

*Professional vs. Personal Life Choices***Lawyers Approaching Retirement Age  
Face Career and Lifestyle Decisions***Many lawyers resist retirement while others embrace change, pro bono opportunities***BY SEAN T. CARNATHAN**

LITIGATION NEWS ASSOCIATE EDITOR

**N**ext year the first ranks of the baby boom generation will begin turning 62, which was once considered normal retirement age. The baby boomers, generally considered to include those born from 1946 through 1964, constitute a substantial portion of the population and includes Presidents Clinton and George W. Bush. Whether boomers retire or continue working holds major social and economic implications for the economy.

Lawyers, however, as one subset of the baby boomers, may not be eager to retire, and those who do retire face the sometimes difficult choice of what to do next. "Many lawyers are not slowing down until they are in their late 60s," says Jay G. Foonberg, Beverly Hills, CA, a member of the ABA's Senior Lawyers Division. "There are a lot of reasons, including late marriages and late children, but I see a lot of lawyers working longer than they used to."

Many law firms have mandatory retirement ages ranging from 62 to 70, although the Equal Employment Opportunity Commission maintains that mandatory retirement of law firm partners who hold the functional status of employees rather than owners can violate the Age Discrimination in Employment Act. See *Equal Employment Opportunity Commission v. Sidley Austin LLP*.

When lawyers are ready to cut back on active practice, they can choose among at least three paths, explains Foonberg: (1) keep doing the same kind of work, but less of it; (2) use their skills and experience to do pro bono legal work; or (3) leave the practice of law altogether.

"There has always been a roaring debate about the meaning of pro bono," says Mary Pat Toups, Laguna Woods, CA, who represents the Orange County Bar Association in the House of Delegates. The issue is whether lawyers should focus their charitable work on traditional legal services, because only

lawyers have the skills to provide this type of work, she notes.

The bar associations of at least 19 states have adopted emeritus pro bono rules, which generally allow lawyers who are not admitted to practice in their states to provide pro bono legal assistance, provided that the volunteer work is performed through a legitimate legal services corporation, the volunteer is a member of a bar in good standing, and the volunteer's work is supervised by a lawyer licensed in the subject jurisdiction.

Toups holds the title of "emeritus attorney" pursuant to the California State Bar Association's Emeritus Attorney Pro Bono Participation Program. In California, emeritus attorneys can be any age but are usually senior lawyers who have retired from active practice. They agree to accept only pro bono work and in turn receive exemption from mandatory bar dues and qualify for certain no-cost continuing legal education benefits. Toups believes retired attorneys should provide pro bono legal representation, as opposed to other forms of community service. "I have seen the desperate need for legal services, and so I tend to be more of a purist," she says.

From an individual perspective, the key according to Foonberg is for lawyers to choose work they will enjoy. Lawyers approaching retirement should ask themselves what they will do next, he says. "If it's not fun, it won't get done," Foonberg states, adding that "if you find something you love to do, it's not work." □

**Resources:**

ABA Commission on Law and Aging, Emeritus Rules for Pro Bono, available at [www.abanet.org/legalservices/probono/emeritus.html](http://www.abanet.org/legalservices/probono/emeritus.html).

Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634.

*EEOC v. Sidley Austin LLP*, 315 F.3d 696 (6th Cir. 2002).