

## The Fiduciary Perspective for New Partners

By Robert W. Hillman

**M**aking partner can make a firm lawyer feel as though he or she has finally “arrived.” It brings a boost in income and enhanced prestige among clients and members of the firm. However, it also brings new fiduciary duties and risks that you may not have considered.

New partners usually have some sense of the economic risks they are assuming, but they often overlook the responsibilities and corresponding risks that come with the elevated fiduciary duties of partnership status. The law has always imposed the strongest of fiduciary duties on partners. As Cardozo observed, we expect of partners something more than mere honesty; that something more, Cardozo said, is a “punctilio of an honor the most sensitive.” At first glance, a standard that uses the word “punctilio” may seem like a quaint artifact, but the frequency with which contemporary courts cite these exact words in describing the standard of conduct expected of partners in the twenty-first century should be sobering. What, then, do you as a new partner need to know about the duties you owe your firm and your partners?

Start with your partnership agreement. Signing a partnership agreement may seem ceremonial, but your signature marks a serious undertaking with significant consequences. Although the importance of reading any contract may seem obvious, there are numerous reported instances of newly admitted partners shown only the signature page of their partnership agreements. Read the agreement carefully—what you

find may surprise you.

Apart from reading the typical provisions, such as what you must pay to become a partner (the capital contribution), how partners are expelled, and how the managers of the firm are chosen, look carefully at what the partnership agreement says about giving notice of withdrawal and who gets the income

the agreement. Some fiduciary duties of partners are expected, such as fees collected by the partner belong to the firm, partners should not engage in competition with their firms, and partners must keep each other informed of material adverse developments affecting the firm. Things get much trickier, however, when a partner is thinking of

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on cases that you may take from the firm. Although the prospect of leaving the firm may seem remote, partners regularly leave their firms either for better opportunities or to escape once-nice situations gone bad.

No partnership agreement is truly complete. Fiduciary duties are important because they fill in the blanks left open by

moving on and begins to make plans for departure. In this position, you should recognize the growing tension between acting in your interests and placing the interests of the firm first. Not surprising, here is where fiduciary duties are triggered and restrict what you can do.

Clients have a right to choose their lawyers, so if you leave the

firm and clients choose to follow you to your new firm, your old firm is powerless to stop the migration. But your firm does have the right to insist that you act in ways consistent with your responsibilities as a partner (i.e., a fiduciary). This means you don't solicit clients before you tell the firm of your departure plans. It does *not* matter that you have a close relationship with a client, that the client almost certainly will follow you anywhere, and that the firm won't be in a position to compete for the client if you leave. Here, the fiduciary norm is straightforward and without nuance: It is a breach of fiduciary duty to solicit clients in anticipation of departing from a firm before informing the firm of your departure plans.

Additionally, you should not recruit other lawyers and staff while you are still at the firm; wait until you are packed up and gone from the firm before doing this. And, speaking of packing up, be careful what you take from the firm. Does that form file really belong to you? Do you have any legitimate interest in downloading billing records from the server? Is salary data on the associates and paralegals you are interested in recruiting yours to see or take? Is the firm entitled to copies of client files you take? The questions highlight the emerging and sometimes unresolved fiduciary duty issues made all the more difficult by the growth of easy-to-obtain digital data.

In sum, new and future partners should be proud of all they have accomplished but also exercise care and common sense when it comes to the fiduciary duties owed to their firms and partners.

Robert W. Hillman is a professor of law at the University of California, Davis, and can be contacted at [rwhillman@ucdavis.edu](mailto:rwhillman@ucdavis.edu).

## Make Your Self-Evaluation Work for You

By Lauren Neil



**O**nce or twice a year, you get the dreaded e-mail: “The evaluation process has started, and your self-evaluation is available for completion.” You probably groan to yourself and/or roll your eyes; after all, no one wants to fill out a self-evaluation. Is anything worse than having to summarize your accomplishments so as to not sound like a braggart while also describing your shortcomings in a way that does not lead to malpractice charges?

Still, you should make the effort to create a well-executed self-evaluation, and the tips below can help. The best-case-scenario is the partners review what you write and take it to heart. The worst-case-scenario is they ignore it, but at least you will have spent time examining your career progression and have a clearly defined set of goals going forward. Either way you win.

**1. Complete the self-evaluation.** Not doing so is the

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# La Voz de la Abogada Latina

## TOO FEW AND FAR BETWEEN

By Melinda Sommers Molina

Supreme Court Justice Sonia Sotomayor has distinguished herself from the other Justices with her ardent dissents protesting the majority's refusal to hear certain appeals and her penchant for asking challenging questions during oral arguments. Justice Sotomayor, in a relevantly short period of time, has added a distinctive voice to the nation's highest court. It is one that is virtually silent elsewhere in the legal profession because there are so few Latina lawyers. Indeed, Latinas represent approximately 1.04% of lawyers nationwide, according to the Bureau of Labor Statistics.

This underrepresentation persists throughout all major sectors of the legal profession. For example, according to recent studies by the National Association of Legal Placement and Minority Corporate Counsel Association, Latinas represent a minuscule fraction of law firm partners and Fortune 500 companies general counsel positions, only 0.4% and 0.6% respectively.

The Hispanic National Bar Association Commission on Latinas in the Legal Profession commissioned two nationwide studies on Latina lawyers to provide a voice to Latina lawyers and address their underrepresentation in the legal profession. The first analyzes the dearth of Latinas in the legal profession: *Few and Far Between: The Real-*

*ity of Latina Lawyers* by Melinda S. Molina and Jill Lynch Cruz in 2009. The second is a study of Latina public interest attorneys: *La Voz de la Abogada Latina: Challenges and Rewards in Serving the Public Interest Sector* by Melinda S. Molina, Jenny Rivera, and Jill Lynch Cruz in 2010.

These landmark studies are the first of their kind to provide both qualitative and quantitative data on the status, experiences, and perceptions of more than 900 Latina lawyers across all major legal sectors. Over a two-year period, each study was conducted in two distinct phases: a series of focus groups across several U.S. cities followed by a national survey. So what did these studies reveal?

### Formative Experiences

**Influential role of family and role models on career decisions:** A defining characteristic of Latina lawyers, irrespective of their parents' educational background or financial resources, is the high value their parents placed on being well-educated as a means to a better life. This high value served as a catalyst for the studies' participants to excel academically and to pursue a career as an attorney. While many did not have attorney role models in their early lives, many credited strong Latina role models, especially their mothers, with providing the necessary encouragement to pursue and achieve their educational and

career goals.

**Equal access to justice:** At an early age, many of the Latina lawyers viewed themselves as advocates because of their roles as interpreters or representatives for their families and communities. This influenced their later goals to use the legal profession to help others who could not adequately represent themselves. For many Latina lawyers, particularly those in public interest law, the desire to promote social and economic justice was a key motivator in deciding to become an attorney.

### Rewards

**High levels of career satisfaction:** Latina lawyers in the study are generally very satisfied with their careers, in large part because they view their careers as vehicles for providing equal access to justice for underserved communities.

### Positive valuation of their cultural identity and skills:

Latina lawyers believe that their bicultural and bilingual skills and insights are critical to their ability to represent their clients in both the private and public sectors. The Latinas in the studies found a great deal of personal and professional satisfaction because they were able to use their unique capabilities to provide valued legal services.

### Challenges

**Differential treatment based on gender, ethnicity, and race:** Latinas experience systemic obstacles to their advancement in the legal profession due to their race, ethnicity, and gender acting as a "triple threat" to their careers. The threats can range from overt sexism and racism, lack of influential mentors, and

having their accomplishments and qualifications as attorneys devalued and questioned. For Latina public-interest attorneys, these negative presumptions are intertwined with a legal sector that is viewed by the legal profession and the public at large as less challenging and prestigious.

### "Otherness" in the workplace:

As the sole or one of the few Latinas in their workplaces, many study participants felt isolated and alienated. Many believed they are often placed in "token" positions and burdened by additional diversity-related roles and responsibilities to educate others and to serve as representatives for all Latinos. This sense of "otherness" compels many to adjust their appearance or behavior in order to fit in or establish credibility within the dominant culture of their workplaces.

### Few opportunities for advancement:

Latina lawyers follow a number of career paths. Yet, the studies' participants were not proportionately represented in leadership and supervisory roles throughout the various legal sectors. This challenge is especially salient for Latina public-interest attorneys, who given the scarce resources and hierarchical structure of most of their organizations, have very few opportunities for promotion and professional advancement.

### Recommendations

The studies' participants recommended several ways to increase the presence, retention, and advancement of Latinas in the legal profession, including reaching out to Latina youth at an early age, providing mentoring opportunities and visible



attorney role models to Latinas at all phases of their educational and career development, supporting Latina networks and support systems, and developing creative opportunities for professional growth and advancement within the public-interest sector. Other recommendations were to foster continued research by academic, legal, and business institutions that would help educate others about Latinas in the legal profession and monitor the participants' views on their profession.

Studies like these two, and actions such as those recommended by the studies' participants, help give Latina lawyers the voice they are currently lacking in the legal profession. Giving the underrepresentation of Latinas in the legal profession the attention it deserves can help solve the problem and diversify the profession so that it more accurately reflects the population it serves.

Melinda Sommers Molina, an assistant professor at Capital University Law School in Columbus, Ohio, can be contacted at [mmolina@law.capital.edu](mailto:mmolina@law.capital.edu).

### NEXT STEPS

■ *The ABA Spanish Legal Phrasebook*. 2010. PC # 1620447. ABA Book Publishing. To order online, visit [www.ababooks.org](http://www.ababooks.org).

## Self-Evaluations

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biggest mistake associates make. It can be easy to lose track of what you have worked on over the past six to twelve months, and filling out a self-evaluation helps you judge your progress and set new goals. In addition,

many partners do read their associates' self-evaluations and use them to write their employee evaluations. Don't be the associate without a self-evaluation on file.

### 2. Don't cut and paste from your last self-evaluation.

Too often I hear associates (almost proudly) declare that they cut and paste from

previous self-evaluations and submit the same information year after year. That may save you time, but it also does you a great disservice. If you want to take control of your career, instead of coasting through on the decisions of others, use your self-evaluation to take a hard look at where you stand and

where you aim to go.

### 3. Talk about your accomplishments.

Hopefully during the year you kept a running list of the deals or cases that you worked on and any significant contributions you made at your firm or workplace. Examples might include taking a first deposition, negotiating an agreement,

or preparing your first due diligence report. If you did not keep a list, look through your calendar for the conferences and meetings you attended to jog your memory about some of your more significant cases and projects. Then list those and discuss the ways in which you made meaningful contributions and

# How to Crack the GS-14 Glass Ceiling

By Hattie Russell DuBois

As a young lawyer employed by the federal government, I was fortunate to climb the federal government pay ladder fairly quickly. I, like many of my young lawyer peers, was at the “GS-14” level—one level below the top rung of the federal pay scale. GS-14 lawyers perform many of the same tasks as GS-15 lawyers, but they often have difficulty advancing to a coveted GS-15 position. So here are some tips for how GS-14 lawyers can improve their chances of cracking the GS-14 ceiling.

**Gain supervisory skills.** Most GS-15-level attorney positions require supervision of other employees, while GS-14 positions generally do not. So it is up to you to acquire the leadership and management skills to show hiring managers you can supervise. Start acquiring supervisory awareness by volunteering to lead teams of attorneys and paralegals. Also, take advantage of any training dollars your agency sets aside for CLE and enroll in leadership and management courses too.

**Be willing to move away to move ahead.** If you want to move ahead quickly in the federal government, you should be open to making a physical move if necessary. Be willing to look around at other agencies for GS-15-level positions. When considering such a move, be sure to weigh the benefits and risks, particularly locality pay. Verify that the move

you are considering is truly a vertical move up. For example the annual pay for a GS-15, Step 1 position in Denver pays \$122,000 but in Indianapolis the same level and step pays \$114,000. Depending on the circumstances, it may not be worth it to move to another city to take a higher grade. A quick reference guide to the varying locality pay for federal government jobs between U.S. cities can be found at the U.S. Office of Personnel Management website [www.opm.gov/oca/10tables/indexGS.asp](http://www.opm.gov/oca/10tables/indexGS.asp).

**Consider accepting a nonlegal job for a few years.** Far more GS-15 positions are nonattorney positions than attorney positions. Therefore, if you are a contracts and procurement attorney, for example, consider applying for other contracts- and procurement-related positions outside of the attorney series. Advancing into a nonattorney GS-15 for a few years may allow you to fine tune your knowledge in a particular area and will likely give you hands-on supervisory skills you can put on your résumé when you want to reenter the attorney series.

Hattie Russell DuBois serves as counsel to a federal agency in Colorado.

## NEXTSTEPS

- *Fifty Unique Legal Paths: How to Find the Right Job.* 2008. PC # 1620386. ABA Book Publishing.

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what you learned from each experience. For example, the accomplishment “prepared my first due diligence report” becomes “prepared my first due diligence report and learned to manage a team of paralegals and first-year associates.” Also include nonbillable accomplishments and contributions, such

as recruiting, mentoring, professional development, or services to professional organizations.

4. **Make the question about your weaknesses work for you.** Many associates feel they can’t honestly answer this ubiquitous question because they don’t want red flags raised about their de-

ficiencies. By rephrasing the question in your head, you can address a “weakness” but couch it in terms of opportunity. What would you like to do in the next year? For example, if you haven’t had the chance to write the initial draft of an agreement or motion, consider answering the weaknesses question with

something like “Although I feel that my writing has progressed commensurate with my class year, I have had limited opportunities to expand my writing by taking on the first draft of a purchase agreement.” Partners might even take notice of your desire for certain opportunities and grant you them.

These tips are not exhaustive but are a good starting point. So when the next self-evaluation e-mail arrives, go ahead and roll your eyes, and then dig in.

Lauren Neil is the corporate department manager at Weil, Gotshal & Manges LLP in New York City. She can be contacted at [Lauren.Neil@weil.com](mailto:Lauren.Neil@weil.com).



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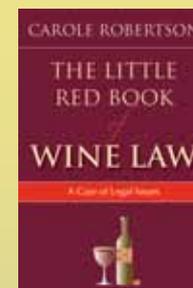
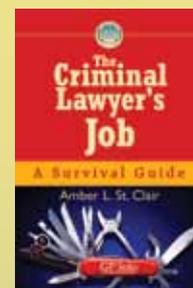
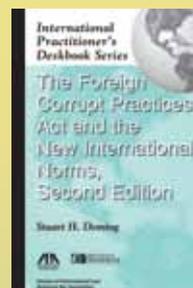
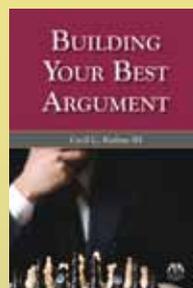
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MAR. 1, 2011	 MAKING PARTNER: UNDERSTANDING THE PARTNERSHIP AGREEMENT
MAR. 2-4, 2011	WHITE COLLAR CRIME 2011   SAN DIEGO, CA
MAR. 9, 2011	 ELDER LAW: WHAT ATTORNEYS REPRESENTING ELDERLY CLIENTS NEED TO KNOW
MAR. 17, 2011	 FUNDAMENTALS OF TAX-EXEMPT HEALTHCARE ORGANIZATIONS
MAR. 23, 2011	 NEW FRONTIERS: HOW A U.S. ATTORNEY CAN LIVE, PRACTICE LAW AND PROSPER IN ANOTHER COUNTRY
MAR. 31, 2011	ROSNER AND ROSNER YOUNG LAWYERS PROFESSIONALISM AWARD DEADLINE
APR. 5-9, 2011	SECTION OF INTERNATIONAL LAW 2011 SPRING MEETING WASHINGTON, DC
APR. 13, 2011	 SMALL BUSINESS BASICS
APR. 21, 2011	 ANTI-KICKBACK LAW BASICS
MAY 11, 2011	 ETHICAL TRAPS IN E-DISCOVERY
MAY 11-13, 2011	HEALTH CARE FRAUD   MIAMI BEACH, FL
MAY 19, 2011	 REIMBURSEMENT & FALSE CLAIMS ACT FUNDAMENTALS

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## It's Your Job to Manage Your Career

By Grover E. Cleveland

**L**anding your first job in the law is only half the battle. Particularly in a down economy, you must make yourself indispensable to keep that job. Start managing your career better today with these tips.

**Remember that you are in charge of your career.** No one else can manage it for you. Thinking of yourself as self-employed—regardless of your actual practice setting—will put you in the mind-set to take ownership of your work and proactively manage your career.

**Do excellent work.** Chances are you have not landed your dream job yet; you may not even know what your dream job is when you first start out. But it is never too early to start preparing for future opportunities.

The best way to get to where you want to be is to develop a reputation for doing excellent work. That will open doors at your own office and with other employers.

**Develop a career plan.** First, identify your career goals, and then identify the specific steps you must take to achieve them. Your goals might include learning a new area of the law, tak-



ing on more client responsibilities, working with a new lawyer, making more money, taking more vacations, or working on projects that are more aligned with your values. Take small steps every day toward achieving these goals.

**Build relationships.** Although you must manage your own career, it is hard to go it alone. Building relationships with two or three supervising lawyers who will invest time in helping you enhance your skills is one of the surest ways to succeed as a lawyer. You have much more job security when supervising lawyers will speak up and say that they cannot do their own work without your help.

**Do your homework on supervising lawyers.** Experienced lawyers are not created equal when it comes to the ability or inclination to mentor young lawyers; so you must do your own homework on supervising lawyers. Learning about the work styles of supervising

lawyers will help ensure that you meet their expectations and avoid any lawyers with a reputation for “eating their young.” Your assistant and other junior lawyers are good sources of information.

**Set boundaries.** One of the easiest ways to fail as a new lawyer is to take on more work than you can handle and choke. Never over-promise and under-deliver, and always work at a pace you can maintain over the long haul. While some nights and weekends are usually required, if you *never* set boundaries you are likely to end up in a situation that does not work for you. Two good ways to try to set boundaries are to never cancel vacations and limit how often you check your mobile device.

**Keep your life outside the office—outside the office.** Law firms and other legal employers carefully cultivate reputations for hiring smart professionals. Don't let a reckless tweet or Facebook posting leave your

colleagues wondering about your judgment. Even if you are circumspect about what you post, you should seriously consider not having current colleagues as friends on Facebook. As I heard one young lawyer wisely observe recently, “What happens in Vegas stays on Facebook.”

As a junior lawyer, it may seem like your fate is in the hands of the supervising lawyers, but ultimately you are responsible for your own success. The tips above can help you to manage your career successfully.

Grover E. Cleveland is an attorney in Seattle and the author of *Swimming Lessons for Baby Sharks: The Essential Guide to Thriving as a New Lawyer* (West, 2010). You can send career questions to him at [www.swimminglessonsforbabysharks.com](http://www.swimminglessonsforbabysharks.com).

### NEXT STEPS

■ *Managing Your Legal Career: Best Practices for Creating the Career You Want.* 2010. PC # 1620435. ABA Book Publishing. To order online, visit [www.ababooks.org](http://www.ababooks.org).