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Recognizing Origination



James D. Cotterman

By James D. Cotterman

Possibly the most often asked about issue regarding law firm partner compensation is origination — the source of business coming to the firm. What are the typical questions?

- Who gets recognized?
- Should it be formally measured?
- How long does the recognition last?
- Should it be shared?
- Should it be reallocated over time?
- What importance should it have in compensation decisions?

For each of these, if the answer is “yes,” then how does one go about it? Before answering, let’s take a look at some of the bizarre situations associated with origination.

- Partners demanding a share in origination to work on another partner’s matter
- “First touch” origination that sticks to a partner in perpetuity, even when the partner can no longer recognize the client
- Firm origination, a result of “sunset” provisions, where no partner in the firm takes responsibility for the relationship
- Partners fighting over clients as though they are property
- Departing and remaining partners seriously misjudging whether a client will follow a departing partner to a new firm

These situations, and many, many others, existed when I started consulting over 20 years ago. They will likely continue to exist long after I retire. Why? Because the status (i.e., power and independence) of a law firm partner, or any professional, derives from the ability to generate cash and to sustain and grow the firm’s revenues.

Who Gets Recognized?

When a partner or team of partners brings a new client to the firm, there is measurable origination. When a new service offering is introduced to an existing client, there is origination. When partners rendering existing services capture a meaningfully larger share of the client’s work in that area, there is origination.

If clients follow a partner from one firm to another, that also represents origination for the partner at the new firm. This is the concept of portability. Unfortunately, this

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undermines the concepts of team and institution and has fostered a lucrative free agency in the legal profession. And it is perpetuated mostly by the willing cooperation of clients who do not speak up readily enough when partners engage in such behavior.

If the client stays with the first firm, someone other than the departed partner must have built a

Tim Corcoran said recently, "This means knowing what's taking place in the client's market; who's growing and who's contracting; identifying the regulatory or legislative changes that will have an impact; examining trends in past litigation to suggest preventative measures; knowing the client's propensity for risk and how this influences its legal decisions; and so on."

should be the controlling metric used in determining origination.

Origination should be tracked at both the client and matter levels. Client-level origination provides an opportunity to reflect one of two aspects of the relationship. It can memorialize the efforts and successes of others in years gone by. Or it can designate someone who has overall responsibility for the client's entire representation at the firm. Matter level origination provides greater flexibility to share origination credits appropriately where multiple and evolving relationships are occurring within both the firm and client organizations.

Matter-level credits should not be given for doing work where simple expertise provides answers to business or legal problems. They should not be granted for billing responsibility, which is how many firms designate who is supervising the work. They should represent a trust-based relationship where the focus is understanding the client organization and the individual.

A client who uses a firm for many types of work is likely to have an equal number of relationships and reasons to keep work at that firm. And relationships change over time — people may change, work needs may change, work locations may change. Matter level tracking best reflects these changes and facilitates decisions that fit each set of circumstances.

Unfortunately, tracking origination is very much like trying to maintain a mailing list. You work hard to keep it updated only to find it is significantly out of date the next time you use it. So it is with origination lists. If done well, tracking can greatly aid compensation decision makers. Practically, however, such lists are the starting point for further discussion with practice leaders and other partners so that informed adjustments can be made.

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"... origination is inexorably tied to client loyalty...

When do we see origination shift? It shifts with changes to the relationship."

relationship with the client — they had/have origination. Often this is the result of a second, separate contact or line of service provided to the client that causes the client to split its work between the two firms. If the client decides to go elsewhere, then one firm has lost a relationship and someone else will get a shot at origination.

Finally, when a partner or a team of partners bring a former client back to the firm after several years of not representing them, there is again measurable origination.

The point to all of this is that origination is inexorably tied to client loyalty. Someone once said to me that emotion trumps everything in client/customer loyalty. Emotion is embodied in that concept of relationship. When do we see origination shift? It shifts with changes to the relationship.

Clients want to do business with lawyers whom they trust as advisors. Trusted advisors understand both the individual client and the business. As my colleague,

Should Origination Be Formally Recognized?

While every law firm should have a solid understanding of why and how clients send work to the firm, there is no absolute requirement that there be a formal scorekeeping system. Nearly half of the firms surveyed in a recent *Incisive Legal Intelligence Surveys* study¹ do not formally track origination. Although, as firms grow larger, the likelihood that a formal tracking system exists increases. It has been my experience that firm leadership can readily identify various origination skill levels among partners, and use that understanding to assess the likely direction of each partner's career with respect to client-building. And they can do this without computer reports to aid in their deliberations.

There is an expectation that an individual's business origination efforts and results will improve over time. For compensation purposes, four to six years of information will provide a much richer picture to identify consistency and trends than a single year of results. Fees collected

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How Long Does the Recognition Last?

In some firms origination is maintained in perpetuity, “in some it sunsets,” and in others the recognition ebbs and flows based on circumstances. Origination policies can cause hoarding of client relationships and matters, the establishment of historical origination credit annuities and corrosive internal competition. That is a primary reason why in some firms there is no formal scoring system.

To mitigate these negative tendencies, firms should insist that origination allocations evolve over time to reflect the current realities as to why business comes to and remains with the firm. The marketplace² suggests that the duration of the credit should last as long as the relationship lasts.

One option is to empirically grant origination on all matters opened for a new client for the first, say, three to five years that the client is with the firm no matter how long those matters are open³. This avoids penalizing early cross-selling and the handing off of matters, while maintaining recognition of the original efforts that resulted in the work coming to the firm. After that time, new matters for an existing client should show evolution in the allocation of origination to reflect the expanded relationships that are healthy for the firm and the client.

Other firms have set up scheduled elimination of origination credit over time. An example is 100% origination for two years, 80% for two years, 60% for two years, 40% for two years and 20% for two years. Under this program, a partner has recognition for a decade. Some might even retain a 5% or 10% kicker for longer. While simple to administer, this likely bears no resemblance to the nature

of the relationship between client and firm. Yet it is preferable to doing nothing.

Should It Be Shared?

Collaborative approaches to client relationships enhance a law firm’s competitive position. Individuals who are instrumental in creating those opportunities should share in the origination. Similarly, for large clients, firms should expect a lead partner to introduce other partners, encourage many relationships and then share origination credits accordingly. Two examples illustrate how this might be done.

A client of ours had a practice group share origination based on how it sold work. Origination for all of their matters was shared equally among all partners in the group. Their logic was that they sold as a group. Teams were tailored to each pitch. The same custom thinking was applied to team roles in the pitch. The partners wanted no internal competition for team assignments or roles. They were confident that each would contribute equally over time and that it would be easier to simply share all origination from the outset.

Another smaller client had each partner review the client matter list and annotate which matters assigned to them should be shared with others from their origination and in what other client acquisitions they participated but were not credited. Interestingly, each year that was done, the result was that partners generously shared ever larger credits. The dialogue and philosophy built greater trust among the partners — strengthening the firm.

Credit sharing works best if the culture is conducive to it. One way to build trust on this issue is to develop protocols for sharing origination credits. This may be done using scenarios that describe different client generation fact situations and asking each

partner to indicate how he or she would share origination based on that fact pattern. Once completed, the partners can meet to discuss differences and build consensus on how to recognize and share origination.

Should It Be Reallocated?

Organizations (both client and law firm alike) are constantly changing. New people, new roles, and new priorities enter the picture. The situation that existed five years ago when a client was brought to the firm may not reflect why the client remains with the firm today. Not recognizing this probability of change can cause all kinds of havoc.

For example, Sara has assisted Tom for ten years in servicing a key client. The client now provides \$6,000,000 of good work to the firm annually. When Tom brought this client to the firm he expected about \$500,000 worth of repeat work and asked Sara to manage a piece of it. Sara and Tom both worked hard servicing the client and became trusted advisors to the senior executives. Sara’s main contact is a business unit executive who sends her about \$2,500,000 of work annually. Sara believes that \$2,000,000 of that should be recognized as her origination. When approached by Sara, Tom disagrees. But after much strained conversation between the two, Tom relents to \$500,000 of origination for Sara.

Sara raised the issue with the Compensation Committee and was again rebuffed. Sara, believing she will never be given fair credit for her contributions, leaves her firm and takes \$1,500,000 of that client’s work with her. Sara was a bit off in her estimate of her relationship with the client. But more importantly, Tom and the firm were off by quite a bit more. Sara’s new firm recognizes the \$1,500,000 as her origination.

This scenario plays out in firm after firm, year after year. This is one

reason why leaders in many firms are constantly reinforcing organization and team values. It is also why the compensation decision-makers work hard to get behind the numbers to understand, as well as anyone can, how work gets to the firm.

What Importance Should It Have in Compensation Decisions?

Origination reigns supreme as the most critical partner compensation factor. Typically, in the US private law firm market, one can explain about 80% to 90% of the variability in partner compensation by knowing just one performance metric — origination⁴. This metric, more than any other, determines whether a lawyer becomes — and remains — an equity owner in a law firm. And it may well be a determining factor in when and how lawyers exit the firm in their senior years.

How should origination affect compensation decisions? There is not a body of strict rules, but rather a set of guidelines determined by common sense. A law firm should recognize the relative importance of origination and use that knowledge to differentiate appropriate levels of income among lawyers, without pursuing a formulaic or commission approach to compensation.

Conclusion

I regularly get requests to assist firms in creating incentives for business development. While a good system and good decisions require that origination be recognized and rewarded, it has not been my experience that a change in compensation system will make rain-makers out of service partners.

Lawyers who generate business do so because they have the ability to do so and they understand the importance. Lawyers who don't generate business don't generate it because they can't. Of the group that can't there are probably two sub-groups: those who could if properly

trained, coached and supported, and those who just do not have the temperament to do so. It is not the compensation system that creates either the ability or drive to market.

Good partner compensation decisions require origination to be recognized and rationally allocated. Failure to do so will put the firm at risk of unhappy partners, departing talent and lost clients. ♦

¹ *Survey of Compensation Programs in Law Firms, 2009 Edition*, Inclusive Legal Intelligence Surveys.

² This refers to the undeniable facts that clients' hiring decisions are influenced by their relationships with individual lawyers, and that law

firms hire laterals based on whether or not they have clients who will follow them to a new firm.

³ Caution is advised to ensure that matters are closed at the appropriate time and that "new" matters are not simply added to an existing client/matter number.

⁴ See "Compensation Risk Assessment" by James D. Cotterman, *Altman Weil Report To Legal Management*, May 2009. www.altmanweil.com/CompRiskAssessment.

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