



Lawjobs.com Career Center

Select '**Print**' in your browser menu to print this document.

©2006 *Lawjobs.com* Career Center

Page printed from: [Lawjobs.com Career Center](#)

[Back to Article](#)

Be a Lawyer, Not an Employee

Tai H. Park
New York Law Journal
October 09, 2008

Welcome to the new class of lawyers starting a career in one of the most important professions in this country and the world. When all is said and done, what makes our profession unique is that we serve the law as well as people or institutions in need of legal advisers and advocates.

For those of you who are starting out at private law firms, however, there is an additional consideration: to make money. Business can have a distorting effect on the quality of professionalism if we let it. And because law firms have profit as an important goal, new lawyers face certain challenges that do not exist in, say, a public interest or governmental organization.

This article is addressed to new associates to offer some tips on developing and retaining a core professional identity in a business environment.

Put simply, the goal is this: Be a lawyer and not an employee. The difference is that as an employee, your duties run to your bosses -- partners, senior associates -- but as a lawyer, a member of the bar, you owe the law a duty of integrity and the firm's client a duty of loyalty. Taking this attitude to heart, you will not only be happier as you learn, you will find yourself sought after as an associate by partners and, eventually, by clients.

WHAT A LAWYER IS

Let's take a minute to consider what are some of the core features of being a lawyer.

First, whether in private practice or government, a lawyer has ethical obligations to the profession and the law. Indeed, litigators who appear in court are said to be officers of the court. Codes of professional ethics outline standards of behavior that do not apply to an ordinary person. When boiled down to their core, I think of these obligations as all fitting under a broad rubric of integrity.

For lawyers in private practice, the notion of integrity encompasses another broad concept, that of loyalty. Preserving confidences, zealous advocacy, conflict-free counsel -- these are some of the core standards of behavior that should



be second nature to lawyers.

While in some extreme circumstances, the obligation to the law or profession can conflict with the obligations to a client, these obligations generally coexist because lawyers help their clients to make the best decisions under the law. For those times when a client will not abide by the law and seeks assistance in breaking or skirting it, the conflict may not be reconcilable, and lawyers will find themselves having to withdraw from the representation. Indeed, it is worth remembering that one of the assets that law firms bring to a corporate client is independent, objective advice.

Thus, while the popular image of a lawyer finds its form in figures like [Atticus Finch](#), it lives as well in the form of lawyers at law firms who identify themselves with the principles of integrity and loyalty to a client. Assisting a corporation engage in an acquisition that will increase its prosperity or fend off a ruinous lawsuit or investigation may not be as compelling as the image of Finch, but for lawyers, the commitment to their profession finds its source in the same calling.

If there are any of you new lawyers who smirk at the above description of law firm lawyers, I suggest you give yourselves one year to find the best partners at your firms, transactional or litigation. You will be pleased to learn that such partners' commitment is deep and not much different from what I have described above.

THE OBSTACLES

But you are not such a partner yet. You are a first-year associate. How do you begin to find the commitment to law and the client, where you may never talk to a client or a client representative for over a year? You may have only the vaguest notion of what are the client's needs, strategies or objectives.

Instead, you will undergo mind-numbing orientation sessions about the several hundred lawyers at the firm, with myriad policies and administrative requirements. When you start, you will be given assignments and narrow legal issues, you will attend to your work mostly in the confines of your office and when invited to meetings, you will largely just observe and carry out tasks that are designed to make life easier for the senior associates or partners. You will receive regular paychecks, bonuses (albeit nice ones), evaluations and criticism, and you will find yourself fretting about the opinion other senior colleagues have of you.

In this setting, it is easy to forget what it was you had set out to become and to think of yourself as any other corporate employee.

It is true that some of the work you do will be quite interesting and engaging. The deals or cases you work on at major firms will be *Wall Street Journal* material, and the legal issues will be varied.

You may also find that smoking-gun e-mail in a blizzard of electronic documents. Or you may catch the contract-altering typo at the printers at 3 a.m. that everyone else overlooked. You will, undoubtedly, see one of the lions of the bar make a masterful argument to the 2nd Circuit or see another successfully negotiate multibillion-dollar terms in an acquisition through the sheer force of her presence and mastery over the subject matter. It can be heady stuff.

But it's important not to confuse interest in the work with identifying one's self as a lawyer. The way I see it, being a well-paid and interested employee is never as good as being an engaged lawyer.

CARING FOR THE CLIENT

To become one of them, I suggest you start by thinking about the clients and the role your firm has been asked to play for them.

Care about their well-being and do what you can as a lawyer to protect and advance their legal interests. Though you have not talked to the client (often an institution with in-house counsel representatives) and may not do so for years, challenge yourself to put yourself in the shoes of the partner who does. The good partners are committed to their clients and share in the client's triumphs and defeats. As a first-year associate, challenge yourself to find that commitment.

You do that first by wanting to do it and understanding that that is your goal.

Caring for the client requires knowledge, an awareness of what the client's goals and problems are. Spend some time and energy acquiring that knowledge, in every new case or matter. It is the rare senior associate or partner who does not give you some sense of who the client is, what the overarching issues are and how the research issue, document review or diligence fit into the picture, as vague as it may be.

Understand that law firms today are highly sensitive to associate morale and training issues. Partners are hungry for the young lawyer who has that special drive and commitment to know and do more. In this environment, your well-

placed and -timed question that seeks out more background information about the client, the project or the issues will likely be well received and enable you to get better engaged as a lawyer working for a client.

To be sure, you must be careful not to alienate people by pushing for more information than they think you really need. Sometimes you will find senior associates or partners who are fundamentally impatient; some will fear that the more you ask, the less focused your work on a research project will be and others will really have no time for a more expansive discussion. Finally, there will be times when the person giving you the assignment really does not have a firm grasp on the issues himself. Peppering senior colleagues with questions is not always the right approach.

But great lawyering requires excellent judgment, both legal and practical, and learning how and when to ask for more information from senior lawyers is another opportunity for you to hone your judgment. With all your sensibilities attuned, ask for more and do it with the right tone and at the right time.

It need not be as soon as an assignment is given. It might be as you give some updates on your research or your findings. Or it may be at a more relaxed period, at the coffee machine or department function. Also, there is a ton of publicly available information about the client on the Web site. Do some basic research in the press.

However you go about it, always strive to get as broad a picture of the client's objectives or predicament as you can. If you're doing it right, you will find, in very short order, that the senior lawyers will start to appreciate you as a lawyer and begin to treat you more and more like a colleague whose view they will want to solicit.

Remember that partners will fight among themselves for those associates who consistently display the qualities of self-initiation and enthusiasm about the practice of law. I'm not talking about brown-nosers. I'm talking about those with a genuine desire to excel as lawyers. These are the associates who let the partners sleep a little easier at night.

CARING FOR THE LAW

As noted, lawyering is not just about clients. It also includes a commitment to the law.

Whether transactional or litigation, the work of law firms is valued by clients because of the lawyers' grasp on the law. This does not mean merely a detailed understanding of cases that apply to contract terms under negotiation or the myriad procedural and substantive issues entwined in a piece of litigation. It means a grasp of the concepts and policies that underlie the cases so that clients can understand what their choices are and make reasoned decisions.

A growing appreciation for the common law is not acquired without a degree of commitment. The good news is that law firm associates are given many opportunities to find that commitment, because there is a lot of legal research for them to do.

The key here is to do that research with a goal in mind. Do it not just to find a technical answer and move on but to understand the case as a whole: the reasoning, from a grasp of the facts and issues in dispute, to the underlying policy of the law, to the logic of applying precedent to the facts as presented.

Do this each time to the vast range of legal issues presented, and you will become far more than technically proficient. You will be fulfilling the commitment lawyers have to the law by understanding how it works. My guess is that you will grow in your appreciation for its dynamic quality and the central role of reason in its foundation.

PROFESSIONALISM

Being engaged as a lawyer and not as a mere employee naturally leads to other approaches to the work and to your senior colleagues that are conducive to professional development and gratification.

Your work will be more thorough and thoughtful. A legal assignment at a law firm is rarely one-dimensional. Research questions are, usually, not so readily answered that they are "black letter law." If they were, the senior lawyers would not need to charge the client to have you spend hours researching it.

An employee might be inclined to get the most readily available answer and think this is good enough. A lawyer would not. She would want to understand whether she is missing something and trace the implications of a discordant phrase in one of the key cases or chase down the cases cited for the generally helpful proposition to make sure there is nothing around the corner the client should be aware of. And if there is, she would want to make sure the senior lawyers were aware of it so they could better advise the client.

Might an employee go through the same process? Perhaps. After all, seeking to please a supervising lawyer can often be the best incentive to competitive employees. And an employee may be as much interested in honing his craft as any professional.

But there is likely to be a difference given our profession and the independent role of the law. An employee works to please his boss, the partner. Mundane considerations like whether the partner would like the answer will creep into the employee's work product if he thinks like an employee and not a lawyer.

Moreover, an employee might do just what she's asked and wait for the next assignment or follow-up question. In contrast, a lawyer's work will have an integrity to it because it is designed to understand the law and advise the client as to it. So if the natural direction of her research led her to important new territory, she will explore it, and her product will be more complete than even the assigning lawyer thought was required.

Over time, the attitude of the lawyer and that of the employee will show in other material ways. The lawyer will be more likely to think creatively to solve problems on his own, without direction. An interest in the nature of common law will lead to more creative thinking. The young lawyers may show themselves to be more enterprising not only in problem solving but in seeking out deeper client relations or new clients because of the satisfaction that comes from winning the trust of clients and having them come back for more advice, more work.

But there will be more subtle differences as well, differences that will really matter to the firm and its partners. For example, a young lawyer will be more likely to have an eye out on efficiency and costs for the client.

Most new associates at major law firms are billed out at over \$300 per hour. A lawyer who senses a duty flowing to the client will be conscious of this. He will ask whether he can charge some of the time he put into researching this issue into a firm learning account so the client is not presented with a bill that reflects a lot of inefficiency.

An employee, in contrast, might tend to log as much time as possible so the partner could be impressed by how much time he billed. Leave it to the partner to decide how much she wants to write off. A business venture might even encourage such behavior. Lawyers will not.

This is not to suggest that every first-year associate should be anguishing about how to account for his time or to routinely discount his time. Instead, the point is to think about those issues responsibly and to discuss them with the senior lawyers as appropriate.

Moreover, just as partners who spend all their time talking about money and profits rather than the excellence of service to clients and the legal community make for bad firm culture, young associates who spend all their time grousing about the associate-partner dichotomy drag the firm morale into a culture of employee pettiness. It is unworthy of you and your profession.

This is not to suggest, of course, that young lawyers must always be loyal to the firm and be good corporate citizens. In fact, some lawyers may end up being the most squeaky of wheels because large firms often deserve to be challenged on the one issue that is vital to young lawyers: excellent training.

Employees concern themselves behind closed doors about the things that consume all employees, such as compensation, long hours, work conditions, etc. While every person cares about such things, lawyers are more apt to ask for more information about the deal or case, prod for feedback and ask for training and different kinds of experience to build more skills. And if they don't get it over time, they move on to other firms, government, or in-house, where they believe they will realize their potential as lawyers.

Every firm faces the challenge today to recruit new associates who want and demand to be lawyers, and it is an even greater challenge to those same firms to retain that population. Every partner knows that the future of the firm (and the health of the partners' retirement plans) depends on the excellence of the lawyers who perpetuate and grow the reputation of the firm. That is achieved by clients' esteem for the lawyers, and their esteem is, generally, tied to the commitment the lawyers have to the client's cause. There is a nice symmetry here.

New associates who hold themselves to a duty of loyalty to clients and the profession will find that a lot of pieces naturally fall in place, including their professional gratification.

Tai H. Park, a partner in the litigation group at [Shearman & Sterling](#) where his practice focuses on white-collar criminal defense and internal investigation matters, is co-chair of the firm's associate development partners committee.