



What Price Privilege?

*And sigh that one thing only has been lent
To youth and age in common—discontent.*

—Matthew Arnold, *Youth's Agitations*

It seems that the longer I have practiced law, the more I have come to appreciate what we do, and the more I value the privilege of being able to do it. When I began practicing in January 1975, State Bar dues for active members were \$100.¹ I can't recall if I was even aware of the Supreme Court Rule that I would no longer have to pay dues once I reached age 70. I considered myself fortunate to be able to pay my dues, particularly considering the costs associated with my education, moving to Michigan, and starting a new career. Frankly, until recently the prospects of someday being free of paying Bar dues had never even occurred to me. I now realize that was not so for an appreciable percentage of our members.

Judging from the comparative volume of comments, the vast majority of our members appreciated that the relatively modest dues increase requested² of the Supreme Court was understandable, both in light of inflation and especially since there had been no increase for a decade. On the other hand, a substantial number of lawyers have complained vehemently about the elimination of the dues exemption for active members of the Bar over 70 years of age. In light of the furor, some

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history and explanation may be helpful to understand the basis for this change.

Why any Change at All?

A review of the history of former Rule 4(c) of the Supreme Court Rules concerning the State Bar discloses that during the first 28 years of our association's existence, there were only two classes of membership: active members and inactive members, the latter of which could not practice law, vote, or hold office in the State Bar. Active members paid Bar dues, whereas inactive members did not. It was not until 1962 that the Supreme Court absolved active members over the age of 70 from the payment of annual dues. Thus, for the past 42 years that has been the applicable rule. I have no readily available information to indicate how that exemption came about, but clearly our septuagenarian practitioners have enjoyed this privilege for almost half a century.

During the formulation of our Strategic Plan, among many other things we examined our dues structure. During the course of that examination, we compared the policies of similar bar associations across the country. Additionally, both State Bar members and Justices of the Supreme Court raised questions about the "senior" dues exemption. They asked, for example: (1) whether dues exemptions based on age constitute inappropriate age discrimination or otherwise tend to perpetuate demeaning stereotypes about

age or capacity; (2) how disciplinary dues exemptions could be justified for any segment of the practicing attorney population when disciplinary infractions are distributed across the attorney population without regard to age; (3) why older lawyers should be exempt from supporting the disciplinary system when there is information suggesting that the discipline of older lawyers is on the rise; (4) what is the impact of changing demographics of the profession on the future funding of the disciplinary system; and (5) why young lawyers at the threshold of their practice, typically earning far less in compensation and often burdened with enormous law school debt, should be made to pay the full amount of association dues while senior lawyers enjoy the privilege of practicing law for free?

At the time of our survey concerning the dues policies of the other 27 unified State Bars, ten offered some sort of dues exemption for over-70 practitioners. Another three imposed no dues at age 75, although two of those required retirement for eligibility. Ten required full payment of dues by active members, and four others had reduced dues for certain ages or for retired members. Nineteen had some form of reduced dues requirements for inactive members regardless of age. Unfortunately, this information did not offer explanations for the basis of the various policies.

Armed with the Strategic Plan, the inquiries of our members, and the comparative

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data, the Representative Assembly (RA) began to consider the need for increased dues and other aspects of our dues structure. The Special Issues Committee of the RA published for membership response the following senior lawyers proposal: No dues exemption for any practicing Michigan attorney, but "emeritus" membership status for non-practicing members age 70 or over. An emeritus member, similar to the previous "inactive" membership class, would be entitled to all of the benefits of membership other than the license.

As expected, the proposal garnered a great deal of comment, the majority of which favored retention of an age-based dues exemption in some form. Subsequently, the Senior Lawyers Section suggested a compromise, which was ultimately adopted by the RA. That proposal included changing the age of eligibility for the dues exemption from age 70 to 75, while "grandfathering" all members between ages 70 and 75 who had already achieved eligibility for the exemption. This was the proposal recommended by the State Bar to the Supreme Court. Instead, the Court substituted a 50-year membership criterion for eligibility for the dues exemption, but imposed disciplinary dues across the board and an assessment of inactive members with less than 50 years of practice for one-half of the base annual dues.³

The Supreme Court's order eliminates the objection to a strictly age-based criterion for exemption eligibility. It requires all attorneys to shoulder the cost of our disciplinary system regardless of age, and it imposes a new burden upon "inactive" lawyers with 50 or more years of membership to continue paying the full discipline portion of the membership dues and one-half of the client protection fund assessment. Although it is difficult to argue with the Supreme Court's reasoning that the privilege of practicing law should be borne equally by all who choose to practice law, it is hard not to empathize with retired "inactive" lawyers who are suddenly faced with a previously unbudgeted expense in order to retain their Bar membership. To the extent that the Court's order was intended to eliminate a preference that discriminates on the basis of age, it is also understandable and hard to challenge.

Finding the Right Balance is Challenging

How are our senior lawyers responding to the change? At the time of writing this article, the Bar has processed only about 8,800 returned dues statements,⁴ so it is still too early to draw final conclusions.⁵ As of mid-October, 572 lawyers had resigned from the State Bar. The great majority of the resignations received were from lawyers who were on inactive status, i.e., were not eligible to practice law. Approximately 42 percent of the resignations to date have come from lawyers 70 years of age or more. Many, many more have paid the increased dues but are protesting the change. The tenor of comments received from the many lawyers who have contacted the Bar suggests that this newly imposed burden is perceived as both inappropriate and, in many cases, financially unmanageable.

Because we remain very concerned about the reactions of our members to this new Rule and in order to be in a position to appropriately advise the Supreme Court about the impact upon senior lawyers, we have recently reviewed again the dues structures of the other unified bars around the country. Keeping in mind that some states have more than one category for exemption or reduction of fees, the overwhelming majority, like

Michigan, still have some form of fee exemption for "inactive" lawyers. Additionally, more than half of all unified bars have some form of a reduction or exemption for some category of active lawyers, with the predominant category being for senior lawyers. Recent data also discloses that over half of the unified bars have made some change in their dues structure within the past two years. Less than half of the bars completely exempt practicing senior lawyers from all dues. This is not surprising. We are living longer and practicing longer. As the demographics change, it becomes an increasing burden on state bars with fixed regulatory responsibilities to exempt lawyers from paying dues merely because they have reached a certain age.

It is irrefutable that the new dues requirement is burdensome to some senior lawyers. It is also irrefutable that paying dues is generally a part of the cost of doing business as a lawyer in Michigan, or any other state for that matter. In listening to lawyers as I have traveled around the state, I have heard various laments such as: this is an "infinite" increase; this is unfair to lawyers who have practiced temporarily in other states, or who did not practice for periods of time during which they served in the armed services (e.g., the Korean War), as they cannot comparably qualify for the 50-year exemption; this is a substantial financial burden for lawyers approaching retirement with diminishing income and/or who may just want to practice "a little;" and, this is an inappropriate tax upon the lawyer who merely wants to remain a member in good standing of the State Bar without retaining the right to practice law.

It is truly unfortunate that we are losing so many valuable members of our association, particularly if resignations can be avoided by the addition of a dues-free, emeritus-type class of membership. While the case for spreading the costs of the association and regulation across all practicing lawyers is a strong one, the argument is also persuasive that we should seek to honor and retain as members those experienced practitioners who wish to remain affiliated with their profession, even after their retirement from active practice. Additionally, there is a strong case to be made for accommodating those members who have practiced law for 50 years, partially in other jurisdictions, or whose Bar member-

ship was postponed or interrupted by military service, so they may benefit from the dues exemption the same as other senior attorneys. Can we find a balance?

It is our intention to continue dialogue with the Supreme Court about these issues and to explore with them the possibilities of different membership options. In the meantime, I can only implore those senior lawyers who are willing and able to do so to stay the course and remain contributing members of our State Bar. I was deeply moved while listening to the videotaped comments of the 50-year honorees who spoke on screen during the Annual Meeting in September. Their reflections upon decades of experience with our profession and its meaning to each of them clearly reflected that they agree that practicing law is truly a valued privilege and I expect they would all agree that it is certainly worth the price we pay. It is understandable that senior practicing lawyers who have become accustomed to exemptions from dues would be upset over this change. Given the length of time that the over-70 exemption was in place, it is easy to see how senior lawyers developed a sense of entitlement to it. On the other hand, there are many good reasons for distributing the burden of supporting our profession and the discipline system equally among all practicing attorneys. I can assure our members that the State Bar will continue efforts to find the right balance so as to retain the membership of as many of our senior lawyers as possible, whose experience and counsel benefits us all. ◆

FOOTNOTES

1. Adjusted for inflation to 2003, the dues today would be approximately \$344. That is \$29 more than the total base annual dues that will be paid by most members of the State Bar this year.
2. \$40 per member. The Supreme Court's order of July 22, 2003, however, approved only a \$20 increase, without the automatic adjustment provision requested by the Representative Assembly.
3. The Court also approved a \$15 annual assessment for the client security fund and a \$20 increase in the discipline component of the annual dues.
4. A total of 35,399 dues statements were sent to active lawyers, of which 1,134 had 50 or more years of service. As of September 2002, we had 2,869 members over 70.
5. It is very possible, if not likely, that the apparent trends reflected in these early returns will change considerably as the large number of as yet unreturned dues statements come in over the next month and a half.