disease are also fairly common. It is known that neurodegenerative brain changes can begin years before symptoms become obvious or debilitating. Dementia is a term that is used to describe a decline in cognitive and behavioral skills that is severe enough to interfere with daily functioning and the ability to live independently. It is a significant clinical finding that strongly implies that an individual is disabled in key aspects of everyday life and may no longer be able to function in the workplace.³

Lawyer Assistance Programs around the country have become increasingly aware of the issue of cognitive impairment and the need to assist those attorneys and the families and colleagues who may be affected. Here in Alabama we are seeing an increase in calls from law partners, judges, family members, spouses and clients. Some fundamental questions and concerns need to be addressed. Lawyer Assistance Programs are accustomed to dealing with attorneys who may have a substance use disorder (alcoholism or addition) or a mental health problem, and the treatment processes are well known. However, as Robert “Kim” Lusk, a Portland attorney who chairs their State Lawyer Assistance Committee states, “dementia is a progressive, debilitating condition there’s not a lot you can do to unravel”. He adds, “You can’t develop a remedial program and get the lawyer to follow through. It’s effectively an irreversible process. What exactly do we do with those cases? As an institution, how does the bar deal with the process”?⁴

Here in Alabama, as far as possible, we hope to provide assistance to these attorneys and their colleagues and loved ones to first identify the presence of a possible problem, assist with intervention, provide appropriate referrals for neurological and neuropsychological evaluation, and then assist with an appropriate and non-disciplinary avenue to discontinue the practice of law when indicated. When colleagues or loved ones begin to recognize that an attorney may be experiencing cognitive impairment the best place to seek assistance is the Alabama Lawyer Assistance Program. We recognize that calling attention to an attorney or judge who may be cognitively impaired may be very difficult, but assistance from the Alabama Layer Assistance Program is confidential. Cognitive Impairment that goes unaddressed will inevitably result in violations of the Rules of Professional Misconduct. It is our hope that we can provide this kind of confidential assistance before the impaired attorney’s behaviors result in harm to clients and law firms, and before formal complaints are received at the Alabama State Bar that may lead to disciplinary actions.

The following is a partial list of Signs and Symptoms of Cognitive Impairment:

- Deteriorating performance at work
- Making mistake on files or cases
- Difficulty functioning without help
- Committing obvious ethical violations
- Failing to remain current on changes in law; over-relying on experience
- Exhibiting confusion about timelines, deadlines, conflicts, trust accounting
- Inappropriate dress, poor grooming or hygiene
- Sexually inappropriate statements or behavior that is uncharacteristic
- Denial of any problem or highly defensive or paranoid
- Forgetting conversations, events, details of cases
- Frequently repeating questions or making requests for information
- Trouble staying on task or topics
- Difficulty adjusting to changes
- Problems with verbal expression, digression, distraction
- Confusion, lapses in attention, concentration
- Emotional distress, rapid mood shifts

It is very important to remember that some degree of cognitive decline is a normal process for most of us that happens very slowly over decades, not years. Rapid cognitive decline should not be

viewed as a normal, expected consequence of aging.⁵ These signs and symptoms should be taken seriously. If you observe any of these signs or symptoms in a colleague or loved one, that person may be struggling with one or more undiagnosed maladies such as a substance use disorder (alcoholism, drug addiction), a mental health issue such as anxiety or depression, or a biologically-based cognitive disorder. It is also possible that one or more of these problems could be “co-occurring disorders”. For example, undiagnosed and untreated alcoholism/addiction can also lead to symptoms of depression, anxiety, and even cognitive impairment. There are often cases in which undiagnosed and untreated alcoholism/addiction have directly caused cognitive impairment. In such cases most people are able to demonstrate significantly improved cognition over time as they maintain abstinence from mood-altering substances and participate in a genuine recovery program. For a smaller but significant minority, the cognitive impairment is biologically based and will persist despite abstinence and recovery. It is also common to see symptoms of anxiety and depression improve over time with abstinence and recovery. Each person’s challenge is unique and requires proper evaluation and treatment. The Alabama Lawyer Assistance Program can provide assistance with this process.

The following is a partial list of suggestions regarding the sensitive subject of approaching the Impaired/Declining Lawyer:

- Partner with those who have first-hand observations of the behaviors that are causing concern about that lawyer’s competence to practice law, and who are trusted by that lawyer.
- Contact the Alabama lawyer Assistance Program for assistance
- Arrange for a non-confrontational meeting with the lawyer and concerned individuals.
- Provide objective and supportive statements such as:
 - a. I am concerned about you because
 - b. We have worked together a long time so I hope you won’t think I’m interfering when I tell you I am worried about you
 - c. I’ve noticed you haven’t been yourself lately, and I am concerned
- Get the lawyer to talk; listen, do not lecture.
- While listening, add responsive and reflective comments.
- Express concern with gentleness and respect.
- Share first-hand observations of the lawyer’s objective behavior that is raising questions or causing concern.
- Review the lawyer’s good qualities, achievements and positive memories.
- Approach as a respectful and concerned colleague, not an authority figure.
- Act with kindness, dignity, and privacy; not in crisis mode.
- If the lawyer is not persuaded that his/her level of professional functioning has declined or is impaired, suggest an evaluation by a specific professional (in most instances, a neuropsychologist) and have contact information ready.
- When appropriate, offer assistance and make recommendations for a plan providing oversight (such as a buddy system or part-time practice with co-counsel).
- When appropriate, propose a voluntary transfer of licensure status to an available non-practicing option such as Inactive status.
- Remember that this is often a process and not just a onetime event.⁶

It is important to never ignore the situation or do nothing when confronted with the issue of cognitive impairment. These symptoms and behaviors are a strong signal that assistance and appropriate intervention are needed. The Alabama Lawyer Assistance Program can provide guidance, support, and assistance through the process of intervention, referral for evaluation, diagnosis and treatment, interpretation of clinical findings and recommendations regarding fitness to practice. We are here to help with this difficult challenge! (Reprinted with permission from THE ALABAMA LAWYER, Sept. 2015)

¹ ABA COLAP SENIOR LAWYER ASSISTANCE PROGRAM, WORKING PAPER ON COGNITIVE IMPAIRMENT AND COGNITIVE DECLINE, Apr. 11, 2014.

² Presentation by Dr. Delisa West, Neuropsychologist, 15 April, 2015.

³ ABA COLAP SENIOR LAWYER ASSISTANCE PROGRAM, *supra* note 5.

⁴ Cliff Collins, *Ready or Not, When Colleagues Experience Cognitive Decline*, OREGON STATE BAR BULLETIN, NOV. 2014.

⁵ “Age and Ageing”, Oxford Journals, November 2011, 40 (6), 684-689.

⁶ ABA COLAP SENIOR LAWYER ASSISTANCE PROGRAM, *supra* note 5.