The Discerning Investor

Personal Portfolio Management in Retirement for Lawyers (and Their Clients)

JULIE JASON, JD, LLM

Praise for *The Discerning Investor*

"Retirement is frightening, especially for those of us near—or at—retirement age, on at least three levels—it presages a potentially dramatic change in the remainder of our lives, it requires us to confront the last, or terminal, phase of our existence and, for attorneys, it forces us to recognize that we have been procrastinating about this critical subject for most of our professional lives. Now, there is a solution. Instead of continuing to procrastinate, read Julie Jason's excellent guide, *The Discerning Investor*. Written with true insight, understanding and an overarching goal of helping lawyers and their clients confront a difficult topic, this book provides a wealth of information in a readable, understandable and useful format that will warm the hearts of all lawyer-procrastinators. *If you read one book on retirement, this is the one, and you should read it now!*"

~ Harvey L. Pitt, former SEC Chairman;
CEO of Global Business Consultancy, Kalorama Partners, LLC

"As a consultant to law firms, I can give it to you straight: You've had a successful law career and you've built your nest egg. Don't screw it up in retirement. Read *The Discerning Investor* for its valuable tools to help organize priorities and focus those priorities on actionable steps. Julie has her own distinct conversational voice and way of making complex concepts come alive. The tone is very direct and devoid of 'investment-speak,' i.e., no jargon. Every partner of every large law firm should not only read *The Discerning Investor* for his or her own benefit, but also provide a copy to every new partner and associate."

~ Peter Giuliani, Career law firm business consultant,
Partner, Smock Law Firm Consultants (smocklawfirmconsultants.com).
Author of Passing the Torch Without Getting Burned, ABA, 2013

"As an investment management lawyer representing investment advisers and broker-dealers servicing primarily retail investors, I have seen it all. From overreaching sales practices and unfair marketing to outright fraud. *The Discerning Investor* lays out the law governing the investment advice industry and will help you make one of the most difficult decisions in your life—selecting a financial institution and financial adviser to help with your investments."

~Max Schatzow, Esq.,
Co-founder & Partner of RIA Lawyers, LLC

"As former Wall Street litigation counsel to a major broker-dealer, arbitrator, and mediator, and a life-long investor, I recommend Julie Jason's book to lawyers who are approaching retirement. If you are—or wish to be—a 'discerning' investor in your retirement, this book will serve you well."

~ Richard P. Ryder, Esq., Founder,
Securities Arbitration Commentator, Inc.

"Julie Jason's *The Discerning Investor* offers solid advice for retirees and pre-retirees. Julie takes much of the mystery out of personal portfolio management and helps the reader understand many of the mechanics without complexity."

~ Russell L. Abrahms, CPA, CPA to highly successful individuals,
families and businesses for more than 25 years

"Who would benefit from reading *The Discerning Investor*? A lawyer who wants to enjoy retirement having accumulated wealth the hard way, by working at it. There is more involved than meets the eye. It's more than picking stocks. It's more than working with a broker. Creating cash flow to support a lifestyle takes some time to organize. Strategy needs to be set (Chapter 7 is an eye-opener). Monitoring needs to follow. Choosing investment advisers takes some knowledge and due diligence. Freedom from conflicts of interest becomes more important. All of these factors come together in Julie Jason's *The Discerning Investor*, culminating in my two favorite chapters. Chapter 14 introduces an innovative "Know

Your Representative Rule." Chapter 15 takes readers through a creative self-assessment leading to getting to know yourself better as a retirement investor. Who should read this book? I can't think of any lawyer, young or old, who wouldn't benefit."

~ Manny Bernardo (retired attorney), Former Director of Employee Benefits Tax Services for Deloitte & Touche Tristate, Benefits Specialist Attorney, and Human Resources Benefits Executive

"As lawyers, we are always so busy keeping our clients on the straight and narrow that we sometimes neglect to tend our own gardens. Every good lawyer knows only too well what he or she does not know. We would never think to help our clients choose investments for their portfolios, as there are other professionals who specialize in that. But sometimes our clients want us to make recommendations. How do you pick the right investment professionals for your clients, or yourself? Too many of us rely on country club cronies, college classmates, people we meet at the gym, or (increasingly) online profiles we stumble across on social media, without even knowing if anyone's financial future should be trusted to them. Hats off to Julie Jason for finally demystifying the process of selecting an investment adviser, using new SEC Form CRS as a guide. *The Discerning Investor* will help you look beyond a professional's veneer and ferret out what is important that will help you or your client determine if he or she is the right fit. Any lawyer familiar with business due diligence will savor this book."

~ Cliff Ennico, lawyer, nationally syndicated columnist and author of 16 books, including The Crowdfunding Handbook *(HarperCollins 2016)*

"In *The Discerning Investor*, Julie Jason helps readers cut through the noise and hazards of investing and retirement planning. The issue for many is that we are overloaded with news of each day's market fluctuations and experts' opinions on how the day's economic and political events contributed. Julie Jason explains why smart investors take a steady, measured, long term approach. She walks us through important decisions and identifies pitfalls that can cause us to veer off course. For those interested in ways to measure portfolio composition and performance, she explains analytical tools professionals use. She lucidly describes the proper role and responsibility of financial advisers and provides a guide for finding the right financial firm and individual. It is never too early to think about retirement planning. *The Discerning Investor* is a road map to long term retirement planning success that everyone should read."

~ Clifford Alexander, Partner, K&L Gates

"Julie Jason's *The Discerning Investor* meticulously explains the various issues that must be considered when formulating a successful financial retirement plan. From identifying one's goal to the various options for achieving those goals, Julie has clearly articulated what one must consider with or without a financial advisor. For the uninformed, her words are informative when deciding whether or not they need a financial adviser and, if one is needed, what one should expect from an adviser upon which great reliance and trust will lie."

~ Jay Sandak,
Partner, Carmody, Torrance, Sandak & Hennessey LLP

"Selecting the right financial professional can be challenging, but new SEC disclosures are now available. Julie Jason uses her extensive knowledge and experience to highlight the key topics and questions to bring up when meeting with a current or prospective financial professional. This book provides you with the framework for determining whether that professional is right for you, or is someone you should avoid."

~Charles Rotblut, CFA, V.P., American Association of Individual Investors, Editor of the AAII Journal, *Author of* Better Good than Lucky: How Savvy Investors Create Fortune with the Risk-Reward Ratio *(Traders Press 2010)*

"Preparation helps avoid pitfalls. Julie Jason offers the reader a dose of "virtual valium" through stock market history and practical recommendations to help stop the nervous investor from allowing their emotions to become their retirement portfolio's worst enemy."

~Sam Stovall, Chief Investment Strategist, CFRA Research, Author of The Seven Rules of Wall Street: Crash-Tested Investment Strategies That Beat the Market *(McGraw-Hill Education 2009)*

Contents

PART I
Personal Portfolio Management and The Markets

In Part I of this book, I will introduce a way to prepare for retirement with the ultimate goal of getting organized, enough so to envision the potential structure for an appropriate retirement portfolio. We'll discuss some of the more important introductory concepts that underpin the formation of a portfolio, the foundation from which investment strategies flow. I'll share market information and insights from experts to enable you to get a sense of how to understand and manage the risk that is inevitably a part of every investor's life.

Note: The market data in this book has to be understood in context. The information presented is not intended to constitute an investment recommendation for, or advice to, any specific person. Returns may not be repeated in the future; past performance is no guarantee of future results. Different market periods than those discussed produce different results. Index data, such as for the S&P 500 Index, is not reflective of actual investor experience, since an investor would need to account for fees, expenses, and sales charges with the purchase of an index fund that sought to replicate the index. With these caveats in mind, it is important to look at historical trends. They may or may not repeat, but it is essential to know what they have been as we position for the future.

Chapter 1
Introducing Personal Portfolio Management

No matter your age, you will need to create a strategy that will help guide your investment decisions through each stage of life and prepare you for the decades that define retirement. At stake is your own and your family's security. How you formulate and execute that strategy depends in large part on you. Retirement investing is a very *personal* exercise.

Thinking strategically will lead to an action plan that tackles the more complex investment outcomes desired by retirees—creating *lifelong* financial security for yourself and your family, and potentially creating a legacy for either your heirs or charities, or both. Let's put a name on this exercise and define it.

Defining Personal Portfolio Management

I like the term "personal portfolio management"[1] to capture the idea that a retirement portfolio is unique to the individual, and requires a long-term commitment, much like running a family business.

The term "portfolio" has special meaning. In the words of Nobel Prize–winning economist and father of portfolio management Harry M. Markowitz, a portfolio is "more than a long list of good stocks and bonds . . . [it is a] balanced whole [that provides] protections and opportunities with respect to a wide range of contingencies."[2]

1. Professor George W. Trivoli wrote a book titled *Personal Portfolio Management: Fundamentals and Strategies*; however, that book is about the basics of investing.
2. Harry M. Markowitz, Portfolio Selection: Efficient Diversification of Investments 3 (Yale Univ. Press 1959/1970). Markowitz did not apply his theories to individuals.

A "personal portfolio" is goal-oriented, meaning it focuses on your personal and unique situation and addresses the goals you want to achieve now and in the future.

"Management" is the process of planning, executing, and, equally important, *monitoring* progress against goals, to adjust for changing markets, needs, and circumstances over the decades that comprise the investor's lifetime. This approach may be new to you (if you have never retired before) or old hat (if you have experience running a long-term enterprise).

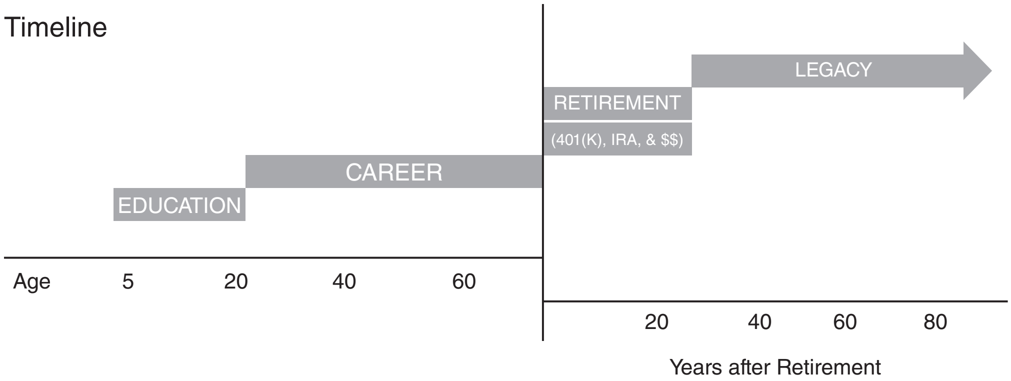
At this point, I'd like to have you think about your personal situation as you plan your next move. We need to discuss time horizon considerations, your personal role in managing your retirement wealth, and how to assess financial expertise in order to match your particular needs.

Time Horizon

Not too long ago, a retirement timeline assumed you lived into your seventies, supported by a pension and Social Security retirement benefits. Today, pensions are almost nonexistent, life expectancies are greater, and financial success is a function of sound wealth creation and management. Moreover, in the best situations, our timelines (see Figure 1.1) extend beyond our lifetimes, to benefit heirs and charities.

It's important to undertand that your retirement planning will encompass a much longer period of time than you might first envision.

Figure 1.1 Time Horizon



Source: Jackson, Grant.

Your Personal Role

In my experience, lawyers, accountants, business owners, corporate officers, and other successful individuals have a number of brokerage accounts, retirement accounts, and even financial relationships that have served them well. At some point (perhaps now), the strategic objectives of retirement push for the need to think things through with a fresh outlook, with the goal of developing a comprehensive retirement plan, one that runs smoothly and is easy for you to manage. As you look to retire, consider these questions:

- Will my current methods of investing serve me well in my retirement, which will hopefully last decades, and serve my legacy goals thereafter?
- What more do I need to know to be successful when dealing with retirement finances?
- Do I want to be in charge of multiple accounts?
- How do I get reorganized as I move into retirement?
- If I have gaps in my knowledge, how can I fill those gaps?
- How do I measure success with a retirement portfolio?
- How do I avoid mistakes?
- How do I define my job as an investor in retirement?
- Can I, should I, delegate the role to someone else?

Once you have clarity on your goals and capabilities, you can make a well-grounded choice about how to manage your retirement portfolio. You may decide to retain expertise or, if you have the training, interest, and time, you may decide to tackle the job yourself.

Four More Points to Ponder

These four points may help provide additional context:

1. **You have a retirement income gap.** If pensions and Social Security do not cover your living expenses, you have a "retirement income gap."[3] This means you will need to turn your savings into a cash

3. To calculate your retirement income gap, answer the following questions: How much are you spending on an annual basis? How much Social Security and pension

flow stream that will not only last a lifetime but also outpace inflation and taxes and prepare you for the unexpected. You might also want to leave a legacy for children or charity, or both. This is a big-picture activity that needs to be conceptualized, coordinated, and managed over time. Having a retirement income gap increases the need for vigilance and planning and calls for organizing multiple accounts into a consolidated portfolio. (Someone who does not have a retirement income gap has a significantly simpler investment challenge.)

2. **Your spouse/partner is not interested in investing.** If your spouse or partner is not interested in making investment decisions with you, then managing your own portfolio would create risk for him or her in the event you become incapacitated. To mitigate that risk, your spouse/partner would need to understand, among other things:
   - How a retirement portfolio should be structured; whether the economy and other news events should trigger buy, sell, and hold decisions; and the effect of taxes and inflation. The ability to make these assessments takes knowledge, typically gained over time.
   - How living expenses are covered. What are the sources, such as Social Security and pension income, cash produced by investments, or other holdings? And when is it time to redirect or reconsider how you are producing and spending cash flow, after inflation and taxes? The ability to either prepare or review this information is essential in structuring a proper portfolio.
   - How to assess conflicts of interest imbedded in financial relationships. To understand conflicts takes experience and the ability to scrutinize disclosure documents.
   - How to interact with financial professionals who may have close long-standing relationships (should all recommendations be accepted; when and how to say "no"). This takes judgment, wisdom, and a dose of healthy skepticism.

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income are you taking in on an annual basis? What's the difference between the two? That's the retirement income gap.

3. **You are single.** If you are single, you will need to settle on who you can mobilize (children, siblings, friends, trustees) to make investment decisions for you in the event of incapacity. (The points just made in number 2 apply here as well.)
4. **You have limited time or interest.** If you would rather be pursuing other interests in your retirement, the effort and skills to manage a retirement portfolio can be a burden. Health issues, now or in the future, might limit your ability to make sound investment decisions. This is particularly important to address sooner rather than later, especially if you are finding your ability to handle the management role more taxing than you would like. This is not uncommon as one advances through one's retirement years.

If you are in any of these situations, think long and hard about the benefits of retaining expertise to manage your retirement portfolio. Who might those experts be?

Financial Expertise

Briefly, the U.S. Securities and Exchange Commission (SEC)[4] regulates financial service providers based on their business models under two separate statutes, one governing the giving of investment advice,[5] the other governing investment transactions.[6] You'll have a better feel for the type of expertise to retain as you read through this book; your choice depends entirely on your personal preferences and how much you want to be involved in the personal portfolio management process.

4. Note that state securities authorities also regulate financial firms. For example, investment advisory firms that manage less than $100 million are excluded from SEC registration. Instead, these smaller firms generally register with state securities regulators under the laws of the states in which they do business. At the end of 2019, there were 17,000 state-registered investment advisers. See NASAA's annual report at https://www.nasaa.org/wp-content/uploads/2020/04/2020-IA-Section-Report-FINAL.pdf. NASAA is the North American Securities Administrators Association. See https://www.nasaa.org/industry-resources/investment-advisers/state-investment-adviser-registration-information/.

5. The Investment Advisers Act of 1940 (the "Advisers Act").

6. The Securities Exchange Act of 1934 (the "1934 Act").

Key Takeaways

For most people of means, retirement investing is very different from investing before retirement. The horizon is decades long, multiple goals need to be met, and spouses may not be as interested as you are in making financial decisions. Perhaps there are charitable interests that need to be addressed; potential mistakes need to be understood, and avoided; a plan needs to be considered, structured, and implemented—all executed, hopefully, within a framework of calm seas, sunny skies, and smooth sailing. The big message is: This is not the time to learn through trial and error.

Now, let's turn to what you can expect to experience in the financial markets, with a skeptic's view on what can go wrong, so that miscues can be avoided.