

Negotiating a Job Offer: Helping Law Students Learn to Ask for What They Deserve

by Stephanie Mitchell

By the time law students finish their degrees and finally find the right law firm, many just want to breathe a big sigh of relief and start working — no matter what kind of salary they're being offered. But even in a tough legal market, there's often room for a bit of salary negotiation when receiving an offer from a smaller law firm or law office that does not have fixed salary scales. If young lawyers take the time and effort to negotiate even a small raise, it can establish their reputation and lead to hundreds of thousands of dollars down the road.

Consider this: a young woman and a young man are offered a salary of \$60,000 for the first year of their legal careers. The woman gratefully accepts, relieved she's finally found a position. The man politely negotiates a 5% raise and starts earning a salary of \$63,000. It doesn't sound like a big difference, but it adds up over the course of their careers. If they both receive a 3% raise each year, but the man invests the difference in his earnings in a savings account with 3% interest, he will have an additional nest egg of more than \$240,000 when he wants to retire 30 years later.

Or, how about this: another man accepts his starting salary of \$100,000. This time, the woman negotiates a 5% raise to earn \$105,000. Again, assuming they both receive 3% raises every year and the woman invests the difference, she will come out more than \$400,000 ahead after 30 years. That's a lot of money for just a little negotiation.

But learning to negotiate isn't just about the money. Let's look at a few other reasons why it's important to negotiate.

Employers tend not to offer more than they think necessary. No extra money, no extra vacation, no extra benefits. Employers would rather save that money unless they are given a good reason to spend it on an employee.

Negotiating for one's salary — with respect and goodwill — also sets the tone for one's professional reputation. Some law students may worry that negotiating could negatively affect their relationship with their employer. In fact, it's just the opposite: employers respect the professional abilities of candidates who demonstrate they are not pushovers. (Of course, this presumes the employer is not a large law firm or other organization that offers fixed entry-level salaries; attempts to negotiate with such an employer will be seen as evidence that a student has not taken time to research the market. Most smaller employers do, however, expect a degree of negotiation, and career services offices can help students understand when negotiation is — or isn't — appropriate.)

Students must also remember that employers can't read their minds. However, employers do want to know what their chosen candidates want. After all, students who get what they want are more likely to stay at the firm as happy, productive employees.

Finally, the best reason to negotiate is because it works. Candidates who don't ask for more, simply won't get more.

Advice for Students

Now, let's talk about how students can negotiate effectively.

This is what I suggest we advise students:

First and most important, be prepared. Research the market to find out what you're worth. Look up salary ranges on the Internet and check with legal search firms and professional organizations. Ask your friends in the same field for a range of what they believe the job should be paid. (This approach avoids the awkward, "Exactly how much do you make?" conversation.) And remember to check with your law school's career services office; most have current information about salary ranges in specific areas.

Once you have a realistic sense of what you should be paid, set your goals and your bottom line. Your goals may be not only about making more money but also about balancing your professional and private life (e.g., vacation time, gym membership, etc.).

Your bottom line is the number below which you'll walk away. Some students may be so grateful for a job that they're willing to work for almost nothing. But if a firm isn't willing to pay a fair wage in the beginning, how much will you ever be valued in that workplace?

Your goal should be a number you know is fair from all the salary research you've done. Remember, setting a higher (but reasonable) goal leads to better results. After all, you don't want to concede as soon as the employer names a number close to your bottom line when you could have negotiated a salary much closer to your goal.

As you prepare to negotiate for your salary, start practicing your negotiation skills in everyday life.

If you buy a new suit for that job interview, ask the store to throw in the belt or shirt. If you see an imperfect (but still edible) piece of fruit at the grocery store, ask for a discount. Negotiate with your spouse to do the dishes or make dinner. The more you practice negotiating, the more confident you'll be when it really counts.

Now that you've done your research and you've been offered a position, it's time to negotiate. Remember to enter the negotiation with a positive attitude: show enthusiasm for the job and confidence in your abilities. Hopefully, the other side will "catch" your positive attitude and you will have a respectful dialogue that leads to a good solution for both of you. Always remember your mutual interests: you are both looking for/looking to create a happy, productive, and long-term employee.

Whenever possible, let the employer make the first offer. This "sets the goalpost" of the least amount the employer is willing to pay you. When you counter, you set the goalpost for the most you could be paid. You and the employer then negotiate within those goalposts. If you set the first goalpost, you risk setting it lower than the employer might have been willing to go.

If the employer is pushing you to name the first amount, you could try to stall by asking to go over your role and by saying you don't have all the information necessary to assess salary expectations. Negotiation expert Delee Fromm also suggests asking these two questions: "What are you planning to pay for this position?" and "Is that the most you would pay?"

When you do tell the employer the number you're looking for, always give a range. This gives you room to move up or down and still save face.

Don't be afraid of silence during the negotiation. We can feel compelled to rush in to qualify ourselves when there's an uncomfortable silence. Count in your head or think pleasant thoughts — let the employer fill the silence. Chances are, he or she might feel compelled to speak, thus giving you

more information or even another number closer to your goal.

Of course, you should always trust your social instincts and your experience in your interactions with an employer. However, make sure you don't back down just because fear or shyness has over-run your sense of what is fair. In their book, *Women Don't Ask*, Linda Babcock and Sara Laschever suggest a good line to use instead of conceding: "That's what the market is telling me I can get right now."

Remember to assume that all things are negotiable. If the employer really can't pay you more, he or she might be able to pay your bar association or law society fees, your parking fees, or your membership in the local health club.

At the end of the negotiation, congratulate yourself. Even if you only came out with a little more than you were initially offered, it adds up to a big difference in the long run. Just imagine what you'll get the next time you negotiate!

SOURCES:

Delee Fromm, "Negotiate and Communicate with Confidence: How to Put Your Best Foot Forward and Be Effective in Workplace Negotiations," University of Toronto Faculty of Law's "Women in Transition: Returning to Legal Practice or Considering an Alternative Career in Law" Conference, 2010.

Linda Babcock and Sara Laschever, *Women Don't Ask: Negotiation and the Gender Divide*, Princeton University Press, 2003, and Bantam Dell, 2007. Linda Babcock and Sara Laschever, *Ask for It: How Women Can Use the Power of Negotiation to Get What They Really Want*, Bantam Dell, 2008.

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CHAPTER 8

NEGOTIATING YOUR SALARY

From new graduates attempting to negotiate a salary for their first legal job, to a seasoned associate seeking to move to another firm or anticipating an annual review and salary increase, the vast majority are unprepared to negotiate their compensation, and simply end up accepting what they are offered. So when do you negotiate? Nearly all large firms still have “lock-step” salaries for entering first year associates. Those salaries are usually publicized in the NALP directory (www.nalpdirectory.com). Most mid-size to small firms, however, do not advertise starting salaries, and are open to negotiation. Even in large firms, after the first couple years, you will be negotiating salary. In addition, for most public interest jobs, there is usually a little leeway to negotiate, and even in many government jobs, you can negotiate between certain levels of pay. This is not meant to be a thorough guide to every detail of negotiating salary - you still must do your homework. However, the following tips will help you be well-prepared.

If attorneys continue to remain uncomfortable about negotiating salary and benefits, and do not perform the necessary research and analysis, they are guaranteed one thing: the very real possibility that they will be underpaid for years to come. Remember that this negotiation involves three essential things: A negotiator who is well-prepared with all of the facts, figures and background knowledge possible relating to the issue at hand (including as much knowledge as possible about the employer); a firm grasp of both her drop-dead bottom line and “opening figure”; and a willingness to listen and compromise.

So, how do you prepare to negotiate a compensation package? Where do you start looking, and what do you need to know? When do you start thinking about salary and compensation?

1. Do a Financial Self-Assessment Immediately: As soon as you even begin thinking about looking for a permanent job after law school, or begin thinking about making a lateral move, or in your firm know when your annual review date is, begin to prepare! First, what are your *basic* requirements? Be sure to analyze your personal costs carefully and honestly - what will it cost you *per month* for the following basics:

- Rental market or housing market for you and any family members; renters’ insurance and liability insurance;
- Medical, dental, vision care; cost of health, life, disability insurance for you and dependants;
- Groceries and sundry items for your household, including number of meals eaten out;
- Professional clothing per year, including dry cleaning costs or laundromat;
- Automobile insurance, payments, repairs and parking; mass transit;
- Professional liability and Bar dues, Bar section dues, continuing legal education classes to meet minimum requirements (many employers will cover these costs);
- Child care or dependent care costs;
- Entertainment, gym and club dues, gifts, travel, computer software or equipment;
- Educational loans, car loans, credit card debt payments, personal loans.

You can get information on several of these costs from a number of sources, many of them online. For example, the Chambers of Commerce of most cities and towns will be happy to talk with you over the telephone or mail you information on many local costs, including housing, cost of living, or mass transportation.

Once you have analyzed your basic costs, then you must decide what standard of living you are willing to accept. Too many people put as their bottom line the bare essentials necessary for living, and then when they accept an offer that barely covers those, quickly become resentful and depressed. It is unrealistic to believe that even though you land your dream job that you will be happy in your personal life with a salary that gives you no room to breathe. Make sure you build in some “breathing room” for you to be minimally happy. It is a very personal thing. For instance, those wanting a public interest job may be very willing to make lifestyle changes such as shopping at second-hand clothing stores, using mass transit vs. a car, eating meals out only once a month, and sharing housing, while a person wanting a job with a large firm is not willing to compromise on any of those. What ever you choose, make sure that you know your absolute minimum bottom line not just to survive, but *to be reasonably happy*.

2. Do an in-depth Skills Self-Assessment: You are selling yourself. It is your job to convince your employer that you will be profitable to the firm. Every law firm anticipates that a new lawyer will not become “profitable” until probably the third year of practice; for small and medium-sized firms an investment in an associate is much more risky than for a large firm. Thus, you must be prepared to speak intelligently and in depth about your skills, and how those will bring value to the firm. Do a self-analysis of every job that you have ever had: What are the things you did every day? How many pleadings did you draft, and in what substantive area? What types of pleadings? How many motions or cases argued, depositions taken, jury trials done, jury instructions drafted, memoranda written and in what substantive areas? What are your abilities as a rainmaker? What Bar sections, community and service organizations are you involved in? Analyze your non-legal skills as well: supervisory, clerical, etc. Get several different samples of your own work, from pleadings drafted to motions and memoranda and briefs written. Prepare a reference list for yourself to draw upon that also includes subordinates, supervisors, colleagues, attorneys you have co-counseled or second-chaired cases with, judges you have appeared in front of, *and* opposing counsel. You absolutely cannot market a product without knowing that product inside out and backwards, including all of its attributes, benefits and flaws. What makes you think you can sell yourself without doing the same? If you are already working for a firm, keep a weekly list (your billing records can be a good source of information for this) of major projects you have worked on, and a file for documents you have drafted. Keep track of every single professional or community organization you belong to, and of your activities: speeches given, CLEs presented, projects completed, etc. and update your resume with these regularly, not just when you want to *use* your resume.

3. Know your Market: Law firm salaries vary throughout the country depending on geographic location, as well as the size of the firms. Additionally, firms that are the exact same size also will have varying compensation rates depending upon the substantive area practiced and the method of payment accepted from clients. And within large firms, often attorneys with the same level of experience, but working in different departments, receive different salaries. You must know exactly what you are dealing with in order to be able to negotiate.

Type of Firm: First, analyze what type of firm you are looking at: Is it plaintiff or defense-oriented? What are the substantive areas practiced? What is the size of the firm? What is the geographic location? You should figure most of this out *before* you go in for your first interview. Analyzing the type of firm is critical, because this often determines what it is likely to pay. For example, most insurance defense firms pay less than comparably-sized firms doing exclusively or primarily business transactional work; a plaintiffs' personal injury firm or private criminal defense firm with a contract to do public defender work will usually pay less than a small general practice firm of the same size that primarily generates billable hours. Plaintiff-oriented firms generally pay less base salary to begin with but offer larger bonuses or salary jumps after a year or two, because most of their income is contingent-fee based, while defense-oriented firms may pay more to begin with because they are billable-hour based, but tend to have a less-dramatic salary increase year-to-year.

Billable Rates, Methods & Firm Finances: This is information that you usually cannot get from looking in a book. Thus, you need to be prepared to ask these questions *in your second interview or salary negotiation session* in order to get the answers you need. For example, ask about the firm's fee arrangements:

Fixed Fee: The firm charges a set amount for a type of service regardless of the hours spent on the project. This type of billing method is most often used by firms doing criminal defense work contracted by the state; in civil practice, firms representing insurance companies sometimes agree to a set fee per case, regardless of whether the case settles or goes to trial. Increasingly it is being used by businesses for routine matters. Ask about the percentage of fixed fee cases as a part of the whole, and the percentage of fixed fee cases that settle versus those that proceed to litigation. (e.g., if there are a lot of cases that go to trial, this obviously reduces the profit margin).

Billable Hours: With this method, the firm charges a set rate per hour. Usually, attorneys keep detailed time sheets and record their activities by the tenth of an hour. How much of the firm's work is billable hours? What are the rates? Do they vary by type of client or type of matter? What rate do they bill out their first year associates or the level of associate that you will be entering? Do associates in different departments of the firm charge different rates? If so, why? Is there a sliding scale? Does the firm do write-offs or mark downs? (e.g., you work 12 hours on a case, enter 10 on your timesheet, and the firm only bills the client for 5) How much pro-bono work is suggested or required, and does this count toward an associate's billable total? Be *very* sure that you *always* ask whether the firm bills you out at the hours you record on your timesheet, or whether they do discounting. This can make a significant difference to you. For example, if a firm says you are required to bill 1800 hours, is that 1800 discounted or non-discounted hours?

Contingent Fee: This method is just what it says: the fee is contingent upon winning the case. The attorney keeps track of her work on a fee-generating case (such as a Section 1983 case), and if she wins, she collects her fees. Or, in a personal injury case, the attorney fee agreement stipulates a certain percentage of the total gross award or settlement, usually on a sliding scale. For example, the attorney may collect 33% of the total before a case is filed, 40% after filing up to 10 days before trial, and 45 or 50% if the case goes to trial. Virtually all personal injury and other tort cases are contingent fee cases. Typically, many small firms hiring associates pay them a base salary plus a percentage of all profits they bring in. Ask about the percentage of contingent fee cases the firm has. If the associate is going to be doing only contingent fee cases, is there a required minimum

“income” from those cases? Does the associate get a percentage of each case where money is brought in? What about a percentage of each case the associate brings in on his or her own? (Then the percentage should be higher.) What is the base salary, and how soon are bonuses or salary increases given? What are the increases in salary, bonuses, or increases in percentages based on, and how often are they reviewed?

Firm Finances: In order to get an idea of what a firm can pay, it is helpful to get a rough estimate of what the gross annual or monthly receipts are. Once you get information on the type of billing, and who is doing what in each firm, that is relatively easy. However, that is not the only thing to consider - you must also look at the firm's overhead and what adding you to the mix will do to the profitability of the firm. You cannot negotiate well with a small firm without an understanding of firm finances, and firm overhead. You can figure overhead by using some simple estimating of your own. What does it cost the firm, approximately, to rent out space in a building, pay x number of secretaries, purchase or lease equipment, pay payroll taxes, advance costs for cases, pay professional dues, insurance and benefits, and utilities each month? You can get this information often very quickly by calling a sole practitioner or the sole practitioner's section of your Bar organization, which may have done some research on office overhead, then multiply it by the number of people in the firm you are looking at to get a rough estimate. Or call a commercial realtor for information on rents, the legal secretaries' association about average salaries, an insurance broker regarding the cost of insurance, the state employment division regarding payroll taxes, etc. The PLF also has excellent information for people interested in sole or small firm practice. Be aware that small firms doing a lot of contingent work often need to keep a lot of capital tucked away for the months when there may be little income coming in, so large profits can be very deceptive.

4. Benefits/Additions to Salary: You need to ask what benefits will be included, which could include any or all of the following:

- Medical, dental, vision insurance for you and perhaps for your dependants;
- Short/long term disability insurance;
- Paid vacation and sick leave;
- Paid or unpaid parental or dependent care leave;
- Retirement (and whether there is an employer contribution plan);
- Costs for professional conferences (CLEs) and number covered each year;
- Parking or bus pass;
- Payment for time studying for the Bar or Bar review courses;
- Professional liability premium payments, and yearly Bar dues.
- Profit sharing
- Expense accounts for entertaining clients or participating in Bar activities;
- Paid meals when working late;
- Sabbatical policy;
- Promotion to partner or senior associate;
- Travel reimbursement; moving or relocation costs;
- Club (fitness, social) memberships;
- Also, increasingly it is not unheard of for small firms to sometimes offer to pay part or all of a new associate's monthly student loan payments in exchange for the associate's agreement to work for a specific time period, like two or three years. After that time, the loan is forgiven; if the associate quits before the time is up, she must pay it all back.

5. **Where to Look for Information:** Now that you know what to ask and look for, where do you find the information? Always give Career Services a call. Every other year, Career Services surveys our alums who have graduated within the past 7 years and compiles an Associate Survey Salary, including information about salary, billable hours for different practice areas and types. In addition, we can often call our colleagues in other parts of the country for information on firm salaries. Also, there are several publications that have basic information about salaries in most cities. Several state Bars conduct member surveys, and even though the information is outdated sometimes, it gives you a place to start. Also, nothing substitutes for calling as many friends or colleagues as you can in similar-sized firms, and ask them. Most people will tell you; if they don't, the worst they will say is "no." This is especially useful if you are an associate in a firm trying to negotiate a raise - be sure to identify as many people as you can working in similar-sized firms to ask for information. Tell them which other firms you are talking to, tell them that you will keep individual names confidential, but that you will share firm information with them once you have gathered it. This is often a powerful incentive for your colleagues who want to know what the salaries are out there, and if they are competitive!

6. **Negotiating the Salary:** Usually, the appropriate time to discuss salary is at the time of a job offer. However, you need to be prepared, should the subject come up during the interview.

- a. **Employer Makes the Offer:** Typically, the employer will make the initial job offer, which should include not only starting salary but the other benefits that will be offered. Evaluate the offer based on your research - is this within the going rate for employers of this type/size/location/practice type? Evaluate the offer as a whole as well as the sum of its parts; sometimes, employers offer a lower starting salary but excellent health benefits. It is fine to ask the employer for time to think about the offer for 24-48 hours.

If you do decide you want to counter offer, negotiate on the basis of your qualifications, skills and experience and how that is worth more to the employer than what they have offered you. Make the business case for yourself that you are worth more to the employer - that by hiring you and paying you x amount more, the employer will make money. Do not base your counter offer on your needs or wants (i.e., "I can't live on that!"). If the employer's offer was below the going rate, you can negotiate from the basis of market rate: "I did some research and believe that the going rate for entry level positions for this size of firm is more in the 50,000-\$55,000 range."

If the employer is unwilling or unable to budge on salary, consider asking for a non-monetary concession: would they be willing to give you an extra week of vacation or perhaps agree to review your salary in 6 months? At that point, the employer is that much more invested in keeping you satisfied and may be in a better financial position to grant you a slight raise.

There is a non-specific realm of reasonableness that you must keep in mind. If the employer has offered \$40,000 per year, you cannot counter with \$80,000. If you're really that far apart, it may be time to say "thanks but no thanks" and wait for an offer that better meets your salary requirements.

b. Employer Asks Applicant for Their “Salary Expectations”: In salary negotiations, it’s always preferable for the employer to make the first move. That way, you don’t end up “low balling” yourself by offering a number that was below what the employer was going to offer you!

Sometimes, an employer will ask you what your salary requirements are, or what salary range you have in mind. Turn the tables and ask them “what salary range did you have in mind when you posted the position?” or “I would expect to be paid the market rate for my level of experience” or “what does the firm typically pay an associate at my level of experience?” If it’s early on in the interview, you can also say something like “I’d like to talk a little bit more about the job and how I might fit the position before we begin discussing compensation.”

With very small firms that may not have hired an associate before (or in a very long time), they may have no idea what the going rate is. Help them out by providing them with a range indicated by your research: “My understanding from talking to Career Services and some local firms is that small firms typically pay around \$55,000 per year. A salary within that range would be acceptable to me, depending upon the other benefits and terms of employment.”