

Are You an “Elder Orphan”?

By Stephen P. Gallagher and Leonard E. Sienko, Jr.

In November 2017 and again in November 2018, co-author Leonard E. Sienko, Jr. and I wrote about how the legal profession could no longer ignore the phenomenon of aging in the workforce. We thought the profession needed to start a dialogue about the need for change. Over the past 30 to 40 years, the number of solo and small firms have expanded to meet market demands, and today many of these same practitioners find themselves unable to retire if they want to maintain anything close to their current standard of living.

Today, there are 109 million Americans, or 45% of the adult population, who are “fending for themselves.” Being ill and alone requires far more advance planning than is required of those of us who live with family. To be sure, a spouse or grown children are no insurance policy against suffering or mortality, but people who live alone without the obvious next of kin must rely on a patchwork of support from professionals and friends.

Elder Orphans

The term “elder orphan” refers to the increasing number of people who may have never married or whose spouses have predeceased them. He/she has no children and friends are fewer each day. Even though the health care industry still works under the assumption that everyone has a family caregiver to help with at least the most basic chores, research is showing that one in five Americans older than 65 are—or are at risk of becoming—“elder orphans,” and 23% of boomers will eventually be without family caretakers.¹

According to an AARP Public Policy Institute report on *The Growing Care Gap*,² today the majority of long-term services and supports are provided by family members. However, the supply of family caregivers is unlikely to keep pace with future demand.³ As more of us join the ranks of elder orphans, we will need to better understand why maintaining a community of support is so important for each of us as we age.

We would like to focus today’s writings on senior lawyers who find themselves aging alone. We are informed by the work of Dr. Maria Torroella Carney, chief of geriatric and palliative medicine at Northwell Health of Great Neck, NY. and her colleagues who have been studying how elder orphans are hiding in plain sight. They report that “adults are increasingly aging alone with multiple chronic diseases and are geographically distant from family or friends.”

Dr. Carney’s research team found that “the complex medical and psychosocial issues for elder orphans significantly impact the individual person, communities,

and health-care expenditures. They are therefore *hoping to encourage professionals across disciplines to work cooperatively to screen elders and implement policies to prevent elder orphans from hiding in plain sight.*”⁴ This got us thinking about what role, if any, bar associations might play in helping to prevent elder lawyers from hiding in plain sight.

We would like to share some of our personal experiences. Our views may be quite different because we come from two very different life experiences, but they illustrate the ends of the spectrum of how we Americans age.

Stephen P. Gallagher – The Family Perspective

I have been married for 47 years, and my wife is a registered nurse who works with the elderly as a Health Care Coordinator for an assisted living facility. She is well versed in health care systems and quite comfortable with the aging process. I am indeed blessed to have such a partner.

I grew up in a large Irish Catholic family, so there always seemed to be someone who would step forward when a family member needed care. However, the more I have looked into caregiving trends and practices, the more concerned I have become about availability of caregivers in my own future. My mother was one of seven children, and as the only female child in the area, mom moved our family back into our grandparent’s house, to help Pop better manage Mema’s advanced Parkinson’s disease. Thinking back on this experience, it was a valuable learning experience for the children, but only later did I realize that my parents faced quite different challenges. Nobody ever questioned my mother’s role in taking care of her parents.

Years later, after marrying and having our own family, history seemed to repeat itself. We moved our five boys back into that same house, because my wife and I were fortunate to be in a position to help my aging parents, so they could stay in their home while we coordinated

STEPHEN P. GALLAGHER (Sgallagher@leadershipcoach.us) was the first Director of Law Office Economics and Management for NYSBA from 1990 through 2003. He now spends his time in coaching lawyers through transition, teaching marketing strategy to MBA students, and committing time each day to moving his personal journey through growth and renewal forward. He remains eternally grateful to the NYSBA community and staff for the time he spends with them.

LEONARD E. SIENKO JR. is a solo practitioner in Hancock, NY. A general practice lawyer for 40 years, he is well-known for his pioneering use of the internet in legal practice and love of gadgets. He graduated from Boston College, received a master’s in divinity from Andover-Newton Theological School, and a J.D. from Boston College Law School. He is reachable via email: lennyesq@hancock.net.

doctor's visits, nursing care, and I was still able to coach youth baseball and basketball. Times have changed, so we have no expectations that our children will be in a position to provide this same level of care. We understand that greater planning and savings are needed on our behalf, because it is clear that we both need to be thinking as potential elder orphans.

I recently met with a friend who I had not seen in quite a while. She told me that she and her husband had just sold their house and they were moving into a continuing care retirement community. I knew my friend has been battling metastatic breast cancer, but I did not know that her husband was fighting his own prostate cancer. They do not have any children as they married later in life. Neither could negotiate the stairs any longer. She did tell me that "they should have made this move years ago."

I never thought of myself as ever aging alone as an "elder orphan," but I am now looking at this under a whole new light. Our research has convinced me that the rules governing family caregiving have changed, and I have a great deal of homework still to do.

although I may have lain down on my bed, I couldn't get up. I could reach my iPhone and called for "help." The mechanics of remotely letting the emergency personnel into my house with the alarm system and directing them to the bedroom on the second floor were complicated, especially when I most resembled a turtle flipped over on its back. The EMTs got me up and it was later discovered that I had broken ribs, which took two months of sleeping upright in a recliner to resolve, but that's another orphan's tale of woe.

For me it is hard to find a more vivid example of just how alone I am. The cat is a great comfort to me, but he can't call for help and I admit I am concerned about who will care for him and his counterpart at the office. My best legal efforts resulted in a testamentary pet trust.

I try to compensate for my solitary state with technology; e.g., the iPhone and/or the cellular Apple Watch 3.0, which can call for "help" are always with me. I'm looking forward to my new cellular contract and an updated Apple Watch 4.0, with "fall detection" and an EKG sensor.

Working past "normal" retirement age is one of the fastest growing trends in America. Many boomers don't want to slow down, and many can't afford to do so.

Leonard E. Sienko Jr. – Home Alone

I check the box on the form that says "Single-Never Married." I have no spouse, no significant other, no partner(s), no siblings. My meaningful relationship in my life was as an only child, who was cared for by his parents and who cared for them—literally.

I was the caregiver for my father who passed away at age 95 and my mother, who died in her 89th year. Mom died a year and a half after Dad, so there were a couple of very busy years, with doctors, hospitals, nursing facilities, and hospice. The result of my experience is that I have no illusions about who and what I am and what I can expect as an "elder orphan."

If I needed confirmation of my isolation, I received it this Fall, the day before Halloween. I was hurrying to put out the garbage and failed to notice the wet leaves on the porch steps. I fell and, embarrassingly close to the cliché, "...I couldn't get up...". I always have my iPhone or my Apple Watch version 3.0 on my person, so I was able to call 911 from my prone position and direct the rescue squad personnel to where I lay out of sight. They got me on my feet and "signed off" with a promise to see my doctor the next day. My medical nonchalance was rewarded at about 3:00 a.m. when I discovered that,

Understanding the Aging Process: By the Numbers

Working past "normal" retirement age is one of the fastest growing trends in America. Many boomers don't want to slow down, and many can't afford to do so. In a word, they want to *rewire*, not *retire*. For those with children and the arrival of grandchildren, it is often a time to refine your babysitting skills and begin celebrating your children's accomplishments.

Research shows that on the health front, the share of individuals who have difficulty performing basic activities of daily living (e.g., bathing or eating) or more complex instrumental activities of daily living (e.g., cooking or shopping) increases dramatically after age 75. These conditions can require professional in-home care or even long-term care at an institutional facility, both of which are often prohibitively expensive.⁵

Routine activities for daily living may become more challenging as we age due to lack of mobility, strength, balance, or other physical or mental infirmities. People of any age may temporarily or permanently lose the ability to care for themselves, but the odds go up dramatically as we get older, so putting a network of support in place

before you need one is today's challenge whether you have family or not.

After the age of 85, the likelihood of needing assistance with one or more activities of daily living increases dramatically. In a 2009 study by the Institute on Aging,⁶ 40% of men and 53% of women age 85 or over reported needing help with at least one of the basic self-care tasks essential to maintaining grooming standards and good health.

Nobody wants to think about the prospect of failing mental capability in later years, but it's another issue we all have to think about and address. An estimated 10 million Americans have dementia or cognitive impairment with 2 million new cases reported every year.⁷ "The incidence of cognitive decline begins rising after age 75, with the rate of dementia growing quickly from 7 percent for people in their early 70s to roughly a quarter for those in their early 80s, raising the risk of financial mistakes or fraud."⁸

As we grow into our 80s and 90s most of us will begin to face more life-limiting challenges. The big question for us now is how best to prepare for these challenges? Even if you have no adult children around to serve as a safety net, the sensible path for all of us is to make some decisions now while we can get around and our brains are still sharp. By the year 2050, the over-85 age group will triple as a percentage of the population. and they estimate that close to one-third of those who reach age 85 will experience some level of dementia.

We are all living longer, so that means more people will be aging with debilitating, age-related chronic conditions like Alzheimer's disease, Parkinson's, arthritis, diabetes, etc. The "Boomer" generation is now at caregiving age, and soon many of "us" will need care ourselves. It stands to reason that people who are aging alone, or will be aging alone, need to make plans when they are independent and functional. We just cannot wait for that misstep on black ice to take action. We all need to start now to learn more about the resources in each of our communities and the appropriate time to start using them.

Susan B. Garland wrote a piece for *The New York Times—Retiring Section* where she reported, "the caregiver support ratio is expected to plummet as boomers' transition from caregivers into old age. The decades of the 2010s and 2020s will be a period of transition, as boomers age out of the peak caregiving years and the oldest boomers age into the 80-plus high-risk years. The departure of the boomers from the peak caregiving years will mean that the population aged 45–64 is projected to increase by only 1 percent between 2010 and 2030. During the same period, the 80-plus population is projected to increase by a whopping 79 percent."⁹

The number of potential caregivers per person aged 80-plus is expected to accelerate during the 2020s—from

6.1 to 4.1 in 2030—especially when the oldest boomers start turning 80 years old in 2026."¹⁰ That ratio could sink to 3 to 1 by 2050, when all boomers will be in the high-risk years of late life.¹¹

Consider Where—and How—you Might Like to Age

While you're still healthy, you need to begin exploring where the best place might be for you to live. Should you move closer to family or is it time to seek a warmer climate? How close to doctors and hospitals are you? How accessible are your network of friends? Is public transportation available in your area?

This is the time to explore options for moving into a senior community or an assisted living facility—often an ideal option for some who can afford it. Take time to investigate continuous care retirement communities (CCRCs) and life-care communities. These are wonderful living options for people without family support systems. They are also the most expensive options with amenities beyond what you would find in an assisted living community. You must be prepared to move in while you are still independent.

You may wish to explore how you can join other elder orphans in your own shared living space, where the household jointly benefits from shared care. To be sure, older cohabitators are still rare, totaling just 2% of adults 65 and older. But their numbers are expected to keep rising because baby boomers are more likely than prior generations to be never married or divorced as they enter older adulthood.¹²

The University of Southern Illinois is experimenting with new 600 square foot "tiny" houses on campus to try to address some big issues associated with aging. They are hoping to find out if elders can live independently—and with better quality of life—in a compact house equipped with smart home technology? Could college students live alongside elders in communities of tiny houses, benefiting both young and old? USI researchers want to turn the perception of growing old on its head, unlocking new strategies to help seniors "age in place."¹³

Stephen P. Gallagher – Moving Home

After retiring from my full-time position with the bar association, my wife and I decided to move back to our family home in Pennsylvania. We explored moving to a warmer climate, but we decided to update the kitchen and install handrails in the bathrooms, so we were able to stay put. The mortgage was paid and we could walk to the train and be in Center City in 30 minutes. If navigating stairs became a problem, we knew we could convert our den back into a bedroom as it was in the past. We also knew we wanted to keep a bedroom for the children and grandchildren when they came to visit.

Leonard E. Sienko Jr. – Home Alone

I am convinced that a smaller, more compact living area is one answer to my aging, leading to reduced mobility. My doctor thinks exercise is the answer, but what does he know? Stairs are the main enemy. Not only do they require effort, the danger of falls is ever present. I find the tiny houses attractive. I'll gladly trade space for no stairs.

My future abode will have to consist of one floor with "no stairs" living quarters, equipped with every possible piece of "intelligent house" gear. Ideally, this residence would be within a "continuum of care" setting, in which services are provided by people who are available 24/7. I'm assuming some major medical catastrophe (stroke or heart failure) will trigger my need to move. Let's hope the real estate market will let me sell my home and office before the increased costs are needed.

The irony would be my living with a lot of technology to make life easier; but being subject to dementia, rendering all of my gadgets useless junk.

Now I have what I refer to as the "light bulb problem." My heart and diabetes medications do an excellent job of keeping my blood pressure and blood sugar readings within bounds, but not without side effects. One of the side effects may be dizziness upon rising or while elevated. I no longer can climb the step stool to change a light bulb, but must rely on my cleaning service.

If I can sell the family house and my small office building, then, like most folks with vague plans, I'd prefer "...someplace where it's warm all the time...". Visions of sunny beaches are what one imagines when thinking of retirement. If I can't liquidate my major assets, then I may have to hibernate for a few more upstate New York winters.

Meal delivery services were one of my first coping methods after my parents died. I had assumed the last several years of menu planning, marketing, and cooking, just starting to use Blue Apron in Mom's last year. It was a convenience to me in the bad weather months when it was difficult to get out to market. When I found myself truly on my own, I kept up with occasional deliveries, trying other services. My rationale was to address my need to sit down to eat a main meal each day. I did not want to gulp something down from a carton standing at the sink with the TV going. The meal delivery services assist in my meal planning and prep. The photos I take of my cooking results have become a source of amusement for my FaceBook friends. An unintended consequence of my culinary efforts is increased social contact about my cooking. Many people in my small town stop me to ask "What's for dinner tonight?"

Embrace the Joys and Complexities of Aging

You may not be able to rely on friends or family for serious, long-term care, but they can help you—and you them—in many ways, such as bringing meals when

you're ill or recovering, and doing errands such as picking up prescriptions or groceries. Keep in mind that it may be harder to make new friends later in life, so it makes better sense to start by reaching out to your lifelong friends. This is where we began thinking that you may want to start with your local bar connections. Rather than dropping out of the profession, you will probably find old friends who may be dealing with their own health concerns, so you may start building your own network of support by helping others.

Ai-Jen Poo, director of the National Domestic Workers Alliance (NDWA) and co-director of the Caring Across Generations Campaign wrote a powerful book, *The Age of Dignity: Preparing for the Elder Boom in a Changing America*, where she raises consciousness about this epic national crisis in care that may in fact be one of our greatest opportunities for positive transformation at every level. *Age of Dignity* calls for more innovative approaches to care rooted in our homes and communities that brings us all together and offers greater support to everyone involved.

Ai-Jen Poo writes about creating a culture that "embraces the joys and complexities of aging, celebrates inter-generational relationships, and values care work at the critical issue of caring for seniors and the need to 'care about' those who do the caregiving." Should the bar association assume a greater role in promoting the value and benefits of "caregiving" for the legal community? If so, we need to figure out a way to celebrate better inter-generational relationships between newly minted lawyers and those of us who have miles on our meters.

Scholars who study the obstacles confronting young people argue that one of the most important ingredients of their future success is the steady presence of caring adults with the time and inclination to support their development. Shared housing may be a way to harness the natural affinity between young and old, particularly as a way that can narrow the opportunity gap facing so many young people. On this last point, Stanford psychologist Laura Carstensen has shown that the emphasis on relationships and the very skills needed to nurture and develop close bonds grow stronger as we age.¹⁴

Stephen P. Gallagher – Building a Network

Raising five boys in Upstate New York, allowed us to travel to every basketball court, aquatics facility, and rowing venue from the Hudson River to Lake Ontario. My wife and I built a large network of friends drawn from our children's sports teams, but I have never felt comfortable in sharing health or retirement concerns with any of these friends. I have kept in contact with local bar connections throughout the state and country, but it would appear that I have to work on building a network of friends who would be available to bring me a meal or visit with me in an emergency situation if my family were not around.

I was surprised to find out that when people get married, they can become more insular. They become less con-

nected to their siblings and parents than they were when they were single, and less attentive to friends and neighbors. Compared to those never or previously married, married couples disengage from neighbors and friends. They are less likely to socialize with neighbors and less likely to hang out with friends. And the never married are more likely than the married to offer a hand or an ear—to give either practical help or emotional support.¹⁵ In theory older single people could potentially have more people involved in their lives than older married people. I have homework to do.

Long before you get to the point where you can no longer care for yourself, you should be able to explore creative ways to live their lives in defiance of the elder-orphan risk. Talk with people about living in multigenerational or extended family households. I have a friend who downsized by moving into a newly renovated space built onto her child's family home. They now live with three grandchildren, which allows the busy professional couple to travel for business. This is a win-win for everyone.

Long before you get to the point where you can no longer care for yourself, you should be able to explore creative ways to live lives in defiance of the elder-orphan risk.

It should go without saying that you need to update your will, your advance directive for medical care, your durable power of attorney for finances. Share your plan with your doctors, your friends, and any living relatives who will likely be called in an emergency. As you build your network of caregivers, take on the responsibility of helping friends do the same thing.

Finally, through my work with the bar association I see many lawyers who wish to retain a stake in the profession as a whole. In the fall of 2018, the Senior Lawyer Section partnered with the Monroe County Bar Association to bring together senior lawyers with younger lawyers to explore opportunities for succession planning for aging law firms in the area. In essence, these "Gatherings" should help to develop the profession's next generation of leaders, while at the same time, helping the profession's elder orphans stay connected.

Leonard S. Sienko Jr. – Building a Network and a Profession

I have found it useful to seek out opportunities for social contact; e.g., I enjoy dining out on "the Liturgical Calendar" as I call it. Local houses of worship have many fetes involving food, conversation, and good fellowship. I'm currently enjoying Lenten Suppers each Friday with

the Roman Catholics at St. Paul's. Last week was the United Methodists' turn. The food is made that day from scratch, with fresh soups and salads predominating. It's a vegetarian delight, with a free will offering. Best of all is the chance to reconnect with community members of all ages and stations.

Is there a role for the bar community in dealing with elder orphans? Last month I was speaking to the real estate paralegal at the sole practice of an attorney I've known and worked with for more than 30 years. In the conversation about scheduling a closing, the paralegal mentioned that another lawyer would have to handle the closing. When I asked "why"? I was told that my colleague had passed away a few days earlier. The other lawyer did not do the closing. The paralegal, who had been hired for a new job, was cleaning up the deceased attorney's cases in her after hours from her new job. There was a very sketchy feeling about the experience.

Doubtless there is a role for the courts and for the bar association in helping close a practice, whose sole practitioner has died unexpectedly. The sole practitioner may be considered the "elder orphan" of the legal profession.

As a graduate of Boston College and Boston College Law School, I am proud to be called a "Double Eagle." As a sole practitioner, I am also a "Double Elder Orphan."

The numbers cited heretofore apply to lawyers as well as non-lawyers. There will be an increasing number of sole practitioners with need of a professional support system as they age. I am an orphan both at home and at work.

I do enjoy the limited opportunities I have to interact with younger people, especially newly minted sole practitioners. When I opened my own office, I was fortunate to be invited to lunch by one of the established attorneys. It was lunch on Monday with all the other lawyers who had come to appear at motion term and to search title in the county seat. (This was well before the individual assignment changeover.) We closed several restaurants with our enthusiastic discussions down the years; but we certainly got a lot of questions asked and answered. When the District Attorney attended, we did plea bargains. We discussed the motions we had just seen argued. Every new procedure was vetted. It was amazing how much the older lawyers learned during the years. Our luncheons ceased after the first 20 years as attrition lowered our numbers; but recently, with a new wave of young lawyers, we have revived the "Monday Lunch Club." It is again a success with excellent attendance and some spirited discussion.

I can remember looking out for solo practitioners who may have been having problems as they aged. There was an informal understanding with the local courts and attorneys that we "... take care of our own ...". Someone who had practiced law for 50 years by him or herself was entitled to a "Mulligan" now and then. Papers could be resubmitted, corrected ... matters settled on reasonable

