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Collecting Attorneys' Fees in Family Law Cases

Robert Weinberg

There are hidden dangers for law firms in the gathering downturn in the economy. Indeed, in any economic contraction, law firms are among the first business enterprises to run into financial trouble, and in the coming months, if the economy goes south, some may fail.

The early 1990s saw a wave of consolidation in the legal profession, as firms large and small alike disappeared into the arms of their competitors in hopes that, by joining forces, they might find economies of scale. Even among the surviving law firms, however, many failed to understand that no matter what their size, law firms need to be profitable. Profitability depends on a disciplined effort to manage accounts receivable.

Invoices Must Be Turned into Cash

From solo practitioners to firms of all sizes, lawyers need to manage their accounts receivable with professionalized discipline. To that end, they must:

- Make their policies regarding fees a part of every engagement letter; and
- Establish back-office follow-up procedures to ensure that every problem invoice is handled in an efficient, professional, and above all, *timely* manner.

The first of these requires only that the firm insert language into every engagement letter stating that it expects payment within, say, 20 business days of the date of an invoice. The firm's standard invoice should carry the same message---"Terms: Net 20 days." This puts the client on notice regarding payment terms going into any engagement and hence enables the law firm to remind the client company, should it be late in making a payment, that it agreed to the practice before work commenced.

Dealing With Late Payments

What happens when a client is late paying an invoice? Some firms have made it standard practice that the lawyer handling a given case makes a personal telephone call to the client. This is poor practice, since it puts the lawyer in an adverse position relative to the client, and it is the rare lawyer who is comfortable, much less effective, at making such calls. Worse, the lawyer who makes such calls risks giving the client control over the firm's cash flow. How? The discomfort in the lawyer's voice can sound like begging, inviting the client to set the terms of payment and, worse, to wonder whether the lawyer is a strong advocate.

The better idea is to give the job to an accounts receivable clerk trained in making collection calls, following up with confirming letters to the client, and keeping proper records. Here is a sample collection call to a client:

"Hello, this is Kim Smith calling from ABC Law Firm. Our invoice went into the mail on January 15, and as you know, our policy is that all invoices are due and payable

within 20 days. If you were not aware of this policy, it is stated in our engagement letter and appears at the bottom of the invoice. Is there any reason we have not received payment on this invoice?"

Commonly, the response will be that the invoice is in process. Only rarely will the client express unhappiness with the firm's services, and when this happens, the law firm should take the incentive to do something about it. Whatever the response, the firm's accounts receivable clerk should ask for a specific date by which the firm may expect payment, make note of the response, and follow up with a letter or email confirming the conversation, including the expected payment date and the client's reason for delaying payment, and reiterating the firm's payment policy.

Following Up

Should no payment arrive by the agreed-upon date, the clerk should make a second call reminding the client of the earlier call and reiterating the law firm's payment policy and the client's commitment to make payment by the agreed-upon date. This time, however, the clerk should add: "We are giving you the courtesy of an additional 48 hours. If we have not received payment by the end of business two days from now, we will have no choice but to terminate the relationship and seek collection of any fees overdue." This should be followed by another e-mail or letter confirming the conversation, the deadline, etc. Should payments still not arrive, the firm should send a substitution of attorney form to the client or, in matters not involving litigation, a letter of termination.

"Special Cases"

There is, of course, the special client of many years' standing who never pays on time. Such clients may be important enough to make it counterproductive to insist on rapid payment. But the more often a firm accommodates a special client by departing from a disciplined, professionalized approach to its collections policies, the less control it has over its financial health. Therefore every firm should handle exceptions case by case, taking care to give special consideration only to the truly special client.

Choosing an Approach

These are hardball tactics, to be sure, and they will not fit the culture of every law firm, much less the needs of the solo practitioner. Whatever their tactics, however, lawyers ought not to be embarrassed to ask for payment for their services in accordance with the terms of their engagement letters---or fear that if they do insist on payment, they will lose a client. After all, it is the client who decides to do business with a particular lawyer, and the client who terminates an engagement must find legal help elsewhere, losing time and in all probability money in the process. It may not always be clear to the lawyer why a given client chooses to seek his or her help. But clients stick with their lawyers to get the matter at issue settled so that they can move on without further disruption. They know very well that it is unwise to change horses in midstream.

Retainers

Lawyers can avoid many collection problems by requiring replenishable retainers from new clients at the beginning of an engagement. When the original retainer is

exhausted, the client must replenish it as the engagement continues. But few attorneys do this, and when the time comes to seek payment, many attorneys are reluctant to pursue their clients for payment. Sometimes, the attorney fears embarrassing the client, or may think that as professionals, they ought to be above money. They also fear that aggressive collection procedures may lead the client to threaten to terminate the relationship and even allege malpractice, in hopes that the lawyer will settle for a lesser fee.

Conclusion

Under pressure to keep billable hours at 2,000 or more annually, many lawyers work into the night and on weekends in hopes that they can make up for those hours that do not result in payment. But the lawyer who bills 2,000 hours a year and collects on all but 50 does far better than the lawyer who bills more and collects less—and is a far more valuable commodity to his or her firm, too. Put another way, it is not the billable hour that is king. It is the invoice marked “paid.” And it lies within the power of every lawyer to get the job done.