H*LL NO, I WON'T GO!
LAWYERS REFUSING TO QUIT

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The topic of this article isn't a new problem. In fact, it's one of the first I encountered when I entered the legal industry. What's new is that this problem's consequences are more difficult to deal with in today's marketplace.

My first law firm had three of its prime offices reserved for attorneys who rarely made an appearance. The offices mostly sat dark, cluttered with old files and papers reminiscent of a busy practice, and plenty of personal mementos accumulated over a noteworthy career. The supporting staff has long since been reassigned or retired. When year-end profits were distributed, checks were cut to attorneys whose names I recognized from the masthead, but had never or rarely met.

I originally managed in corporate environments. I had never encountered this situation. It made no sense to me. People who didn't work weren't still collecting paychecks. They didn't have offices. They didn't get a piece of the profits. The more I questioned the rationale behind it, the less sense it made. Yet there it was. Back then, when one became a firm owner, there was an expectation that it was a bestowment for life, ending only upon the voluntary withdrawal of the owner, or the owner's death or permanent disability. It was rare for someone to voluntarily withdraw back then.

Let's face it: lawyers are about being lawyers. For most, one's entire identity is based first and foremost on being a lawyer. That's why, even with the best of intentions to step aside at some certain age, lawyers find themselves emotionally unable to pull the trigger when the time arrives. Because upon retirement, there is no longer an answer to the existential question "who am I?"

Hobbies cannot fill the void that a career has filled. Many lawyers think that their hobbies will see them through. But if the hobbies are just pleasurable time fillers, it becomes apparent that it's just not enough. Plus some hobbies are predicated on certain levels of continued health, and one may not be able to participate fully or at all when retirement arrives.

Activity which provides both meaning and purpose is required to create a satisfactory alternative to one's former career. Not just activity to fill the day and pass the time. But activity which provides a new sense of identity as one who is doing something which is both of significance in the universe, and imparts a sense of personal satisfaction. For some there must be a monetary reward to achieve satisfaction. For others there must be a distinct lack of reward other than knowing one is "giving back" and doing important work. The bottom line is that it has to be activity that one can feel passionate about, take pride in, and create a sense of worth and accomplishment.

It's not surprising that for the majority of lawyers, planning for this "next step" is not something which takes priority in busy lives. Only a rare few have a calling which they look forward to answering in some next phase of their life. Yes, some aspire to write, teach, volunteer, create a foundation, become an entrepreneur, or travel the far reaches of the world. They're the lucky few. For most, it requires a lot of questioning and soul searching to identify the next step, let alone lay the groundwork to make the transition possible. And as a result, although there may be an occasional creative thought, it disappears quickly like the morning mist under the glare of sunlight.

For a period of time, growing firms began proactively protecting themselves by incorporating such safeguards as mandatory retirement or de-equitization ages. Partnership agreements were amended to clearly spell out any options for continued employment at the firm past a certain age, as well as upon voluntary withdrawal. These changes ensured that there was continued room at the top for younger lawyers to move up in status and earnings. It ensured that the next generation would have a reason to stay; thus ensuring succession and perpetuation of the firm.

Unfortunately, there is no solution without some downside given the right set of facts and circumstances. So while these changes worked overall to deal with the challenge of lawyers who refused to retire despite being long past their prime, it sometimes became a case of throwing out the baby with the bathwater.

Advancements in medicine and nutrition means that a lot of lawyers are still capable of making positive contributions much later in life than anticipated when agreements were amended. Seventy-five has become the new sixty-five. Not for all lawyers, certainly, but for many. Some would say most. We are seeing now that a lot of lawyers with many more good years to contribute are being forced out of their firms too soon. Many struggle to reposition themselves elsewhere, where they can continue to practice and contribute.

While mandatory retirement ages have been successful in creating room for succession, it has done nothing to assist departing lawyers with finding their new purpose. It has created a lot of angst for many. It has cast too many adrift.

I'm not a big fan of mandatory retirement. You can tell clearly, right? That's because I'm the one who often gets the call from the aged attorney who is stunned by how lost they are. Yes, their fate was not a secret. Yes, there was plenty of advance notice. But when the time arrives they find that the hobbies and small opportunities within the industry, which they thought would sustain them, are simply not enough. There is not sufficient purpose and meaning. All of a sudden their identity and self-worth collapses in an unsatisfying mess.

Another less common reason for refusal to retire is one of economics. Notice I didn't use the word simple when referring to economics, because there's nothing simple about it.

For some, significant retirement savings vanished during lengthy recessions. The flip-side to living longer and maintaining vitality longer is that one's desire to maintain an active lifestyle extends ones need to earn a living, as well as build a sufficient retirement nest egg. As my 93 year old mother frequently says, "I have learned how to continue on while outliving all my friends and siblings. I will never learn how to outlive my savings." Fortunately we are not yet there, but my sister and I stand ready to pick up the slack if need be.

With increasing frequency, lawyers share privately with me that they cannot afford to retire due to personal financial circumstances. In some instances, one or more ex-spouse may have claimed a share of retirement savings in property settlements. In addition, we have seen an increase in what I lovingly call "do-overs." Formation of new family units later in life creates a need for significant financial means to pay for a second round of college, grad school, weddings, and so forth at a later age than previously experienced.

Within law firms there is now a dichotomy between what may be good business practice for the firm itself, and what may be desirable or necessary for individual members. Because of the inherent conflict of interest for so many owners, firms are often lacking in the ability to make necessary changes in the absence of a clear consensus.

Here is but one example of how this issue manifests at a midsize urban firm which never anticipated these issues or modified its member agreement. An octogenarian partner is still occupying an office and a part-time staff member. He is a current member of the bar, but his role is exclusively social.

On an objective basis, he has not produced revenue for the firm in many years. He continues to earn a disproportionate share of firm profits. No doubt, he feels that this is his right for all of the sweat equity he invested building the firm. In reality, it has probably been long-since repaid in full.

The firm's only mechanism to change this situation is to call for a vote to eject. It will require a unanimous vote of all but the partner in question. Let's be completely candid. If you were called upon to cast a vote, how well would you be at distancing your emotions from what was good for the firm? I suspect you would be having a conversation with yourself: "What if I were next?" "What does this say about our gratitude and loyalty?" "If it were me, I would feel horribly betrayed and humiliated!" The more collegial the firm, the more difficult it will be for each owner to cast the vote dispassionately in favor of the health and viability of the firm.

So while the economic reality and well-being of the firm calls for one vote, the likelihood is that just calling the vote will be a damaging and destructive, probably divisive, exercise for the firm. The managing partner — to his credit — will not call for a vote. When he turned to me for other suggestions, my only offering was to try to cut a deal with the partner to voluntarily retire.

But deep down I know it is not a question of money which keeps the partner at the firm. Emotionally he is just not capable of letting go of his identity. Unless the firm can replace his current role with one which provides sufficient purpose and meaning, no negotiation will be successful.

Yet another manifestation of the same problem presented itself to me this past week. A retired attorney over ninety years old sought my advice on starting up a solo practice. His reasons were not related to any financial need. I spent a good deal of time exploring what was motivating this attorney to want to start a practice from scratch at his age. It took a while for him to get to his real motivation. He needed to do something which earned him a greater level of respect from his children upon his passing. In his mind, being retired from a long-standing career, with reasonable economic comfort, wasn't enough. He needed to be actively engaged in what he considered important work. He needed to rebuild his identity. His biggest concern was that he achieve this goal without losing any of his nest egg. So we dealt with economics and goals, given a desire to work limited hours, that would allow him to achieve his goal.

I remember when firms reluctantly came to the realization that they were not responsible to look after the post-retirement financial well-being of its members. That's when firms starting putting in retirement savings plans, purchasing buy-sell insurance policies, and making its members aware that they were responsible for their own financial well-being upon retirement.

That's very well and good, but in my opinion the most important component in this process has been and is still being ignored. How and who will help these aging attorneys build a vision for the next stage of their life? How will they identify what will create sufficient meaning, purpose and passion to help them maintain a strong, albeit changed, identity?

My personal observation is that this realization isn't on the radar screen of most attorneys. Nor is law firm management thinking about assisting attorneys in this area. I regret that I am so often in the position of informing law firms and individual lawyers that there is yet one more difficult task they must undertake. I wish I were capable of not seeing something broken; I would not then feel compelled to shine a spotlight on it and recommend a way to fix it.

All you young attorneys out there, take note. You will also need to cross this bridge someday.

So what should be done? I don't claim to have all the answers. I hope that the senior lawyer's section of the bar association gives this some thought. Initial thoughts I have involve seeking counsel from a life coach or psychologist. It's never too late or early to begin to address this eventual challenge. Spend quiet time alone, and with family, friends and colleagues trying to uncover where your passions lie. I'm convinced that there has to be passion on your part about whatever the next step involves.

At a firm level, management can encourage proactive thought, and provide a forum for discussion. Perhaps bring in a speaker or two who can talk about transitions and discovering how to navigate one's individual path to a next phase which is meaningful and rewarding. Perhaps develop a recommended reading list.

Every firm should think about what alternatives it can offer for attorneys approaching retirement, and openly discuss the possibilities. If a lawyer is interested, then hammer out the details to make it a viable alternative. All or nothing should not be the only possibilities for a senior lawyer's career.

I encourage PBA members and firms wrestling with these issues to reach out to me to begin the discussion. As so many of us enjoy longer lives, let's work to maximize our enjoyment and sense of satisfaction to the very end.

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