

Some Thoughts about Negotiation & Job Offers

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You've been looking for a job, and the folks in the Career Services Office will be an outstanding resource for you during every stage of that process. At some point along the way, after wondering when you'll start getting calls from prospective employers, you will probably wonder whether you will need to (get to?) do any negotiating with a prospective employer about a job offer.

This brief guide aims to provide a few thoughts on negotiating with a potential employer—whether a law firm, a government office, a public interest law position, or an employer outside of the traditional practice of law. This memo is no substitute for taking a full-semester course on Negotiation, of course. But we hope that it will give you something to consider during your job search process.

We should say, at the outset, that the advice below is general advice. The people who work in the Career Services Office spend all day talking with employers and students, and they have years of experience working with law students as they get jobs. They know about specific employers' practices, and you should certainly seek their advice and thoughts about particular employers and about trends in your practice area or geographic area. Trust them and use them as a resource to supplement your negotiation strategies.

Before You Get an Offer

1. Know Thyself.

What matters to you? Sure, you want to get a job. A good job. But what would make one job more attractive than another? As a first step in surveying your place in the employment landscape, it is helpful for you to know your *interests* – the things that matter most to you and that will motivate your decisions when it comes time to make choices. Make a list, and if possible, prioritize the interests you are able to articulate. What matters most to you? Prestige? Location? Area of practice? Training opportunities? Fun colleagues? Salary? Lifestyle? Prospects for partnership or advancement? Service to the community in some form? Etc, etc. Know what matters most to you and why.

And then consider what you will do if you *don't* wind up working with the particular firm or organization you're considering right now. Do you have lots of other firms lined up to talk with you? Do you have offers from others already? Have you heard from no one at all? Have you even explored other avenues? As a general matter, you will be in a better position (and feel a whole lot more comfortable) if you have a good sense of what you will do if you do not reach an agreement with the person with whom you're about to speak. If you know you have really attractive alternatives, you'll feel more comfortable walking away from an offer that it not attractive enough. And if you know that your alternatives are bleaker, you'll at least have the comfort of knowing *what* you're comparing an offer with. (It's not that you'd take *anything*, of course. You just might

not be able to get everything you'd hoped.) If you look honestly at your alternatives and decide they're not very attractive, then it is probably worth spending some time trying to improve them. Where else might you work? What else might you do? Get on the phone, get on email, get on the web, put on a suit, do whatever you need to do so that the choices in front of you are as attractive as possible.

2. **Know the Market.**

The firm or organization you're considering is not unique—or at least, it is possible to find other firms or organizations that can serve as comparators. It is useful if you can understand how they view themselves—both because it can help you to understand more about them as a place to work and because it can help you understand how to evaluate a possible offer from them. What do other firms like this typically pay new employees? Where possible, figure out whether pay varies by city, by size of firm, by practice area, etc.

Knowing how other firms or organizations structure their employment agreements with new employees will help you to know whether an offer you receive is in the ballpark of “reasonable.” Of course, no amount of research and data would ever be able to point to a single number as *the* reasonable figure a firm should offer you. There are too many variables to come up with a single figure. It depends on many qualities of the firm *and* on their view of you. Still, as with most aspects of lawyering, information is your friend. Figure out comparables whenever possible.

3. **Know What Could Go Into an Agreement**

An offer of employment includes more than just a salary figure. This is obvious, of course, but the number is such a conspicuous component of the deal that there's some risk you'll mistakenly focus only on the salary they offer. And yet, if you are looking to satisfy your interests (remember your list from #1 above), you'll see that salary only addresses some of the things you care about the most.

So, before you even have a conversation with a prospective employer, spend some time thinking about possible pieces of an employment agreement. Talk to others. Talk to the folks at Career Services. What goes into most of these contracts, and which of those pieces matter to you? Salary? Vacation? Billable hours expectations? Partnership track? Training opportunities? Substantive areas of practice? Parental leave? Insurance? Etc., etc.

When You Get An Offer

1. **“Thank you!”**

Thank them for the offer. They've just said to you that they are willing to pay you to come work with them, to be part of their organization. Before you even get to the

question of whether you will accept the offer, thank them for the invitation they are extending.

In fact, even if you've decided that there's no way you're going to work with them, thank them. They may not be in a position to offer you something better than some other firm or organization. That doesn't mean that they don't like you or that they wouldn't value you. Life is long, communities are small, reputations are lasting, and relationships matter. Say thank you.

2. “What is the best mechanism for me to see the specific terms of the offer?”

They may contact you with an initial offer in writing, and they may include a full offer letter laying out virtually everything you could possibly want to know. But probably not. More likely, someone will call you, and they'll say nice things about you, and then they'll tell you they'd like to extend you an offer to come work with them.

Then there's a pause.

What do you say? Don't fill the air by saying, “Great, I look forward to working with you.” You don't know enough to make that kind of decision at this point. Say “thank you,” and then ask them about the details of the offer. Sometimes, the person calling with the offer will know all of the details. Sometimes, it will be a senior partner or someone who will just direct you to a Human Resources person to discuss the details.

Make sure it's clear that you are grateful for the offer, and make sure it's clear that you want to learn more about it.

3. “Where did that number come from?”

Unless the salary figure they offer has a very obvious explanation, it is usually a good idea to ask how they came up with that figure. Here's why:

Most employers (and certainly almost all of them who you would want to work for) view themselves as fair. And most employees (hopefully you included) want to be treated fairly. By asking them where the number came from, you are offering them a chance to explain why they set the salary where they did (impliedly, why they think that's a fair salary).

If their explanation is great, then you know that there's far less chance that you will get to (need to? have to?) negotiate for some different arrangement. If they say, “That salary is set by our national headquarters, and it is the same for every first year attorney across the country.” then unless you have reason to think that's not true, you're probably not going to get a different term on the salary figure.

On the other hand, if they don't have much of a reason underlying that figure (for example, "That's our offer."), you may have an opportunity to persuade them that a different figure would be more appropriate. For example, you might say, "Part of the reason I am asking is that my research on other similarly-sized firms in this city shows that they are offering starting attorneys an average salary about 20% higher than that. I'm wondering why your firm's offer is so different."

4. **"I have some questions about the details of the agreement."**

You've done your homework, and you know that it's not just about salary. Ask about the things that matter to you. Some other aspects of the employment agreement are likely to be standardized. You're not likely, for example, to get different insurance coverage from another starting attorney. On the other hand, things like schedules, bonuses, work expectations, and the like, may all be negotiable in a way that would allow you to customize the offer—making it more attractive to you. Ask them about the things that matter to you—the things that would help you decide whether or not to accept the offer.

5. **Listen. Listen Harder. Listen Again.**

Every meeting you have with a potential employer—whether in an interview, during visits to their offices, or during negotiations over an offer—is an opportunity for you to learn about that employer and their interests. Make sure you listen carefully for their concerns. If you ask about their mentoring program and they don't have one, don't just dismiss what they say next as unimportant. Maybe they don't have a formal program because they've seen other firms fail at that approach. Maybe they are starting a program. Maybe they have other information processes in place that fulfill the same functions. Make sure you listen to any clues your potential employer gives you about their perspective and interests. This will let you tailor your questions—and your negotiations—to meet their concerns as well as your own.

6. **"By when do you need a response from me?"**

Yes, they'd love very much to have you accept the offer immediately. And it's very unlikely that they actually need to hear from you on the spot. You should take enough time so that you will feel comfortable that you are making a smarty choice, under the circumstances.

You should talk with the folks in Career Services about what a reasonable decision window is for this type of job or for this employer. Do not imagine that they'll give you months to ponder their offer. After all, they are looking to fill this position, and if they don't work with you (their preference), they will need to go to their next choice.

7. **"Thank you."**

Seriously, don't forget to thank them for the offer. Regardless of what you wind up deciding, be gracious and grateful.

Frequently Asked Questions

1. **“I don’t want to sound ungrateful. Should I really ask questions or try to negotiate?”**

Yes. It is not ungrateful to want to understand the particulars of an offer. You can be grateful *and* want to make sure you are treated fairly at the same time.

Another frame on the conversation that might help is this: They are hiring you at least in part because of your legal training and your ability to be an effective advocate. If you were an employer making a job offer to an attorney, wouldn’t you want to see that person demonstrating the skilled advocacy you want him or her to have?

There’s a big, big difference between being an annoying, demanding, dissatisfied prospective employee and being a gracious, persistent, thorough prospective employee. You should be the latter.

2. **“Should I be ready to give them a counter-offer?”**

Probably not. This is not a haggle—or at least, you shouldn’t try to turn it into one. What you will say to them should depend on what you learn from them in their offer. You might learn that something you value can’t happen, for some legitimate reason. You might also learn that they are willing to give you even more than you expected on some other aspect of the contract. In short, you should have a solid understanding of your interests and of the range of potential options you can think of for satisfying those interests. But you are probably not well served to have a single package in mind.

3. **“What if they ask me what my salary expectations are before giving me an offer?”**

This is not very likely, but it could happen. As long as you have done your homework, there’s no reason you shouldn’t feel comfortable telling them, “I’ve done some research, and I’ve learned that similarly sized firms in this area are paying in a range from \$X to \$Y. At a minimum, then, I would expect the salary to be in that range. Of course, I assume that you view yourselves as a better-than-average place to work, and I hope that you view me as a better-than-average candidate, so I would hope that the compensation would be closer to the top of that range...” Or something like that.

If you haven’t done your homework, shame on you. As an attorney-to-be, you know that information is the primary source of your ability to persuade. Still, all is not lost. You could respond with something like, “I haven’t researched this particular legal market yet in any detail. Clearly, I want to make as much money as I reasonably can. But even more importantly, I want to make sure that my compensation level is fair and appropriate. One thing that would help me to better gauge any compensation package would be to know more about how your firm has handled compensation in similar circumstances in

the past.” It’s not as helpful to you as having done the research, but it’s better than just picking a number at random.

4. **“What if the offer they’ve made just isn’t high enough for me to pay my bills?”**

If you have assessed your financial situation and have determined that the minimum you need to earn is \$Z, and their offer is less than that, tell them. You don’t want it to be a surprise when you turn down their offer. “There are lots of things I’d find really attractive about working with your firm. I’m stuck on the salary, here, because it just isn’t enough for me to pay the bills. I ran my budgets and I need at least \$Z. If there’s not a way to increase your salary offer, I will need to take a job somewhere else.”

Do NOT make a little speech like this as a bluff. If you were hoping for more than they offered, but you can live with it, don’t say, “I can’t live with that.” Ask them where the number came from. Tell them why you were expecting more. But don’t tell them “I can’t” if there’s a chance you’ll turn around and accept it. That signals a lack of preparation, a lack of negotiation skill, or a lack of professionalism. None of those are the impression you want them to have of you as you start working there.

If, at the end of the conversations (plural), you and the firm can’t agree on a number that is good enough for you, say no. Do it as nicely as you are able. And be clear about why you’re saying no. “Again, I really appreciate the offer you’ve made. I wish that I could accept it, but I can’t. The amount you are able to pay doesn’t meet my financial needs right now. Maybe sometime down the road we’ll have a chance to work together. Thanks again.”

5. **“What if I have a better offer from another firm?”**

If you have an offer from another firm that is more attractive, at some point you should probably tell the firm you’re now talking to. There’s no reason why you would take a less attractive offer if you’re holding something better as an alternative. And it’s only appropriate that they know what kind of decision you’re facing.

“Thanks again for the offer. As I consider it, you should know that one of the things I’m doing is comparing it with my offer at firm XYZ. They’ve offered me \$Q, which is considerably more than you are offering. I certainly recognize that there are differences between the firms. I am not sure that I can see giving up that much salary at this point in my career, though.”

It may be that they will adjust their offer to you, once they know that there is less attractive than some other firm’s offer to you.

They may also try to convince you that it is *worth* the reduced salary to come and work at their firm. Unless you see the two firms as exactly identical, you should hold this possibility open at least for purposes of the conversation. How much is it worth to you to

have greater flexibility? To have assignments in your area of primary interest? To have a shorter track to partnership? To have smaller billable hours requirements? And so on. You should have those conversations with this firm, giving them an opportunity to help you understand why they might view their offer as *more* attractive than the other one, even if it is for fewer dollars.

Don't lock yourself in early on. Don't say, "They are offering more salary than you, so unless you can at least match their salary, I'm going to have to take their offer." That would preclude you from exploring potentially mutually beneficial, creative options. What if the firm gave you a bigger bonus? More vacation time? A better office? More support? Better training?

In all circumstances, you should NOT make a speech like this as a bluff. It's one thing to tell them you would like to have a higher salary. It's another thing to tell them you're walking unless they increase it—unless you mean that you will take the other offer. If you turn around and accept the offer, after having told them it wasn't good enough, you look unprepared, unskilled as a negotiator, and unprofessional. None of those are the impression you want them to have of you as you start working there.

6. "What if I need to tell them no?"

Tell them no. "Thank you again for the offer. As you know, I've received several offers. There are lots of things that I think would be attractive about working with you. At this stage in my career, though, I have decided to accept the offer from firm WXY. Thanks again."

Be clear that you are saying no. If you are calling them up and you really aren't sure whether you're going to say yes or no, you should probably say neither. Ask for more information so that you can make a good decision. But don't send them a signal that you might still be considering your decision, if you have in fact decided.

Don't try to persuade them. The purpose of your call to tell them No is to let them know that you're not coming. You're not trying to get them to agree with you that you've made the right choice—they're unlikely to agree with your decision. If you sound like you're trying to persuade them, they'll probably think that you want to keep negotiating with them, so they'll try to persuade you, in return. That's not what you want.

Don't delay. It's never fun telling someone No, but you're not doing them a favor by waiting. They need to fill the position, and if it's not going to be you, they need to make an offer to someone else.

Be nice. Life is long. Legal communities are small. Reputations matter.

7. **“What if they’re pressuring me to make a decision quickly?”**

Explain your purpose for wanting time to consider the offer. It is not reasonable for them to expect an answer on the phone, immediately, unless the terms of the potential offer have been clear for some time. So you could quite easily say, “I would like to review the details of the offer. Could you send them to me?” Or, “I will need to discuss this with my spouse.” Or, “I’d like to sleep on it. Can I call you tomorrow?”

It *is* perfectly reasonable for them to want an answer soon enough so that they’re not prejudiced in the marketplace if they need to find someone else. You might *want* another few weeks so that you can interview with more firms. They may or may not be comfortable waiting that long. If that’s why you want the time, tell them. “Thanks for the offer. I have three more interviews lined up next week, and they are with firms in which I also have an interest. My hope is that you’ll give me a chance to talk with them before making a decision.” If they say no, then you have a choice to make. You can accept their offer, of course. Or, you might instead say something like, “I understand that you feel the need to fill this position. I don’t feel comfortable making a decision about your firm until I learn more about other firms. Here’s what I propose: I will go ahead and interview with these firms next week. If your firm can’t wait that long and fills this position before then, then that’s that. But I’m hoping that the position with your firm will still be available to me next week, when I have more information, because I think there’s a strong chance that I’d wind up taking the job with you. I just don’t feel comfortable deciding without having explored these other options.”

8. **“What if I just can’t decide?”**

Go back to your interests. What do you care about most? Which opportunity is most likely to give you the things you value?

Seek the advice of people with no interest in the outcome. Ask your mother. Ask a professor. Ask a professional in the Career Services office. They know you, and they may have a perspective on the decision that is harder for you to see.

Make sure you have enough information. Do you understand the details of the various choices before you? If not, go back to each firm and say, “I’m weighing different options, and it would help me in my decision-making if I better understood XYZ.” They will be more than happy to give you more information (and they’ll probably spend some time trying to convince you to come join them.)

Go with your gut. At the end of it all, you need to feel comfortable with the people with whom you are going to be working. You’re likely to spend more of your waking time with them than with your pets or your spouse. Are these people from whom you want to learn? Will you feel valued and fairly treated here? Would you be proud to work here? Do you trust them? Do you like them? Take comfort in knowing that the decision is not life-long, and make the decision that feels right.

9. “If I go ahead and accept their offer, is there anything else for me to do?”

Just because you've accepted their offer, don't assume that your work is over. Make sure that you and your prospective employer share the same understanding of the offer, and that you've recorded your agreement so that there is no confusion later on.

Sometimes, they will present you with a letter that formalizes all of the terms you discussed. If they give you a letter or a sheet summarizing the agreement, review it carefully.

If they do not give you something in which the terms are spelled out, write them a letter thanking them again for the offer and indicate that you look forward to working with them. In that letter, be sure to outline the main points of agreement as you understand them—the salary, vacation terms, moving allowances, etc. At the end of the letter, ask the employer to confirm that these are indeed the terms as they understand them. If you have not received a confirmation from them within a reasonable period, get on the phone to figure out if you need to have further conversations with them.

In all events, be sure to keep a copy of the agreement between you and your new employer.