

Compensating Business Origination

By James D. Cotterman

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.

Origination Defined

Origination occurs when the business of the firm is expanded by such means as:

- the development of new clients
- the development of new services unrelated to the current representation of an existing client
- the significant expansion of business (20%+ growth rate) that is related to current or previous representation of an existing client
- the recapture of a client who had left the firm for representation elsewhere, or who has not sought representation by the firm for over several years.

The marketplace also defines origination. The market says origination is the work that is portable to the lawyer. Unfortunately, this market-driven definition can lead to results that are not in the best interests of the firm, such as relationships being hoarded and the firm being put at risk if a lawyer leaves or competitors try to poach.

The client's perspective indicates much the same view, i.e., that lawyer relationships are bundled with portfolios of work. Corporate counsel repeatedly indicate that should one of their law firms disband, specific work would likely follow individual lawyers when the relationship is strong and the work of high quality. However, for weak relationships or "so-so" work, corporate counsel may look elsewhere. This challenges the concept of institutional clients and accordingly the "sun-setting" of origination, or the establishment of firm (as opposed to individual) origination.

A compensation system that considers origination contrary to market forces (i.e., when origination and client relationships are not aligned) will make getting to good compensation decisions difficult. A law firm need not dismiss the efforts and successes of others in years gone by, but those considerations should be made elsewhere in a compensation system – not with origination.

Origination Credits as Incentives

We regularly get requests to assist firms with systems to incentivize new business development. While a good system and good decisions require that origination be recognized and rewarded, it has not been our experience that a change in the compensation system will make rainmakers out of service partners.

Lawyers who generate business do so because they have the innate ability to do so and they understand its 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 subgroups: 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 the drive to engage in marketing.

Tracking of Origination Fee Credits

There should be an expectation that an individual's business origination efforts and results will improve over time. Four years of information will provide a much richer picture to identify consistency and trends for compensation purposes. Fees collected should be the controlling metric used in determining origination.

Origination should be tracked at the matter level, as opposed to the client level. This provides greater flexibility to share origination credits appropriately. 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. Also, relationships change over time – people may change, work needs may

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change, work locations may change. Matter level tracking allows contemporary decisions to be reached that fit each set of circumstances. Evolution of the origination credits will come more naturally with this approach.

that the client is with the firm. This encourages cross-selling, the handing off of matters and recognition of the original efforts that resulted in the work coming to the firm. After that time, new matters of a client should show evolution in the allocation of

should be shared with others from their origination and in what other client acquisitions they participated. Interestingly, each year that this has been done, the approach has been to generously share credits. The dialogue has built greater trust among the partners – helping to strengthen the firm.

It is important for each firm to establish protocols for allocating business origination credits. This is best done using scenarios that describe different client generation fact situations and asking each partner to allocate origination based on the fact pattern. Once this exercise is completed, the partners can meet to discuss differences and arrive at a consensus as to what origination means and how it should be awarded consistently with their firm's values, practice and clients. This exercise should be repeated in some form whenever new partners are admitted to the firm.

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Tracking origination should not necessarily require a formal score-keeping system. Less than half of the law firms participating in the *2003 Survey of Compensation Systems in Private Law Firms*¹ grant formal origination credits. It has been our experience that firm leadership can readily identify various origination skill levels among partners and use them 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.

Duration of Origination Fee Credits

Origination policies can cause hoarding of client relationships and matters, the establishment of historical origination credit annuities and divisive internal competition. To mitigate this tendency, firms should insist that origination allocations evolve over time to reflect current realities of why business remains with the firm. The marketplace suggests that the duration of the credit should last as long as the relationship.

One option is to empirically grant origination on all matters opened for a new client for the first three years

origination to reflect expanded relationships that are healthy for the firm and the client.

Allocation of Origination Fee Credits

Collaborative approaches to client relationships enhance a law firm's competitive position. Therefore, individuals who are materially instrumental in acquiring the client or the work should share origination. Similarly, for large (key) clients, firms should expect partners to establish many relationships and to share origination credits accordingly.

Here is an intriguing approach to sharing origination: a practice group requested that origination for their matters be shared equally among all partners in the group. Their logic was that they sell as a group. Teams are tailored to each client, as are the roles each individual plays on each team. They wanted no internal competition to be on a particular team or to have the lead role. They were confident that each would contribute equally over time and that it would be easier to simply share all from the outset.

Another (smaller) law firm has each partner review the client matter list and annotate which matters

Summary

Good partner compensation decisions require origination to be recognized and rationally allocated to aid the decision-makers in differentiating performance and awarding compensation. But first the partners must define origination – when it occurs, how it is allocated and how it evolves over time. Formal tracking is not necessary to such recognition. It is simply one means to do so. ♦

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