



BEST PRACTICES FOR COLLECTING YOUR RECEIVABLES

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I've written previously about best practices for client intake and client billing. And I've written about creating a receivable management program. But I haven't written specifically about best collection practices. It's overdue.

It became apparent when I presented a seminar recently for the PBA Family Law Section conference on "Ethical Considerations and Best Practices for Billing & Collections." A number of excellent questions regarding the fine points of ethics influencing best practice arose. Many arrived after the fact through the hotline, after people had a chance to mull over the many points presented and question how to apply that knowledge to practice at their firm.

Let's step back first to client intake. The reality is that the intake process employed by the firm can greatly influence the collectability of receivables later. As I wrote in "Client Intake Best Practices,"

I find that a large proportion of firms could benefit from improvement in their client intake procedures. The better these procedures are, the more likely the firm will have quality clients, get paid for their services, avoid conflicts, collect valuable strategic information for marketing purposes, avoid wasting otherwise billable time and avoid potential malpractice actions. All that from improvement in intake practices? You betcha!

If your firm has not examined its intake process, do that first. Remember that it often starts before the firm is even aware of a prospect's interest. It may entail a visit to the firm's website, to social media of individual lawyers, a seminar, or any combination of exposures. We used to say that the receptionist is manager of first impressions, but that may not be true much of the time. That doesn't mean it is not a critical point of interaction. But now there are so many more to monitor for quality and consistency.

Once engaged, we focus our attention to meeting or exceeding client expectations while demonstrating attention to controlling legal spend. We need to

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keep in mind that nowadays 80% of the work most attorneys perform for clients is commodity work. That means that any capable attorney with similar skill and experience can do the work. For that reason, controlling legal spending for our clients is a necessary part of the process if we are to remain competitive.

If your firm has not recently performed a thorough examination of all the component aspects of workflow (project management), time recording and the billing process, its overdue. As I wrote in “Best Practices for Client Billing,”

Most attorneys understand that their bills have the power to convey or confirm an image of the firm to its clients. However, many fail to understand just how that occurs. As a consequence, opportunities to maximize the advantage of an important client communication are often missed.

In other words, your firm may need an attitude adjustment where billing is concerned. Most attorneys I meet loathe sending out their bills. It is an activity usually regarded as a necessary evil. Far from it. Try to understand that it is an opportunity provided to express to the client the value you provide. It is your opportunity to demonstrate they made a wise choice by entrusting their matter to you.

To this point, I've been reminding you that the road to best practices in collecting your receivables originates with intake and passes through best workflow and billing practices. Assuming your firm's navigation skills are excellent thus far, that doesn't guarantee every bill you send will be paid promptly and in full. You will have less to worry about with excellent intake, workflow and billing practices. But sadly, some people will not pay, either on purpose, or because of exigent circumstances or a simple disagreement. So, let's discuss what to do.

First, you want to have a written protocol. Hire someone part-time, or redirect some hours of an existing employee, to walk through the steps consistently and carefully. The right person is not the attorney who did the work or brought in the client. You need a customer-service-friendly person who is properly trained.

Client exceptions should be nonexistent. Following the steps of a well-crafted receivable management program consistently is not offensive to clients. It follows the business arrangement to which the client agreed. Activity should start on the day the invoice becomes due, not following some “grace period.”

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It's vitally important that a record of each call be kept. Calls must be made on a regular basis. And accountability must be created by following up on every promise of payment with a call on the date the payment is supposed to be made.

The real secret to success is in the way the call is conducted. Your person must have a warm friendly voice. He or she must gently continue the conversation, negotiating when and how much can be paid, without allowing the call to end until some commitment is made. When the only way to end the call without being extremely rude is to make a commitment, those called will make the commitment. That's all it takes. The rest is follow-up to create accountability.

My grandmother used to say, "a single slice of bread is better than no loaf." That old-world wisdom applies where receivable management is concerned. Simply, don't allow your entire receivable to be held hostage because of a dispute over a small portion of it. Get as much as you can, as quickly as you can. That reduces the client's leverage and leaves less money at risk of becoming uncollectible. Empower your receivable manager to waive any disputed amount of cost or fee under a reasonable percentage in order to coax the client into paying the balance immediately. I usually recommend 10% - 15%, because the national write-off rate for current law firm receivables is 7%. Whereas the write-off rate for receivables which age to 90 days jumps to 21%.

Formal Opinion 94-35 provides attorneys rights to create charging liens and retaining liens. Yes, you do have a right to put a lien on the client's file. However, you can't hold back anything they've paid for, regardless of how much they still owe. For example, if they paid for their corporate kit, you can't refuse to turn it over, even though it may be the only thing of "value" in the file. The fact is you can't hold back anything important enough to unduly prejudice the client's representation by future counsel. So there isn't much leverage in refusing to turn over the client file.

I am often asked whether the deadbeat client can be reported to a credit bureau or even to other attorneys, as in blacklisting bad-pay clients. Unfortunately, Rule 1.6 and Informal Opinion 91-08 make it clear that you cannot disclose information without the client's consent, except where reasonably necessary to establish a claim or defense for yourself. Nor can you threaten to reveal embarrassing or detrimental information about the client. That's a clear invitation to the Disciplinary Board to step in.

Space limitations prevent me from adding much more. So let me close with a final very important point. Just because you have client money in trust doesn't

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mean you can just take it and then send the “paid in full” bill. The client has a right to have a reasonable amount of time to review the bill and raise objections before you take money from his or her trust account.

As I always say, progress is a process, not an event. Create your receivable management policy and process. Be prepared for discomfort from those who want their clients to be exceptions. It may take a while for changes to “stick” and there may occasionally be backsliding. That’s natural. Don’t give up. And keep your sense of humor.

A version of this article originally appeared in the August 30, 2021, issue of the Pennsylvania Bar News.

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