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Easing Out the Gray-Haired. Or Not.

By **NELSON D. SCHWARTZ**

As the managing partner of a top Los Angeles law firm, Norman H. Levine is no stranger to what might be called the Posada problem.

Nothing, he said, is as tough as telling fellow partners that their best days are behind them. "I've always joked that I wish I could have these conversations by phone," Mr. Levine said. "If someone wants to stay and you don't want them to, that's the hardest. It's like going to your parents and telling them they can't handle their affairs anymore."

If anyone doubts the sensitivity of the task, consider the case of Jorge Posada, the once-formidable New York Yankee who at the ripe old age of 39 found himself demoted in the starting lineup, unable to consistently do the one thing a designated hitter does — hit. When he got the news earlier this month, he walked into manager Joe Girardi's office an hour before the game was to start and announced [he wasn't going to play](#).

Few professionals in other fields have that option — Posada's contract guarantees him \$13.1 million this year, despite a batting average of .183, the lowest among designated hitters in Major League Baseball. But the painful encounter between coach and lagging star — [Posada apologized](#) the next day — is one that is taking place with increasing frequency in the wood-paneled aeries of law firms, [banks](#) and other elite professions, industry insiders said.

"All the rules have changed," said a longtime New York executive recruiter, Richard Stein of Caldwell Partners. "In a market that's become extremely lean and mean, these individuals who have tended to be the senior statesmen of their day are sometimes the first to go."

It can happen at any age, of course, but it's an especially delicate issue in an era when many workers stay on after they turn 66, when they qualify for full [Social Security](#) benefits.

Even as old notions of professional courtesy and obligation erode, so too has the quiet acceptance of traditional, mandatory [retirement](#) ages. Twice in recent years the [Equal Employment Opportunity Commission](#) has sued top law firms, accusing them of discriminating against older partners, and a closely watched case now under way could

make it even harder for firms to dislodge aging lions.

As roughly 44 million baby boomers hit retirement age over the next decade, the problem of how and when to step aside is becoming a hot-button issue, said Robert J. Gordon, a professor of economics at Northwestern University. Many older workers have had to put off retirement because of stock market losses during the recent deep recession. And while unemployment among older workers is lower than the national average at 6.2 percent, it is up sharply from three years ago, when it stood at 2.9 percent.

Some jobs will always have age restrictions — police officers, firefighters, air traffic controllers and the like. And in corporate America, mandatory retirement ages for senior management face less resistance, thanks in part to generous incentives to leave early that are perfectly legal. What is more, federal law permits age limits for the top brass who set corporate policy.

But chief executives still have a habit of hanging on, said Jeffrey A. Sonnenfeld, a professor at the Yale School of Management and the author of a book on the subject, “The Hero’s Farewell.” Mr. Sonnenfeld has even developed a taxonomy to describe how different executives handle the challenge of going into the sunset.

The monarchs stamp out rivals and remain on the throne until they die or are forced out, while the ambassadors become senior statesmen, attending the economic forum at Davos, Switzerland, and similar affairs. Generals leave under pressure and spend their days plotting a Napoleonic return to power. Finally, there are the governors, who go on to do something else, like philanthropy or public service.

Rupert Murdoch at the News Corporation and Sumner M. Redstone at Viacom are quintessential monarchs, but Andrew S. Grove has become an ambassador for Intel, Mr. Sonnenfeld said. Steven P. Jobs is a general at Apple, and Henry M. Paulson Jr., formerly of Goldman Sachs, has emerged as a governor with his tenure as Treasury secretary under President George W. Bush.

On Wall Street, firms like Goldman don’t have a mandatory retirement age, but there are other ways of easing people out, like “de-partnering,” when partners are quietly dropped from the top ranks.

It is an especially tough issue in the legal profession. There is no mandatory retirement age for federal judges — one remains on the bench at 103 — and solo practitioners often work into their 70s and 80s. Senior partners at big law firms, on the other hand, frequently feel

the heat much sooner.

“It’s a huge issue with law firms amid the downturn,” said Jonathan Ben-Asher, an employment lawyer in New York. “Partners may be eased out or chucked out, but in my experience, it is much harder for older partners to maintain their position if their billable hours decline. They’re not given the same courtesies or deference there was in years past because there is less money to go around.”

While Mr. Levine, the law partner from Los Angeles, always breaks the news in person, sometimes the message isn’t even delivered face-to-face. One New York real estate lawyer learned by letter that he was to lose his equity share in the partnership where he had worked for nearly 20 years, but had the option of staying on with a salary cut of 10 percent and a limited contract that would have to be renewed by the firm every 18 months.

“I was surprised and hurt,” said the lawyer, who insisted on anonymity because he still practiced law and occasionally worked with his old firm. “You couldn’t go out and tell people you were fired. And it’s hard to move on when you’re 50 or 60.” Strong relationships with clients helped him land a new job at another, larger firm, he said, calling that “pretty good evidence I didn’t need a drool cup.”

Edward Poll, a Los Angeles consultant who works with law firms on improving the bottom line, recalled the case of a partner told of his fate by an office manager after his computer password no longer worked.

The best way to stave off that situation, Mr. Poll said, is to maintain deep relationships with clients. “Very few people are so skilled that they can’t be replaced by a younger, more current practitioner,” he said. “You’ve got to be so connected to important clients that the firm is going to fear your departure.”

Mr. Levine and other law firm bosses are quick to point out that a fall-off in performance isn’t always a matter of age. Some partners at his firm, Greenberg Glusker, are still going strong in their 70s, while much younger partners have occasionally had to be told they have lost their edge.

Arthur A. Russ Jr., a Buffalo lawyer who turned 68 this year, said: “I think 65 is the new 45. You end up at 65 and you do have enough money to retire but you’ve been doing this your whole life. I enjoyed practicing law.”

Perhaps in reflection of that view, challenges to mandatory retirement ages, which typically range from 62 to 70, have been cropping up more often, according to Mr. Poll and other

experts. Traditionally, partners were considered employers, and thus not protected by the federal Age Discrimination in Employment Act.

But a 2007 settlement between the E.E.O.C. and the law firm Sidley Austin undermined that notion, with the E.E.O.C. successfully arguing that 32 older partners who had been demoted lacked a say in the management of the firm, and thus could be considered employees.

And last year, the E.E.O.C. filed suit against the Kelley, Drye & Warren firm in New York, arguing that it had acted illegally when it forced a partner, Eugene D'Ablemont, to give up his equity stake when he turned 70, and cut his bonus to \$25,000, from \$75,000. The agency termed the suit "a wake-up call for law firms," and specifically cited the firm's mandatory retirement age.

The firm has since dropped the forced-retirement rule, but the case of Mr. D'Ablemont, an employment lawyer who specializes in defending management in labor disputes, is still pending. Kelley Drye is fighting back hard, illustrating the dangers in going public with age discrimination complaints.

The firm countered in court filings that Mr. D'Ablemont's billable hours had been falling precipitously, adding that he engaged in "objectionable behavior inconsistent with the expectations of a Kelley Drye partner." Mr. D'Ablemont declined to comment, as did Kelley Drye, but legal experts say another victory by the E.E.O.C. could open the floodgates to many more such suits.

In the meantime — like Posada, whose not-so-subtle hint came when the manager dropped him to No. 9 in the lineup, from No. 7 — older partners find themselves on the lookout for signals like a cut in the annual bonus. Despite the anemic economy, that's often enough to do the trick.

"Some of these lawyers have egos the likes of which you can't imagine," Mr. Poll said. "The partners get offended and that's what the firm wants. The message is loud and clear — if it's not, they'll stick around because there's nowhere to go."