

# “Who Will I Be When I Am No Longer a Lawyer?”

(Is Retirement Still an Option for Aging Sole Practitioners?)

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

For many aging lawyers, status and professional achievement have become inseparable from one’s identity. The link becomes especially apparent when we begin thinking of retirement. As we look toward the future, it is only natural to ask, “Who will I be when I am no longer a lawyer?” We all experience difficult questions relating to our own aging process, but regardless of whatever financial planning you have done, most people still experience fears about their retirement.

## “Ah, but I Was So Much Older Then, I’m Younger Than That Now... (Bob Dylan)”

Researchers say that half the people born today will live to be 100, and by 2030, people age 65 and older will comprise nearly 20 percent of the population. The United Nations predicts that there will be 2.2 million people over the age of 100 by 2050, making the idea of a universal longevity a real possibility for the first time in human existence.<sup>1</sup>

People of all ages, including lawyers, are embracing the idea of living longer, living better, and maintaining a more balanced, vital lifestyle. The aging process can no longer be seen as just the concern of individuals 50 and older. Aging affects lawyers of all generations, so it is important to involve mid-career lawyers and younger professionals in this dialogue. They too must balance busy work schedules with added responsibilities for supporting aging relatives, adult children, grandchildren and siblings. Multi-generational family dynamics is one of the new “wild cards” we have to build into this new retirement model.

Unfortunately, aging has always been seen as a personal matter, rarely discussed outside one’s immediate family, so it is understandable that in many law firms, individuals are reluctant to let anyone else know about their aspirations. In many law firms today, it may be the younger partners who push for greater clarity in terms of transition strategy and succession planning. If baby boomers are comfortable with denial and silence in dealing with aging concerns, equally large number of Millennials want to know and understand the process—even to help.

The legal profession, and all of us, are being challenged to design new approaches that give lawyers more and better choices for living longer and better lives. The sheer number of baby boomers born between the years 1946 and 1964 will change the traditional demographic shape of our society, while reshaping the legal profession.

If aging is the new normal, we need to explore how a new retirement model for lawyers may be needed to help experienced senior lawyers move away from full-time practice—on their own terms. The survival of the profession may depend on how well the profession and individual lawyers respond to this call for a new retirement model.

## I’m Broke...I Live from Check to Check...I’m Caught in a “Sandwich”...

In November 2017, co-author Leonard E. Sienko, Jr., who has worked as a sole practitioner in rural, upstate, Hancock, N.Y., for the past 40 years, and I wrote an article, *The Legal Profession in Transition*, for the *NYSBA Journal*. We opined about how the 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.

In our conversations regarding retirement planning and the possibility of being able to move away from the winters of upstate New York, Lenny felt that “The single greatest challenge to the profession is the number of senior lawyers who actually cannot or will not retire.” Lenny explained: “Over the past 30 to 40 years, the number of solo and small firms has expanded to meet market demands, and today, many of these same practitioners find themselves unable to retire and still maintain anything even close to their current standard of living.” We wanted to explore whether Lenny’s assumptions about sole practitioners were correct.

## Looking Back in Time to See Forward

In 2008, the New York State Bar Association conducted a Senior Lawyer Survey in which they examined what planning and preparations for retirement senior lawyers

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had undertaken or were planning to undertake. This comprehensive study is a valuable starting point for us in tracking senior lawyers' thinking regarding interest and preparedness for retirement.

It is important to note that responses were received from 1,732 lawyers. Of these, only 527 were "solo" (i.e., employed no other lawyers). Since a separate survey to assess sole practitioners' readiness for retirement has not yet been conducted, it is difficult to confirm objectively Lenny's hypothesis about sole practitioners' inability or unwillingness to retire, but actual comments from the Senior Lawyer Survey express fears, doubts and personal concerns regarding the very concept of retirement.

Several of the statements from the Senior Lawyer Survey confirm the hypothesis:

1. I am a sole practitioner with no substantial assets accumulated for retirement. I wish to learn some practical ideas about how to prepare and manage the retirement challenges from the Association or other senior attorneys.
2. I am vaguely concerned about retirement, but not focused on this issue right now, because I still

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have a young child, as well as elderly parents—I'm a classic "Sandwich Generation" lawyer.

3. I have young pre-college age children and, my retirement plan is presently best characterized as "never." Since this survey primarily concerns post-retirement planning, I am sorry that I could not be of much help to you.
4. I believe guidance and experience of others who have retired or simply changed career focus would be extremely helpful. Many of us will be coming of "retirement age" shortly and ideas and guidance would be great. It would also be a wonderful opportunity to segue into pro bono work.

The Senior Lawyer Survey was a two-part survey, including both retired lawyers and those approaching retirement. The survey showed that attorneys 55 and older anticipating and preparing for retirement expected to work longer and have more concerns about retirement than their colleagues who had already retired. Only 8 percent of respondents actually planned to retire and not work at all, while 53 percent were planning on working part-time. Twenty-four percent planned to work as long as they were able.

The need to continue working part time reflects how respondents felt about the retirement resources they expected to count on as a source of income during their retirement years. *Social Security* was listed by 81 percent of respondents for retirement income; *IRA, 401(k), or other retirement savings account* came in at 78.8 percent; *income or money from after-tax savings and investments* came in at 49%; while *income from part-time work* came in fourth at 44.9 percent.

### **Personal Concerns Regarding Retirement or "Where Do I Go After I Get Up and Get Dressed in the Morning?"**

If you've spent the last 40 years going to the office every day, including weekends, what do you do now?

People don't live their lives in silos, and lawyers looking to move away from full-time law practice cannot make this transition without forming new, sustainable working relationships. Because the legal profession has always stressed self-sufficiency, we tend to forget that needing help does not mean lack of control over our affairs.

At some point in time, many of us will need a support network of caring individuals to help us manage certain aspects of our well-being. Some large firms keep some shared space and shared clerical assistance for retirees and those in transition. Where does the sole practitioner go?

Many will rely on family and friends while others will turn to a wider range of community connections. We suggest the bar association has a broader role to play in keeping its aging workforce together as a way of helping younger lawyers grow their own practices.

### **Law Practice Continuity—What Do I Do for Clients?...for Myself?**

Of the attorneys responding to the *Senior Lawyer Survey* who were still working in 2008, 48 percent said that they had not made any practice continuity arrangements. Of those who have made a designation of an "Assisting" or "Successor" attorney, only 15 percent had informed their clients of the arrangement. Another 21.3 percent, *have arranged with their firm to handle the transition of client matters and files*. These respondents were obviously not the 527 solos who practiced alone.

A few more statements from the Senior Lawyer Survey about solos' doubts and fears:

1. I have attempted, with limited success, to have my clients picked up and/or designate/instructions for original wills, other documents. Simultaneously, I have not been able to find a notable assisting attorney.
2. I like the thought of a confidential registry where I could identify those I think best able "to pick up the pieces" of my practice should I die or become disabled and should my partners need assistance with my area of practice.

Of the sole practitioners, only 11.1 percent have arranged with another attorney (Assisting Attorney) to assume their practice or to assist in the transfer of client matters and files. Only 2.9 percent have made any arrangement with an assisting attorney who has agreed to close their practice if they are no longer able to practice. Without more current data, we can only speculate on how prepared solos are to protect client interests. Our suspicions are that solos who do not see retirement in their future may not be as interested in devoting time and resources to protecting client interests. Giving solos hope about their own retirement paths may be a good place to start in better protecting client interests.

### "Survey Says"

The Senior Lawyer Survey asked respondents about their personal concerns regarding retirement. The Number One concern listed was *loss of intellectual stimulation* (35.6 percent), while *loss of opportunities to use professional skills and experience* came in a close second at 30 percent. Not surprisingly, *loss of professional identity* came in third at 23 percent. We have no reason to believe that lawyer concerns have changed in any substantial part these last 10 years.

The NYSBA Senior Lawyers Section (SLS) was established as a response to concerns expressed in the Senior Lawyer Survey.

### Senior Lawyers Section—Priorities

At the time of the 2008 survey, 41.5 percent of the respondents listed "Employment opportunities for senior lawyers" as the number one priority for the new Section. Other services listed highly were, "Health and wellness information at programs" listed at 31 percent, and "Retirement planning information" at 30 percent. Fast forward to today, according to an Altman Weil's 2016 Flash Report on Law Firms in Transition, the majority of law firms are practicing some form of labor arbitrage, either shifting work to less costly lawyers or to part-time and contract lawyers to meet demand while lowering costs. Do senior lawyers have a fast track to these jobs,

and can the bar association do more to help make these connections?

### Reflecting on the Past—Looking Ahead

Around the same time NYSBA<sup>1</sup> was conducting the 2008 study of senior lawyers, Theodore Roszak, a professor of history at California State University, who was known for coining the term "counterculture" in the late 1960s, wrote *The Making of an Elder Culture* (2009) where he laid out his vision for the emerging elder culture.

Professor Roszak's vision at the time was that,

Boomers who will usher us into senior dominance are the best-educated, most socially conscientious, most politically savvy older generation the world has ever seen.... Given sufficient awareness and inspiration, I believe that generation will want to do good things with the power that history has unexpectedly thrust upon it in its senior years.<sup>2</sup>

Could Professor Roszak be correct? Should the bar association bring together these senior lawyers, no matter what Sections, committees or outside affiliations come together, "to do good things with the power that history has unexpectedly thrust upon us in our senior years"?

The Senior Lawyers Section is in the process of expanding the range of community initiatives aimed at bringing its aging workforce together in a series of regional meetings (Gatherings) designed to bring individuals together as resources to encourage individuals and to serve as a sounding board for peers in a safe, neutral place to relax, talk and learn. The first Gathering was held in partnership with the Monroe County Bar Association in October 2018. Lawyers came together to explore business opportunities and retirement options with younger lawyers looking to gain a foothold in the profession.

We do believe the Senior Lawyers Section is in a unique position to provide leadership in bringing lawyers together in new ways. The complexity of the aging workforce mandates that bar associations need to come together to build new pathways for sole practitioners to gain renewed hope for retirement possibilities. The demand for change will remain unresolved, until the talent found in each "siloes" Section and committee and bar association can come together to design new approaches and new solutions for retirement planning.

### Endnotes

1. Matthew Bandyk, *The Future of the Economy: 2050*, US News, accessed February 2, 2010, <http://usnews.com>.
2. Theodore Roszak, *The Making of an Elder Culture: Reflections on the Future of America's Most Audacious Generation* (Gabriola Island, BC: New Society Publisher, 2009), 8.