

## So, You Think You Might Want to “Retire?”<sup>1</sup>

I have a friend, let’s call him Joe, who decided in mid-2020 that it was time to retire from the practice of law. Joe’s idea was to close his full-time practice by the end of 2020, shut the lights to his office, “turn-in” his law license, and pursue all the personal passions that he believed he had let drift over 30+ years of practicing law. But as his workload began to decrease, and he started to think about the satisfaction he derived from helping others in his practice, Joe began to wonder if there was something in-between; a way to slow down and take more time for personal pursuits, but still stay engaged at some level in the practice of law. As it turns out, Joe had a number of options which any attorney thinking of “retiring” might well consider. As with anything, each has benefits and costs.

### Option 1: Keep an active law license but take on less work.

Nothing requires an active licensed lawyer to work full-time. By simply reducing one’s workload, a lawyer can provide more opportunities to pursue “off-duty” passions. The benefit of this approach is that the lawyer can grow or shrink the workload to suit the lawyer’s needs and taste. Of course, maintaining an active license means that the lawyer must continue to pay the full licensing, disciplinary and client protection fund fees, which combined are currently \$420 annually, and pay for and complete at least 12 hours of continuing legal education annually, at least 2 hours of which must be in courses dealing with ethics and professionalism, and only 4 of which can be completed by self-study. While this may not be a true retirement, it provides great flexibility for a lawyer who is not ready to stop practicing but, nevertheless, wants to “slow down.”

### Option 2: Work under the Legal Services Provider Limited Law License Rule.

Pursuant to Rule 15-301.2, NMRA, an attorney who has taken inactive status in New Mexico can apply to the New Mexico Supreme Court for a legal services provider limited law license. The applicant-attorney must also apply for a character and fitness investigation with the New Mexico Board of Bar Examiners. If approved, the applicant-attorney can then provide a broad range of legal services to clients in New Mexico, whether for monetary compensation or

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<sup>1</sup> *This article is provided to members of the State Bar of New Mexico for informational purposes only and is not intended to be exhaustive or applicable to all circumstances. Further it is not intended to, nor does it constitute legal advice to a lawyer or law firm, nor does it establish any type of attorney-client relationship between employees of the State Bar of New Mexico and any person or entity. Further, this article is not a substitute for independent analysis and research by a lawyer or law firm. Each lawyer and law firm are responsible for their own compliance with applicable rules and laws and should consider seeking appropriate counsel for advice.*

otherwise, through a qualified legal services provider. A qualified legal services provider is a not-for-profit legal services organization: (a) whose primary purpose is to provide legal services to low-income clients; (b) is classified as a Section 501(c)(3) organization under the Internal Revenue Code; (c) is registered with the New Mexico Attorney General Registry of Charitable Organizations; and (d) has been recommended by the New Mexico Commission on Access to Justice.

Licenses under this Rule are required to pay a reduced annual licensing fee, currently \$125, and pay for and complete 12 hours of continuing legal education annually, at least 2 hours of which must be in courses dealing with ethics and professionalism, and only 4 of which can be completed by self-study, but their disciplinary fee, currently \$150 per year, and their annual client protection fund fee, currently \$15 per year, are waived. The license remains effective unless the licensee terminates employment with the qualified legal services provider and does not immediately apply to and be selected for employment with another qualified legal services provider, or is otherwise reinstated to active status.

### Option 3: Work under the Emeritus Attorney Rule.

Rule 24-111, NMRA defines an Emeritus Attorney as “an attorney who is or was a licensed attorney in good standing in the State of New Mexico or other jurisdiction who voluntarily withdrew from the practice of law or transferred to inactive status and does not ask for or receive compensation of any kind for the performance of legal services, but who is granted permission . . . to participate in the emeritus pro bono program . . .” If approved by the New Mexico Supreme Court following a motion for approval, an Emeritus Attorney working in association with an approved legal aid organization and under the supervision of an active licensed attorney can:

- \* Appear in any court or before any administrative tribunal in New Mexico on behalf of a client of an approved legal aid organization provided the client has consented in writing to that appearance and the supervising attorney has given written approval for that appearance;
- \* Prepare pleadings and other documents to file in any court or before any administrative tribunal in New Mexico in any matter in which the Emeritus Attorney is involved; and
- \* Provide such other services as authorized by an approved legal aid organization with the approval and consent of the supervising attorney.

For purposes of the Emeritus Attorney pro bono program, an approved legal aid organization is “a not for profit legal services organization whose primary purpose is to provide legal services to low income clients or a legal department within a non-profit organization that employs at least one (1) lawyer full-time to provide legal services to low income clients and (a) is an organization described in Section 501(c)(3) and exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 or corresponding provisions of federal income tax laws from

time to time in effect; (b) is registered with the New Mexico Attorney General Registry of Charitable Organizations in compliance with the New Mexico Charitable Solicitations Act; (c) is recommended by the New Mexico Commission on Access to Justice; and (d) provides lawyer malpractice insurance for the Emeritus Attorney to cover services rendered by the attorney while under its supervision.”

Emeritus Attorneys are exempt from the annual license, disciplinary, and client protection fund fees, and are not required to comply with annual minimum continuing legal education requirements nor trust account certification. In addition to providing pro bono services as set forth above, Emeritus Attorney can also serve on Supreme Court and State Bar committees, boards, commissions, or other working groups designed to improve the legal profession, unless otherwise prohibited by Court order or rule.

#### Option 4: Take inactive status.

An attorney who decides to fully retire and completely cease practicing law, but nevertheless wants to keep the option open to return to practice in the future, whether full or part-time, can take inactive status pursuant to Rule 24-102, NMRA. Attorneys who are in inactive status are not required to pay the annual disciplinary fee or the annual client protection fund fee, but are required to pay an inactive license fee, currently \$100 annually, unless they are over 70 years of age. The annual fee is waived for inactive members over age 70. Inactive members are also exempt from annual continuing education requirements. An inactive member can petition to return to active practice at any time and, if done in less than one year, simply files that request with the State Bar of New Mexico. But if the member has been inactive for more than one year, the petition must be filed with the Board of Bar Examiners who will conduct a character and fitness investigation before recommending to the Supreme Court whether the inactive member should be returned to active status. Additionally, if an inactive member returns to active status, that member must complete any outstanding continuing legal education requirements such that the total earned for the year in which inactive status was taken total at least 12 hours, and must also obtain at least 12 hours of continuing legal education credit in the year in which he or she returns to active status. Again, at least 2 hours of the annual continuing education requirements must be in courses dealing with ethics and professionalism, and only 4 hours for each year can be completed by self-study. While inactive, the member cannot practice law in New Mexico or in any other jurisdiction under the member’s New Mexico license but can serve on Supreme Court and State Bar committees, boards, commissions, or other working groups designed to improve the legal profession unless otherwise prohibited by Court order or rule. Inactive members also retain certain other member benefits, including electronic access to the Bar Bulletin and Fastcase legal research, and the option to audit most CLE programs offered by the State Bar Foundation Center for Legal Education.

Option 5: Withdraw. Finally, some may decide that that they really do want to stop practicing law “forever.” That person can file with the New Mexico Supreme Court a written notice of voluntary withdrawal. If approved by the Court, the person completely forfeits his/her law

license and must immediately cease the practice of law. Of course, he/she is no longer required to pay annual fees nor complete annual continuing education requirements. But unlike inactive status, where one can petition to reactivate, if an attorney withdraws, he/she can only return to the practice of law in New Mexico by again taking the bar exam or qualifying under the rules governing reciprocity admission, and in either case will have to undergo a full character and fitness evaluation by the Board of Bar Examiners. In other words, he/she must “start over.”

So, what did my friend Joe do? First, he realized, for the first time in his legal career, that paring back his workload was an option. For him, law practice had always been a “light-switch;” either on or off. Now he understood that it did not have to be that way. Second, he realized that he was not ready to completely stop practicing. Armed with these realizations, Joe kept his active license, reduced his workload, and entered the next chapter of his legal career in what he calls “semi-retirement.” While that was the right choice for Joe, it may or may not be for you when you think about “retiring.” What is important is for you to know that you have options when you write your next chapter.