

# Corporate Articles

published by Corporate & Association Counsel Division  
of the Federal Bar Association

Spring 2017

## Looking To Go In-House? Strategies You Should Know

by Nancy B. Reiner, Managing Director, & Amy B. Katz, Director,  
Major, Lindsey & Africa

While the majority of law school graduates begin their legal careers at law firms,<sup>1</sup> many eventually ask the question: Do I want to be an in-house attorney? Of course, regardless of whether a law firm associate aspires to become a law firm partner or seeks an in-house, nonprofit or government position, it is critical to focus on important career success strategies such as leadership development, branding, networking, community involvement and business development.<sup>2</sup> As in-house legal recruiters, however, we are often asked whether there are any particular strategies, tips or skills that could maximize the likelihood of landing an in-house legal position. To help answer that question, this article lays out what we believe are top strategies and skills needed for attorneys to succeed in gaining in-house employment.

### Gain business acumen

The most common request we get from our clients regarding their in-house legal needs is that they want to hire a business person who happens to be a lawyer as

opposed to a lawyer who knows business. Time and again, our clients ask us to find an attorney with strong business acumen who will understand the business and how it works and who will not be a nay-sayer. Companies want to know how they can accomplish business objectives legally and ethically. They do not want to witness employees running from the lawyer to avoid a roadblock; they do not want barriers to progress. Of course, the in-house counsel might have a legitimate legal issue with a business proposal, but an attorney with business acumen would find a solution. The attorney might say something like, "Well, you can't do it that way, but you can do it this way. This will avoid as much risk as possible while still allowing us to effectively move forward."

Some savvy attorneys gain experience through a secondment while at their law firm; they might work in a client's legal department full time for anywhere from three months to two years, gaining that important in-house experience and sharpening their counseling skills.

## Message from the Chair

by Diana Lai

Spring is finally here and I hope everyone is enjoying it. The division leadership is pleased to release another issue of *Corporate Articles* featuring insights from law students, governance and legal professionals across a diverse spectrum, including Nancy B. Reiner, Managing Director and Amy B. Katz, Director with Major, Lindsey & Africa; Scott Mayland, Associate with Fiduciary Responsibility; Kevin Walsh, Associate at Groom Law Group; Lusine Vardanyan; Juris Doctorate Candidate 2017 of Southwestern Law School, and Brian M. Heit, Esq. of Heit Law Group. As always, we would like to encourage division members to get more involved, whether it participating in our upcoming CLE programs, in-person events, contributing an article, or other activity. Feel free to contact any of our division leaders if you have any questions on how to get more involved. We have some exciting events coming up this year. On May 4, 2017 we will be hosting an in-person event on "Cyber Security: What Every In-House Counsel Need to Know (And Outside Counsel Should Tell Them)" at Hollingsworth LLP in Washington, DC and on June 21, 2017 at 12:00 p.m. EST, we will be hosting an Immigration Law webinar with CLE credits. We have members across the country with diverse backgrounds, if you want our division to address other topics, please contact us. Finally, thank you to everyone who has contributed to the division and to all for being a member of the FBA and the division. ■

## In This Issue

- pg 4** DREAMers: Undercutting Our American Values to Uphold Antiquated Ideas of Nationalism
- pg 5** Preserving the Arts For Generations to Come: Using Tailored Injunctive Relief Under DMCA §512(j) By Targeting Structural Infringers Exploiting the Digital Millennium Copyright Act
- pg 6** Update on DOL Fiduciary Rule
- pg 8** Membership Application
- pg 10** Division Leadership

A secondment experience gives law firm attorneys a greater understanding of the law firm client's business as well as the in-house legal environment. Another option is to develop very strong relationships with several clients so that you become the go-to-person for all of those clients' legal needs in all substantive areas of law. Whether it is a secondment opportunity for a major client or becoming the go-to-person for a smaller client, find ways at your law firm to develop business acumen, use it and then provide examples to show you have it.

### Gain industry expertise

In addition to developing strong business acumen and gaining experience in different areas of the law, you will also enhance your chances of in-house employment if you become an expert in a specific industry. Halley Gilbert, senior vice president and chief legal officer of Ironwood Pharmaceuticals, affirms, "Become an industry expert!" We recommend that junior attorneys try to gain experience across a variety of industries in order to evaluate which sectors are most interesting and compelling for them. Likewise, pre-law studies or professional experience may give you a head start in developing industry expertise. For example, if you have an engineering degree, you may naturally gravitate toward technology or software industry; if you worked as a medical researcher or clinician prior to law school, you may have a jump on healthcare industry expertise.

Once you have identified an industry to pursue, we advise that you learn as much as possible about that industry—both from a legal and business perspective. Study the industry from law firm partners who practice in the area, as well as from in-house attorneys and business professionals working in the field. Also, be sure to attend industry-specific panels and networking events where you will connect with business executives and in-house counsel. Not only will you meet industry thought leaders, but you will also gain insight into current industry developments, challenges and issues—legal or otherwise—that will add to your industry expertise. Finally, ask industry experts what publications, trade magazines, business journals and other resources they use to stay current—then research and consult them regularly. You may learn about industry trends leading to a need to hire in-house counsel with your expertise. You will also impress potential employers by communicating in their language (and not legalese). For example, we recently had a candidate who prior to her job interview met with an industry expert in the field and followed up with extensive research. She *wowed* the in-house hiring attorney with her in-depth knowledge of the relevant regulations in her interview and soon thereafter was offered the job based on her industry knowledge and preparation.

Becoming an industry expert and understanding what a company does are both keys to a successful search for in-house legal employment. Keith Wexelblatt, associate general counsel at Reebok, advises:

"For those looking for their first in-house job, make sure you know what the company actually does (note it's probably not legal), what legal/biz services they need and how you can fulfill those needs with your expertise and experience. Be very knowledgeable about their services or products and anticipate the legal needs for which you can add value."

### Use all of your resources—networking, job boards and legal recruiters

Of course there is no single path to finding in-house employment, and you should take advantage of all available resources in order to find your in-house job. Your first important resource is your network. As our Major, Lindsey & Africa colleague and in-house recruiter Sonya Olds Som aptly quips, "It's not entirely true that 'It's not what you know but who you know,' but it certainly feels true."<sup>3</sup> Your network of professional and personal relationships is a critical source of information, job leads, referrals and introductions and should be constantly nurtured and expanded. As Som counsels:

"Connect and reconnect with former colleagues, classmates, opposing counsel, in-house counsel, law firm partners, board directors and other members of the C-suite. Having gotten your arms around who is in your network, make it a point to connect and reconnect with them online (ahem, LinkedIn again, but also Facebook), via email and in person one-on-one and at events. Out of sight means out of mind. And we're all trying to juggle so many relationships with so little time. Be strategic about the relationships you want to make sure don't die on the vine and smart about the various means that you can use to keep them alive. You never know where the next great opportunity is going to come from."

Nikki Hadas, senior vice president and general counsel of Akebia Therapeutics, agrees, suggesting that attorneys continually try to expand their networks to include in-house attorneys. Hadas advises, "Network, network, network! Have coffee or lunch with any in-house lawyer you can get connected with. Sometimes people don't technically have an open position, but they will open one up if they have a need and the right person comes along"

An additional and helpful part of your network should also include legal search firms such as Major, Lindsey & Africa. If legal recruiters know you, they can reach out to you throughout your career to advocate on your behalf and also contact you when they become aware of a company seeking an attorney with your background and skill set.

Lastly, you should regularly review job boards for postings for in-house legal opportunities. Be sure to check out relevant industry association websites. For example, if you are seeking an in-house legal job in higher education, regularly review [www.nacua.org](http://www.nacua.org) (National Association of College and University Attorneys). If you are searching for an in-house chief privacy officer role or job requiring privacy expertise, you should review [www.iapp.org](http://www.iapp.org) (International Association of Privacy Professionals). Likewise, we recommend exploring our website, [www.mlglobal.com](http://www.mlglobal.com), as well as websites of other search firms for a broad range of job opportunities. The following websites are also helpful sources for in-house legal job postings:

ACC.com  
 MCCA.com  
 GoInhouse.com  
 Indeed.com  
 Simplyhired.com  
 Lawjobs.com  
 LinkedIn.com

You should also consider if you see a job posting whether there is anyone in your network who is connected to the company in some way, perhaps as a current or former employee, outside counsel or

search firm handling the search. Rather than simply sending in a resume, explore whether your relationships can provide you with greater insight about the opportunity, get your resume in the right hands or put in a good word for you.

### **Solidify client relationships—early and often—and maybe they will hire you**

If you want to move in-house, seek every opportunity for close and sustained working relationships with your law firm clients. As noted above, such relationships will help you develop business acumen as well as put you front and center with a potential employer. Regardless of specialty, it is critical to seek out opportunities to interact directly with various client representatives such as C-suite executives, in-house counsel and other corporate employees. For example, if you are a labor and employment attorney, get to know the HR team; if your focus is SEC compliance or corporate finance, find every occasion to interact with the client's CFO or controller.

In addition, once you have direct access to clients, it is important that you impress them. As Gilbert recommends:

“Do great work for your clients as they are the best potential in-house targets. Not just the qualitative stuff but also the softer skills that solidify relationships. Make time to get to know your clients on a personal level, be responsive and try to think ahead to the next possible action following the completion of a project. For example, if you assist with a collaboration agreement, create user-friendly compliance guides to assist your client with the obligations they just agreed to.”

Likewise, Susan Lipsitz, vice president, chief compliance officer and associate general counsel at Patheon, a company that develops and manufactures pharmaceuticals, also recommends developing client relationships as a critical element of any in-house job search. Lipsitz suggests building direct client relationships early on. “Seek out opportunities with smaller clients or in areas that afford an opportunity for counseling clients.” Also, once relationships are formed, Lipsitz advises “offering practical, not purely legal or academic advice.” As noted above, one way that attorneys distinguish themselves as strong in-house counsel candidates is by regularly demonstrating business savvy and sharing practical solutions for a challenging situation rather than simply reciting the statute and case law developments in a particular area of the law.

Finally, Nereyda Garcia, global head, ethics and compliance at Alnylam Pharmaceuticals, suggested one way to gain in-house employment after observing an uptick in work from a client with whom you have a good relationship: the direct approach. Garcia suggests discussing with the client the potential to create a full- or part-time job or a secondment for you at the company. Of course, as Garcia also observes, that approach must be sensitive to the different perspectives of the associate, client and law firm so as not to disrupt relationships. Consider speaking to a trusted partner at the firm before approaching the client, if possible. But, law firm partners are often pleased to see their associates accept in-house counsel roles with their clients as a means to enhance the client relationship.

### **Gain national and international experience**

Whenever possible, seek out opportunities to work beyond your local geography. Lipsitz recommends, “As companies are

becoming increasingly global in footprint and approach, try to handle matters in various states and outside the U.S., if possible.” Many practitioners who focus on areas of international law will necessarily develop an international expertise, which will be helpful for companies seeking counsel with global experience. Likewise, attorneys should also try to develop additional familiarity with national legal practice, as both global and national experience can help distinguish you in a crowded candidate pool. For example, if you are a privacy and security law expert, it would be helpful to have at least limited knowledge and experience with international privacy law so that you can spot areas of concern for companies doing business outside the U.S. In addition, you should take advantage of any assignment that may provide an opportunity to compare and contrast U.S. law with a particular international law perspective.

If you aspire to find in-house legal employment, we recommend that you start to take action early on. For both career development reasons and to enhance your in-house legal counsel job search, we recommend that as soon as possible in your legal career you begin focusing on gaining business acumen, becoming an industry expert, expanding and maintaining your professional network, developing close client relationships and gaining national and international experience. ■



*Nancy B. Reiner is a Managing Director with the Boston office of Major, Lindsey & Africa (MLA), the world's largest and most experienced legal*

*search firm. Nancy focuses on in-house placements for public and private companies, hospitals, and universities, both for general counsel and other in-house counsel positions. Prior to joining MLA, Nancy was a partner and commercial and environmental litigator with the Boston-based law firm, Brown Rudnick. Nancy is a graduate of Northeastern University School of Law and Tufts University. Amy B. Katz is a Director with the Boston office of MLA, and also focuses on in-house placements for general counsel and other in-house counsel positions. Prior to joining MLA, Amy practiced as an employment and litigation attorney in Boston in a number of settings, including in-house employment counsel for Genzyme Corporation, partner with Outside GC, LLP and an associate with Foley Hoag. Amy is a graduate of George Washington University Law School and Cornell University.*

### **Endnotes**

<sup>1</sup>“STAY CONNECTED” NALP—Salaries for New Graduates Rise While Employment Rate Remains Unchanged, Number of Private Practice Jobs Tumbles. National Association for Law Placement (NALP), 17 Aug. 2016. Web. 22 Feb. 2017.

<sup>2</sup>Recommend Reading: Rikleem, Lauren Stiller. *Ladder Down Success Strategies for Lawyers from Women Who Will Be Hiring, Reviewing, and Promoting You*. N.p.: Thomson Reuters West, 2016. Print.

<sup>3</sup>Som, Sonya Olds. “6.” *Top 10 Things to Do to Get an In-House Job in 2017*. Diversity and the Bar, Nov.-Dec. 2016. Web. 22 Feb. 2017.

## OPINION PIECE

**DREAMers: Undercutting Our American Values to Uphold Antiquated Ideas of Nationalism**

by Lusine Vardanyan, Juris Doctor Candidate 2017, Southwestern Law School

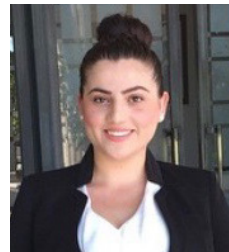
In 1991, my parents celebrated the birth of their second child, me. However, this celebration came with a harsh realization that their family was growing and their country was not. My parents made the tough decision to leave their native country of Armenia to seek and apply for asylum into the United States. Throughout childhood, I frequently witnessed disappointment in my father's eyes thinking he failed his family again because he lost a job or business to government corruption. But he was always strong, he would rise and find another job, and he would tell us not to worry because this was temporary and that we were just awaiting our entry into the U.S. My brother and I dreamed of the day we could come to the land of endless opportunities. And then, fifteen years after my parents applied for asylum, we got the exciting news, the U.S. was finally ready to take us in. Strangely this was the happiest day of our lives. If this country did not accept my family, we would never have obtained basic levels of success and likely would have continued to face violence and persecution. Today, I cannot imagine the nightmare of having all my rights revoked and losing all the blessings that came our way. I cannot imagine being forced to return to Armenia, not being allowed to graduate law school, or give back to the country that has given my family so much, especially considering I had no part in applying for my legal status.

Such is the dream and the fear of the many illegal immigrant children who have been brought to this country before the age of sixteen. DREAMers (Development, Relief, and Education for Alien Minors), a body of law introduced in 2001, afforded children of illegal immigrants an opportunity to become legal residents. This Act failed to pass the House in 2010, but the name stuck, and now the term DREAMers applies generally to illegal aliens under the age of 35 seeking full or partial legalization/ amnesty and/or taxpayer subsidized tuition.

President Barack Obama's objective for creating Deferred Action of Childhood Arrivals (DACA) in 2012 was to formally incorporate these young, undocumented children into the US economy and system, allowing them to apply and receive work visas, obtain a driver's license, file taxes, join the military, and attend school. Statistics gathered by AmericanProgress.org, show that DACA is significantly improving the lives of recipients. A

2015 survey revealed that 69 percent of visa holders were able to get jobs with better pay, 89 percent were able to obtain driver's licenses and state IDs, and 92 percent were able to pursue higher education.

Due to the recent rise in Nationalism and the "alt-right" movement, there have been demands to do away with, or repeal, DACA. In an article published by Gutierrez.house.gov, U.S. Senators Lindsey Graham and Dick Durbin raised the issue and introduced to the BRIDGE act that bars removal of individuals "who dream and grow our economy." The Senators urged the executive branch to maintain DACA, rather than subject these individuals to becoming one of the many unknown faces in our immigration system or deportation. Ultimately, these children, like myself, did not control the status in which they entered this country but to hold them responsible for their parents' choices seems inconsistent with the American values of personal accountability, caring treatment of children, and providing an opportunity to thrive. How this situation unfolds will be a true testament to what America values and how we will be seen around the world. President Trump and the executive branch can easily choose to protect these children. ■



*Lusine Vardanyan Coppock is a third year law student at Southwestern Law School. She moved to United States with her family in December of 2005 at the age of fourteen. She attended North Hollywood high school and graduated in three years with an Honors Diploma. She received her Bachelors Degree in Philosophy from California State University Northridge in December of 2013, and started attending Southwestern Law School in August of 2014. Lusine works at Heit Law Group, PC as a law clerk assisting the firm in all stages of the trials. She also volunteers as a law clerk at Los Angeles County District Attorney's Office conducting preliminary hearings. She is fluent in Armenian and Russian, and learned English while in high school. Her hobbies include reading crime mystery books, and her favorite author is Sidney Sheldon. She will be graduating from Southwestern with her J.D. in May of 2017.*

**SAVE THE DATE • Immigration Law Webinar • June 21, 2017 @ 12:00 p.m. EST**

**More details to follow.**

## Preserving the Arts For Generations to Come: Using Tailored Injunctive Relief Under DMCA §512(j) By Targeting Structural Infringers Exploiting the Digital Millennium Copyright Act

by Brian Morgan Heit, Heit Law Group Professional Corporation

Digital piracy has caused systemic changes to copyright associated businesses throughout the arts—specifically film, music, authorship, and photography. Artists attempting to monetize their talents are stolen from, and then demonized for pursuing legal recourse for that theft. And while artists are weighing both the financial and reputational price of litigating to preserve the value of their art against the very people these artists want to be their paying fans, companies that profit from providing the conduit for that theft have been coined as “structural infringers” who are given “Safe Harbor” by the Digital Millennium Copyright Act (DMCA).<sup>1</sup> Without legislative amendments, the remaining remedy is seeking specifically tailored injunctive relief that orders Internet Service Providers (ISP) take requisite measures to prevent repeat and systemic infringement under § 512(j).<sup>2</sup>

Copyright protections, although neglected all too frequently in this digital age, serve and have served entire industries since the inception of this country that serve cultural purposes and impact human experience in profound ways. These industries are currently struggling to combat the change technology has on the availability of their copyrighted content and the anonymity of the persons enjoying it.

And while these industries and artists within them struggle to combat this new form of infringement, ISPs are able to build their businesses on the backs of it and profit off others’ hard work and talent while implicitly supporting aggregators such as Pandora, Spotify, YouTube, and the like. Although sheltered from monetary liability, except under specific circumstances, the ISP is best suited to manage and implement technologies and take on part of the responsibility for digital theft. Ultimately, the DMCA statute created an insufficient structural response by preventing action against the companies most capable of curbing widespread infringement.

Rather than the current structure requiring copyright holders to send ISP take-down notices demanding protection for their art, copyright litigants must seek some form of responsibility on the ISP. Put succinctly, a leading copyright treatise, Nimmer on Copyright explains the efficacy of ISP take down notices as “...the endless task of identifying and sending notifications requesting the removal of copyrighted works more closely resembled the game of Whack-A-Mole than an efficacious tool for relief.”<sup>3</sup>

This is the same game that is being played out in federal courts by copyright holders filing against individual infringers. Artists will continue to produce art but without protections for their digital material. Millennial and future generations devaluation of digital content could decrease the amount of people and change the

demographics of people creating art. The judiciary must maintain the sanctuary provided for artists by copyright laws and further a tradition of promoting the progress of the useful arts—that is knowledge and creative works—by providing an incentive for the creation through giving the creative community exclusive rights in their works, more simply, compensation for its enjoyment. ■



*Brian Morgan Heit is the founder and managing attorney at Heit Law Group Professional Corporation (HLG), a boutique firm in Hollywood, California that offers business litigation services and general counsel services for film production studios and technology companies throughout the Golden State and Florida. HLG provides responsive legal services to companies dealing*

*with large multinational companies that are represented by large law firms with immense resources. The firm is dedicated to its clients and providing personalized plans of action for them; HLG is an outside-the-box firm that is always looking for creative solutions to obtain the best possible results for our clients. Although Brian handles a wide range of matters, he became the most prolific filer of federal copyright lawsuits in California in 2016. Prior to HLG, Brian served as a broker for international insurance giant Aon in their financial services group in San Francisco, serving much of the Bay Area’s fortune 500 companies, biotech, and financial tech companies. Brian Graduated with honors from the University of Miami School of Law. While in law school, Brian served as an honors intern for the Securities and Exchange Commission trial group and was the returning fellow at the University of Miami Investor Rights Clinic. Brian and his fiancé, Alexis enjoying spending time with family and friends, attending and volunteering at their church, enjoying music and the arts, spending time on LA’s beautiful beaches surfing, visiting the Sierra Nevada’s to backpack and snowboard, and traveling internationally.*

### Endnotes

<sup>1</sup>Paul Doda, *Distinguishing “Common Carrier” from “Common Thieves” Requiring Notice And Stay Down For “Structural Infringing” Host Sites that Discourage Legitimate Electronic Storage Incentivize Copyright Infringement and Exploit the DMCA 512(c) Safe Harbor*, 63 J. Copyright Soc’y of the USA, 515, 515-534 (2016).

<sup>2</sup>*Id.*; 17 U.S. Code § 512.

<sup>3</sup>Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 4-12B.01(B)(2), pp. 13–75 to 13–77 (2002).

### Corporate Articles Submissions

If you are interested in submitting an article or being considered to be an editor of *Corporate Articles*, please send an email to [crystal.ellis.esq@gmail.com](mailto:crystal.ellis.esq@gmail.com) and [dgreene@foxrothschild.com](mailto:dgreene@foxrothschild.com).

## Update on DOL Fiduciary Rule

by Kevin Walsh and Scott Mayland, Groom Law Group Chartered

Retirement savers and retirement service providers are on edge waiting to learn the fate of the Department of Labor's (DOL) recently finalized regulations (the Fiduciary Rule) that define when someone acts as a fiduciary by providing investment advice under the Employee Retirement Income Security Act of 1974, as amended (ERISA), or the Internal Revenue Code of 1986, as amended (the Code). As explained below, the DOL recently proposed a 60-day delay in the Fiduciary Rule's applicability date that would push it from April 10, 2017 to June 9, 2017, a delay that could result in additional changes or even revocation of the Fiduciary Rule by the Trump Administration.

Substantively, the Fiduciary Rule would significantly alter the interaction between savers and service providers by expanding the types of interactions with retirement investors that give rise to fiduciary status under ERISA. Under the Fiduciary Rule, some activity that has traditionally been considered "selling" of investment products would become fiduciary investment advice, subject to the broad range of ERISA duties and penalties. This expansion is due in large part to the fact that the Fiduciary Rule makes investment advice that is provided to individual retirement accounts (IRAs) and IRA rollover advice fiduciary advice.

ERISA requires that a fiduciary act prudently and in the best interest of the plan's participants and beneficiaries, so this change in policy would impose significant new duties on investment advisors who provide investment advice to the retirees who are investing assets held in their personal retirement accounts. Simultaneously, a new exemption to the Fiduciary Rule has been finalized, the "Best Interest Contract Exemption." This new exemption would provide a way for fiduciaries to individual retirement investors and small retirement plans (including 401k plans) to continue to receive compensation for investment advice if certain conditions are met.

Under ERISA, if an adviser or financial institution is a fiduciary, then the fiduciary needs to rely on an "exemption" in order to receive compensation. Prior to the Fiduciary Rule, IRAs were generally considered to be outside the scope of ERISA's fiduciary duties. Under the new regime, however, for most fiduciaries providing advice to individual participants and IRA holders, the only available exemption will likely be the "Best Interest Contract Exemption," a complicated exemption that does not allow advice givers to require that claims that could be brought as class action lawsuits instead be arbitrated.

Because of the sweeping changes involved, many members of the retirement services industry have pushed for the Fiduciary Rule to be delayed, revoked, or revised. Below are the three pathways that could lead to a delay and a possible reopening of the rulemaking process—

### DOL Action Directed by the Trump Administration

On Feb. 3, 2017, President Trump issued a memorandum (the "Memorandum") directing DOL to study the Fiduciary Rule and related exemptions, and, if warranted, to rescind or revise

them. Under the Memorandum, DOL is directed to consider three economic and legal points in determining whether the Fiduciary Rule is consistent with the priority to empower Americans (1) to make their own financial decisions and (2) to facilitate their ability to save for retirement as well as other typical lifetime financial needs:

Whether the anticipated applicability of the Fiduciary Rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;

Whether the anticipated applicability of the Fiduciary Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees; and

Whether the Fiduciary Rule is likely to cause an increase in litigation and an increase in the prices that investors and retirees must pay to gain access to retirement services.

As a result of the Memorandum, on March 2 DOL issued a proposed rule that would delay the applicability date of the Fiduciary Rule until June 9, 2017. In conjunction with the proposed rule, DOL solicited comments on, among other things, the costs and benefits of delaying the Fiduciary Rule, whether the Fiduciary Rule should be delayed for a period longer than 60 days, and stakeholders' views as to the issues the Memorandum directs the DOL to address. The proposed rule has attracted a lot of attention, both because of the possibility that the Fiduciary Rule may be modified, and because of the limited time between its issuance and the original applicability date of April 10, 2017. This effort to delay the Fiduciary Rule through the regulatory process has caused confusion because the Fiduciary Rule's current applicability date of April 10, 2017 and compliance deadlines are fast approaching. The proposed rule's comment period will end on March 17 (comments related to the issues the Memorandum directs DOL to address, however, may be submitted until April 16).

Currently there are more comments opposing the delay than there are comments supporting the delay. However, DOL does more than simply count the number of comments on either side of an issue, so the pure number of comments will not be dispositive of whether the delay is finalized. While this regulatory action seems to be the most likely path to revision or revocation of the Fiduciary Rule and related exemptions, another possible vehicle is litigation that is already ongoing.

### Litigation

Financial services and other business groups have filed several lawsuits challenging the Fiduciary Rule and related exemptions. So far, U.S. District Courts in the District of

Columbia, Kansas, and Texas have issued summary judgment rulings finding for DOL and upholding the Fiduciary Rule. Each of these decisions has been appealed. A fourth case is currently pending in Minnesota.

Recently, DOL has begun asking courts to stop deciding these cases. In both Texas and Minnesota, DOL asked the district courts to stay the litigation on the basis that DOL could make changes to the Fiduciary Rule before it takes effect.

While it is unlikely that any of the appeals will be decided before the Fiduciary Rule's April 10 applicability date, there is some possibility that DOL could reach a court-approved settlement with one of the business groups suing to stop the rule where DOL agrees to delay the applicability date or to make other changes. Another possible way the Fiduciary Rule could be delayed would be if a court were to stay the April 10 applicability date pending the various appeals. Recently, the plaintiffs in the case filed in Texas did just that and have asked the Texas District Court to delay the applicability date until all appeals have been exhausted.

### Congress

Several bills meant to delay the Fiduciary Rule or provide an alternative definition of "investment advice" under ERISA have been proposed in Congress since the Fiduciary Rule and its related exemptions were originally proposed in 2015. Although Republicans who generally oppose the Fiduciary Rule control Congress and a Republican occupies the White House, Senate Democrats could filibuster legislation delaying or revoking the Fiduciary Rule. Due to the filibuster risk and due to Congress being focused on other issues – such as amending the Affordable Care Act, tax reform, and confirmation of the President's cabinet – it is unlikely that Congress acts before April 10.

### Conclusion

While none of these three routes to delaying the Fiduciary Rule is certain, it is likely that the Fiduciary Rule will be delayed for at least some period of time. If it is delayed, and DOL uses the period of delay to review the three questions posed in the Memorandum, there is an increased probability that substantive changes will be made before it ultimately becomes applicable. Both retirement savers and retirement service providers should be aware of both when the Fiduciary Rule becomes applicable and what it requires. ■



*Kevin L. Walsh is an associate at Groom Law Group, Chartered, where he advises clients on a wide range of fiduciary issues and other issues*

*involving benefit plans. His practice encompasses helping plans and plan service providers comply with the Department of Labor's fiduciary rules and related exemptions, working with plans as they develop processes for and make investments, and helping plans navigate the impact of CFTC, OFAC, and SEC regulations. Scott is an associate in the Fiduciary Responsibility practice group. He advises employers and financial institutions, and his practice focuses on the fiduciary responsibility and prohibited transaction sections of ERISA. Mr. Mayland's experience includes representing clients with respect to alternative investments, requests for individual prohibited transaction exemptions from the Department of Labor, and Department of Labor investigations of plans and service providers.*



**Follow us on Twitter today!**

**@FedBarCACD**

## SAVE THE DATE

**"Cyber Security: What Every In-House Counsel Need to Know (And Outside Counsel Should Tell Them)"**

**May 4, 2017 • 4:00 – 6:30 p.m.**

**Hollingsworth LLP – 1350 I Street, N.W., Washington, DC 20005**

**Visit [www.fedbar.org/CACD\\_CyberSecurity](http://www.fedbar.org/CACD_CyberSecurity).**

# Federal Bar Association Application for Membership

The Federal Bar Association offers an unmatched array of opportunities and services to enhance your connections to the judiciary, the legal profession, and your peers within the legal community. Our mission is to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary, and the public they serve.

## Advocacy

The opportunity to make a change and improve the federal legal system through grassroots work in over 90 FBA chapters and a strong national advocacy.

## Networking

Connect with a network of federal practitioners extending across all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.

## Leadership

Governance positions within the association help shape the FBA's future and make an impact on the growth of the federal legal community.

## Learning

Explore best practices and new ideas at the many Continuing Legal Education programs offered throughout the year—at both the national and chapter levels.

## Expand your connections, advance your career

**THREE WAYS TO APPLY TODAY:** Join online at [www.fedbar.org](http://www.fedbar.org); Fax application to (571) 481-9090; or Mail application to FBA, PO Box 79395, Baltimore, MD 21279-0395. For more information, contact the FBA membership department at (571) 481-9100 or [membership@fedbar.org](mailto:membership@fedbar.org).

### Applicant Information (Please print legibly and complete both sides of the application)

First Name \_\_\_\_\_ M.I. \_\_\_\_\_ Last Name \_\_\_\_\_ Suffix (e.g. Jr.) \_\_\_\_\_ Title (e.g. Attorney At Law, Partner, Assistant U.S. Attorney) \_\_\_\_\_  
 Male  Female Have you been an FBA member in the past?  yes  no Which do you prefer as your primary address?  business  home

Firm/Company/Agency \_\_\_\_\_ Number of Attorneys \_\_\_\_\_  
Address \_\_\_\_\_ Suite/Floor \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Country \_\_\_\_\_  
( ) \_\_\_\_\_  
Phone \_\_\_\_\_ Email Address \_\_\_\_\_

Address \_\_\_\_\_ Apt. # \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Country \_\_\_\_\_  
( ) \_\_\_\_\_ / / \_\_\_\_\_  
Phone \_\_\_\_\_ Date of Birth \_\_\_\_\_  
Email Address \_\_\_\_\_

### Bar Admission and Law School Information (required)

**U.S.** \*Court of Record: \_\_\_\_\_  
State/District: \_\_\_\_\_ Original Admission: / /

**Tribal** \*Court of Record: \_\_\_\_\_  
State: \_\_\_\_\_ Original Admission: / /

**Foreign** \*Court/Tribunal of Record: \_\_\_\_\_  
Country: \_\_\_\_\_ Original Admission: / /

**Students** Law School: \_\_\_\_\_  
State/District: \_\_\_\_\_ Expected Graduation: / /

\*Court of Record: Name of **first court** in which you were admitted to practice.

## Authorization Statement

By signing this application, I hereby apply for membership in the Federal Bar Association and agree to conform to its Constitution and Bylaws and to the rules and regulations prescribed by its Board of Directors. I declare that the information contained herein is true and complete. I understand that any false statements made on this application will lead to rejection of my application or the immediate termination of my membership. I also understand that by providing my fax number and e-mail address, I hereby consent to receive faxes and e-mail messages sent by or on behalf of the Federal Bar Association, the Foundation of the Federal Bar Association, and the Federal Bar Building Corporation.

Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_  
(Signature must be included for membership to be activated)

\*Contributions and dues to the FBA may be deductible by members under provisions of the IRS Code, such as an ordinary and necessary business expense, except 4.5 percent which is used for congressional lobbying and is not deductible. Your FBA dues include \$15 for a yearly subscription to the FBA's professional magazine.

Application continued on the back



**Federal Bar Association**

# Membership Categories and Optional Section, Division, and Chapter Affiliations

## Membership Levels

### Sustaining Membership

Members of the association distinguish themselves when becoming sustaining members of the FBA. Sixty dollars of the sustaining dues are used to support educational programs and publications of the FBA. Sustaining members receive a 5 percent discount on the registration fees for all national meetings and national CLE events.

	Private Sector	Public Sector
Member Admitted to Practice 0-5 Years.....	<input type="radio"/> \$170	<input type="radio"/> \$150
Member Admitted to Practice 6-10 Years .....	<input type="radio"/> \$235	<input type="radio"/> \$215
Member Admitted to Practice 11+ Years .....	<input type="radio"/> \$285	<input type="radio"/> \$245
Retired (Fully Retired from the Practice of Law) .....	<input type="radio"/> \$170	<input type="radio"/> \$170

### Active Membership

Open to any person admitted to the practice of law before a federal court or a court of record in any of the several states, commonwealths, territories, or possessions of the United States or in the District of Columbia.

	Private Sector	Public Sector
Member Admitted to Practice 0-5 Years.....	<input type="radio"/> \$110	<input type="radio"/> \$85
Member Admitted to Practice 6-10 Years .....	<input type="radio"/> \$170	<input type="radio"/> \$145
Member Admitted to Practice 11+ Years .....	<input type="radio"/> \$215	<input type="radio"/> \$175
Retired (Fully Retired from the Practice of Law) .....	<input type="radio"/> \$110	<input type="radio"/> \$110

### Associate Membership

#### Foreign Associate

Admitted to practice law outside the U.S. ....  \$215

#### Law Student Associate

First year student (includes four years of membership) .....  \$50  
 Second year student (includes three years of membership) .....  \$30  
 Third year student (includes two years of membership) .....  \$20  
 One year only option .....  \$20

All first, second and third year student memberships include an additional free year of membership starting from your date of graduation.

**Dues Total:** \_\_\_\_\_

### Practice Area Sections

- |   |      |   |      |
|---|------|---|------|
| <input type="radio"/> Admiralty Law .....                                 | \$25 | <input type="radio"/> Intellectual Property Law .....                         | \$10 |
| <input type="radio"/> Alternative Dispute Resolution ..                   | \$15 | <input type="radio"/> International Law .....                                 | \$15 |
| <input type="radio"/> Antitrust and Trade Regulation...                   | \$15 | <input type="radio"/> Labor and Employment Law .....                          | \$15 |
| <input type="radio"/> Banking Law .....                                   | \$20 | <input type="radio"/> LGBT Law .....  | \$15 |
| <input type="radio"/> Bankruptcy Law .....                                | \$25 | <input type="radio"/> Qui Tam Section .....                                   | \$15 |
| <input type="radio"/> Civil Rights Law .....                              | \$15 | <input type="radio"/> Securities Law Section .....                            | \$0  |
| <input type="radio"/> Criminal Law .....                                  | \$10 | <input type="radio"/> Social Security .....                                   | \$10 |
| <input type="radio"/> Environment, Energy, and<br>Natural Resources ..... | \$15 | <input type="radio"/> State and Local Government<br>Relations .....           | \$15 |
| <input type="radio"/> Federal Litigation .....                            | \$20 | <input type="radio"/> Taxation .....  | \$15 |
| <input type="radio"/> Government Contracts .....                          | \$20 | <input type="radio"/> Transportation and<br>Transportation Security Law ..... | \$20 |
| <input type="radio"/> Health Law .....                                    | \$15 | <input type="radio"/> Veterans and Military Law .....                         | \$20 |
| <input type="radio"/> Immigration Law .....                               | \$10 |   |      |
| <input type="radio"/> Indian Law .....                                    | \$15 |   |      |

### Career Divisions

- Corporate & Association Counsel (in-house counsel and/or corporate law practice) ..... \$20  
 Federal Career Service (past/present employee of federal government) ..... N/C  
 Judiciary (past/present member or staff of a judiciary) ..... N/C  
 Senior Lawyers\* (age 55 or over) ..... \$10  
 Younger Lawyers\* (age 40 or younger or admitted less than 10 years) ..... N/C  
 Law Student Division ..... N/C

\*For eligibility, date of birth must be provided.

**Sections and Divisions Total:** \_\_\_\_\_

## Chapter Affiliation

Your FBA membership entitles you to a chapter membership. Local chapter dues are indicated next to the chapter name (if applicable). If no chapter is selected, you will be assigned a chapter based on geographic location. \*No chapter currently located in this state or location.

<b>Alabama</b> <input type="radio"/> Birmingham <input type="radio"/> Montgomery <input type="radio"/> North Alabama	<b>Illinois</b> <input type="radio"/> Central District of Illinois-\$25 <input type="radio"/> Chicago <input type="radio"/> P. Michael Mahoney (Rockford, Illinois) Chapter <input type="radio"/> Southern District of Illinois <input type="radio"/> Tucson	<b>Nevada</b> <input type="radio"/> Nevada <b>New Hampshire</b> <input type="radio"/> New Hampshire-\$10	<b>Puerto Rico</b> <input type="radio"/> Hon. Raymond L. Acosta/ Puerto Rico-\$10
<b>Alaska</b> <input type="radio"/> Alaska	<b>Indiana</b> <input type="radio"/> Indianapolis <input type="radio"/> Northern District of Indiana <b>Iowa</b> <input type="radio"/> Iowa-\$10	<b>New Jersey</b> <input type="radio"/> New Jersey <b>New Mexico</b> <input type="radio"/> New Mexico <b>New York</b> <input type="radio"/> Eastern District of New York <input type="radio"/> Southern District of New York <input type="radio"/> Western District of New York	<b>Rhode Island</b> <input type="radio"/> Rhode Island <b>South Carolina</b> <input type="radio"/> South Carolina <b>South Dakota</b> <input type="radio"/> South Dakota <b>Tennessee</b> <input type="radio"/> Chattanooga <input type="radio"/> Knoxville Chapter <input type="radio"/> Memphis <input type="radio"/> Mid-South <input type="radio"/> Nashville <input type="radio"/> Northeast Tennessee
<b>Arkansas</b> <input type="radio"/> Arkansas	<b>California</b> <input type="radio"/> Inland Empire <input type="radio"/> Los Angeles <input type="radio"/> Northern District of California <input type="radio"/> Orange County <input type="radio"/> Sacramento <input type="radio"/> San Diego <input type="radio"/> San Joaquin Valley	<b>Kansas</b> <input type="radio"/> Kansas and Western District of Missouri <b>Kentucky</b> <input type="radio"/> Kentucky <b>Louisiana</b> <input type="radio"/> Baton Rouge <input type="radio"/> Central Louisiana <input type="radio"/> Lafayette/Acadiana <input type="radio"/> New Orleans-\$10 <input type="radio"/> North Louisiana	<b>Texas</b> <input type="radio"/> Austin <input type="radio"/> Dallas-\$10 <input type="radio"/> El Paso <input type="radio"/> Fort Worth <input type="radio"/> San Antonio <input type="radio"/> Southern District of Texas-\$25 <input type="radio"/> Waco
<b>Colorado</b> <input type="radio"/> Colorado	<b>Connecticut</b> <input type="radio"/> District of Connecticut	<b>North Carolina</b> <input type="radio"/> Eastern District of North Carolina <input type="radio"/> Middle District of North Carolina <input type="radio"/> Western District of North Carolina <b>North Dakota</b> <input type="radio"/> North Dakota <b>Ohio</b> <input type="radio"/> Cincinnati/ Northern Kentucky-John W. Peck <input type="radio"/> Columbus <input type="radio"/> Dayton <input type="radio"/> Northern District of Ohio-\$10 <b>Oklahoma</b> <input type="radio"/> Oklahoma City <input type="radio"/> Northern/ Eastern Oklahoma	<b>Utah</b> <input type="radio"/> Utah <b>Vermont</b> <input type="radio"/> Vermont <b>Virgin Islands</b> <input type="radio"/> Virgin Islands <b>Virginia</b> <input type="radio"/> Northern Virginia <input type="radio"/> Richmond <input type="radio"/> Roanoke <input type="radio"/> Hampton Roads Chapter
<b>Delaware</b> <input type="radio"/> Delaware	<b>District of Columbia</b> <input type="radio"/> Capitol Hill <input type="radio"/> D.C. <input type="radio"/> Pentagon	<b>Maine</b> <input type="radio"/> Maine <b>Maryland</b> <input type="radio"/> Maryland <b>Massachusetts</b> <input type="radio"/> Massachusetts-\$10 <b>Michigan</b> <input type="radio"/> Eastern District of Michigan <input type="radio"/> Western District of Michigan <b>Minnesota</b> <input type="radio"/> Minnesota <b>Mississippi</b> <input type="radio"/> Mississippi <b>Missouri</b> <input type="radio"/> St. Louis <input type="radio"/> Kansas and Western District of Missouri	<b>Washington*</b> <input type="radio"/> At Large <b>West Virginia</b> <input type="radio"/> Northern District of West Virginia-\$20 <b>Wisconsin</b> <input type="radio"/> Wisconsin <b>Wyoming</b> <input type="radio"/> Wyoming
<b>Florida</b> <input type="radio"/> Broward County <input type="radio"/> Jacksonville <input type="radio"/> North Central Florida-\$25 <input type="radio"/> Orlando <input type="radio"/> Palm Beach County <input type="radio"/> South Florida <input type="radio"/> Southwest Florida <input type="radio"/> Tallahassee <input type="radio"/> Tampa Bay	<b>Georgia</b> <input type="radio"/> Atlanta-\$10 <input type="radio"/> Southern District of Georgia Chapter	<b>Montana</b> <input type="radio"/> Montana <b>Nebraska</b> <input type="radio"/> Nebraska	<b>Chapter Total:</b> _____

## Payment Information

### TOTAL DUES TO BE CHARGED

(membership, section/division, and chapter dues): \$ \_\_\_\_\_

Check enclosed, payable to Federal Bar Association  
 Credit:  American Express  MasterCard  Visa

\_\_\_\_\_  
 Name on card (please print)

\_\_\_\_\_  
 Card No.

\_\_\_\_\_  
 Exp. Date

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

**Federal Bar Association  
Corporate & Association Counsel Division Leadership**

**CHAIR**

Diana Lai  
Associate Counsel  
American Beacon Advisors, Inc.

**DEPUTY-CHAIR**

William Whitman  
Fed Ex Ground

**SECRETARY**

Fernando Ortiz  
Ortiz & Ortiz Law

**TREASURER**

Brian Heit  
Heit Erlbaum

**VICE CHAIR—PROGRAMS**

David Greene  
Fox Rothschild LLP

**VICE CHAIR—PUBLICATIONS**

Crystal M. Ellis  
Attorney, Seattle, WA

**CHAPTER LIAISON**

Ryan Temme  
Groom Law Group

**VICE CHAIR—MEMBERSHIP**

Michael Cahalane  
Cetrulo, LLP

**IMMEDIATE PAST CHAIR**

Rachel V. Rose  
Rachel V. Rose—Attorney at Law, PLLC