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Playing With Fire: Using a New Offer From a Competing Firm as Leverage to Get What you Want at Your Current Firm

Several years ago, a BCG Attorney Search article detailed the dangers of trying to use offers from other firms as leverage at your current firm, commenting on the fact that such offers are often wolves in sheep's clothing.

This article addressed most firms' usual motivation for extending a counteroffer; a candidate's common motivation for accepting it (i.e., the "natural inclination . . . to stay with the devil you know rather than to dance with a new one"); and what a candidate's future will probably hold at that same firm if they do choose to stay.

What the above-referenced article did not address, however, is how to avoid walking down the counteroffer path in the first place. It also did not address the secondary consideration attendant to any counteroffer scenario. You have put yourself on the market with another firm or firms (ones that are very often competitors to your current firm); taken the time to meet with them and exchange professional goals and desires; and asked them to invest their time in meeting with you (often over the course of several weeks or months). Once you obtain an offer, you use it merely for leverage, and responding to the new firm, "Never mind; I think I will stay where I am."

Ill will is never created where this exchange of meetings and interviews is an honest and legitimate exploration of the marketplace. People turn down offers from new firms every day because, for example, the work doesn't suit their growth goals, chances for advancement are murky, relocation is problematic, they didn't feel a "click" with the group, and other reasons. Firms understand this and accept such reasons for decline as acceptable and par for the course in the marketplace.

In contrast, ill will is created where sincerity is absent. Simply put, what firms don't understand is your reaching out to them deliberately in pursuit of an offer but, it seems, only desiring to use that offer as leverage to obtain a better deal (or counteroffer) at your current firm. This type of scenario is a very dangerous game of "one upsmanship" or "better dealing," which firms do not forget.

Recently, a significant number of candidates have asked me about this approach—using an offer from a competing firm to leverage your marketability and value at your current firm. I respond in the same way to each: "You are playing with fire, and you may end up hurting both your current career as well as your future success." Set forth below are two important myths which exist around this topic:

Myth 1: Getting an offer from a competing firm and using it as leverage at your current firm to get what you want is a better career strategy than approaching your partnership directly and asking for what you need.

I won't say that there isn't value in sometimes glancing at a new face in order to make your current girlfriend or boyfriend jealous; however, an offer from a new firm is not a mere glance, it is more likely akin to a full on

"Surprise! I'm leaving you for someone else, and I never gave you warning. If you love me, convince me to stay; and I will." Nothing good can come of that type of surprise.

Those candidates who attempt this "leverage" approach are typically those who wish to avoid confrontation, are fearful of their partnership, or are hesitant to give their partnership any inkling that they may be leaving for fear it will hurt their careers down the road. Thus, they do an end game around these fears by picking up a new offer from a competing firm and using that new offer as a shield to cover themselves when they ultimately pay their partnership a call. What these candidates do not realize is that an offer from another firm does not eliminate the above-mentioned fear factors. You will still have the confrontation; you will still be fearful when you tell your partnership about the new offer; and you will still be giving your partnership an inkling that you are leaving or thinking about leaving. Actually, it will now be more than an inkling. You will be giving them full-on confirmation of your dissatisfaction with the firm—enough that you avoided talking to them about the problems and instead put yourself on the market (which is risky in itself) and secured another offer before you actually spoke up.

Because a new offer from another firm will never eliminate your fears (and may actually make your problems bigger), I consistently counsel candidates to avoid games, avoid "better dealing," and approach their partnership directly and clearly about their career concerns. Whether you need better work, wish to switch practice groups, are seeking a relocation, or desire to work with a new partner, you need to approach your partnership directly and ask those questions. Don't beat around the bush. Ask the questions you need to have answered. You are a professional with a career and a life. You have the right to ask these questions and direct your career with personal responsibility. Partners understand this much more than you realize. To this end, the only things you need to worry about are:

1. What is the problem, and what is the question I absolutely need to ask; and
2. Do I like this firm and do I see a future here enough that I am willing to ask the question, affirmatively and actively seek a change, and stay?

If you can't answer the second question in the positive, don't ask the question(s) at all. It may be best if you simply explored other firms and moved on. If you can answer the second question affirmatively, then take a good hard look at the first question. What do you need to make your career better? What do you need to put your career on the track you want? If it means you need to move to London to be closer to your spouse, ask that question. When I say ask that question, I don't mean hinting to your partnership, "Ms. Senior Partner, do you see any possibility of an opening in London at any point?" or, similarly, "Mr. Senior Partner, do you see the London market opening up and the firm needing people to move out there?" So many candidates hint or work around the real question, and when the senior partner says no, they think they were given an answer. They were not given an answer. They threw out a scenario, and the partner threw back a very vague answer in response to that scenario. That's all.

I see a lot of the above type of indirect question-asking. Candidates often ask for their needs to be met in a roundabout way, don't get the right answer, put themselves on the market, get a new offer, tell their partnership about the offer, and then get a counteroffer (detailing exactly what they were looking for in the first place). At the end of this game, they think that they have won, when they've actually lost a lot.

As explained more fully below, they have hurt their current careers with this time-consuming approach. Even more so, such candidates lose because they have put themselves on the market with other firms, and by doing so, brought in a third party to their game playing—a third party that has no interest in playing games. This will hurt their future success.

Aside from the lengthy list of firm damage described in BCG's earlier article, unless you are genuinely interested in switching firms, randomly soliciting an offer from a new firm

1. Wastes your own time,
2. Takes time away from your current firm clients,
3. Wastes your money,
4. Causes you to appear fearful of and disloyal to your current partnership, and
5. Renders you a passive observer of your own career path.

How can you avoid this pitfall? Don't walk down the road in the first place. In short, then, do not hint. If you need to move to London, for example, sit down with your partnership and clearly say, "My husband is in London; long term, my goal is to relocate to the London office within the year. Can you help me to meet these goals? I would like us to work together on this as I value your opinion as well as my role within your group." Be direct when you ask for help. You can never fail in this approach. The partner will either respond, "No" or "Yes, I think I can. Thank you for coming to me first." Either way, you win. You get your answer without games. Of course, you may feel like you have put yourself on a bit of a ledge and, as some would say, "shown your hand," but if you need to spend a little bit of time on the ledge in order to climb the mountain, then go sit on the ledge. You would be in the same spot if you waited three weeks, got a new offer and then approached your partnership with that new offer, hoping for a counteroffer. However, at that point you would not only be sitting on the ledge, you would have a disgruntled third party sitting next to you (discussed further below).

Simply put, getting an offer from a competing firm and using it as leverage at your current firm to get what you want is not a better strategy than approaching your partnership directly and asking for what you need. At the end of the day, there is something intrinsically wrong with feeling that you need to threaten departure before you feel that your current employer will be in your corner. If that is how you are feeling, then, you need to seriously consider whether your current firm is the place for you at all. I often say, "Firm life is like marriage. Do you want a wife or husband that always treats you well or only treats you well when she or he knows you are leaving?"

Myth 2: I won't hurt my career in any way at the firms from which I receive a new offer. In fact, if I get an offer now from a new firm and merely use it as leverage to increase my value at my current firm, I can always just re-approach the new firm again in a few years. No harm, no foul.

Before you approach other firms:

1. Be absolutely clear of where your current firm stands on those topics affecting your career (i.e., get the answers to your questions), and
2. Be sincere in your desire to move. Please note that I say sincere here and not absolutely certain because no one is ever absolutely certain. It's more important to be sincere and honest. If you are not genuine in your job pursuit when you enter the marketplace, you may likely be very sorry down the road.

For instance, a typical scenario for insincere "leverage seekers" is to reach out to firms which compete with their current firm. If Big Firm X (a candidate's current firm) is a high-profile M&A practice, a candidate will likely reach out to Big Firm Y and Big Firm Z, which are also big names and high-profile M&A practices (and likely to make Big Firm X jealous for trying to steal away the candidate). Such candidates will ask Big Firm Y and Big Firm Z to arrange for them to meet with partners and associates, perhaps for lunch. They will ask Big Firm Y and Big Firm Z to step up to the plate on the career issues that are important to them (the exact same issues they are afraid to discuss with their current firm, Big Firm X). Big Firm Y and Big Firm Z will invest, engage, step up to the plate, and one or both will make a lucrative and flawless offer. The candidate will go back to Big Firm X with this offer and attempt to use it as leverage for a counteroffer. When this happens, BCG's earlier article clearly dealt with what happens in the minds of Big Firm X's partnership and to the candidate's career at Big Firm X. What the article did not address is what happens with Big Firm Y and Big Firm Z—the two firms "played" by the candidate.

I can tell you what happens. Big Firm Y and Big Firm Z will be confused and sometimes angry. They clearly have given the candidate the better offer. They have given him or her a big-firm name; big-firm practice; high-profile clientele; stellar compensation; and, more importantly, answers to the candidate's important and unanswered career questions. Knowing that they gave the candidate exactly what he or she wanted but that the candidate decided to stay at Big Firm X because they counter-offered, Big Firm Y and Big Firm Z often think one thing: "We've been played." Firms know when they have been played or used as pawns in a leverage game, and they remember you. In fact, firms have a very long memory. Thus, if a candidate thinks she or he can simply revisit the offer down the road, she or he is very often served a cold dose of reality.

Aside from Big Firm Y and Big Firm Z's injuries, we also have injuries to the candidate. Remember, that Big Firm Y and Big Firm Z are the candidate's current firm's competitors. Hence, one or two or three years down the road when the candidate is actually sincere about switching firms, the candidate will likely want to go to Big Firm Y or

Big Firm Z; but now the candidate may have lost that chance. Candidates do not realize the copious records that firms keep. I have often had firms respond to my inquiries with "Sorry, he applied here two years ago and turned us down for unclear reasons," or "Sorry, she met with us a few months ago; and we thought she was playing games." No one should desire to injure his or her future in that way.

Recently, a candidate applied through me to her dream firm. Unbeknownst to me, she was attempting to play the leverage game. She received an amazing offer from her dream firm and then turned them down in favor of staying at her old haunt—a firm which only stepped up to the plate when they found out she was leaving. Her response to this scenario was, "That's okay; if they made me an offer now as a first-year, I will only be more useful to them two years from now. We can just revisit later." She was woefully incorrect.

An offer today does not mean an offer tomorrow, especially where the offer is based on an insincere approach in the first place.

Conclusion:

Using an offer from a new firm as leverage to increase your value at your current firm is a very dangerous game. Sometimes it works. Often times, it creates unintended and unexpected results hurting both your current and future marketability. At the end of the day, it's a passive-aggressive way of getting what you want; and, as a lawyer, that can be a very chaotic approach to a simple task.