

Avoiding Unpaid Fee Traps

When a client is faced with a lawyer's bill, some may react by finding dissatisfaction with the lawyer's work and refusing to pay. Attempts to recover unpaid fees, such as sending the client to collections or suing the client, all too often draw a counterclaim for legal malpractice or an ethical complaint. Even if the client is clearly in the wrong for failure to pay, lawyers usually regret having ever initiated the fee collection action. The time, energy, and expense to recover unpaid fees and defend a malpractice claim or ethical complaint make alternatives to the fee collection process much more attractive. A lawyer's efforts are often better spent on preventing the problem of unpaid fees by increasing the probability of payment, and then, if necessary, utilizing alternatives to the fee collection process.

Here are some steps you can take to avoid falling into the most common traps:

Screen New Clients

- Avoid clients who have unrealistic expectations or have fired attorneys in the past. Clients who are unhappy with their attorney's services are often the same clients who are unhappy with any bill they receive, regardless of the amount.
- In appropriate cases, you may want to consider whether the person will be financially able to pay for your services by inquiring about employment status, monthly income, previous bankruptcies, and/or delinquent finances.

Document Billing Procedures and Get Your Money Up Front

- Be explicit and clearly explain your fee structure and billing policies with your client from the outset of representation. Clients often

don't understand a lawyer's billing methods and are confused when they receive a bill. For example, clients may not understand the actual amount of time spent in terms of tenths of an hour, so explain that 0.5 reflects 30 minutes of work. If you bill for things like copying costs, explain that so clients are not surprised.

- Specify the information in a written fee agreement and engagement letter and provide copies to the client. The PLF website and BarBooks publication "Fee Agreement Compendium" are great resources for sample fee agreements and engagement letters.

- One of the most proactive approaches to avoid collection traps is to utilize "replenishable" ("evergreen") retainers, which require the client to maintain a specified retainer balance rather than setting up "accounts receivable."

Keep the Client Updated on Your Estimate of Fees and Costs

- Provide your client with an initial estimate of fees and costs and update the estimate regularly. Also provide your client with a general overview of the steps that you will take throughout the case, such as the filing of certain motions, research, and discovery analysis. This will enhance communication with your client and will help your client to accurately budget. The amount of a bill and the work that went into that bill should not come as a surprise to the client. While it is not always possible to estimate fees and costs up front, certain parts of every case can be estimated with some degree of certainty. Examine your overall fees and costs from similar past cases to develop an estimate.

- If it is not possible to provide an estimate for a particular aspect of a case, explain why an

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estimate is not possible and inform clients that you will provide them with that information if it becomes available.

- Give the client an anticipated overall timeframe for the case as well as the proposed strategy. When clients feel informed about their case, they are often happier with your representation and less inclined to be unhappy about their bill.

Bill and Collect on a Regular Basis

- Create and send out detailed bills on a regular basis, preferably monthly. Most people receive their paychecks the 1st and 15th of the month, so it is recommended that you send out bills by the 25th of the month so that clients receive the bill before or soon after they are paid at the beginning of the month. When bills are sent out regularly, clients see it as a positive sign that you are working on their case and that you maintain an organized practice. Regular bills also act as an additional form of communication, allowing clients to see the work being done and the progress being made on their case.

- Include a detailed narrative in each bill, specifying the date the work was completed, the amount of time spent, each individual charge, and the total amount due. If you were paid a retainer up front, also specify the amount remaining, if any. If you entered into an agreement for a replenishable retainer, specify the initial retainer balance, fees and costs incurred, total funds disbursed from the retainer, balance remaining, and the amount due in order to maintain the original balance.

- If you anticipate that a bill will be significantly higher than the previous month – for example, if you were preparing for trial – notify the client beforehand so the client is not surprised at a bill for such a large amount. Also consider including an additional “trial deposit” in the original fee agreement that must be paid prior to the trial date if you anticipate that preparation for and participation in trial will cost more than the original retainer amount.

- Specify the due date on all bills and establish a collection procedure that follows a timeline. For example, if you require payment within 30 days of receipt of the bill, set up a procedure to send past-due notices to clients on day 31. If a client still has not paid by day 40, send another notice or give the client a call. Institute a system that automatically sends statements and past-due notices at regular intervals, or enter a repeat tickler on your calendar reminding you or your staff to take the necessary actions in each case. Confronting clients with large unpaid bills may provoke hostile feelings, and they will be less inclined and possibly unable to pay. Be sure to consistently follow the procedure. Clients may take advantage of an opportunity to avoid payment if they think there are no consequences.

Actions to Take Before You Sue or Pursue Debt Collection

- Call the client. If the client still has not paid by the second notice, first call the client to determine the reason for nonpayment, whether it is due to personal circumstances or to the client’s being upset with you. If the client is unhappy, you can address the issues early on. Things will only get worse with time.

- Suggest alternative payment options. If a client is unable to pay the full amount due, suggest installment payments as an alternative, with a clear expectation of installment amounts and due dates. Or offer an incentive, such as a discount if paid within 10 days.

- Consider withdrawing from the case. If you have taken all of the suggested steps and the client is still either unable or unwilling to pay the bill, consider withdrawing from the case, if possible. Follow the necessary ethical and procedural requirements, and begin the process sooner rather than later. In the interim you must continue to perform legal services for your client even if the client has not paid.

Most lawyers gain clients through happy clients. Fee collection actions and suits rarely result in anything but unhappy clients, which can hurt your practice in the long run. Even if the judgment might be collectible, the pursuit of collection can result in your client badmouthing you to others and can also cause the upset or angry client to file a malpractice claim or ethical complaint against you. Even though these statements and claims lack merit, they can cost you goodwill, time, energy, and sometimes even money. Avoiding fee dispute litigation is worthwhile. Instead, explore alternatives, such as the Oregon State Bar Fee Dispute Resolution Program or some other alternative dispute resolution method, to get your fees paid and also keep a happier client. For more information about the bar programs, go to www.osbar.org/feedisputeresolution.

If you still decide to send a delinquent fee out for collection, we suggest that you have another attorney review your file to help you objectively assess whether you have made any mistakes. This review will also help you make a more informed choice whether to proceed with collections.

Ultimately, the risks often outweigh the benefits when sending the client to collections or suing for fees, and your time and energy are better spent developing a system to avoid the collections process altogether. The alternatives require careful planning and diligent monitoring, but generally won’t make a bad situation worse.

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