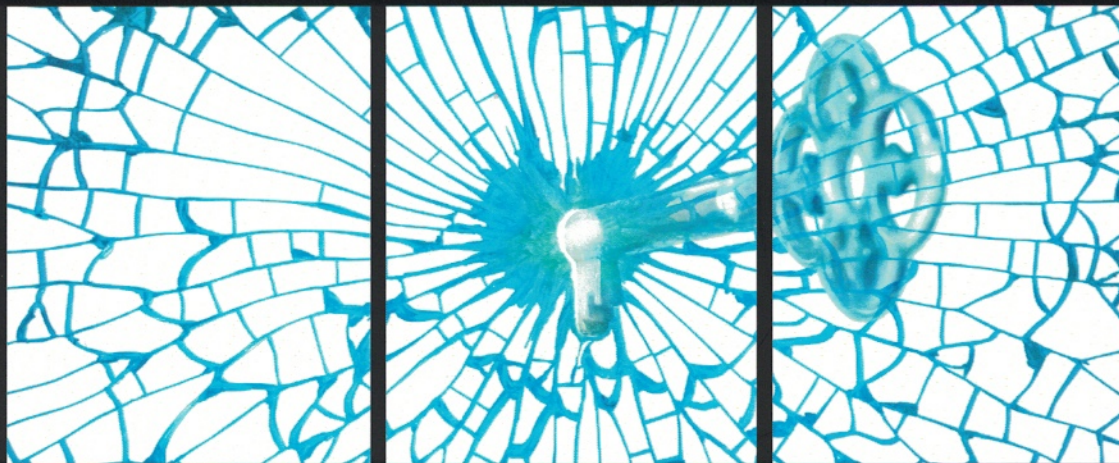


# Breaking Barriers: Promoting and Retaining Women in the Legal Profession

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# Origination credit – Getting credit where credit is due

*By Marianne Trost, The Women Lawyers Coach*

FIVE YEARS ago, I spoke at the Women Legal 2009 conference on the topic of empowering women to take control of their careers by developing their own book of business. The message was that having a client base is a key component to creating self-determination in private practice. This still holds true today, with one new modification: getting origination credit for business development successes is also a critical component to creating self-determination in private practice.

While many of the key statistics and indicators regarding the forward progress of women in the law have been stagnant for the past many years (and, in some instances, decades) the frequency with which origination credit issues surface among my national client base has grown exponentially over the past five years. The topic has taken on greater importance – so much so that at Women Legal 2014 a segment of the program was focused on the challenge of getting origination credit where credit is due.

Women are succeeding in bringing in new clients to their firms. They are expanding existing firm relationships to generate work in additional practice areas. They are participating in winning client pitch teams. They are leading teams of attorneys that successfully service key clients, who in turn send more business to the firm. However, as many women attorneys are now discovering,

generating business and expanding client relationships is one thing, getting credit for those efforts and successes is another.

This article will provide strategies to address this newest of challenges on the path to breaking barriers and creating equality and success for women in the legal profession.

## **Why does origination credit matter?**

Origination credit matters because in today's competitive market it is often not enough to simply be a talented attorney who achieves her billable hours targets. Rather, an attorney's contribution to the bottom line through bringing in new business or securing and expanding existing client relationships serves as a measure of their "added value" to the firm, above and beyond their talent and billable hours.

From the firm's perspective, origination credit is one way to track, measure, and reward the additional contribution attorneys make to the economic lifeblood of the firm, i.e. the continual stream of new work from clients. Depending on the firm, origination credit may be given to an attorney for her role in bringing a new client to the firm, her role in securing a new matter for an existing client of the firm, or her role in assuming a supervisory position on a matter that keeps the client relationship intact and paves the way for additional client work for the firm.

From an individual perspective, origination credit is the reward for investing hundreds of hours of non-billable time each

year to successfully bring in new work to the firm or expand and strengthen client relationships that are valuable to the firm. Getting origination credit typically has a positive impact on compensation, strengthens the chances of achieving equity partnership, and bolsters the ability to achieve leadership positions on a firm's highest governing bodies. If you have earned origination credit, you need to claim it.

### **What can women attorneys do to ensure that they get credit where credit is due?**

#### **Know what your firm's origination credit policy is**

Origination credit policies vary almost as much as law firms vary. Find out what your firm's policy is. If your firm has an "eat what you kill" policy that rewards only the first attorney to bring in a new client to the firm, consider whether pursuing additional work from that client is where you want to put your time and energy. If your firm has a "shared credit" policy, make certain your role in bringing in new work for a client is apparent so that you are one of the attorneys who will receive a portion of the credit. If your firm has a policy that allocates a portion of origination credit to a "supervising attorney", and you fulfill that role, make sure your firm's records actually indicate that you are the supervising attorney. Knowing what your firm's origination policy is provides the first critical piece of information necessary to being strategic and proactive in positioning yourself to get the credit that you are due.

#### **Understand how the origination policy works**

Origination policies can be complex. If your firm's policy is confusing, seek clarification from someone who is familiar with the implementation of the policy. Ask questions and learn the rules of the game. If your

firm's origination credit policy is based on a systematic formula – e.g. client originating attorney x per cent, client service attorney x per cent, matter level originating attorney x per cent, supervising attorney x per cent – make certain you know what the formula is so that you can self-advocate effectively and accurately and get what is due.

#### **Be aware of variances in policy versus practice**

If your firm's policy is one thing in writing, but another in actual practice, seek out someone who understands what the policy "really" is. For example, if your firm's policy states that origination credit disputes are to be elevated to the managing partner of the firm for resolution, but most attorneys successfully seek resolution of disputes at the practice group chair level first, this is valuable information to have. Get the lay of the land as navigating the waters of origination credit can be tricky.

#### **Start to document your origination efforts early**

It is never too early to be thinking about achieving origination credit. Even if you are an associate in a firm that does not give origination to associates, it is important to begin laying the groundwork for your future origination credit. Document your efforts. Keep track of yours statistics. If you have had a relationship with a new client that goes back several years, make sure you have been documenting your efforts over that period of time. If your firm has a client relationship management (CRM) system, consider utilizing it so that your involvement does not go undocumented. Even a simple folder that tracks when and where you participated in efforts to originate business will be useful if your portion of origination credit is questioned.

### **Start the origination credit conversation early**

Laying the groundwork for receiving origination credit early can significantly increase your chances of success. When you team with someone else in business development, talk about the joint effort, mention your role in the relationship, update others on your efforts, and communicate your viewpoint regarding shared credit early in the process. Consider raising the origination credit conversation and leading with your viewpoint, "When this matter comes in, this is how I propose we allocate the origination." If you don't take the lead, you may find that origination credit has already been allocated without your knowledge. Getting origination credit allocations changed when you have been left out of the process is a lot harder than initiating the conversation early.

### **Speak up and state your viewpoint**

No one knows what role you have played in origination as well as you do. Don't assume that others are up to speed on your efforts or aware of your reasons for believing you have earned origination credit. Most people are focused on their own contribution, not yours. It is up to you to make sure you advocate for yourself. If you find yourself in a situation with differing viewpoints, speak up and express your viewpoint. When possible, address differences in person (not via email) to reduce the risk of miscommunication and guard against having your written communication read by others out of context. Having a face-to-face conversation demonstrates your commitment to being included in origination and will usually increase your chances of successful problem solving. Speaking up may be uncomfortable in the moment, but missing out on origination credit is usually worse.

### **Negotiate**

There are many good colleagues in law firms who are willing to negotiate and share. Initiating origination credit conversations may not be as difficult as you suspect. Remember that establishing your role and quantifying your value by stating what you believe your origination credit percentage should be is good business. You would do that for a client without hesitation. Negotiate as if you were advocating for a client. Start the conversation with "plan A", but have a "plan B" in mind, just in case "plan A" does not work out. And remember that in business "you don't get what you deserve, you get what you negotiate".

### **Use facts and figures**

When negotiating, have your facts and figures available to back you up. Make your case based on what you "know" to be factual, not based on what you "feel" is right. If precedent for your origination credit request has been set, point it out. Quantify your efforts, e.g. how many years have you known the contact, on what date did you have the conversation about handling a new area of work for the client, how many people are you supervising on a client matter, and what results have you achieved. Avoid the abstract. Present your case based on the facts and the numbers. They are much harder to dispute or negate.

### **Refer to the origination policy**

Sometimes origination credit conversations take on a life of their own. To bring a conversation back on track or in instances where the allocation of origination deviates from the firm policy, consider asking, "Is that in the policy? Can you show me where it says that, because that is not my understanding?" Sometimes people just need to be reminded of what the policy is.

Or, in instances where others are deviating from the policy, bringing the policy back into focus can help get the conversation and negotiations back on track.

#### **Seek support in difficult situations**

If you find yourself in the difficult situation of seeking origination credit involving someone who is territorial or if you sense that you are at risk for negative backlash, seek a trusted source, an ombudsman, or the assistance of an attorney in a position of influence, to provide additional guidance and insight. In some cases, that attorney may even be able to assist by running interference for you or advocating on your behalf.

#### **Take control of the new matter memo or paperwork**

It is much harder to go back after the fact and correct origination allocations than it is to make sure they are allocated correctly in the first place. Reduce the possibility for error or omission by offering to have your assistant fill out the origination credit new matter memo or paperwork. Make certain your role is noted. Correcting a misallocation or inserting yourself into the equation after the paperwork has already been approved can be frustrating, time consuming, unsuccessful, and sometimes detrimental.

#### **Remember that “no” does not mean “never”**

If you are not given origination credit the first time you seek it, be certain not to let that stop you from seeking credit the next time. Old patterns are hard to break. Every time you bring up origination credit, even if you don't get it, you are sending the message that you are a valuable contributor and you are worthy of receiving credit for your efforts. If your firm has an appeals process, consider utilizing it.

#### **What can women attorneys do to assist their firms in creating more equitable origination credit policies and practices?**

The responsibility for obtaining an equitable allocation of origination credit should not be placed solely on the individual attorney. In order to break through the origination credit barrier, firms must take an active role in supporting and encouraging the equitable distribution of credit. Consider the following approaches to advance change at the firm level.

#### **Use collective wisdom and influence**

Flaws in law firm origination credit policies and practices have sometimes been in play for years. If your firm has an origination credit policy that discourages team effort, results in systematic exclusion, and contributes to ongoing inequity, the odds are that the policy is not going to change as the result of one person's complaint. Taking on such policies alone can be risky business. Consider approaching management collectively so that the conversation is about “we have seen a pattern and we would like to address it” or “a number of us have experienced this discrepancy and this is what we recommend”. Enlist the support of women on your compensation or management committees, members of your women's initiative group, or other attorneys of influence. Use collective influence to guard against one person having to take a position against the policy as a whole.

#### **Advocate for critical mass on the compensation committee**

Statistics have shown that when two or more women are on the compensation committee, the typical compensation for women partners is roughly on par with the typical compensation for male partners.<sup>1</sup> Women

on the compensation committee can help address patterns of origination credit inequity. Encourage your firm to include women on the compensation committee.

#### **Encourage your firm to identify an ombudsman to resolve origination credit dispute**

While negotiating origination credit and resolving disputes without involving law firm management is ideal, sometimes it does not work out that way. Encourage your firm to designate a well-respected, influential, neutral attorney to serve as a facilitator for the resolution of origination credit differences of opinion. Addressing origination credit issues can involve a morass of political, historical, and firm culture twists and turns. Identifying a person whose role it is to assist in navigating through the rough spots and working toward creating a stronger climate of collegiality, cooperation, and collaboration can be very helpful.

#### **Concluding thoughts**

Closing the origination credit gap is the next frontier for creating equality in the legal profession. While becoming familiar with the origination credit process and learning to navigate its tricky waters takes time and practice, it can, and is, being done. The rewards have significant implications.

When women attorneys succeed at getting credit where credit is due for their business development successes and their client relationship contributions, they will be able to obtain greater power, leverage, and influence that can be used to narrow the compensation gap, access equity partnership, and attain positions on their firm's compensation and highest governing body committees. When those shifts occur, profound change in the profession will take place, and many of the barriers that

women attorneys have been encountering for decades will finally be overcome.

#### **About the author**

Marianne Trost is The Women Lawyers Coach. A nationally recognized trainer and coach, inspirational speaker, and internationally published columnist, Marianne works exclusively with women attorneys to help them to succeed in business development and to create self-determination in their careers. Marianne is an expert on "the business of the practice of law". Distinguished as one of the first in-house law firm attorney training professionals in the US, Marianne created an Amlaw 100 in-house associate training program that was voted number one in the *American Lawyer*.

Marianne's mission is to guide, teach, and inspire women lawyers globally to grow their own books of business and manage their careers strategically. She conducts business development workshops, small group training sessions, and one-on-one coaching for lawyers, and is launching a line of business development self-study products to enable women lawyers throughout the world to access the information and training they need to succeed in business development. Known for her hands-on skills workshops, practical tips, and "how to" approach, Marianne has presented at Women Legal, DRI Women in the Law, DRI Diversity for Success, the Defense Association of New York, the Women Lawyers Association of Los Angeles, the San Diego Lawyers Club, law firm women's initiative programs, and at numerous bar associations, law schools, and legal organizations. She is a former co-chair of the National Association of Women Lawyers Survey Committee on the Retention and Promotion of Women in Law

Firms and a former columnist for *Women Legal* magazine. For more information, see [www.thewomenlawyerscoach.com](http://www.thewomenlawyerscoach.com).

**Reference**

1. NAWL, "Eighth Annual National Association of Women Lawyers Survey on Retention and Promotion of Women in Law Firms", February 2014.