



How to Break Out of the Low Salary Trap — A Step-by-Step Approach

*By John Tobin, Executive Director¹
New Hampshire Legal Assistance*

Improving salaries in legal services is vital to the long-term quality of the service we provide to our clients.² The purpose of this article is to provide legal services leaders who are already committed to changing our approach to salaries with a road map for the journey.³ My hope is that this step-by-step approach will help a motivated leader overcome the financial, organizational, and, perhaps most important, attitudinal barriers to such a change that have proved to be daunting and indeed paralyzing for many programs.



The passage from hopelessness to modest progress on salaries involves a number of stages, and this article will address each one. The first stop on the route to better salaries must be a well-led internal discussion of the characteristics of a strong legal services program and the role of our salary structure in strengthening or weakening the program's long-term ability to provide a range of high quality services to clients. The next step is information-gathering about the cost-of-living and about salary levels, especially in the rest of the world outside of legal services. Then the leadership must develop a salary proposal, thinking strategically

My hope is that this step-by-step approach will help a motivated leader overcome the financial, organizational, and, perhaps most important, attitudinal barriers to such a change that have proved to be daunting and indeed paralyzing for many programs.

about both goals and the approval process, mindful of but undeterred by the risks, and ready to deal with the short-term and long-term consequences.

Finally, the proponents of a new approach to salaries must educate and persuade board, staff and funders of both the urgent need and the ultimate practical wisdom of raising salaries. All along the way, there must be recognition and discussion of deep-seated attitudes about the societal value of legal services work and the powerful unspoken external and internal assumptions about how our programs are to be staffed and structured.

Step One: Looking Inward: A Guided Internal Discussion about Values, Goals and Needs

In most legal services programs, the long-standing approach to salary scales has been characterized by a step-based scale based on years of experience, with annual salary increases that are automatic and not tied to performance or merit, and a frame of reference for overall salary levels based largely on the other legal service programs and especially the salary levels of similarly configured programs in the same region. Our programs have made sporadic adjustments to the salary scales, in response to the vagaries of our budgets and, in some cases, union pressure.

Rather than picking apart the specific features of this approach or plunging directly into the nuts and bolts of alternative salary plans, it is important for the program leadership to spend a little time unearthing the underlying assumptions and goals, stated and unstated, that have shaped our approach to salaries. The first of these discussions should take place within the program's leadership team, to make sure that the program's leaders are working from the same understanding and come to a strong common commitment to change the program's approach to salaries. A committed leader can help guide this discussion by asking a series of questions:

- What do we want our salary plans to accomplish?
- What kind of staff do we need in our programs to meet our clients' needs?
- What are the different kinds of advocacy that our clients want/need us to be able to provide?
- What are the various capacities and skills that we should strive to possess in order to best be able to provide this range of advocacy?
- What mix of experience levels do we need?
- Does our program's salary structure enable us to continuously build, preserve, and replenish this blend of experience levels and skills over the long-term?

This client-focused discussion will reinforce and strengthen the program leadership's understanding about the array of staff capacities that the program needs in order to provide the range and depth of services our clients need and deserve.

The next part of your leadership team's discussion should be to look at your salary's structure impact on our most important management task, building and preserving a staff to create and preserve these capacities for service to our clients. Here are some questions to ask your management colleagues that focus on the practical management consequences of the program's failure to confront the salary issue:

- Is our program succeeding in recruiting and retaining minority advocates?
- Do our salary levels exacerbate this problem?
- How do our salary levels affect our ability to undertake "lateral hiring" of experienced advocates?
- Do we have an appropriate gender balance among our advocates?
- What role do low salaries play in creating the current gender (im)balance?
- How do our salary levels affect the morale and productivity of long-time employees — do they feel unappreciated for their loyalty to the program?
- Will these problems and limitations affect our long-term ability to meet our clients' needs?
- If these current patterns continue, what will be their cumulative impact over the next ten years, especially in light of the departure of the aging baby-boomers during this period?

The leadership team should then initiate a broader dialogue, seeking the perspective of the staff at all experience levels, but especially at or near the entry level. This requires asking some questions that probably are beyond the scope of the typical lunch-hour banter and then listening carefully to the answers. In essence, everyone needs to talk about what kind of lives our staff can expect to have on our salaries. Here are some questions to get at the realities of this problem from the staff point of view:

- Can a five-year level staff attorney buy an average (modest?) house on our salaries? Save for the down payment? Keep up with the mortgage, taxes, and maintenance?
- Can our staff contribute to the college education of their children? Will those children have to borrow heavily because their parents can only contribute minimally?
- How much can one save for retirement on our salaries? Are our career staff going to have to depend largely on Social Security?
- Can our staff remain viable financially on our salaries as a single parent if their marriage/long-term relationship breaks up?
- Do we quietly count on affluent extended-families and well-paid spouses/partners to support our staff? If so, aren't we limiting the pool from which we can draw long-term staff?

One final question for everyone to answer — how long does it take for perceptive entry-level prospects, new staff, or potential experienced hires to figure out these harsh realities, even if they are not acknowledged out loud? And how does that realization affect their decisions about working for our program?

Assuming that these discussions have created a strong leadership commitment to improving salaries, the next step is to engage your board leadership and then the full board in a condensed version of these discussions. The purpose of the first round of discussions with your board should not be to ask them to endorse a specific proposal, but rather to educate them about the problem and obtain their support and participation in further fact-gathering and the formulation of a proposal. My experience at this stage was that our board members were dismayed to hear how far our salaries had fallen behind other public sector lawyers and that we were losing promising lawyers as a result. They were also ashamed, as I was, that some of our lawyers were working second jobs as waitresses to make ends meet.

© HOW TO BREAK OUT OF THE LOW SALARY TRAP
Continued from page 25

This first level of discussion helped them become converts to the cause before I asked them to wrestle with the specifics of a plan or the financial challenge that any such plan would entail.

Step Two: Gathering Data and Insight from the World Beyond Legal Services

Many of the other non-profits who serve our clients seem to be caught in the same salary pit. However, there are old and new nonprofits, particularly in the educational and health-care arenas (e.g., colleges and hospitals), where both the internal self-concept and the external perceptions are different. What can we learn from asking the following questions about these organizations?

- Who are the nonprofits in our own community with salary levels that lead to less painful answers to our questions about the impact of our salaries?
- What are their expectations and assumptions about their staffs?
- How do their “customers” view them and their salary culture?
- How do their funders view their more generous salaries?
- How are they viewed by the community at large? Does a culture of decent middle-class pay and long-term staff development make them seem stronger and more effective in carrying out their mission? Does it create any vulnerabilities?

It is worthwhile to find out what these non-profit institutions in your local community pay their lawyers. Some of your board members may have been involved with these institutions or may have contacts who can help you learn about their approach to this issue.

This should be part of a larger effort to gather a great deal of salary information. In particular, you need to see the salary levels of other public-sector attorneys at the state attorney general’s office, local prosecutors, county/district attorneys, staff attorneys at state agencies, and public defenders. The salaries at law firms, large and small, while not ultimately the most important benchmark, also provide perspective. In the past, the executive director and boards of legal services programs have focused primarily on salary comparability with other legal services programs. In view of the widespread failure of legal services programs to successfully

face salary issues, I suggest that the salary levels of other legal aid programs be given much less weight until they improve significantly.

Equally important is objective and current information about the cost of a basic middle-class life in the communities we live in. Sad to say, many executive directors and board members, whose own incomes significantly exceed the average salaries in their programs, do not have up-to-date personal knowledge, for example, about the current cost of rental housing or the price of an average home, or the cost of child care for a month.

In a number of states, economists and demographers have conducted “livable wage” studies, which provide compelling data about how expensive a minimum no-frills but self-sufficient standard of living has become.⁴ These studies demonstrate, among other things, that the salaries of many legal services workers relegate them to the ranks of the “working poor.” Like our clients, many of our staff are struggling to keep up financially, vulnerable to financial crises precipitated by a family illness, an expensive car repair, the need to replace a furnace, etc. A comparison of our salary scales, especially for paralegals and support staff, with the empirically-based conclusions of these cost-of-living studies paints this picture quantifiably, starkly, and irrefutably.

Step Three: Formulating a Successful Proposal: Make it Ambitious, Simple, and Marketable

Any proposal for dramatic increase in salaries will raise a host of concerns about how to pay for it, how funders will react, and whether it addresses all of the various policy goals inherent in any salary plan. In order to be able to respond to these concerns, gain the support of all constituencies within your staff and of your board, and have it viewed favorably by funders, it is best to create an ambitious proposal that is also simple and easy to explain.

When designing a salary plan from scratch, there are a number of possible issues to talk about, including how large the step increases should be, and whether the larger steps should occur at the beginning, middle, or top of the scale. There are also questions about the relationship between the scales for attorneys and those for paralegals and support staff. Another question is how much should managers get paid. While there is great merit in careful consideration of all of these issues, they can fracture a consensus about the overall need to raise your salaries and can dissipate momentum and energy. In my view, the first major salary im-

provement plan should be simple and should propose the same percentage increase in all of the salary scales, without attempting to address the more complex issues in the design of the existing scale. I recommend postponing all of the other discussions. In this way, all the staff will be given the same percentage increase and all will see that the proposal does not contain any new preferential treatment for one or more subgroups. At the same time, the proposal's simplicity is valuable in marketing it externally. Instead of having to justify different increases based on more complicated policy considerations, the argument can simply be made that all of your salaries have become woefully inadequate and you need to address all of them at once in a unified and dramatic way.

In my view, the goal of such a plan should be to bring legal services salaries within a reasonable range of other public-sector legal salaries, especially those of the state attorney general. In many cases, significant raises in the legal service salaries that would greatly improve recruitment and retention need not create full parity, but would bring out salaries into the same ballpark. Having a public-sector law office standard gives the proposal an objective and easily justifiable grounding.

Because the salary levels at other public and private legal employers never remain static but continue to grow as the cost of living continues to increase, it is important that any plan look beyond specific dramatic one-time increases and include a long-term approach. During this decade the cost of living has generally increased at about three percent per year, and the salary scales of many legal employers have increased at least that rate. Therefore, if your goal is to bring your salaries into the same range as these other employers and keep them at comparable levels, the plan needs to provide for cost-of-living increases in the future.

Perhaps the most daunting challenge in raising salaries is the financial one — how will we possibly be able to pay for the salaries we want to provide? Looking at this financial challenge soberly can lead one to a conclusion that any proposed salary increases should be implemented in stages over several years. In our program, we decided that we wanted to increase our salaries by 20% and we wanted to institute regular cost of living increases of 3% per year. Blending these two goals together, we decided that we would increase our salaries 10% per year for three years. At the end of the three years we had increased our salaries by 20% and added on an additional 10% to cover the three years' increase in the cost of living, so we did not lose ground during the staged implementation. Thereafter, we have

provided for a 3% cost of living adjustment to our salary scale each year. This approach enabled us to reach our goal in three years, but also allowed us to phase in the large new financial burden at 10% per year. This plan gave the Board and staff time to raise the money needed, while providing a concrete and specific promise of salary relief, beginning with a 10% step implemented immediately.

Step Four: Talking Honestly About the Short-Term Consequences and Long-Term Attitudinal Changes

While some legal services programs have maintained a rigorous approach to professional growth and productivity, in many legal services programs there has been an implicit trade-off between low salaries and loose standards of accountability, especially for mid-level and senior staff. While I would counsel against introducing any formal merit-pay system as part of a new salary plan, I strongly recommend a general discussion, repeated regularly, about clear and heightened expectations of staff that should accompany higher salaries. Our programs ought never to tolerate staff who perform in a mediocre and unproductive way and fail to grow professionally. We ought to be clear that if we are going to pay people at the levels that they deserve, we expect everyone to strive for excellence in their work. We ought to let everyone know that stagnation and burnout or even mediocre performance will not be tolerated over the long term, but instead will be dealt with through a gradation of accountability measures which can ultimately include termination. This approach goes back to the ultimate goals of any salary plan, which is to provide our clients with the best possible advocacy. Again, this may not be an issue in some programs, but will have to be faced in others.

An important short-term problem inherent in implementing a significant salary improvement plan that must be recognized is that dramatic increases in staff salaries are likely to precipitate short-term shrinkage in the size of the staff. This painful likelihood should be acknowledged and discussed from the beginning of the process. Everyone should be reminded that the salary plan is a remedial effort intended to correct a long-festering structural problem that is slowly but gravely weakening your program. In undertaking such a large and overdue correction, there is inevitably a transition period during which existing revenue will not cover the actual cost of running your program at its current size. We need to remember and admit openly that we have balanced our budgets for years by asking our staff to

© HOW TO BREAK OUT OF THE LOW SALARY TRAP
Continued from page 27

accept less-than-appropriate salaries. This has enabled us to have larger staffs than we could afford. We must now take a new measure of what size program we can pay for at any given level of revenue. Eventually, a new salary plan will bring your program to a place where everyone is being paid decently, so that when new staff are added, the cost of doing so is calculated with the true cost of decent salaries in mind. Nonetheless, the transition period involving no staff growth or temporary shrinkage, which in our program lasted two and a half years (and included several layoffs and a number of unfilled positions), is difficult and needs to be planned for and talked about.

Step Five: Implementing the Plan

The first step in implementing the new salary plan you have developed is obviously to get your board to approve it. Hopefully, by the time you bring the formal proposal to the board, they have been educated about the salary issue and some board members have participated actively in formulating the proposal. In the final discussions with the board, you can remind them of the recruitment and retention problems the program has suffered, the data that shows how far behind your salaries have fallen and what the cost of living is in your area, and the importance of having a strong and stable staff for the performance of the program's mission for clients.

The board and the staff also need to develop a plan to raise the money that will be required. As noted above, the program's budget must reflect the reality that not all the money will be available immediately and that staff vacancies will need to be left unfilled, so that the program will have the money to begin implementation of increases for the remaining staff. One of the virtues for having a phased-in salary plan is that it gives the board and the staff more time to raise the money and the ability to set interim goals. In a number of states, the salary gap in legal services has proved to be an effective fundraising theme in campaigns aimed at law firms and lawyers in larger firms. A financial plan needs to include both plans for raising more money and preparation for not filling staff vacancies and even layoffs in the short term if all of the money needed cannot be raised immediately.

Another often-stated fear about increasing legal services salaries is that our funders will balk. In my view, this does not give our funders enough credit for

recognizing that we need decently paid professionals to serve our clients. It also does not recognize that our funders' primary reference points for salary discussions, i.e., the business world, their own private lawyers, the salaries of their own adult children, are very different from our more narrow traditional focus on legal services salaries. If the goal of a salary plan is to bring our salaries within the range of other public-sector salaries, it is fairly safe to assume that these new salaries will still seem modest to many funders who are aware of the salaries of private attorneys and other professionals. In my experience, once we educated funders about our salaries and how they compared to other public-sector and private law firm salaries, they usually supported our belated effort to address the problem.

It is also important to explain to funders the cost of the staff turnover, both in money and time for training and in the quality and quantity of services delivered to clients that is precipitated by low salaries. In its recent and very compelling report on recruitment and retention of legal services lawyers in Illinois, the Chicago Bar Foundation devoted considerable analysis to this issue and came up with a formula for quantifying the cost of turnover.⁵ This can be an important and persuasive argument for raising salaries with even the most skeptical and frugal funder.

One final important step or activity in the implementation period is to make sure that the value of your staff, the need to pay them decently, your expectations of consistently high performance, and your commitment to a strong program for the long term, are a regular part of conversations in your program's leadership and with all of your staff. Taking the step to significantly increase salaries is momentous and it can cause short-term problems and concerns, but these ultimately will be far outweighed by the enormous boost in your program's sense of itself. Staff members who can see that your program values them and has taken big steps to pay them appropriately are staff members who will be loyal, energetic, and productive for your program and their clients. A new salary plan opens up opportunities for lateral hires of experienced staff while lowering financial anxiety for everyone. All of this leads back to fulfillment of the goal that everyone shares, high-quality legal services for our clients.

1 John Tobin, Executive Director, New Hampshire Legal Assistance, may be reached at jtobin@nhla.org. He has also been active in school-funding litigation and Bar leadership, he serves as a court mediator, and as co-chair of the

Training 2007-2008

SAVE THE DATES! Management Information Exchange 2007-08 Training Continues!

- National Fundraising Conference**
Thursday, July 19 – Saturday, July 21, 2007,
Hotel Nikko, San Francisco, CA
- Supervising Legal Work Training**
Monday, August 13 – Wednesday, August 15,
2007, Sheraton University Hotel,
Philadelphia, PA
- National Directors Conference**
Thursday, September 27 – Saturday, September
29, 2007, Ambassador East Hotel, Chicago, IL
- New Executive Director Training**
Tuesday, November 6 and Wednesday, Novem-
ber 7, 2007, Tucson, AZ (immediately preceding
the NLADA annual conference)
- Leading from the Middle: MIE's Biennial
Conference for Legal Services Managers**
Spring 2008
- Advance Beyond the Basics: Supervising
for Excellence**
Fall 2008

- YES! Please send me information on the
trainings indicated in the left hand column
as soon as it is available.**

 Name

 Title

 Program

 Address

 City

 State

 Zip

 Phone

 Fax

 Email

Please FAX this page back to Patricia Pap, MIE Executive Director, at 617-507-7729 or CONTACT her at 617-556-0288, or ppap@m-i-e.org. Visit the MIE website at www.m-i-e.org.

☉ HOW TO BREAK OUT OF THE LOW SALARY TRAP *Continued from page 28*

- MIE *Journal* Committee. In recent years he has urged legal services programs to significantly increase staff salaries and to raise our income guidelines to serve more of the “working poor.”
- 2 See Cathy Carr’s excellent article on this topic in this issue of the *MIE Journal* and my prior *Journal* articles, “Urgent Memo to Ourselves: Legal Services is not the Peace Corps (Addressing the Salary Chasm Now)” – *MIE Journal*, Vol. XVII, page 5, Spring 2003; and “Lifting Staff Out of Near Poverty Will Foster, Not Inhibit Creativity and Energy,” *MIE Journal*, Vol. XVIII, page 54, Fall 2004.
 - 3 This article focuses on salaries, not loan assistance or retirement plans. In my view, a legal services program must provide all three: improved salaries, a loan assistance program, and a retirement plan if it is to recruit and retain the “best and the brightest.” In other words, creating a loan assistance program does not eliminate the need for improved salaries and visa versa.
 - 4 See New Hampshire’s Basic Needs & Livable Wage — 2006, available at www.nhsbdc.org/LW2006/index.html. The list of references at the end of this report includes a number of similar studies in other states.
 - 5 “Investing in Justice: A Framework for Effective Recruitment and Retention of Illinois Legal Aid Attorneys,” Chicago Bar Foundation and the Illinois Coalition for Equal Justice, November 2006. See the article in this issue of the *Journal* by Joseph Dailing and Dina Merrill describing this study, and quite encouragingly, reporting on the follow-up work being done in Illinois to bring about significant changes in the compensation of legal services lawyers. More information available at www.chicagobar-foundation.org.