

[privacy@jury.com](mailto:privacy@jury.com)

---

**From:** "Richard Nichols" <dnichols@mhalaw.com>  
**To:** "James S. Link, Esq." <james.link@jury.com>  
**Sent:** Tuesday, April 04, 2006 5:27 PM  
**Subject:** Re: Lawyers' Retirement Plans Dashed by Appellate Decision

Mr. Link:

I am a retired (inactive) attorney, #32604, by reason solely of age. I agree with you that the Benninghoff opinion is susceptible of use not only against involuntarily retired or resigned attorneys, but also against those of us whose professional careers are without blemish. I do have a couple of thoughts which either are not discussed in your petition or are passed over without significant discussion. Make whatever use of them you may deem advisable.

1. Footnote 4 of the opinion refers to some statutes containing "counsel or other representative" language. I call to your attention the fact that Rule 9 of the preeminent alternate dispute resolution provider in this State, the Judicial Arbitration and Mediation Service (JAMS), contains substantially that same language ["may be represented by counsel or any other person of the Party's choice."]. Given that the majority of the membership of JAMS is retired judges, one would think that their adoption of such a rule might be of some significance.

2. The list of non-legal activities set forth at pages 11-12 of your Petition fails to include (except possibly by inference through analogy) what to me is a significant area of activity by retired attorneys. There are innumerable charitable and eleemosynary organizations, small homeowner and condominium associations, and similar entities, on which retired attorneys serve as members of their governing boards of directors, and as officers. I personally am a director and the vice president of one such organization. Many such organizations are so small that they are unable financially to afford formal legal counsel, and officers and directors with legal knowledge afford the benefit of their judgment, frequently based in part upon their legal knowledge, to those organizations. They do so not as attorneys, but as officers and directors. Would the State Bar contend that doing so constitutes a criminal offense? If so, there will be a lot fewer retired lawyers undertaking such pro bono work.

3. While I have not thought it through, I wonder whether there are potential First Amendment and/or Noerr-Pennington issues involved in the State Bar's position.

Richard W. Nichols  
5361 Reservation Road  
Placerville, CA 95667-9768  
Tel: 530-676-4667  
Fax: 530-676-5327  
E-Mail: hmonrdick@directcon.net

On Apr 4, 2006, at 2:39 PM, James S. Link, Esq. wrote:

**JAMES S. LINK, Esq.**  
COUNSELOR & ADVOCATE AT LAW

215 N. Marengo, 3rd Floor

Pasadena, CA 91101

A new California appellate decision (*Benninghoff v Superior Court*) defined the "practice of law" so broadly that once a person has resigned from the bar - voluntarily or with charges pending - that person joins a perpetual subclass of humanity who can never again perform any function using the education, training or experiences that she, or he, acquired while licensed as a lawyer.

What does this mean to you? Ever think about retiring, resigning from the Bar and stopping the ugly annual dues payments and malpractice insurance? Think again! You need to read this email and take action for your own interests.

Our state Supreme Court did a great job in defining the practice of law in such cases as *Baron v. City of Los Angeles* (1970) 2 Cal.3rd 525, and the more recent *Birbrower v Superior Court* (1998) 17 Cal.4th 119. Nothing more is needed. There is no reason to make a catastrophic mess out of the retirement plans for tens of thousands of California lawyers.

This case is now before the California Supreme Court.

So, what can you do to get this mess straightened out? SIMPLE!

Write the Supreme Court telling the Justices that you want this case reviewed and that you do not want the definition of "practicing law" changed to be so broad as to eliminate all law-related work by resigned attorneys.

We have already received several letters from attorneys about this case.

In one letter Attorney Sam K. Abdulaziz of Abdulaziz, Grossbart & Rudman writes that *Benninghoff v Superior Court* even has the potential to make retired attorneys buy malpractice insurance just to cover their "cocktail conversations".

Professor Emeritus Michael Asimow of UCLA, who is the author of the casebook "California Administrative Law" has urged the case be reviewed and also urges a narrow interpretation of "practice of law" in line with *Baron*.

Workers Compensation Appeals Board Judge, the Hon. Gerre VanGorder, states that the case must be reviewed because the lower courts' decisions are just wrong.

One lawyer states the decisions below are so wrong he may leave the state.

Please go to [www.jury.com](http://www.jury.com). A short form is there along with the complete Petition for Review and the originals of the attorneys letters already received.

Thanks,  
James Link, Esq.  
Certified Specialist Appellate Law

If you no longer wish to receive news about this case send us a reply.

<image.tiff><image.tiff>