

Time to go? Helping lawyers retire with dignity

An experienced, well-regarded attorney has given his heart and soul to the profession and his clients—and served them well. He's not yet ready to retire. But, due to aging, his hearing is going, his memory is spotty, and he's no longer serving his clients well.

Is that a fictional tale? A rare occurrence? No, not at all, says John T. Berry, who is Legal Division director at The Florida Bar and chairs a committee studying the issue of aging lawyers.

"Bar counsel in every state I've talked to have at least one, and usually many more, such stories about a very experienced attorney with a great reputation who has been put in a situation where they have harmed the public," Berry says.

"You certainly have to look at it on a case-by-case basis," he adds. "There are some lawyers very active at 75 and practicing better than those in their 40s. But then again, there are some in their 50s who are burned out."

The point, Berry says, is that the bar should be there to help lawyers in need.



Fredric Ury: "Senior attorneys are not going to just go away. They are going to hang on and practice much longer."

"If we just wait until something breaks, we get a serious discipline problem," he explains. "If we don't do anything, it's a disservice to the public and the individual attorney."

In chairing the NOBC and Association of Professional Responsibility Lawyers' Joint Committee on Aging Lawyers, Berry says he wanted to make sure the committee was sensitive to the needs and the feelings of the aging attorney. He says it's a normal reaction for senior lawyers to take it personally when they are told their competencies are being reduced.

"We owe dignity to the lawyers of this generation that's getting older, and we owe them the opportunity to continue and to stay out of trouble," he says. "However, there is an obligation on you as a professional that you are being objective in your decision making. We have to protect the public, and we have to protect you from having a long-term career ruined because you don't realize it's time to slow down or to retire."

We're now seeing the beginning of the largest group of lawyers ever to retire, says Fredric Ury, past president of the Connecticut Bar Association, who spoke on the topic at the ABA Bar Leadership Institute in March. The first wave of the baby boomer generation is coming up on retirement age; Ury calls this one of the top trends in the profession, based on the sheer numbers of attorneys who are going to retire.

For example, one statistic mentioned as part of Ury's BLI presentation is that the largest membership age group for the Vermont Bar Association is 50 to 59, and that there are more Vermont bar members in their 80s than in their 20s.

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going to hang on and practice much longer."

He says there needs to be a joint effort of lawyers' assistance programs, discipline and ethics committees, and bar associations. "Senior lawyers will need assistance in learning how to retire, how to protect their clients," Ury says. "Judges will have to learn how to handle senior lawyers who are suffering from mental infirmities."

What about mandatory retirement?

One former judge in North Carolina had to leave the bench not because of mental infirmity but because of mandatory retirement, which is still in place at many big firms and court systems. At 88, Harry Martin has practiced law for 16 years since he was forced off the bench due to age, and all indications from colleagues are that he is doing fine. After serving as chief justice of the Eastern Band of the Cherokee Nation, however, he has slowed down his work considerably.

"I am opposed to mandatory retirement based on someone's age," Martin says. "There are plenty of ways to get someone off the court or from law practice."

For example, he says, when an excellent lawyer in the western part of the state "began to fail," a judge noticed it and sat down and talked with him, and he retired shortly thereafter. "And then there was a judge down east who developed very bad hearing," he recalls, "so a friend and [state] Supreme Court justice talked with him, and he soon retired."

Since it doesn't always work that way, Martin believes state bars should have committees to delegate a group of lawyers, mostly from the local bar where the lawyer in question practices,

that will visit senior lawyers who are in decline. Such a group would bring hard evidence of an ailing lawyer's condition and discuss the matter with him or her, he adds.

"If after so doing, the delegation thinks he should cease practice, they should say so to him and request that he retire from the practice," Martin says. "In so doing, the delegation would assure the lawyer that he would retire in good standing, and they would help him in closing out his office."

The report from the committee on aging lawyers (available at www.nobc.org/nobc-aprl.pdf) also opposes mandatory retirement and supports this sort of dialogue on solutions.

"So often we don't dialogue frankly, honestly, and caringly," Berry says. Instead, he says, the lawyer in question is avoided, as is the topic of aging altogether. Often the lawyer's firm is in denial too, he adds. "We should not act in a patronizing way, but we should dialogue sincerely," he suggests.

A recent report by the New York State Bar Association noted that mandatory retirement is required in 57 percent of that state's firms that have at least 100 lawyers, but that there's a trend toward firms dropping the policies.

Ury is also against mandatory retirement but adds that without such a blanket policy, "we as a profession are going to have to help our brethren see the light" and know when it's time to retire. He says that lawyer assistance programs are going to have to "ramp up" to handle these sensitive issues, and that bars have to be leaders in coordinating these efforts.

Bars reach out

One bar that has done an excellent job of meeting this issue head-on, Ury and Berry agree, is the New York state bar. NYSBA started a Law Practice Continuity Committee in 2002, and, in 2005, it developed and produced a "Planning Ahead Guide," which helps lawyers establish a plan to leave the practice of law. The plan is available at www.nysba.org/Content/NavigationMenu/Publications/For-

[SolosPlanningAheadGuide/Planning Ahead_Guide.htm](http://www.nysba.org/Content/NavigationMenu/Publications/For-SolosPlanningAheadGuide/PlanningAheadGuide.htm). In 2006, NYSBA formed the Special Committee on Senior Lawyers, which recently conducted a survey of senior lawyers that received 6,000 responses.

Anthony R. Palermo serves on both those committees and recently was asked to coordinate activities of the ABA Senior Lawyers Division with the ABA Division for Bar Services and other groups "to continue our mutual outreach efforts to encourage and assist state and local bar associations" with senior lawyer issues.

"This is a subject which I've worked on extensively over many years," Palermo notes. "I've witnessed increased interest in the subject at all levels, probably because of the recognition that lawyers are living longer and wish to be professionally involved longer, and the appreciation of the coming onslaught of baby boomers."

Palermo is also a member of the Monroe County (N.Y.) Bar Association, which is now studying ways to implement a resolution sponsored by the ABA Senior Lawyers Division and recently adopted by the ABA House of Delegates, which deals with the voluntary advance designation of a transition or successor lawyer. In addition to protecting the client, the resolution is aimed at helping educate lawyers regarding problems associated with a lawyer's inability to practice law. To read the resolution, visit www.abanet.org/srlawyers/resolution.html.

Some positive steps

Berry admits this can all be somewhat of a downer but says it doesn't have to be. For one thing, he notes, many senior lawyers who may need to step away from everyday practice may not need to leave the profession entirely. "First, our committee wanted to encourage the profession to find better ways to utilize the skills of an ever-increasing competent and healthy older lawyer population," he says. "We need to look at how we can better prepare the aging lawyers to serve in different ways."

With that in mind, immediate past ABA President Karen Mathis formed the Commission on Second Season of Service (www.abanet.org/second-season) during her presidential term to help aging lawyers who want to continue practicing law, perhaps with a new career path or by providing pro bono service.

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—John T. Berry

The Florida Bar is looking at a mentoring program to connect young lawyers to senior mentors, Berry notes. He adds that law office management programs are starting to pay special attention by helping lawyers move into something slower paced or half time.

"Discipline agencies also need to be more attuned to complaints based on age," Berry says. "Even if a lot of them are dismissed cases, the agencies themselves should start paying attention."

The joint committee recommends a permanent voluntary retirement status, rather than a disciplinary action that would reflect poorly on the lawyer's overall career, if someone has a non-serious discipline complaint. "Consideration should at least be given that you can resign and go out with some grace," he says.

Unfortunately, though, human beings tend to react to emergencies instead of preparing for them, Berry adds.

"We are raising a huge red flag here," he says. "We already have problems, and it's going to be so much worse in five or 10 years if we don't do anything about it."

—By Clifton Barnes