



TABLE OF CONTENTS

Articles »

The Myths and Realities of Law Firm Compensation for Women

By Jennifer Hoekel

A recent study notes that at the current pace, women partners will achieve pay equity with their male counterparts in 2086.

Writing and Using the Effective "I Love Me" Memo

By Nan E. Joesten

The author offers 10 steps to take to better negotiate the salary you deserve.

Elements of a Competitive Corporate Compensation Package

By Kandice K. Bridges

Attorneys moving in-house must understand the different elements that make up a competitive compensation package for corporate executives.

The Importance of Promoting Yourself as a Female Attorney

By Angela A. Turiano

As a young attorney, it is imperative that you promote your accomplishments and share your ideas.

Preparing for Partnership Buy-In: Exploring the Important Questions

By Cammie Hauser

One of the most important long-term career decisions relates to becoming an owner of a business.

Toward Living a "Guilt-Free" Life

By Katherine Y. Fergus

A common challenge for female lawyers is balancing the need to meet billable hours with the need to be present at home.

News & Developments »

Low-Confidence Behaviors Stunt Women's Careers

A recent *Harvard Business Review* article discusses four "low-confidence behaviors" frequently exhibited by women in the workplace.

The Effect of Makeup on Perceived Competency

A recent study found that women who wore makeup were perceived to be more competent, likeable, and trustworthy than their non-makeup-wearing counterparts.

ARTICLES

The Myths and Realities of Law Firm Compensation for Women

By Jennifer Hoekel

On Friday, August 5, the Women Advocate Committee presented a panel at the ABA Annual Meeting in Toronto focused on a study entitled “New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women.” The study was conducted through the collaborative efforts of The Project for Attorney Retention (PAR), Minority Corporate Counsel Association, and the ABA Commission on Women. The panel included Manar Morales, executive director of PAR, Bobby Liebenberg of Fine Kaplan, and Jim Goh of Ogletree Deakins. Both Liebenberg and Goh are commissioners on the ABA Commission on Women. The panel was moderated by Beatrice O’Donnell of Duane Morris.

Liebenberg opened the program by highlighting the reasons that the study was performed. Pay equity has been a focus of the Commission since its inception under Hillary Clinton in 1987. Liebenberg noted that, at the current pace, women partners will achieve pay equity with their male counterparts in 2086. Unfortunately, the higher one looks within the law firm structure, the worse the inequities become. The largest compensation gap is between male and female equity partners. It is estimated that this compensation gap adds up to \$1,000,000 during a woman’s legal career.

Morales discussed some of the key findings, noting that the confidentiality assured to respondents resulted in extremely honest responses and commentary. Morales noted that in most firms, compensation is determined one way or another by equity partners, a group that statistically includes only 16 percent women. Further, three-quarters of the compensation committees at respondents’ firms had one or no women on the committee. This was consistent with other findings, including the lack of women on any influential committees within the firm.

After highlighting some of the key findings, the panel spent a significant portion of the program focused on the best practices that should be implemented by management, in-house counsel, and individual attorneys. The panel noted that both the Commission and PAR work with general counsel and firm management to discuss the implementation of many of these best practices.

For example, Liebenberg noted that general counsels should be asking at pitch meetings whether the team that is presenting will be the same team that actually performs the work. She noted that some law firm women’s initiatives are beginning to track statistics related to which attorneys are participating in client pitch meetings, which attorneys are getting the work that arises from those meetings, and the nature of the work that is being assigned for those clients. In other words,

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Fall 2011, Vol. 17, No. 1

firms and general counsels should begin paying closer attention to who is doing the substantive work on the files and demand accountability.

Additionally, the panelists encouraged in-house counsel to identify, where relevant, when diversity has played a role in either awarding work or pulling existing business from a law firm. If a law firm makes an impressive diversity case to the company, the company should make it known that diversity was a positive factor in influencing the decision to hire the firm. Similarly, if a firm is being eliminated as a provider for failing to provide diverse talent, the company should make that known as well. The panelists noted that pay equity could be driven in part by outside counsel merely making known their interest in maintaining a diverse pool of outside counsel resources.

Firms were further encouraged to present information in a more transparent format. One striking finding from the study was how few partners understood their firm's compensation structure. The panelists encouraged firm management to put compensation criteria in writing and available to all partners who are subject to the system. The panel further noted that objective compensation systems are inherently fairer than subjective systems.

Many respondents to the study noted that retention and management of existing human capital within the firm was not reflected in compensation despite the importance of these factors in a successful firm. The panelists noted that general counsels have expressed displeasure with the fact that this factor is not taken into account in compensation decisions. The business costs of turnover and training are a substantial factor in both firm health and client happiness. The panel encouraged firm management to consider how talent management can be compensated in such a way as to increase talent retention.

Succession planning is another area that firm management was encouraged to attend to. Only 2 percent of respondents said that clients have any input into where the credit for the business goes after the originating partner retires. More often, however, the client is bequeathed to whomever the retiring partner denotes, often with little regard for who is actively working or managing the client. Active succession planning should be focused on fair allocation of client credit.

As to individual attorneys, the panelists encouraged women to find champions within the firm. It is important to have someone "in the room" that can speak up on your behalf, particularly because of the double bind of negotiations. As many studies have shown, women that are perceived as overly assertive are often penalized financially. However, women that fail to speak up for themselves face the same compensation shortfalls. Having a champion to cheerlead efforts on your behalf is a valuable resource.

Additionally, the panelists emphasized the importance of thinking of yourself as the client. We are all strong and zealous advocates in the courtroom when it comes to speaking for our clients. However, at compensation time, it is just as important to be a strong, yet dispassionate, advocate.

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Prioritize these conversations and prepare for them the way you would for an appearance on behalf of your client.

Keywords: glass ceiling, compensation, PAR, Commission on Women in the Profession

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Writing and Using the Effective "I Love Me" Memo

By Nan E. Joesten

Few of us enjoy the process of negotiating our salary or justifying our professional existence, but only an ostrich or someone of independent means can afford to stick their head in the sand and ignore the realities of what it takes to get paid for what you are worth. The facts surrounding the compensation of women attorneys are generally grim. In the National Association of Women Lawyers' fifth annual survey on the retention and promotion of women in law firms last year, of women attorneys in AmLaw 200 firms, female law firm associates had no noticeable income gap compared to their male counterparts, but at every higher level, the gap widens, and in 2010, women equity partners earned only 85 percent of the compensation of their male partners. Similarly, the 2010 report from the Project for Attorney Retention (PAR) and Minority Corporate Counsel Association (MCCA) on the impact of law firm compensation systems on women was blunt in its assessment: Less than half of women equity partners, and only about one-third of either income or diverse partners, are satisfied with their compensation systems. While these results focus on BigLaw, they are confirmed more broadly by a recent Census Bureau report revealing that the median income of women lawyers is only 70 percent of male lawyers' income, and the gap between male and female equity partners adds up to a whopping \$66,000 annually. For income partners, where rainmaking might not be such a factor, women still earn \$25,000 less.

While we should be pushing for best practices in compensation—such as having objective criteria—here are 10 steps to take in the meantime to better negotiate the salary you deserve.

1. Understand the Reward System

Or, as one of Steven Covey's seven habits suggests, begin with the end in mind. What does your organization reward? Dig beneath what is paid lip service, and find out what really matters the most. For more junior attorneys, the expected competencies are often set forth in writing and hinge on growing your technical competence as a lawyer, expanding the depth of your knowledge in your chosen focus areas, and delivering excellent client service. As you become more senior in private practice, technical competence becomes a given, and the name of the

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game shifts to client origination, revenue collected, and hours billed. As more organizations recognize the need for long-term investments in their infrastructure by incentivizing teamwork and better managing and developing talent, these factors are shifting. Understand what matters to your organization, and you'll be well on your way to crafting a persuasive argument to justify your compensation.

2. Start Early

Most law firms adjust compensation annually, shortly after the beginning of a new calendar year. You know this process is underway by the pained look on partners' faces, the numerous meetings behind closed office doors, and the general lack of spring in the step of the managing partner. For some associates, performance reviews (which are tied to whether an associate will advance lockstep with his or her class into the next salary level) occur twice a year. Do not let these events sneak up on you. Spend sufficient time in advance preparing for your meeting(s) to discuss your accomplishments so that you are ready when the time comes.

3. Keep a File

Preparing the written record of your contributions to your organization's success is greatly simplified when you keep a file of any emails, letters, voice mails, or other laudatory praise of your efforts or recognition of your success. If a client calls and leaves an appreciative message on your voice mail, file away the WAV file, or transcribe it and drop it into your performance review file. Likewise, do the same with transcripts from oral argument if the judge happens to praise your written or oral advocacy. Without a reminder in a file, you'll spend unnecessary time trying to remember the recognition you received six months ago.

Along with positive feedback, you also want an easy system for keeping track of what you've done during the year and not just the results you've achieved in your cases. What were your business development accomplishments? If you're a partner, you're already experiencing the pressure to bring in new client matters, and you should be very clear about your role in any new business that has come into the firm as a result of your involvement or the efforts you're making to plant seeds that will result in long-term business generation. The PAR/MCCA report makes reference to the sometimes bruising exchanges that can occur when partners clash over origination credits, and the more you can document the contributions you've made to landing more work, the easier those negotiations will be. Whether or not new business resulted, claim credit for the number of pitches you participated in, and, if work resulted from it, how much of that work you are doing. Too many women report being added to pitches as "window dressing," only to find out once the work is in the door that little or none of it is coming to them. While that's a topic for a different article, the least you can do is make sure you get credit for having helped originate that work in the first place.

Your file should also track your investment in what my firm calls "the life of the firm." Are you involved in internal committees? Do you offer in-house CLE training to new attorneys in your group? Do you interview prospective new attorneys or law students? Mentor others? These

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actions sustain a firm and are harder to measure because they don't break down easily into objective numbers like billable hours, collections, or originations, but you shouldn't overlook them.

4. Quantify Your Contributions

Know your numbers. If you're in private practice, are you a profitable lawyer? How many hours did you bill, and at what rate, in the past year? Do you know how much of your work was (1) billed to and (2) paid by the client? Every private practice attorney should know and understand these numbers. Ask the partners who bill out your time if your work is being written off or if the client hasn't paid. If you are subject to large write-offs, find out why. If you're the partner, how are your collections? Are you a responsible firm citizen who follows up regularly with clients who are behind in their bills? If you're in a commercial law firm, are you doing mostly pro bono work, and, if so, how will that impact your compensation?

How much of your time did you devote to your law practice in the last year, including your client work, non-billable business development work, continuing education, mentoring, recruiting, and everything else? Keep track of this time so that you can (1) manage this valuable resource and allocate it to the highest purpose possible, and (2) get credit for what you've done.

5. Did You Start Any New Initiatives at Your Office?

This is your chance to toot your own horn. Perhaps you recruited some peers to form an internal support group for your business development efforts, helping each other brainstorm ways to expand your referral base, suggesting speaking forums, or facilitating networking. Take credit for your ideas, even prior to your annual review, by letting others know about what you're doing. Consider forwarding emails as an "FYI" that shows key allies what you've started and how it's going. It won't immediately show up in your hard numbers, so find other ways to tell people about your creative leadership.

6. Take It Seriously

It's a safe bet that no one cares more about your financial interests than you and that many of your colleagues will care much more about their situation than they care about yours. There are plenty of anecdotes from the few women who've led large law departments and AmLaw 100 law firms about the well-worn path their male partners walked to their door, eager to discuss their compensation. Noticeably absent were their women colleagues. You don't have to make yourself a pain to your management, but neither should you be a doormat and fail to advocate on your own behalf. No one else is doing it for you.

7. Align Your Business Plan to the Reward Structure

Once you know what really matters, make sure you are focusing on precisely that. According to the PAR/MCCA study, law firm compensation models rely heavily on billable hours, business origination, and collections. Of course, nearly every law firm consultant will point out that these are very short-term results that don't necessarily sustain the long-term health of the firm, which

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is why teamwork, leadership, mentoring, and other softer skills are needed as well. Women have historically struggled to avoid being sucked into leadership of their organization's diversity committees, women's initiatives, or hiring committees out of recognition that it would not be compensated. That may be slowly changing, but in the meantime, each attorney must decide where to devote his or her hours every day. Make your choice knowingly in light of your firm's reward structure.

8. Write Your Memo

You've established the criteria against which you're measured, created a plan for achieving your goals, and worked your plan. You have the facts that demonstrate your progress, so now put pen to paper and bring your year to life. For associates, this is often the opportunity to write a formal self-assessment as part of your review, and for partners, to justify a move to the next partnership tier, or during the recent tough economy, to stave off a downward move, or even de-equitization. Match up your memo to the reward system of hours (including efficiency and write-offs), origination, and collections, demonstrating your immediate acknowledgment that revenue-generating client work is what keeps the doors open, and consider using bullet points for your other major contributions, such as client pitches, new business, client service, key case results, internal firm leadership, external community leadership, honors, and awards.

One word of caution here: Don't hurt your credibility by over-claiming credit. At one firm where each partner's "I Love Me" memos were posted internally for all the other partners to review and comment on, origination of the same matters were claimed by multiple partners across several different clients. It's clear these folks weren't playing nicely together in the sandbox, and the overreaching for credit diminished them all in the eyes of their partners. Speak your truth, but don't go overboard.

9. Share Your Draft Memo with a Trusted Advisor

You don't need to be the lone ranger on this project, especially if you're new to the process. Make discreet inquiries among your mentors to see if they'd be willing to read your memo and give you their reaction. If you don't feel comfortable asking someone in your own organization, consider approaching a close friend from law school, or, just perhaps, the Woman Advocate Committee, who can read your memo with a critical, but supportive, view. You don't know what you don't know, and you won't find out unless you ask. Redact out any confidential information as necessary, and ask for unvarnished opinions on the memo's tone, content, and style. You can choose whether to accept or reject any feedback you get, but this is your chance to make any final adjustments as appropriate.

10. Submit Your Memo and Go to Your Meeting

Your memo is perfectly polished, and you've done your homework, so it's time to turn in your memo to your compensation committee or management team and sit down to negotiate with yourself as your client. If you struggle in this kind of meeting, think of yourself as zealously advocating for your client, only this time, you are your client. Prepare for this meeting as you

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would plan for a negotiation on behalf of your client. Know your (client's) goals, anchor position, and how you might handle hypothetical objections or new information that you learn in the course of the meeting.

Once it's over, it's time to celebrate your success. By taking a deliberate approach and putting your best well-shod and even better educated foot forward, you've improved the odds that you'll be rewarded commensurate with your value to your organization. Congratulations!

Keywords: NAWL, National Association of Women Lawyers, retention, promotion, income gap, PAR, MCCA

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Elements of a Competitive Corporate Compensation Package

By Kandice K. Bridges

Attorneys who are preparing to make the move to an in-house counsel position, particularly a general counsel or other C-suite level position, need to be aware of the different elements that make up a competitive compensation package for corporate executives. A competitive compensation package in a corporate context is different from one in a law-firm context.

A comprehensive compensation package can include base salary, benefits, short-term incentives, long-term incentives, non-qualified deferred compensation, termination protection, perquisites, and fringe benefits.

Base Salary and Benefits

The most basic elements of a compensation package are base salary and benefits. Base salary is the building block of an individual's compensation arrangement and is paid in cash consistent with the company's payroll practices. Base salary is included in the employee's income in the year in which it is paid and is subject to federal income tax and employment tax withholding.

Additionally, executives should be eligible for the benefits offered by the company to all employees. These benefits may include qualified retirement plans (e.g., 401(k) plans); medical, dental, and vision benefits; and life, disability, and accidental death and dismemberment insurance. Some employers also offer flexible spending accounts, dependent care reimbursement accounts, and pretax parking. These benefits may be made available to employees on a pretax basis.

Short-Term Incentive Compensation

Short-term incentives are a critical part of any compensation package. As such, most companies have implemented annual bonus arrangements based on the achievement of specified performance measures. Eligibility for and performance criteria required to receive an annual bonus should be clearly defined. Performance criteria may vary by industry and can include one or more measures, including individual performance. For example, in the oil and gas industry, the most prevalent performance measures include finding and development costs, EBITDA, production, reserves, stock price performance, net income, and cash flow. Companies typically set expectations for the amount of the annual bonus to be paid upon achievement of the performance criteria by utilizing the concept of a target bonus, which can be expressed as a percentage of base salary.

Sign-on bonuses can also be a part of an executive's compensation package, generally where the executive is walking away from a bonus or other compensation payable by the current employer. The sign-on bonus operates as an inducement to leave one position for another and can serve to make an executive whole. Sometimes these bonuses can be subject to repayment if the executive does not remain employed for a specified period of time (typically one year).

Sign-on bonuses and annual bonuses are included in an executive's income and are subject to federal income tax and employment tax withholding.

Long-Term Incentive Compensation

The most common form of long-term incentive is equity-based compensation. Stock options, stock appreciation rights, restricted stock, and restricted stock units are the most common forms of equity-based compensation.

Stock Options

There are two different types of stock options—incentive stock options (also known as statutory stock options) and nonqualified stock options (also known as nonstatutory stock options)—each of which is subject to different tax treatment. Stock options allow the executive to buy stock at a specified price (generally the fair market value of a share of stock on the date of grant) for a given period of time.

Restricted Stock

Restricted stock is the outright grant of shares to executives subject to restrictions as to the sale, transfer, and pledging of the stock. Restrictions typically lapse over time or upon the achievement of performance criteria as described below.

Restricted Stock Units

Restricted stock units (RSUs) are an instrument whereby an executive is promised the right to receive the value of a specified number of shares after a specified period of time. RSUs are a

promise to receive stock or cash in the future, as opposed to the outright grant of shares that are subject to transfer restrictions, like restricted stock.

Stock Appreciation Rights

Stock appreciation rights (SARs) are the right for a participant to receive the excess of the stock's value over the exercise price (generally the fair market value of a share of stock) set on the date of grant. SARs can be settled in shares of stock or in cash.

Long-term incentives are typically subjected to a vesting schedule, which requires that the executive earn his or her award over a period of time. Vesting can be based on time or performance. If vesting provisions are time-based, the executive will earn the award at future dates following the date of grant. The most common vesting schedules are three- and four-year graded schedules.

For example, assume an executive is granted 300,000 shares of restricted stock subject to a three-year graded time-based vesting schedule. If the executive remains employed, she would receive 100,000 shares on each of the first, second, and third anniversaries of the date of grant.

Performance-based vesting requires the achievement of pre-established performance criteria over a set performance period for the executive to become entitled to the award. The performance criteria should be documented in the applicable award agreement or plan document.

Another type of long-term incentive is a cash award payable in the future. For example, an individual could be awarded the right to receive \$50,000 in cash on a specified date in the future (January 1, 2020) if at such time certain performance criteria are achieved. It could also be structured such that on January 1, 2012, the individual is awarded the right to receive \$50,000 in cash on January 1, 2020, if certain performance criteria are achieved during a performance period that expires December 31, 2015.

Under certain circumstances, vesting of a long-term incentive may be accelerated, such as upon a change in control of the company or certain terminations of employment within a certain period of time following a change in control.

Typically, the executive recognizes income related to the transfer of property (such as restricted stock) when it is transferable and no longer subject to a substantial risk of forfeiture; however, a comprehensive discussion of the tax treatment applicable to each different type of equity instrument is outside the scope of this article. The executive would include the long-term cash award in income when paid.

Non-Qualified Deferred Compensation

Non-qualified deferred compensation is generally any arrangement—whether written or unwritten, formal or informal—that allows for the deferral of compensation. An arrangement

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Fall 2011, Vol. 17, No. 1

allows for the deferral of compensation if the person providing the services has a legally binding right during a taxable year to compensation that, pursuant to the arrangement, is or may be payable to the service provider in a later taxable year. An employment agreement could provide for the deferral of compensation.

Non-qualified deferred compensation arrangements can be beneficial to executives if they are structured properly, because they allow the service provider to defer income recognition until the amounts are paid at a future date. However, if such arrangements are not structured in a way that complies with Internal Revenue Code section 409A, including very specific terms related to deferral elections and when distributions can be made, the executive, not the company, could be subject to a 20 percent federal excise tax and interest.

Because the penalty is assessed on the employee and not the company, it is in the executive's best interest to consult a tax advisor to ensure that there are no inadvertent 409A violations.

Termination Protection

Executives should also negotiate key terms for employment, severance, and change in control agreements, including conditions that will trigger payments. Be aware, however, that not all companies utilize individual agreements and may, instead, adopt broader policies.

Employment Terms

Key terms to be negotiated in an employment agreement include employment term, base salary, bonus, equity-based compensation, vacation days, business expense reimbursement, non-qualified deferred compensation, perquisites, benefits, and expectations regarding travel. Terms regarding any relocation benefits should also be spelled out in the employment agreement.

Severance

Severance upon different types of termination should also be negotiated. These could include severance payable upon termination with cause, termination without cause, an executive's resignation for good reason (including the definition of good reason), death, and disability.

Change in Control

Different provisions are typically applicable when there is a termination in connection with a change in control of the company. The typical severance protection for named executive officers (other than the CEO) who suffer a termination of employment without cause or resign for good reason in connection with a change in control is two times the base salary or the sum of the base salary and annual bonus. It is also critical to be aware that in a change in control situation, if an executive is considered a disqualified individual for purposes of Code section 280G and receives certain payments in excess of safe harbor limits, she may be subject to the so-called golden parachute excise tax. When the parachute payments equal or exceed the safe harbor limit, a 20 percent excise tax is imposed on the executive. In the past, some companies have grossed up their executives for this excise tax, but the 280G gross-up has become a poor pay practice

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Fall 2011, Vol. 17, No. 1

according to certain shareholder advisory groups. However, even if the company is unwilling to provide a 280G excise tax gross-up, there are still strategies that can be employed to minimize the exposure to the executive without costing the company.

It is important to note that compensation payable upon termination must be disclosed for the CEO and other named executive officers in the company's proxy if it is publicly traded. Whether a general counsel will be a named executive officer depends on whether he or she is one of the top three highest compensated officers in the company.

Perquisites and Fringe Benefits

Another category of compensation includes perquisites and fringe benefits. Perks and fringe benefits can include personal aircraft usage, tax planning, outplacement assistance, the payment of country club dues and initiation fees, personal security services, relocation benefits, car allowances or personal use of a car service, spousal travel benefits, and tax gross-ups. Some fringe benefits are excludable from income, such as tuition assistance up to certain amounts, *de minimis* fringe benefits, and certain employee discounts. However, the fair market value of taxable benefits must be included in income in the year the benefit is received.

Executive Stock Ownership and Holding Requirements

Individuals getting ready to accept a position within a company should also be aware that they may be subject to stock ownership and holding requirements. Ownership guidelines typically dictate how much stock an executive must acquire within a specified period of time (usually three to five years). These guidelines are generally defined as a multiple of annual base salary or the ownership of a fixed number of shares. Holding requirements require executives to retain a certain percentage of shares acquired through the exercise or vesting of stock options, restricted stock, and other equity awards. These guidelines help align shareholder and executive interests.

From the Company's Perspective

It's also helpful to understand from where the company is coming with respect to executive compensation packages. A company has an interest in determining what levels and types of compensation are going to be competitive so that its compensation structure does what it is supposed to do: incentivize and retain key performers while at the same time maximizing shareholder value. Publicly traded companies must also contend with institutional shareholder advisory groups that continue to influence executive compensation trends by annually defining best practices. Hot button issues right now involve the use of perquisites and tax gross-ups.

In benchmarking compensation, companies generally consider how their peers compensate their executives. A peer group is set by looking at other similar companies based on industry, market capitalization, revenue, total assets, and/or employee head count. Most companies develop a philosophy regarding how they want to compensate their executives relative to market. Many companies may choose to target the 50th percentile, whereas others may target higher levels.

Fall 2011, Vol. 17, No. 1

Competitive levels of compensation are typically set by analyzing the compensation information for peer companies and aligning recommended levels with the company's compensation philosophy. Compensation levels are traditionally set for base salary, target bonus, equity or long-term incentive awards, perquisites, and other benefits. Total compensation may be considered, including all different types of compensation, when measuring against the peer group.

When you receive the call that you are the candidate of choice for an in-house counsel position, consult with your advisor to make sure you receive the most competitive compensation package possible.

Keywords: compensation, in-house counsel, compensation package, benefits, stock ownership, termination, severance, base salary

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The Importance of Promoting Yourself as a Female Attorney

By Angela A. Turiano

As a young lawyer, I made the mistake of thinking that hard work was enough. If I produced quality work product and won the majority of my cases, my career would be golden. Unfortunately, this is simply not true. The proverbial fallen tree in the woods that makes no sound if no one can hear it comes to mind. I was that tree.

Both as an assistant district attorney and as an in-house attorney for a prominent broker-dealer, I believed I was the ideal lawyer. I conducted numerous hearings and trials successfully, received positive feedback from clients, and got along well with other employees—professional and support staff included. Yet, while I always received good evaluations, I was consistently trumped by male colleagues in both rank and salary. What was I doing wrong? The answer is clear. I, like many of my female colleagues, was under the delusion that my superiors would simply recognize my talents and promote me accordingly. This does not happen.

Now thriving in private practice and looking back on my career, I see the error of my ways. I failed to both properly promote my accomplishments and share my ideas. More specifically, I would win a case or obtain positive feedback from a client and not take any steps to make this known to my superiors for fear of sounding too narcissistic. In addition, I failed to communicate my ideas with management because I assumed I was merely stating the obvious or the ideas were not worth saying aloud.

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Fall 2011, Vol. 17, No. 1

These feelings of humility and self-doubt are especially common among women and may explain why female attorneys are not paid on the same level as men. Indeed, according to [a recent study](#) done by the [Project for Attorney Retention](#) and the [Minority Corporate Counsel Association](#) called “New Millennium, Same Glass Ceiling?” female attorneys within the highest ranks of elite law firms are paid, on average, roughly \$66,000 less than their male counterparts. And according to the study’s authors, this pay disparity is not merely a consequence of women bearing the burden of family responsibilities, and thus, as the argument goes, being less focused and not as productive. Instead, the study concluded that rather than this oft-cited “family obligation” theory, the biggest contributing factors to pay disparity between male and female attorneys include stereotyping, gender bias, and even intimidation.

So what can we, as female attorneys, do to change things? I spoke to a number of successful women lawyers, both in-house and in the private sector, who had these words of wisdom to share.

A senior attorney at a prominent construction law firm in New York City advises to “be better than the average man” by becoming accredited and/or more specialized in your chosen practice area. In her male-dominated practice of construction law, this attorney often finds herself in conference rooms of 10 or more men with her as the sole woman. When she has attempted to contribute her ideas, she has often felt belittled or that her ideas were not taken as seriously simply because she is a woman. To overcome this hurdle, and in an effort to make herself stand out, she became accredited as a LEED Green Associate, a credential intended for professionals who want to demonstrate green or environmentally friendly building expertise in nontechnical fields of practice. There are very few attorneys—men or women for that matter—in New York City that hold such an accreditation unless they happen to also be an architect or engineer by training. The construction attorney has since added this accreditation to her web profile, business cards, and email signature. To further her goal, she has joined the New York City Chapter of the United States Green Building Council as well as the Professional Women in Construction, a group that has since become coed. With her new and respected accreditation and affiliations, she hopes to secure a reputation as an expert in green building, a significant trend in construction law, and thereby stand out as a woman in a male-dominated field.

A former in-house counsel for a Fortune 500 company firmly agrees with the proposition that women are often less adept than men at self-promotion. This innate disadvantage was exacerbated by the “old boy’s club” atmosphere that existed at her company and that is prevalent at many firms today, law or otherwise. One way she was able to become comfortable with self-promotion was to promote women’s causes generally. For example, as in-house counsel responsible for securing a narrow list of law firms to handle the company’s legal matters, she consistently encouraged the use of female and other minority attorneys and firms. While promoting diversity was consistent with the firm’s policy, it was not done in practice by her male colleagues. By advocating for women and leading by example, she was able to bring other

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Fall 2011, Vol. 17, No. 1

competent women into what was historically a man's circle while, at the same time, reinforcing the importance of diversity to management.

Finally, a current in-house counsel at another Fortune 500 company (who has always felt comfortable in a male-dominated practice) simply advises to be strong in your convictions. More specifically, women have a tendency to preface their thoughts with expressions of self-doubt, such as "maybe we could consider . . ." or "it might be a good idea if . . ." Instead, have confidence with your ideas and speak with authority by saying "what we should do is . . ." or "it definitely makes sense if we . . ." By using authoritative phrases, you will command respect and your ideas will be taken far more seriously.

There is more than one way to promote yourself as a female attorney to combat gender bias and pay disparity. Whether it is by further specializing in your practice area, promoting women's causes, learning how to communicate your ideas more effectively, or some other way, how you choose to do it is less important than doing it. In my experience, I have found that the list of perceived "best" attorneys is quite distinct from the list of those that are actually the most competent. The perceived "best" attorneys are often the ones that "make the sounds" that everyone can hear, while the actual "best" attorneys—often highly talented females—are like the proverbial tree: unknown and thus underrated simply because they do not know how to properly promote themselves. Don't be that tree! Hard work will serve as your foundation for success, but only through self-promotion can you properly build on that foundation and truly be perceived as—and thus *be*—the best attorney you can be.

Keywords: young lawyer, female attorney, self promotion, promote your work

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Preparing for Partnership Buy-In: Exploring the Important Questions

By Cammie Hauser

One of the most important long-term career decisions relates to becoming an owner of a business. It involves risk and reward, challenges and accomplishments, influence and control, highs and lows. Many important questions need to be answered to make the best decision about your firm choice. How do you evaluate your firm? When should you start to pursue partnership? What expectations does the firm have for you? When should you start building your book of business? How should you plan for the required financial investment? These questions will be reviewed in this article.

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Fall 2011, Vol. 17, No. 1

How Do You Evaluate Your Firm?

There needs to be a good fit between the firm and the partner to create the best long-lasting situation. It is similar to a marriage. The firm's long-term goals and core values should be clearly communicated, easily understood, and regularly practiced—and they should align with your own goals and values. Your compatibility with the firm and other partners should be carefully scrutinized and weigh heavily in your decision-making process. You should have a clear practice area and a thorough understanding how that area fits into the whole firm strategy. The culture of the firm should be one that you relate to and are comfortable operating in. You should agree with the firm's expectations for different aspects of the practice, such as profitability, flexibility, quality of life, and leadership style. The presence of other women partners could be a sign of the firm's understanding of the importance of diversity at the ownership level and having a marketing niche. Your awareness of these issues may emerge over time as you gain experience and true knowledge of the firm and how it operates.

When Should You Start to Pursue Partnership?

I recommend serious contemplation about the partnership buy-in process at least five years out. That will give you enough time to gather information, assess what is important to you and the firm, and make sure there is a good fit. Therefore, your first job out of law school may not be the place where you will end up as a partner. As you gain experience, your preferences will become more important and you will begin to know what you want and do not want in firm ownership. There should be a track that you follow at the firm that is a clear indication of when and how you can achieve partnership status. If the firm does not have one, that is an indication of the firm's lack of long-term planning or lack of growth. A firm should need new partners because its business is growing and the firm needs more "owners" to handle the business. If there is no growth, it simply means splitting the profitability pie into smaller pieces with each new partner, which is not a thriving economic model. The firm also needs owners to make business decisions that are for the good of the business versus a simple "what's in this for me." As owners are (or should be) aligned with the firm's goals, they share in the risks and rewards. Thus, the more time you have to get to know the firm, the better decision you can make about your firm choice.

What Expectations Does the Firm Have for You?

What are some individual competencies that you should develop to prepare for partnership? Each firm usually has specific minimum requirements in a variety of areas. Productivity is probably the first and easiest to measure. How many hours does the firm expect you to bill, how many dollars must you generate, or how many matters must you handle? Productivity includes efficiency. Just getting the job done correctly is not enough. You must be able to produce quality work in a reasonable amount of time. I recommend paying close attention in your formal reviews, which should highlight any concerns that the firm has about your efficiency. Or better yet, ask your supervisor directly about any areas that you can work to improve.

Most firms expect their partners to effectively manage other attorneys and staff. A partner should be a strong leader that develops others and therefore attracts productive team members. Thus, the

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Fall 2011, Vol. 17, No. 1

ability of an associate to manage herself and others is very attractive to the partnership. The firm needs partners who can be effective people managers; otherwise, the firm's time and energy is needlessly spent on problem resolution. Management ability is also a learned skill over time. Look for a firm that encourages management development and involvement.

Firms also expect senior associates to take responsibility and act like owners. One example of this is seen when a lawyer's own self-interest comes second to that of the firm. Firms want partners who have a longer-term perspective and who do not respond out of short-term desires. You can illustrate this by taking on responsibilities that normally would be handled by someone invested in the firm without concern with how will I be rewarded for this? Perhaps you arrive early or stay late to complete a project. By operating at a level higher than expected, it shows a different attitude than your peers. What activities could you undertake that show initiative? This really impresses partners and sets you up as a potential partner in their view.

When Should You Start Building Your Book of Business?

I often hear partners complaining that their associates do not focus on marketing. This must be an area of focus for anyone aspiring to become a partner. The technician that only produces work will always be the slave of the effective marketer. Therefore, marketing must be a focus for anyone seeking partner status. Marketing credit may be given simply for engaging in certain activities at first. Eventually, actual client matters would be expected from the developing associate. One difficult part of marketing is having the time to focus on it in addition to everything else that is on your plate. If marketing is not a skill that comes naturally to you, I recommend getting help with the use of a professional marketing coach who can help you develop your skills. In addition, I suggest exploring executive women groups. These groups usually reach out to and encourage other women and are a natural fit for female associates who want to grow their marketing skills.

How Should You Plan for Partnership Buy-In?

Once the firm and you have reached an agreement about partnership, the next question is how do you buy in? There are many ways to purchase your interest in a partnership. Some firms simply give new partners an interest in the business as a reward for the attorney's dedication to the firm and years of service. This is less common in this economy. Although you should not have to invest as much as the original founders did to establish the firm, you will probably need to invest a substantial amount of money. To accomplish this, it may be possible to forego bonuses and salary increases and apply that money towards your buy-in. This would give you time to save for your investment. Taking on debt may be another way, but once again the economy makes this option more difficult. Be creative and flexible to determine the best vehicle for your situation.

You should have honest and open conversations with firm leaders about the purchase in advance so that you can plan for the transaction. Make sure you know what the purchase price is and how it is determined. Is it the same for everyone? Has it ever changed? Is it based on a calculation? I have seen it calculated both as a percentage of annual revenue (ranging from one-half to three

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times) or the net present value of the firm. Look for your return on investment, because there are usually benefits that come with partnership that make the transaction very attractive.

Finally, be sure that your written partnership agreement specifies how your investment will be returned to you if you exit the partnership. If things do not go as planned, there needs to be a clear process to buy you out or return you to your non-equity position. It is much more difficult to negotiate when the situation occurs and obstacles exist that can cloud your judgment.

Conclusion

The more objective you can be in evaluating these factors, the better decision you will make. Take time to contemplate your own goals and objectives, focus on your time line, and consider all opportunities. Carefully consider whether the firm aligns with your goals and objectives. Finally, give yourself and the firm time to cultivate the relationship so that it is a good fit for a strong and lasting partnership.

Keywords: partnership buy-in, long-term goals, build business, partnership agreement

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Toward Living a "Guilt-Free" Life

By Katherine Y. Fergus

Many of us are trying to balance the need to meet a billable hours target with the need to be present at home. That guilt is magnified when you compare yourself to the stay-at-home mothers who have enough time to be classroom parent liaison, attending every school and classroom event, and your colleagues who can literally work or be available to work 24 hours a day. While there is by no means an easy formula for meeting all of the demands so as to avoid the guilt of missing billable hours opportunities or of missing the class trip to the zoo, there are things to do that might ease those pangs of guilt that invariably plague every woman who is trying to have it all.

Make a Commitment and Stick to It

There is virtually no way to be at every school event, but that is nothing to be ashamed of or to harbor guilt about as a parent. Think of how exciting and special it is for your child when you do attend one of the big-ticket events at school with them. Each year, pick an important school event that requires parent participation and mark it off on the calendar as early as possible. Maybe it is chaperoning the year-end trip to the beach, zoo, or science museum; participating in the class holiday party; reading to the class on your child's birthday; or even just working in the classroom

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Fall 2011, Vol. 17, No. 1

as an assistant for an hour one afternoon. Whatever it is, try not to let anything interfere with that critical date. Treat that date like a national holiday so that your children know that Mom is going to be there. If you have a draft or final brief due on that date, get it done way ahead of time to keep that date inviolate. If at all possible, and it usually is, schedule depositions, court appearances, and client meetings clear of that time slot so that you can keep your commitment to your child. Those of us who continue to work outside the home can still use our time wisely to make each moment with our child extra special.

Market Yourself and Your Commitment to Your Practice

There is an undeniable perception that those of us who have two jobs are somehow not fully committed to our law practice. One way to dispel that perception is to volunteer to present at the monthly trial practice luncheon meeting and hit it out of the park with your presentation. Not only does this earn goodwill with the organizers of the luncheon (who are no doubt begging for agenda items), but it also puts you center stage and reminds your colleagues that you are committed to your practice and are miraculously able to find time to bill hours, present topics, and live a full family life. An investment in these non-billable opportunities can be as invaluable as the billable ones.

Take a Big Vacation While You Can

We all need a break from both our outside and at-home jobs to rejuvenate, and we need to take those opportunities if they come. Use those frequent flier miles to do some jet-setting now while you are young enough to be able to enjoy it. Your BlackBerry or iPhone keeps you in touch enough to ensure that nothing slips through the cracks while you are gone, yet gives you the freedom to tag along with your significant other on an exotic work trip or plan a long weekend with the kids. Maybe your parents or in-laws would be willing to help with the kids as a birthday gift to you. Maybe your children are old enough that you can take “vacation turns” with another couple to get away for a few days. Even if it is just a few days away, getting out of the normal routine can recharge the batteries.

Become a Morning Person

Mornings—before the household wakes for the day—can be invaluable for those of us who cannot seem to get everything done. Use the early mornings to get a jump-start on the day, even if it is only to get a workout in so that you can be home in time for dinner, bath, and bedtime.

Catch Up on Work Post-Bedtime

You would be surprised at what a two-hour post-bedtime commitment can do for your billable hours and your ability to get everything done. Put a load of clothes in the washer, start the dishwasher, and get on your computer to finish up that brief, do a little research, or respond to emails. You can skip the television because it is so much better to watch everything commercial-free on DVR another time.



Plan a Date Night

Remembering that it is not all about work and the kids is perhaps the thing most people neglect to do. Even if it is just a trip to Home Depot in the middle of the week to pick out the carpeting for the back stairs, you and your significant other need some one-on-one time. Get the babysitter lined up and spend some one-on-one time together. Maybe you can do “tradesies” with another couple (i.e., you watch their kids one night and they watch yours another night) who also wants to get out once a week. Remember, when the kids are gone, it is just going to be the two of you.

Surprise Your Children

If you have a light day, or if you can get in early enough to get your daily billables in, surprise your children by picking them up early from daycare or their after-school program or by meeting the bus at home at the end of the day. Some parents commit to meeting the bus once a week, even if it means Mom and Dad switch off on Friday afternoons to finish the long work week with some family time or to schedule a long overdue playdate.

Make Time for Girlfriends

If you have not done it already, join or create a monthly book club, and be sure to calendar a girls night with the college or law school classmates to celebrate birthdays. Not only is it important to celebrate these happy occasions as we get older, but it is also an excuse to get together and catch up. Consider it free therapy for those of us who need to vent, get advice, gossip, or just get waited on for a little while.

Make Time for Yourself Too

No explanation is necessary here. Even if it means grocery shopping at 5:00 a.m. so that you can get your nails done later, do it. Take that early morning walk or a walk at lunch if you can. Try a yoga class. Whatever it is, make the time for yourself.

For most of us, the simpler times are behind us; that is, those times in our lives when we could concentrate exclusively on studying for a law school exam, building a loving relationship, or beginning our careers. Those times are now replaced with a complicated patchwork of responsibilities that when viewed separately, can pull on each other. We cannot permit ourselves to engage in tunnel vision on the billable hour. There are certainly times, particularly in litigation when you are on trial, when there is no room for anything else. But as we all know, the work ebbs and flows, and we need to adopt a mindset that lets us forgive ourselves for taking time away from the office. The concept of time management may sound trite at this point, but that needs to be coupled with the realization that having it all means doing the little things that will make you truly present at home and at the office. Time management is a gift to ourselves, our families, and our employers.

Keywords: work-life balance, time management, balancing commitments

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NEWS & DEVELOPMENTS

Low-Confidence Behaviors Stunt Women's Careers

According to a 2011 study by Europe's Institute of Leadership and Management, women are less confident than men in their careers. The study found that men were more confident across all age groups, with 70 percent of males having high or very high levels of self-confidence, compared to 50 percent of the women surveyed.

In a recent *Harvard Business Review* article, Jill Flynn, Kathryn Heath, and Mary Davis Holt discuss four "low-confidence behaviors" cited by both male and female managers as frequently exhibited by women in the workplace.

1. Being overly modest. Men are more willing to take public credit for their successes, while women believe their accomplishments should speak for themselves and do not seek the recognition they deserve.
2. Failing to ask for promotions. Women fail to get promoted because they fail to apply for or request a promotion. The problem with this behavior is that "[n]ot asking means you've lost the chance to influence the outcome."
3. Blending in. Some women prefer to blend in and go to great lengths to avoid attention. Blending in, however, "means you are missing opportunities—every single day—to stand out and sell your ideas."
4. Remaining silent. Women frequently fail to speak up in the workplace, resulting in missed chances "to get in the game."

According to the authors, women should make small adjustments in how they think and act to improve their confidence and progress in their careers.

Keywords: confidence, career, growth, self-confidence

—[Suzanne L. Jones](#), *Hinshaw & Culbertson, LLP, Minneapolis, MN*

The Effect of Makeup on Perceived Competency

Appearance may not be everything, but the way a woman presents herself can affect how she is perceived in the office. A recent study sponsored by Proctor & Gamble and designed and

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executed by Harvard University Professor Nancy Etcoff, researchers from Boston University, and the Dana-Farber Cancer Institute found that women who wore makeup were perceived to be more competent, likeable, and trustworthy than non-makeup-wearing counterparts.

The study took a diverse group of 25 women between the ages of 25 and 50 and took pictures of them in four different looks: no makeup, a natural look, a professional look, and a glamorous look. The pictures were then shown to two separate groups. The first group was shown the pictures for 250 milliseconds so that a snap judgment could be made. The second group was shown the pictures for an unlimited amount of time. According to the study's findings, women who wore makeup were perceived as more competent than the women without makeup, which even held true for those depicted in the glamorous makeup option. However, according to Professor Etcoff, if a woman always wears a glamorous look, "there may be a lowering of trust, so if you are in a situation where you need to be a trusted source, perhaps you should choose a different look." Read the [full study](#).

Keywords: women, beauty, makeup, perception, competency

—*Gabrielle Jackson, Wake Forest University School of Law, 2013*

ABA Section of Litigation Woman Advocate Committee

<http://apps.americanbar.org/litigation/committees/womanadvocate/home.html>