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Cash Is Only One of Many Factors to Consider When Jockeying for a Job

by K.C. Victor

Within the last few months, I had calls from two different lawyer friends seeking my counsel about negotiating their own compensation package. In one case, the person had been at the job for many years. In the other, the person was being offered a new position. Both calls concerned general counsel situations and titles and, nonetheless, presented very different scenarios.

While having these conversations, I realized that although there are no generics about what makes a compensation package attractive or at least acceptable, there are generics about the factors that go into any individual evaluation of whether or not to accept an offer or try to negotiate a different deal at a place you already work.

Almost no junior lawyers are in a position to negotiate their compensation packages. Therefore lawyers who have been practicing for several years, many of whom have client skills and perhaps client relations, as the most likely to be in control of their own financial fates.

The most obvious factor is pure cash compensation: What will the guaranteed, or likely, paycheck look like? (At law firms, often there is a realistically expected compensation amount that exceeds the guaranteed amount. This compensation is based on a lawyer's expected business.)

Some lawyers might encounter a scenario where there is an offer for a low level of compensation that is nonetheless tempting because of other factors. One might take a low compensation package for various non-desperate reasons.

Most of us have some level of compensation below which we cannot or will not accept an offer of work; we would rather keep looking. Obviously, this number is a threshold. But once that threshold is crossed, there may be good reasons to take a position with a low compensation package. On the financial side, these include necessity, especially in hard times; on the spiritual side (the virtues of humility), these include the pay scale of a particular industry or institution. I have a number of friends and acquaintances who left large compensation packages behind to work for admired educational, political or arts institutions for much lower salaries.

My advice to all lawyers is to actually take pencil to paper and figure out your fixed expenses. No number lower than that should be acceptable. Seasoned lawyers calculating a true bottom line figure should, when possible, to add \$10,000 - \$20,000 to that number. Almost everyone practicing for some time, and especially those who have earned a significant salary, will resent it if the only meal out you can afford is at a pizza parlor.

While different people have different numbers in mind for fair compensation, the truth is that expected income varies with both the type of institution for which one will work and one's title. It is almost universally the case that within a law firm structure, partners will get paid more than associates, even when the partner brings in no business and works fewer hours. Within corporations, general counsels are at the top of the legal compensation heap.

There are still many corporations where all lawyers are undervalued. Even if you are being offered a compensation package with which you can live, be wary of any offer where the general counsel is paid drastically less than other high-placed executives. In-house counsel always helps reduce legal costs, or if not, do important legal work that was previously neglected. Corporate lawyers often lay out safety nets for executive decisions. A general counsel compensation offer that is greatly below the pay scale for the company's other executives is the natural outgrowth of a pervasive attitude on the part of important company executives that lawyers are not valuable. There is often good reason besides compensation to say no to such offers. You may be able to live with the money, but not the lack of belief in your value to the enterprise.

Another important item in evaluating compensation for high-level lawyers at law firms and corporations is the equity factor. It should be acknowledged, however, that not all high-level legal offers involve equity participation. For the last few decades, a noticeable percentage of law firm partners do not partake in their firm's equity. Likewise, even chief legal officers sometimes do not get equity. Regardless of their title, people without equity in their compensation package should evaluate those packages as an associate, counsel or on-line staff attorney would.

That leaves only one other possible item in compensation packages: bonuses. Are bonuses at your place of employment expected or discretionary, formulaic or subjective? Those distinctions should be taken into consideration when calculating the bonus component in an offer.

If one receives a set percentage of business acquired, there is a realistic way to calculate the range of one's likely bonus. Furthermore, usually if the bonus is not paid, there is no one to blame but yourself.

If the bonus is expected and not dependent upon your business, is it guaranteed? Is it part of the official offer letter or verbal offer? If you ask for it in writing, will that written guaranty be forthcoming? If a bonus is not guaranteed, what is the employer's track record? (Of course, in difficult economic times, a track record is not always a reliable indicator of future performance.) Does the bonus depend on hours billed? If so, and you are not bringing in your own work, have you been placed high enough on the food chain that you are likely to get a fair share of what work there is? Are you encouraged or discouraged from bringing in business?

Regarding equity participation, there are fundamentally two situations. At law firms, the good side of equity is profit participation. Within a corporation, equity is a share of the value of the company – sometimes liquid and sometimes not. Particularly in shaky economic times, equity participation in a partnership, and most law firms are still partnerships, is not without risk. Although you may not be signing up for past debt participation, future debts may be taken on,

sometimes against your will, for which you will be responsible. When law firms struggle, law firm equity can go negative.

On the corporate front, the opportunities for private companies to go public are rarer than they have been in many years. Liquid equity may not be in your foreseeable future. Within public companies, equity, including options, is hard to evaluate.

The bad news of these times is that there is generally less money to go around. The good news is that there are fewer opportunities to be distracted and dazzled by compensation. You might be able to give other aspects of job satisfaction the weight they deserve. Happiness matters.