



Due Process

To successfully collect what clients owe, firms need to clearly define their billing practices — and their breaking point.



ERIN BRERETON
Owner, Chicago Journalist Media

Since the Great Recession, to increase revenue, many law firms have focused on landing new business.

In the process, some may have missed out on another major opportunity to improve the bottom line, says James “Beau” Hays, a Partner at Georgia-based Hays Potter & Martin, LLP.

“People noticed new matters would dry up, but they didn’t look at how they could get better at getting money in the door,” Hays says. “Very little attention has been paid to how to turn your receivables into money.”

THE WAITING GAME

In a perfect world, every client would pay legal bills upon receipt. In reality, some delay, contribute an insufficient amount, or permanently default.

Partially as a result, realization rates have declined in recent years, according to a 2016 Georgetown University Law Center report. The percentage of actually collected standard rate fees is at an all-time low of approximately 83 percent.

The percentage of actually collected standard rate fees is at an all-time low of approximately 83 percent.

Today, most firms have at least some outstanding invoices, according to Frederick J. Esposito Jr., CLM, Executive Director at 160-attorney firm Rivkin Radler, who previously managed several law firms.

“Very few I know of have zero receivables that are over 30 days,” Esposito says. “Law firms are finding they’re running into situations where clients are not paying.”

Clients may not have the money. Some dispute the amount they’ve been charged and are withholding payment until a new total is agreed upon. Others — the smallest group, Hays stresses — never had any intention of paying.

“There are hundreds of excuses,” he says, “but only three real reasons people don’t pay bills.”

Pinpointing which clients will or won’t eventually compensate you can be challenging; conducting research before you agree to work together can help.

“If you do your due diligence — put the word on the street and find out four to five firms have done work for the client — and something comes up that’s a red flag, then the firm has to decide what level of risk it’s comfortable taking,” Esposito says. He notes that some firms are also using public records to determine clients’ financial stability.”

PRE-EMPTIVE PAYMENT MEASURES

To further protect the firm from past-due payment issues, law practice management consultant Ann Guinn, Owner of G&P Associates, which works with solo and small firms, recommends including specific verbiage in the agreement.

“The collection process starts in the initial consultation,” Guinn says. “You have to have a good written fee agreement that explains how you bill and when and what will happen if clients don’t pay. You’re educating them about their obligation.”

Ensuring all parties are on the same page can prevent inadvertent issues, such as confusion about billing due dates.

Additionally, law firms can also take several other steps to increase the likelihood they’ll get paid. The following are some suggestions.

Safeguard matter revenue. “In an ideal scenario, you’d get a retainer up front that would be replenished every time it falls to a certain amount, or an evergreen retainer that you don’t apply until the end of the matter,” Esposito says. “You create a cushion; when all else fails, the firm has money and can apply it, so you’re at least covered to that extent.”

The retainer should reimburse the firm for the time and other expenses it anticipates incurring, in case clients later contest the costs, according to Jon Robertson, Partner at the four-attorney Southern California law firm Robertson & Culver, LLP.

“You want to get a sufficient amount — what you estimate the first amount of fees and costs will be, so you don’t have to be \$50 million in on a case when you get that pushback,” Robertson says.

Stay on top of invoicing. More than half of law firms feel they’re spending too much time on the billing process — which takes up to 16 hours a month for a quarter of small firms, according to LexisNexis.

Pinpointing which clients will or won’t eventually compensate you can be challenging; conducting research before you agree to work together can help.

“A lot of small firms don’t seem to be able to get their bills out on a monthly basis; they bill two to three months at a time,” Guinn says. “Some clients can’t handle a bill for several months of fees and expenses.”

She recommends billing twice a month, if possible, which provides clients with smaller, more manageable amounts. It also can help firms maintain a steady cash flow and may prevent clients from assuming they can postpone payment.

If a client's payments have stopped without explanation, the firm needs to decide if it feels it's time to take action.

"I've heard from many attorneys that their clients say, 'You didn't get around to sending me a bill for six months, so I'm not in any hurry; I'll take six months to pay you,'" Guinn says.

Stay in touch. "If you send clients regular communication — call, send holiday cards — it's much harder for them to stiff you on fees because they have a relationship with you," Guinn says.

Even if matters have inactive periods, keeping clients in the loop will show them you're prioritizing the work.

"The best thing you can do is to keep clients constantly updated," Hays says. "They can get really aggravated about a lack of progress."

Monitor your mail. Guinn recommends firm members produce reports using a program like QuickBooks to check payment status and calculate other helpful measurements, such as the firm's realization rate.

"You have to look at your aged accounts and cash flow report every single week, if not daily, and see who is still

outstanding," she says. "The longer it goes, the less chance you have of recovery."

Esposito produces two reports a month for his firm and sends notices to attorneys highlighting accounts that are more than \$1,000 and 45 days overdue.

"That prompts a lot of people to [follow up with clients]," he says. "I also CC the collections manager to see what needs to be done to follow up with attorneys. If they're not going to do it, he makes the calls."

The majority of U.S. law firms' past due accounts are the result of clients' financial hardship, according to a LexisNexis survey. Suggesting a revised payment plan may remedy the situation.

"If they say, 'We had a crisis in our business, we can pay you X amount for this month and get caught up in the last month,' you [can potentially] recover what you're owed, as long as meaningful payments are made in a fairly short time frame," Roberston says.

WHEN ALL ELSE FAILS

If a client's payments have stopped without explanation, the firm needs to decide if it feels it's time to take action.

In some instances, firms may give clients they've worked with before a little leeway.

"If a large bank in California owes me \$4,000 to \$5,000 but tends to pay in the 75-day column, I'll do the work and send a bill next month," Hays says. "If it's a small company, or I don't see it as more than a one-off case, instead of regular business, I probably would not let it go as deep."

When clients consistently fail to make fair payments, exiting the engagement may be a better option.

"If someone has a \$50,000 balance, \$100 a month is not going to cut it," Esposito says. "You want to be able to continue doing work and serving the client, but if it gets to a point where the payments can't be of any substance, you can be stuck with a hard decision."



Although some firms leave the responsibility solely to attorneys, having firm management involved in the payment monitoring process can help prevent potentially costly time gaps.

Firms may choose to file a suit. Several attorneys, however, have told Hays they've been hesitant to because the client could file a counterclaim for malpractice.

"I occasionally hear people say, 'Then your premiums will go up,'" Hays says. "You're assuming a client is going to bring a counterclaim; [even] if it does and it's a wholly frivolous claim, there probably won't be a lot of cost involved. If you're owed enough money to go after it, why would you let the fact you might have to spend some of it deter you?"

Some firms try to recoup at least a portion of the outstanding sum by reducing what the client owes them. It may encourage clients to make a payment. However, the practice can also significantly diminish the matter's profitability — particularly if the firm is one of the 71 percent that provides a discount or writes off legal work before it invoices clients, according to LexisNexis.

"Some lawyers say, 'At year-end, I'm going to cut receivables by 20 to 30 percent just to get a payment,'" Esposito says. "If you're writing off 20 percent of the time, the client doesn't pay and you cut another percent of the bill, your realization can be 50 to 60 percent. If you add that cumulatively over all clients, that's a lot of money they're leaving on the table."

A PROACTIVE APPROACH

More than half of small law firms say up to 39 percent of their total client base is typically past due, according to LexisNexis.

Given the pace law firms operate at — particularly ones with fewer attorneys — it's not surprising following up on delinquent bills isn't first on every lawyer's to-do list.

"A solo practitioner or small firm may not have a COO [chief operating officer] or in-house collections person whose entire role is to make sure the firm is getting paid," Roberston says. "You are so enveloped by the urgency of the cases you're working on that you can take your eye off that ball, in terms of collecting."

However, to maximize profitability, receiving money that's owed, before you've invested massive amounts of time trying to collect it, is crucial.

Set clear agreement terms at the start of each matter. Then closely monitor which payments are coming in, and contact clients immediately if there's a delay — and know when it best for your firm to get out.

"You need to decide upfront when negotiating with clients at what point you are going to say, 'I can't help you,'" Roberston says. "Because now, what should have been a successful venture for both sides has turned into a loss leader. You haven't been paid and are investing more money in the hopes of getting a declining payment."

Although some firms leave the responsibility solely to attorneys, having firm management involved in the payment monitoring process can help prevent potentially costly time gaps.

The longer bills linger, the less likely you are to receive the full amount from clients in financial distress. Even if you do, after the dispute ends up in court, you'll likely lose that piece of business.

"The client relationship is over at that point," Esposito says. "Some lawyers don't want to confront clients about money, so it just grows and grows. If someone in the firm's management doesn't step up, it can get out of control." ■

ABOUT THE AUTHOR

Erin Breerton is a legal industry marketing consultant and freelance journalist who has written about the legal industry, finance, business and other topics for more than 50 legal associations, magazines, websites and other publications.



breretonerin@gmail.com



www.chicagojournalist.com



twitter.com/erbrer09