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Life after life tenure

By Vaughn Walker

A former colleague of mine, the late William H. Orrick, Jr., always described the position of federal district judge as the “best damn job in the world.” He said it so emphatically that his statement commanded agreement. Plus, in many ways, it’s true.

So, why would any sensible person lucky enough to have attained that position walk away from it? Put aside that federal district judges make mistakes — as they are with some regularity reminded by judges on the circuit courts — there are lots of reasons not to walk away from a district judgeship. There are at least five reasons:

- It’s a great job, as Orrick emphasized. Seldom does one read of some event or issue in the public sphere that doesn’t find itself into a case that comes before a federal district judge.

- Few, if any positions, offer as great an opportunity to exercise authority over public issues of importance from a position of relative anonymity as a federal district judgeship.

- As I frequently point out — mostly in jest — what other job allows one regularly to abuse one’s discretion and not get either fired or demoted.

- It’s a great job because no matter what you do, you’re right for at least a year; it takes at least that long for the

court of appeals to correct your mistakes; furthermore, the court of appeals is usually pretty forgiving, so if you say the right words in rendering rulings, give parties plenty of say so and don’t appear to bend over backwards to help one party or the other, you can get away with doing what you think is the right thing to do in most cases with only a modest risk of reversal.

- The job carries a terrific semi-retirement option; it’s called senior status. You can carry a substantially reduced caseload, keep your chambers and staff and receive the raises that Congress gives (sparingly and infrequently, to be sure) to fulltime active judges. Most folks who become federal judges are not too big on hobbies anyway (the job being too much fun), and the reduced workload of senior status is generally not too onerous and can include judicial-related activities that one enjoys, like judicial education and committee work as a means of meeting the workload requirement.

What’s not to like about a job like this? With a position like this and carrying these benefits, why would anyone walk away from it? Well, there are some drawbacks to going senior or staying as an active judge.

The biggest reason is that we’re living longer and there are more opportunities for older folks than was

historically the case and law (the field in which federal judges ply their trade) tends to value experience in ways that few other professions do. So, if you have your health and marbles and want to try something new, leaving the bench makes a lot of sense. You’re 65-years-old or older and want to try a new challenge. Opportunities abound.

What are some of those opportunities? A few retired federal judges go back into the practice of law. Whatever the satisfactions of the judiciary, there are some who like the hustle, bustle and battle of practicing law. Plus, time on the bench imparts lots of insights that come in very handy in law practice. And although a judgeship has the advantages I mentioned, there is a bit isolation that goes with the job. Law practice is anything but isolating.

I, and many others who left the bench, went into what is now called alternative dispute resolution. Three of my former colleagues on the Northern District of California bench did so while I was a judge. All three did well and enjoyed what one of them described as a “marvelous third career” — law practice, judicial work and ADR practice. This is the path selected by most who decide to leave the bench and it makes a lot of sense, because the work resembles what one has done as a judge. Arbitration, of course, is very similar

to presiding over a bench trial, save for two key differences: (1) on a three-arbiter panel, there are two other voices who want to be heard; it takes some getting used to not being the sole decision-maker; (2) arbitration has a different dynamic from a bench trial; hearings in the latter tend to move along more crisply (although not necessarily to a faster conclusion) with the formalities of courtroom dominating the atmosphere; the whole process of arbitration generally produces faster and (for the parties) more economical results, but with the power of the robe and gavel missing, hearings are more relaxed and informal. Still, in all, I like lawyers and it’s my observation that those who do best in ADR work like and enjoy lawyers and the whole process of working out a legal dispute.

Then, of course, there’s the other aspect of ADR work — mediations. This is a different kettle of fish from what judges typically do. That is the reason some ex-judges who go into ADR work gravitate to arbitration while others gravitate to mediations. These inclinations set one’s course in ADR work. So, if you like doing settlement conferences, there are plenty of opportunities for a retired federal district judge to engage in a mediation practice. If, on the other hand, you like deciding issues, there are plenty of arbitration opportunities — albeit deciding

issues in a more informal and generally faster moving, if more relaxed, process with the added benefit of not having a large docket of other matters happening at the same time.

In addition to ADR work, consulting opportunities come to retired federal judges. Sometimes, this is consulting with a law firm or party on an existing or contemplated case. Sometimes, it's mooted arguments or hearings. Sometimes, it's special master work with parties, a court or both in dealing with particularly difficult issues where it's useful to the process to serve as a buffer among the court, the parties and the lawyers. The long and short of it is that knowledge and experience that one gained as a judge has value (but more about this in a moment).

An often-overlooked advantage of leaving the bench is

the opportunity to re-engage in the community in ways that are off-limits for a judge. One can join boards — both for-profit and nonprofit — which a judge would have to avoid. I received an appointment to a board charged with managing my city's cultural venues and joined the board of the Law Center to Prevent Gun Violence, an organization that focuses on issues of personal importance to me. As a judge, I'd have to stay away from organizations like these, especially the latter as it takes a position on hot-button issues. I have even gone to a few political events and given money to a few candidates that I support. Freed of the constraints of judicial office, re-engaging in the community is quite liberating.

One possible misconception of retiring from the bench is that retired judges rake in

the bucks back in the private sector. It's true that law practice, ADR work and the other opportunities that retired judges pursue can be remunerative. But there's no guarantee that practicing law, ADR work or whatever else a retired judge pursues is going to be lucrative. What rewards is the satisfaction of tackling new challenges that call upon the skills and insights that one has developed in a long legal career.

It turns out that one of the rewards of the bench can follow one into post-judicial life: as there are seldom times when a matter of public interest fails to arise in some case in court, so too it is seldom in post-judicial law practice or ADR work, that cases or work fail to come in that deal with issues in the wider world.

Leaving the bench is not for everyone on the bench. Some

judges are like perennials; they flower and do excellent judicial work long after typical retirement-age. But others of us have found reward and satisfaction in returning to civilian life. Closing the door on a judicial career, can open new doors. Maybe the hardest part is deciding to walk through that door. ■

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