



GETTING PAID

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There is no magic secret to ensuring you get paid for the work you do. Rather, there is a methodology you can and should follow. If you do, you will greatly improve your cash flow, and dramatically decrease the percentage of bad receivables.

What holds most people back from collecting their bills are a number of emotional issues. Sometimes these are combined with poor client management. Let's start by acknowledging that an attorney's busy schedule leaves little room for dealing with administrative issues, of which collection of receivables is a big one. Often you find everything and anything calling out to be done in order to avoid dealing with the work which *should* be done. Calling for money is one of those unpleasant tasks which falls by the wayside at the slightest excuse. You are not comfortable making those calls. And if you're honest, you're probably a little annoyed that you should even *have* to make those calls. After all, you dropped everything to accommodate the client's needs, and produced the desired results. Why should you have to call?

In addition, you know it's near impossible to call for additional work and try to collect on past due invoices at the same time. In today's competitive market, you'd rather get additional work, and keep the faith that the older bills will eventually be paid. And some of them definitely will be. . . eventually, after you've had to dip into your line of credit to pay operating expenses. And then there are the many instances where you know the "inside" story of your client's financial condition, and feel it would be inappropriate to ask for payment when you know the client is in a precarious position. You feel the client expects you to be understanding and get in the back of the creditor line.

Putting aside the emotional issues, there can also be instances where clients are "surprised" in an unpleasant way when the bill arrives. This is a sure sign that the engagement agreement was not clear, and that communication between you and the client could be improved. And without knowing it, you could be delivering a message to your clients that you really do not care if you get paid on time, or maybe even at all.

Here are the steps you should take to keep the cash flowing:

1. Write a strong engagement letter which clearly spells out rates, costs, billing cycles, and expected payment terms, and allows the firm to disengage for non-payment, as well as apply an interest charge on past due balances and allows reimbursement of collection costs. Use this letter for every new client, and every matter for a client which is billed

under a different arrangement from other matters, and do not proceed until the letter is returned signed. Pennsylvania rules require that the engagement letter be sent, but many attorneys overlook getting the signed copy back for the file. Learn a lesson on how to do this from your CPA. Likely he or she will not provide you with your final financial statement until you have returned the signed engagement letter. I can assure you he or she gets that signed statement back every time.

2. Take the time to find out what your client's billing cycle is, and try to time your bill to arrive before the cut-off of a billing cycle, so that it does not wait around for another month's cycle.
3. Try to get your bills out by the tenth of the month if you do them all in one batch. Receiving the bill early in the month communicates to your client that your bills are important to you.
4. If there is something on the bill that surprises your client, you have not communicated adequately during the month. Keep the client informed of unusual or unexpected expenses or time spent. Whenever possible, give the client a say in whether or how aspects are handled that relate directly to costs or fees. Consider having the client pay directly for large costs.
5. Designate someone to call the client's bookkeeper whenever an invoice remains unpaid longer than 30 days (unless your agreement with the client stipulates payment in a longer cycle). This is a customer-service driven call, and can be handled by a bookkeeper, receptionist, or secretary, whoever has the best "people" skills. The person who makes the call needs to ascertain
 - a) was the bill received?
 - b) if so, has it been processed for payment?
 - c) if not, is there a problem which needs to be addressed?
 - d) if it has been processed, when will a check go out?
6. If the bill has not been received, a copy should be immediately faxed or sent by overnight courier. A follow-up call should be made in 24 hours to the same person as the day before to ask the same questions posed the prior day. This prompt action will communicate the firm's desire to collect on the outstanding bill. It will transfer a sense of urgency. It will also eliminate any possible "stalling" tactics in the future. In addition, follow up calls should be made every one to two weeks until such time as payment is made, or a payment arrangement is made. The trite statement that "the squeaky wheel gets the oil" was probably invented when referring to successful collection strategies. Simply put, those who call most get paid first, and are paid more quickly in the future.
7. If there is a problem with the bill you must make contact with the client without delay to ascertain what the problem is, and resolve it. As an example, at one firm a client had a bill in excess of \$30,000 which was over a year old. The client has not been contacted.



Upon making contact a year later the client said that he had a question about the bill and had left numerous messages to that effect, but the attorney did not return those calls. (But to the attorney's credit he apparently had responded to the same client's request for additional work in the interim.) The managing partner met with the client and discovered that the client's question concerned approximately \$1,000 worth of time and costs. The managing partner told the client that if he were willing to cut a check on the spot, the questionable items would be written off. The client was as relieved as the managing partner to get the debt resolved. The client indicated that he felt so uncomfortable knowing the invoice was outstanding for so long that he could no longer contact the attorney for additional work. Past due bills can therefore evoke emotional reaction for *both* the client and the attorney.

8. If the invoice is approved but payment cannot be made due to financial constraints, it is time to work out a payment plan. It should not be acceptable for you to finance your clients. You need to be paid, as do your employees, and your bills. You need to communicate this clearly and directly to the client. No matter what your client's financial situation, you are entitled to be paid for the work you do. You may ultimately not collect 100%, but you should be at the top of the line of creditors and get your fair share every step of the way. The only way to ensure that is to make sure the client knows that you expect to be paid for your work. Keep in mind that there comes a point in time, as the debt grows, when the "power" shifts to the client. For example, one firm found out the hard way when a client which accounted for about 17% of its annual revenues experienced a downturn. At first the past due balances were ignored, due to the fact that the client had previously been such a good paying client. By the time the firm contacted the client to inquire about the past due bills, the client owed a lot (over six figures) of money to the firm. The client agreed to a payment schedule, after being advised that the firm would not continue working if the schedule was not adhered to. The client made most of the scheduled payments, but also gave a lot of additional work to the firm, promising that payment would come from the revenues the additional work produced for the client. In a short time the client had actually doubled the debt. When the firm informed the client it was "putting the pens down" the client threatened not to pay at all. At this point the client's debt was such a significant portion of the firm's total receivables, it could not afford to alienate the client. Did the firm get paid? Ultimately it wound up writing off an even greater debt than if the firm had put the pens down and walked away.
9. Probably obvious from the previous point is that you must be ready to walk away from a client who cannot or will not pay. Certainly there are loyalty issues. You do not want to abandon a client who is experiencing a temporary setback and will eventually bounce back. But that doesn't mean you can or should be their banker, either. And you also need to objectively determine the client's capacity to catch up on your past due bills when they recover from the set-back. Equally as important, can your firm afford to keep investing \$2 for every \$1 you collect?



10. What about the quality of your clients? Do you ascertain whether they have the capacity to pay for your work before you proceed? What we're talking about is the type of credit check our corporate counterparts perform. As you've probably discovered, an ability to pay a retainer to the firm is no indication of ability to take on considerable legal fees for litigation or transactional work. The best way to determine this is to have a frank discussion with the client before commencing work, and perhaps review their financial statement.
11. Lastly, there will come a time when you will have to consider whether you should sue the client for unpaid fees. This is a difficult decision-making process. Your professional liability insurance carrier will advise, emphatically, no way! They believe that the exposure to a counter suit for malpractice is just not worth the receivable. Take a look at your deductible and the client's debt, as well as your prior claim history, before even taking a look at the file to see if there might be any "merit" in a counter suit. If the debt is lower than your deductible, or if your firm has already reported several claims in the past 5 – 7 years, you are best advised to walk away from the debt and client. This is not easy when your emotions are running high regarding the result you achieved for the client and your indignation at being stiffed. But reason must prevail.

In summary, in order to ensure you get paid, you must work for quality clients who have the capacity to pay for the work you are being engaged to perform, and who know the terms of payment. You must have someone promptly follow up on every past due bill, and to keep following up frequently until payment is received. You must intervene immediately if there are questions raised about the bill. If a payment schedule is arranged it should be carefully monitored by the person designated to make calls. Keep an eye on the client's balance to make sure that they at least keep "even" if you continue to work, meaning that their payments equal or exceed current time spent. And finally, do not wait until it is too late to put pens down and walk away.

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