

## Senior Lawyers Committee Report on Retirement and Pro Bono Activities

When he was inaugurated as President of the New York City Bar Association in 1999, Michael A. Cooper made this observation:

As the retirement age lowers in the legal profession and elsewhere at the same time that life expectancy is increasing, the number of retired lawyers is growing rapidly. Some wish to enjoy their retirement years away from the law, travelling or playing golf or tennis. Others may pursue a second and very different career or concentrate upon hobbies that they never had enough time to pursue. But many retired lawyers are not only able but eager to devote the skills and experience they gained as lawyers to addressing our society's many pressing legal needs.

In the decade since these remarks were made, there has been a growing focus on two subjects that, we believe, bear a close relationship: first, the increasing interest by law firms in pro bono activities; second, the growing number of senior lawyers who wish to continue the active practice of law but are faced with mandatory retirement requirements.

These developments offer significant opportunities for both law firms and their senior attorneys. Specifically, we believe law firms should adopt the practice of utilizing senior lawyers, who would otherwise be subject to mandatory retirement, by offering them major roles in the firms' pro bono practices, in return for the lawyers' commitment to devote all, or substantially all, of their working time to such work. In this way, the firms will benefit by having talented, experienced attorneys play a role in their pro bono activities while, at the same time, the attorneys will have an opportunity to make use of their talents and experience. Of course, such pro bono work should not be limited to

senior lawyers. However, the purpose of this report is to focus on the role senior lawyers can play in this expanding area. Specifically, we recommend that member firms take affirmative steps to provide opportunities for certain senior lawyers, including lawyers who would otherwise retire, to participate in their firm's pro bono activities, including, but not limited to, the retention of such attorneys as full-time, compensated, participants in these pro bono efforts.

### **I. Mandatory Retirement**

Mandatory retirement from law firms is a difficult and controversial topic. In general, most institutional law firms include in their partnership agreements provisions requiring retirement of partners who reach a certain age, often 65 to 70, or providing for some form of "decompression" at those ages leading to retirement. The purpose of these provisions is to promote internal growth by preventing senior partners from holding on to their relationships with clients, or creating limits on the available compensation for younger lawyers and, in general, to ensure that older partners do not continue to dominate their firms or work beyond their capacities.

Mandatory retirement and "decompression" provisions vary, not only to the ages at which they take effect, but other terms as well. Often, partnership agreements provide that at a certain age, perhaps 65, the partners enter into a period of "decompression," whereby their compensation is gradually reduced on an annual basis until, for example, the age 70, at which point compensation totally ends and the partners retire. There are, of course, many variations. In some cases, partners continue to receive full compensation until reaching retirement and then are required to leave. Often, partnership agreements

authorize management of the firm to waive retirement requirements, so that the firms may continue their relationship with senior lawyers whose judgment, experience, and significant client relationships continue to make them of special value to the firms. Firms also vary with respect to whether they provide post-retirement financial benefits in the form of pension or other payments. In the past, such benefits were customary, at least in large firms. However, it appears that funded or even unfunded retirement plans are less common today, with the growth of 401(k) and other self-financed pension plans intended to provide retired persons with sufficient income.

The practice of forced retirement is becoming increasingly controversial, and questions have arisen concerning the continuing viability of the concept. This is due to the growing number of senior lawyers who are physically and mentally able and eager to continue performing productive work. Further, the recognition that the viability of many retirement plans is threatened, or that such plans may be unduly expensive, is generating a new look at mandatory retirement. As the Wall Street Journal recently noted in an article entitled, "Gray Is Good: Employers Make Efforts To Retain Older Employees," "the % of workers 55 and over are growing four times faster than the workforce as a whole. By 2012, this age group will account for more than 19% of the labor force up from less than 16% now."<sup>1</sup> Similarly, the New York Law Journal, in an article entitled, "Senior Partners Balk At Retirement Policies," observed that New York City law firms

---

<sup>1</sup> In EEOC v. Sidley Austin, a complaint was filed on behalf of a group of non-equity former partners at a major law firm alleging violations of the federal age discrimination laws in connection with the termination of their employment. Similarly, there has been considerable litigation involving the question whether a retirement plan can be conditioned upon a lawyer's refraining from taking part in law practice.

are increasingly retaining lawyers who have passed the traditional retirement age, at least where such lawyers are able to attract substantial business. The article cited several prominent lawyers who made arrangements allowing them not only to continue working past the usual retirement age, but at significant compensation levels as well. Likewise, The New York Times recently described a 61-year old attorney who left private practice to take a corporate position as chief ethics and compliance officer of a major public corporation. However, while these are good examples of senior lawyers continuing active practices, they will not provide much comfort to the ordinary practitioner approaching retirement, since they involve lawyers of exceptional standing.

Of more general interest is the recent creation by the American Bar Association of a Task Force, "The Second Season of Service," which will examine issues facing aging lawyers, specifically "what services and benefits the ABA can provide to our members as they mature in their practice . . . ." Maury B. Poscover, who heads the Task Force, has noted that, "if someone is of good health and sound mind and financially able to do so, they may well wish to reduce their level of involvement in law. Others who enjoy what they are doing will continue well beyond retirement." Since retirement programs force partners out of their firms, Poscover has stated that the ABA will consider "developing a best practices plan in terms of how to deal with lawyers as they reach those career points and helping them make decisions for the maximum benefit of the firm and the lawyer." In this vein, at least one major firm, Mayer, Brown, Rowe & Maw, has announced the adoption of a program specifically designed to help the transition of retiring partners by utilizing them for a limited period in such matters as training, mentoring and pro bono projects.

## II. Pro Bono Activities

Participation by lawyers in pro bono programs probably is as old as the profession itself. The City Bar Association has for years been actively involved in recruiting legal resources from the profession to assist needy individuals or worthwhile charitable groups, and indeed through its City Bar Justice Center (formerly the City Bar Fund) it annually arranges for legal representation or service to 25,000 pro bono clients of all types. However, pro bono work is now performed in a more sophisticated manner than in the past. There are several reasons for this development, including the growth of not-for-profit legal service programs but limited public funding for them, efforts to improve the image of the Bar, the interest of law students and young lawyers in pro bono work, and the growth of large institutional law firms that have the financial strength to underwrite extensive pro bono programs. As reported by the New York State Bar News in February 2006, "Institutionalized pro bono programs are becoming the industry standard for private New York law firms . . . ." In essence, this means that in addition to the very extensive commitment that firms and individual lawyers have made in the past through the efforts of the City Bar Justice Center and its City Bar Public Service Network, which has successfully expanded its mission to match the individual interests of participating lawyers with appropriate worthwhile pro bono clients, pro bono services will increasingly become a planned part of law firms' overall practice. This was made evident recently when the City Bar Association released a "Statement of Pro Bono Principles," and identified a number of prominent major law firms as inaugural signatories to the Statement.

The Statement of Pro Bono Principles requests the participating firms to “adopt and abide by a written pro bono policy” and to pledge to perform an aggregate amount of pro bono legal work that at least equals an average of 50 hours per lawyer per year. According to City Bar President Bettina Plevan, “These principles are more than a promise of a number of hours; they are a set of best practices to help ensure these pro bono efforts receive the requisite recognition and support.” By signing this statement, the firms pledge that pro bono hours will be counted the same as billable hours; that newly hired lawyers will be asked to participate in at least one pro bono matter during the first year of employment, and that in recognition that people lead by example, “senior lawyers will be strongly encouraged to participate in pro bono activities.”

The Statement of Pro Bono Principles illustrates the broad, national commitment by law firms to pro bono work on an institutionalized basis. This commitment leads to increased visibility for the firms, rewards attorneys who participate in the programs, provides mentoring, supervision, and training for junior lawyers, and makes it easier for the firms to reach out to the not-for-profit community for important, productive matters for the firms’ pro bono agendas.

By pursuing such ventures, law firms make themselves more attractive to both clients and young lawyers. In this regard, it has been reported that many large corporations seeking to place legal work or choose law firms for their approved lists, now consider not only the quality and costs of competing firms’ legal services, but their dedication to pro bono work as well.

The significance attached to pro bono work is illustrated by the annual surveys of The American Lawyer. This widely read publication uses a complicated formula for compiling an “A-List” of leading law firms which rates firms in four respects: revenue per lawyer, associate satisfaction, diversity of membership, and commitment to pro bono activities. The American Lawyer has made “a value judgment” about the importance of pro bono commitments to the evaluation of law firms, stating that “some core values are more important than others. We double the value of revenue per lawyer . . . and pro bono scores.” As for pro bono work, firms are ranked “by a formula that includes both per capita hours and the number of firm lawyers who perform at least 20 hours of service annually.” The American Lawyer separately lists firms on the basis of their pro bono activities, and publicizes those lists. Anecdotal evidence suggests that law firms consider a good ranking in these American Lawyer surveys as very important.

In light of their large size, many firms today no longer rely on the part time effort of individual partners, or other attorneys, to supervise and handle pro bono matters. The pro bono programs are too complex, varied, and extensive, and the number of lawyers involved too large, for the firms to rely on such part time voluntary efforts. Instead, law firms are designating full time attorneys to act as coordinators or participants in pro bono activities.

Reflecting the current trend, a prestigious 1200 lawyer Manhattan firm utilizes one of its attorneys to serve as full time Pro Bono Counsel to facilitate the firm’s initiatives and unify its pro bono efforts, under the direction of a Pro Bono Committee chaired by a senior litigation partner. Other pre-eminent firms have recruited lawyers from the public sector to run their pro bono projects on a full time basis. And to widen

pro bono opportunities for older attorneys, in 2000, a group of Washington, D.C. lawyers founded the International Senior Lawyers Project which reportedly has over 150 senior lawyer volunteers.

The nature of the pro bono projects themselves have evolved, from traditional pro bono programs focused on legal services for the poor, elderly, or minority groups, in such areas as landlord/tenant, social security, disability, and family law, to highly visible litigation and corporate endeavors in sophisticated, far ranging matters. For example, one large multi-office firm recently announced the creation of New Perimeter, a non-profit affiliate of the firm, to provide legal support on a pro bono basis for international problems such as economic development, law reform and human rights.

### **III. A Proposal For Marrying Retirement With Pro Bono Service**

The area of pro bono service offers a valuable avenue for dealing with the task of finding useful work for lawyers reaching normal retirement age, who are both able and eager to continue rendering legal services on a full time or largely full time basis. Retired lawyers have, of course, often sought fulfillment in pro bono work.

However, the pro bono efforts of retired lawyers is done on a voluntary, ad hoc, individual basis. Such volunteerism is highly commendable, and can be a source of a great deal of satisfaction to retired lawyers. However, the increasing interest of law firms in sophisticated, high profile pro bono work, offers a more concrete and wider opportunity for senior lawyers. Specifically, we recommend that law firms take affirmative steps to draw upon the services of senior lawyers facing retirement, by



offering to employ as many of them as possible in significant pro bono projects, on a full time or other negotiated basis. Senior lawyers are particularly well equipped to take part in law firm pro bono work. They have proven abilities, are well respected in their firms, and their experience, knowledge, and judgment make them especially suited for leadership roles in the pro bono area. While some senior lawyers may not wish to be encumbered by the administrative work entailed in managing pro bono agendas, some will be willing and able to coordinate pro bono activities. Still others can provide significant expertise as mentors or teachers for young lawyers who are actively involved in pro bono work, but who require supervision. Senior lawyers also can play a direct role in litigation, contract negotiation, and rendering other advice for not-for-profit organizations, and other areas. Importantly, senior lawyers can assist their firms in meeting their commitment to pro bono quotas.

For all these reasons, firms should reexamine the role of lawyers reaching retirement age, and take affirmative steps to open the door for them to remain active by devoting themselves to pro bono activities. In this manner, the firms can take advantage of the lawyers' extensive knowledge, experience, and skills, without creating impediments to the advancement of younger lawyers that have led to mandatory retirement requirements.

Firms with "decompression" programs have a particularly attractive opportunity to encourage and enlist senior lawyers to devote an increasing amount of their time to pro bono work. A transition from predominantly client work to pro bono undertakings would have the multiple benefits of raising the perceived status and importance of the firms' pro bono programs while offering to the senior lawyers a sense of professional fulfillment,

continued professional status, and a positive transition to a continued active professional career while their client responsibilities are reduced. Hopefully, there would also be an opportunity for interested and committed senior lawyers to continue their contribution to the firms' pro bono efforts after the conclusion of the phase down period. Thus, it is the Committee's recommendation that the firms with "decompression" programs place more weight on pro bono participation as part of the programs by enlisting and encouraging senior lawyers to participate in pro bono activities. The senior lawyers' compensation would be as traditionally structured by the firm during such periods and pro bono time would be given full credit, as it now is for associate time on pro bono work. For firms that do not utilize a formal decompression program, the Committee recommends that they introduce a pro bono participation plan for senior lawyers at some point prior to retirement age, with the comparable objective of encouraging senior lawyers to participate both before and after their formal retirement.

In our view, retired senior lawyers who fill such roles should also be compensated, though not at their pre-retirement levels. Compensation would signify a commitment by the firms to its pro bono program and to the participating senior lawyers while, at the same time, requiring a corresponding commitment by the senior lawyers to serious and continuing legal services. Although some senior lawyers will be receiving other payments from their firms in the form of unfunded retirement benefits, those benefits should not require the lawyers to render significant pro bono service without compensation.<sup>2</sup> In this regard, we agree with ReServe, a distinguished not-for-profit organization founded to "connect educated older adults with stipend-paying jobs at non-

profit organizations,” that “when money changes hands, older adults and the non-profit partners alike take the jobs more seriously.” The inclusion of senior lawyers in pro bono work should not preclude the employment of younger attorneys as coordinators or managers of pro bono projects. There clearly is room – indeed need – for multiple leadership in the pro bono area, especially in firms with hundreds or thousands of lawyers. Take, for example, a firm of 500 lawyers which has pledged 50 hours a year of pro bono work per lawyer. This pledge entails the expenditure of 25,000 billable hours of work per year – the equivalent of some dozen or more lawyers working full time. Obviously, the management, coordination, and supervision of such extensive work – the equivalent of running a small law firm – while interfacing with client organizations to develop important pro bono projects, is a major task requiring the devoted efforts of several lawyers able to play leadership roles. This may explain why a number of law firms have created positions for both full-time pro bono partners, and separate full-time pro bono managers who deal with different aspects of the pro bono programs. With such multiple leadership, the firms are able to ensure that their pro bono efforts are properly managed, that liaison work with non-profit organizations is conducted at a high level and the necessary training and supervision is provided so that the pro bono clients receive equal treatment with clients of the firm’s more traditional practice.

---

<sup>2</sup> The law in New York and elsewhere generally recognizes that law firms with pension plans may require retired partners receiving pensions not to enter into competitive law practice.

**IV. Conclusion**

This Association and its members have been leaders in the struggle for diversity in legal education and employment and have pledged themselves to take affirmative steps to promote such goals. They have also taken the lead in the development of pro bono work. We believe the Association and its members should similarly address the issue of finding rewarding professional work for senior lawyers. To that end, we have outlined this affirmative program for marrying the talent, experience and judgment of senior lawyers with the increasingly significant commitment to pro bono work of law firms in New York City.

May 22, 2006

Senior Lawyers Committee

David N. Ellenhorn, Chair

Doris Barbara Keeley, Secretary

Members:

Sylvia Arnowich

Larry Bodkin

David Botwinik

Emily Campbell

Ernest Collazo

David De Wahl

Albert Driver

Edward Finch

Ira Goldstein

\*John Hadlock

\*James Harbison

Florence Horowitz

Sylvia Kaplan

Harvey Kitay

Ed Labaton

Robert Lippmann

Jesse Margolin

Mark Murdock

Sara Portnoy

Roger Pugh

Jerry Rosenberg

David Rosensweig

Beatrice Shainswit

Harvey Schneider

Allan Seif

\*Sub-Committee Members