



# Mandatory Retirement

*An Opportunity for  
Growth and Longevity*

BY DARYL BRISTOW

**FOR 42 YEARS, TWO YEARS BEYOND MY LAW FIRM'S MANDATORY RETIREMENT AGE,<sup>1</sup> I DEVOTED MY PROFESSIONAL CAREER TO TRIAL WORK, MORE SPECIFICALLY, TO JURY TRIAL WORK.**

To be really good, to be successful, to become recognized by your peers, jury trial work is demanding. The profession is littered with bad health habits, heavy drinking, divorce, dementia, and early death rates. This is so because of the almost singular focus; the long hours; the relatively insular, contentious, and sometimes toxic, existence; the energy requirements; and the high stress that this chosen profession carries with it.

Not all, not even nearly all, trial lawyers suffer these downsides of our profession. Many are simply genetically engineered or of such well-grounded disposition and upbringing as to handle without downside the time demands and stress of a trial lawyer's professional life. I am one of those who let trial work rule to such an extent that it damaged family relationships and personal lifestyle choices.

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Studies on longevity, not only living longer but also living better, have exploded over the past 20 years. And almost all of them tell us that, as we age, the things that can increase our longevity, re-energize our brains, and maintain our bodies, are the same things that trial work often makes more difficult: a balanced life, a sound focus on family, positive socialization, exercise, healthy food, lower alcohol intake, and less stress. At the same time, the studies tell us, just as importantly, that one of the positive by-products of trial work is essential to aging well: continued emphasis on exercising your brain and maintaining a sense of continuing productivity.

Last summer, "60 Minutes" produced a news piece on longevity, one that included a review of a telling study of bees. The brain cells of bees are quite similar to those of human beings; there are just far fewer of them. A bee's average lifespan is 30 days. Isolate a bee, and it won't survive more than seven to 10 days. A young bee's job, in a highly socialized environment, is to protect the queen's eggs; then the bee becomes a forager, a more focused, stressful, and rel-

atively isolated life. The study revealed that, as a forager, over time, the bee's brain cells deteriorated. But force the bee back in time, with a return to the hive, and the brain snapped back and became more youthful. This social intervention triggered proteins that can heal the brain. The point of the study: stay socially connected and watch out for stress.

When faced with mandatory retirement, my life as a dedicated and fairly successful forager came to a crossroad. I took a careful look at the professional life behind me and at the possibilities for the life ahead. I chose to look at my retirement as an opportunity, and not a time of decline: an opportunity to nourish and work with the wisdom and tools I developed over the past 40 years; an opportunity to re-challenge and recharge my brain; an opportunity to engage myself more in and to promote socialization; and an opportunity to keep my hand in the game, but to lower the stress level.

So, rather than quit the game, I decided to change it in a constructive and rejuvenating way. I decided to re-invent

myself as a mediator and an arbitrator. I also decided that I would offer my experience to serve as an independent expert witness on attorneys fees and professional conduct issues. That process has been going on now for about five years.

Anyone who thinks that being a trial lawyer automatically makes one an effective mediator, a thoughtful and capable arbitrator, or an effective expert witness, is a person who has not attempted to make the transition. Trial experience clearly can be an asset for a mediator, arbitrator, or expert witness, but the objectives and the tools one needs to achieve those objectives differ in material ways.

Mediation requires a different skill set — different communication dynamics, a wholly different dimension of patience and listening expertise, and a win/win kind of thinking. Unlike trial work, mediation is not about making the other side wrong; it is about achieving a mutually beneficial result.

Arbitration requires disciplined fairness and neutrality; a careful weighing and understanding of the equities,

facts, and law surrounding a dispute; the ability to work productively with other arbitration panel members; and unbiased communication skills. The role of expert witness requires more than simply subject matter expertise; it also requires the ability to think and communicate with a fact-finder as an independent, not as an advocate.

So, the transition took hard work, but the studies tell us that continued hard work, as long as you don't overdo it, is good for longevity and for maintaining a positive, youthful, and energetic attitude and lifestyle.

I first talked with many of my colleagues and judges I knew to get their take on whether they thought I could make the shift I was thinking about. They thought I could; so, I went to work. I did mediation training. I studied literature on mediation and arbitration practice. I worked with experienced mediators, co-mediating matters. I broadly advertised my transition; acknowledged my inexperience; touted my dedication to do my best; and decided to use one tool of my trial work more than any other — hard work and due diligence.

It all worked. Several hundred mediations, a couple dozen arbitrations, and several expert witness assignments inform that, for me, I have made a good transition. I find myself in a place where, in my early 70s, I have broad exposure to the profession I love; I get positive social interaction with large numbers of professionals in dispute resolution and expert witness roles; and I exercise my brain daily, continually learning something new and challenging.

At the same time, my new career does not dominate my life, as trial work did. I have made more time for family, friends, and exercise. I work hard on what I take on, but I take on less.<sup>2</sup>

Outfitted with computers, printer/scanners, and telephones, I can work almost anywhere. For example, I have the opportunity during several months of the year to do my preparation work and telephonic conferencing out of a home I have in Colorado — a fairly low-stress and positive environment in which to get ready. The result: a feeling that I am still relevant to my profession and continuing professional accomplishments; a feeling of satisfaction and success with positive mediation results that is fulfilling; and an interaction with younger members of the trial bar, which is most energizing. And, at the same time, I have found room for a more balanced life.

I am not promoting the proposition that all trial lawyers who hit mandatory retirement at their law firms become mediators, arbitrators, or expert witnesses. For some, staying in “the life,” but with more balance, may be the answer. Just because one hits mandatory retirement at his or her firm does not automatically translate into leaving the profession; it just changes the game plan. Some

associate with another firm. Some become of counsel to another firm. Some decide to offer their services as co-counsel in selected trial matters. Some choose to teach at a law school. Some choose to devote their time and talent to advocate on behalf of or otherwise advance charities or social causes. There are many alternatives out there to just shutting down, and it is shutting down that I advise against.

Whatever the choice, my personal experience with retirement age tells me to stay engaged, but in a balanced and less stressful way. Take time for exercise. When you hit 70, your energy level is directly related to physical fitness. Stretching daily will give you a much more youthful range of movement, a spring in your step.

Excess weight at the age of mandatory retirement is not only unhealthy, it denies you the energy and stamina to achieve a balanced life that includes some hard work. For more than 40 years, I resided in the highly stressful, confrontational, isolated, and caustic world of being a jury trial lawyer. I thought I thrived on the stress, and maybe for a time, I did. But all the literature tells us how destructive stress can be.

The less stress you impose on yourself, the healthier state of mind and body you will enjoy. That means a different approach, as you age, to the business of being a trial lawyer or using your trial lawyer skills in a transition to something similar but also new. Like the experiment with the bees, I have tried to get myself at least closer to the environment at the hive, rather than the environment of the forager. And I am feeling really good about it. **TBJ**

## NOTES

1. I extended my senior trial partner position at my firm for one year, and then continued my trial work as senior counsel to the firm for another year.
2. I am still working on the take-on-less part of this equation, but making progress.



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