

Moving from Jobs to Careers: Hiring and Retaining Quality Staff in Legal Services



Fairness and Justice in Setting Legal Services Attorney Salaries: Finding the Will to Get There

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Introduction

For years I have participated in conversations with legal services executive directors, board members, supporters and even union leaders, bemoaning the terrible financial pressures on our staff attorneys because of low salaries combined with large student loan debt. Over decades, law school tuitions and thus student debt has increased, while legal services salaries have dwindled in comparison to private attorney salaries.



As we discussed the problem, we would point fingers at law schools, at legislatures, at bar associations and at funders, discussing what they could do to address the issue. And we made little progress, but just watched as the situation worsened and more wonderful attorneys left legal services practice because they could not pay their bills.

It took me some time to recognize the irony of these conversations: the very people who could move immediately to remedy the problem were in the room. Who set the low salaries that were causing the problem? The directors and board of legal services organizations; they decide how much to pay legal services lawyers and they were clearly not paying enough. But somehow that was never said.

It is time for our community to own up to our role in this problem, look at it carefully, and assume the power we have to fix it. We must work quickly and directly to reach a solution. Stated simply, legal services salaries in most organizations are too low, and management and boards need to push them up.

Defining the Problem

Legal services attorney salaries are far below market rate, and moreover, lower than every other public legal job type. A recent study done by NALP, the National Association for Legal Career Professionals, determined that in 2006 the median starting salary for a legal services attorney was \$36,000. The median parallel salary for attorneys in private firms increased with the size of the firm, but the average for the smallest firms was \$75,000, more than *double* the salary of the legal services lawyer. (The figure for the large firms was \$115,000.)

These differentials remain as a young attorney gains experience. After five years out, a legal services attorney continues to make less than 50% of the median salary for the smallest firms. Legal services salaries were 17% lower than public defender salaries, which were in turn lower than local and state prosecutor salaries. Perhaps the most discouraging statistic is that our entry salaries are even 10% lower than other public interest law firms.²

Does it really matter that our programs pay low salaries? Some program directors, who have spent decades fighting with their unions to keep program sala-

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ries down, just assume that low salaries are good. They mean we can have more staff with the same money and thus provide more services. So why should we even care?

Just in the past two weeks, I have had two exchanges that illustrate why our low salaries are a problem. First, one of my program's outstanding younger attorneys walked into my office to tell me that she is starting to look for government jobs. She explained that she loves her current job, it is her "dream job." But she recently got married, wants to have children, and she and her new husband, who also works for a non-profit, have realized they cannot pay off their student debts and buy a home and raise children on their current salaries. Her leaving will be a significant loss for our program. She comes from an immigrant family and a minority culture and is bilingual. She has been a brilliant leader and advocate and has developed many contacts in our community at the grassroots level and in the state government. She has brought in funding and initiated new projects. It is devastating to lose her at this stage of her career.

My second contact came during a discussion with a prominent African American attorney now in his fifties who fondly described his two years as an attorney in my program when he graduated from law school, and how much he respects our work. "Why did you leave?" I asked. He explained that the City's attorney office had made a big effort to recruit young minority attorneys and offered significantly more money than he had been paid at legal services; a number of young minority attorneys had left our program at that time in response. He is someone who now has connections and prestige and can list many accomplishments. It would have been very valuable in many ways to our organization if he had spent his career with us.

Our low salaries are resulting in the loss of highly qualified attorneys, frequently after we have invested significant time and money in training them and supporting them as they build strong contacts in our communities. Recently, the Illinois Bar Foundation published a study which estimates the cost of losing a legal services attorney at over \$32,000 per attorney.³ And if we lose many young attorneys, we will never be organizations with the significant expertise, experience, reputation and contacts that long term employment brings. My organization, like many across the nation, is well respected by the bar, the social services community, policy makers and client organizations because of our decades of expertise and sophisticated knowledge of poverty law. If we cannot hire fabulous lawyers and

keep them for decades, we will lose that reputation and respect.

While I have watched attorneys of all ethnic backgrounds leave my program for financial reasons, it is particularly troubling to watch outstanding minority attorneys leave, since we struggle hard to keep our program diverse and we serve a high percentage of minority clients. And if we attract attorneys from low income backgrounds without family resources to help them survive, they will have particular trouble remaining in a job with low pay.

I also believe there is a relationship between our low salaries and the "feminization" of legal services attorney staff. While I love the fact that we have many female attorneys in our community, I do worry that perhaps their male counterparts are staying away because they will not accept our salaries. I am alarmed at the possibility that legal services managers and boards are creating our own low paid "pink collar" work place, which takes advantage of talented women attorneys by paying them less than the rest of the marketplace.

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In addition, it is upsetting to hear how many of our young attorneys, and even some experienced attorneys, are forced to struggle to financially survive. Many young lawyers are holding down second jobs in restaurants or grocery stores or other non-legal positions so that they can pay their bills. Others reside with their relatives, depending on the family house and car so as to "afford" to be a legal services lawyer. As a legal services director, I was embarrassed and saddened to hear a bright young attorney, who had graduated from a prestigious law school at the top of his class and completed a federal clerkship, describe how he rushes from his law job to his moonlighting position, leaving his wife home each evening with their new baby. Do we, the leadership of legal services, believe that this is the way our staff should live?

Sometimes we justify our low salaries by the other benefits we provide. But unfortunately, while our orga-

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nizations do typically provide generous health care coverage and leave time packages, these cannot make up for the lack of financial assistance. This is particularly true for people with large student loan debt interested in buying a home and starting a family. And the benefits do not help our more experienced attorneys who are looking at the cost of educating their children or funding a comfortable retirement.

Low Salaries and the Legal Services Culture

So just why are our salaries so out of synch with the rest of the legal market? How did we get here? We as a community argue for the need for fair salaries for our low income clients which allow them to be self-sufficient. We know that it is hard to be poor, to face debt and bills and trouble finding housing. And we believe in fairness. So why do we not take steps to pay our own attorneys salaries that are in line with the market? Do we think they are worth less than other attorneys? Just what *are* we thinking?

To those of us within the legal services culture, the answer has seemed obvious: We simply do not have enough resources to do the work we try to do, and if we pay staff less, we can “buy” more staff. More staff means more clients served. Our mission, indeed our *passion*, is to serve as many needy clients as we can. So, our mission requires low salaries.

Does this really make sense? Only if we make certain assumptions:

- First, it assumes that we, the legal services employees must bear the brunt, personally, of a culture which is failing to adequately fund legal services to better our clients’ lives.
- Second, it assumes that there are not costs to programs or clients of paying staff poorly.
- Third, it assumes that funding for legal services is inelastic and thus will not go up to meet increased costs were we to pay higher, fair salaries.

All of these assumptions are subject to question:

- First, why should professional staff doing the important work of justice for all, be paid poorly to further the cultural goal of justice and equality? Does this really serve our mission? Why do we not believe that people willing to do this work are worthy of high pay, and that until they are paid well, the culture will not increase its valuation of

the work we do? In a culture where, like it or not, money defines value, should we not be insisting on the value of our staff?

- Second, as discussed above, there are obvious costs to programs and to clients of failing to attract and retain the very best, diverse staff, irrespective of their ability or willingness to accept low wages.
- Third, how do we know that we will not receive more funding if we pay staff well, and cut services to clients proportionally? If funders really care about the work we do and the clients we serve, why would they not step up to the plate with adequate funding? In other words, why do we not look to them to make the contribution to provide more access to justice to our clients, rather than to our staff?

Legal services has taken the responsibility for providing access to justice as our own problem, one that we must solve, even though it means sacrificing the financial comfort of our own staffs. We have done this, rather than holding the government funding system responsible. We have never said clearly to our government and the culture at large, “if you do not give us enough money, we are going to stop providing services.” Instead, we have said, “we care about this even if you don’t. We’ll still be here, no matter how much money you give us. We may have to do a bit less, but we’ll struggle to see that the neediest are still getting justice.” And we do this even though it causes stress to our organizations and our staff, and even though we know that we cannot really do it all.

This position is supported by our work culture, which is one of giving and self sacrifice, of realization that our clients have so little, so we should do so much. The larger culture does not seem to care that much about poverty, so we will do it ourselves, the best we can, with the little bit of resources we have. In a nation of plenty, we and our clients have very little. We accept that as the reality and do the best we can to make some change.

Of course, it is wonderful that we care and give. But we need to be careful not to think of ourselves as too different from others, as alone in our quest for fairness and justice. Our different approach to salary helps make our organizations, and even our staffs, the poor outsiders, *just like our clients*. Indeed we sometimes hear people ask if we are even “real attorneys”?

It is time for us to grow up and enter the mainstream, and to demonstrate that we are indeed real

lawyers who need real salaries. Legal services organizations are made up of amazing, creative, intelligent and dedicated people. They need to be paid in a way that reflects this. Like nurses, like doctors, like teachers, they are professionals who should be valued and remunerated for their education, skill, dedication and hard work. And if we can enter the mainstream, become “real lawyers”, we are a step closer to pulling our clients there with us. We also send a message that “real lawyers” and mainstream people care about justice and equality and ending poverty.

So What do We do to Change all This?

Unlike so much of the injustice that we in the legal services world face, the issue of unfair staff salaries is a problem that we ourselves have the power to change. We only need the will to get it done. Management and boards can make higher salaries a priority, and start making the adjustments immediately to fund those salaries.

Of course our legal services programs operate with finite resources, and indeed with resources which have generally declined in real value over recent years and decades. To pay higher salaries, we will have to either find new resources or run smaller programs, or most likely, do both. The reality of smaller programs is a challenge not just to management and boards, but to all our staff who will have fewer colleagues.

Programs need to start an open discussion of the harm that low salaries are causing and the steps that can be taken to raise those salaries. Planning needs to be done about what the programs will look like with fewer staff persons, and how programs will get to that model. Expectations in the number of clients a program will serve and the work it will accomplish need to be adjusted. Boards need to provide leadership, and funders need to support these efforts.

In my unionized program, I found that the attorneys’ union was a responsible participant in discussions about these issues. The truth is that even our unions have accepted salaries well below the rest of the legal marketplace rates. Their requests have not been outrageous, and they should be included in thinking about what new appropriate salary levels, staffing patterns and work expectations will look like. Our program is working toward salaries on par with the public defenders, city solicitors and prosecutor’s office and we have gotten closer. We keep in mind the fact that fair salaries require a trade off in the size of the staff and the work we can get done. When vacancies come up, we weigh filling them against the need for increased salaries. While sal-

ary amounts are only set when union contracts expire (which is now every three years), we keep the need for increased salaries in mind throughout our ongoing budgeting and planning. We have pushed up our salaries and are well above the national median figures, but must continue with the effort as it still seems that salaries of other legal offices are rising faster than ours.

The state of New Hampshire offers a good model for making this change. The Boards there adopted a plan to raise salaries that looked to increased funding, decreasing staff with attrition, and incremental salary adjustments over a three year period.⁴

Let’s “Just Do It”

It is frequently said that we who want to change the world should lead our lives as we want the world to be. While we cannot change the whole world immediately, we can make smaller changes in our own personal spheres which reflect our vision of that more perfect world we would like to create. Our more perfect world should be one where lawyers doing the most important and most valuable legal work, selflessly providing justice to the most vulnerable and ignored segments of our population, are paid at least as well as lawyers doing other less meaningful work. Unlike many world problems which we cannot fix, we, the leaders of legal services, can make this simple shift happen: committed hard working legal services lawyers can be paid a decent competitive salary that they and their families can live on.

Let’s just do it!

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- 2 Judith Collins, *2006 Public Sector and Public Interest Attorney Salary Report*, published by NALP, the Association for Legal Career Professionals, available at <http://www.nalp.org>.
- 3 *Investing in Justice: A Framework for Effective Recruitment and Retention of Illinois Legal Aid Attorneys*, The Chicago Bar Foundation and the Illinois Coalition for Equal Justice, November 2006, p.18.
- 4 See John Tobin, “Urgent Memo to Ourselves: Legal Services is Not the Peace Corps (Addressing the Salary Chasm Now)”, *MIE Journal*, Spring 2003. John quite rightly points out the need for accountability in legal services as the flip side of better salary. Many legal services have poorly managed issues of burn out, low productivity and the lack of leadership, justifying these problems as acceptable in view of low pay. Part of the discussions with unions and staff as salaries are raised needs to be how to concomitantly better manage these issues.