

## Making collections processes pay off

A nonlawyer staff member is best suited to coordinate a firm's billing practices.

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AN ORGANIZED WAY of thinking about receivables collections is an important part of law firm management, and establishing internal procedures is essential in controlling the process. The external issues that most often influence the collection potential of an outstanding client receivable are the client's financial capacity and willingness to pay. If both issues are in the firm's favor, it's usually money in the bank. When a firm has only one (or none) of these issues in its favor,

### COLLECTIONS

that's when a sound collection process really pays off.

A nonlawyer staff member is best suited to coordinate the firm's collection process. Busy attorneys simply don't have the time to handle their own collections, especially when there is constant pressure to bill more hours. When attorneys are squeezed for time, their administrative duties are often put on hold, particularly when these include the unpleasant task of hounding a client for payment. This results in their putting off the task (while not allowing anyone to contact the client) until the end of the year when the pressure is on to collect. When this practice is employed year after year, clients become conditioned to get caught up on payments to their lawyer only once a year. This practice also results in excessive discounts being offered to clients in exchange for their payment before the end of the year—a dangerous precedent.

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And now, a word or two about fear, which is that unpleasant feeling that many attorneys tend to get when one asks for permission to contact "their" clients for payment. Visions of having a client offended or (even worse) of being sued by a client for malpractice immediately come into their minds. Panic ensues, and the end result is: "Don't contact the client! I'll take care of it!" While we can make light of it, fear is a serious issue for attorneys and it must be appreciated and respected. For this reason, the goal of all staff members involved in the internal collection effort must be to earn the trust and respect of the attorney so that he or she is willing to allow them to contact the client directly for payment.

To address the fear factor, the billing attorneys should retain the ultimate responsibility for collecting their receivables, but they should have the ability to delegate some or all of this responsibility to a staff member. This will allow the attorneys to maintain control over their client relationships, while still being accountable for maintaining their receivables and work in process within firm standard guidelines.

Law firms should establish a non-lawyer internal collection function to assist the attorneys in collecting their receivables. The manager and staff members should be experienced in the field of credit and collections (not just "bill collectors") and articulate enough to communicate effectively with the attorneys and law firm clients. All staff members who are asked to contact clients for payment should be properly trained in how to do their jobs effectively and professionally.

Internal controls should be established for staff members that ensure a uniform and consistent approach to the firm's collection efforts. For example, here is one

approach to consider before direct client contact is initiated:

- Determine the clients' billing and payment history with the firm, i.e., the collected realization rate, the date of the last bill and the date of the last payment.

- Document all previous collection efforts or any known issues of client dissatisfaction regarding the firm's services.

- Schedule regular meetings (in person, if possible) with the responsible attorney to discuss the receivable balance and jointly determine the most appropriate collection strategy. The strategy may include nothing more than a telephone call or reminder letter, or it could involve the complex scenario of resolving a balance that is the subject of an alleged act of malpractice or excessive billing. In all cases, the staff member should obtain the advanced approval of the attorney before initiating direct client contact.

- Include the billing department in any discussions that involve compliance with billing guidelines issued by insurance companies, or with clients that have unique billing requirements.

Law firms should also make sure the collection staff is properly deployed. In larger firms, it is virtually impossible to contact personally every client that requires follow-up. For this reason, one should try to focus direct collection efforts toward the group of clients that represents at least 80% of the outstanding portfolio (not just the 20% that is aged beyond 90 days). If the staff still has some time on its hands, the collections manager can expand upon this list. Use reminder letters or statements on the smaller balances. Finally, if the staff is unable to obtain a response or payment from a client within a given time period, consider promptly assigning these balances to a

third-party receivables firm.

In addition, law firms should utilize a shared database to track collection activity. Managers and staff should be able to determine easily what is being done to resolve a receivable balance, no matter who happens to be working on it. This is crucial for maintaining good client relations and departmental efficiency, and for ensuring internal control of the collection process. If the firm is not prepared to invest in a new software product, then each staff member should record a summary of his or her collection activities into an Excel spreadsheet that can be accessed by all users of the document-management system.

### **Put someone in charge**

Collections are enhanced by establishing the position of collections partner to provide support to the internal collection unit. The attorney or attorneys selected for this position must have displayed the ability to manage successfully their own receivables portfolio, thereby lending credibility to their authority. Strong-willed attorneys can intimidate certain staff members and have a negative effect on the firm's collection goals. The collections partner can be a valuable resource for the staff in resolving these situations.

Law firms should additionally develop stop-work review standards to identify and resolve receivables problems before they escalate or before the firm is prohibited from withdrawing from representation. This process serves to flag potential receivables problems so that they can be addressed by the attorney or staff before they escalate. In developing the review standard, law firms should avoid a blanket approach that flags, for example, "any client with a receivable balance aged beyond 60 days." (Is a lawyer really going to stop working for a well-paying client who has one bill for \$10,000 aged over 60 days, while \$90,000 is aged current?)

A more appropriate review standard may be to circulate a list of all receivable balances where greater than 33% of the total owed the firm is aged beyond 60 days. Once a client appears on the stop-work review list for the first time, a firm should issue a

"warning" to the attorney along with the payment amount needed to bring the balance back within firm standards. If the payment is not obtained—or other acceptable arrangements made—within a given time frame, a list of these clients should be sent to the decision maker(s) who may then instruct the attorney to discontinue working for the client.

Exceptions to this policy must be made when continued representation of a client has been mandated by the court; if the client's rights would be prejudiced, thereby exposing the firm to a potential malpractice claim; or if there is an unapplied advance or retainer which exceeds the balance beyond firm standards.

In addition, law firms should establish tiered dollar approval authority limits for each of the following areas:

- Writeoffs of billed receivables and write-downs of unbilled fees and costs.
- Compromise settlement arrangements that include guidelines for obtaining settlement agreements and mutual release forms as a condition of settlement.
- Negotiations concerning the terms of client payment plans.

Firms should establish an independent file-review process before seeking arbitration and/or a lawsuit as a means of resolving a receivable balance. These independent reviews must be performed by a risk management committee or risk management partner, and only these parties should be empowered to make these decisions. (The firm's malpractice insurance carrier probably requires this independent review process as a condition of the policy.)

They should also institute a periodic financial-capacity review process for the major client balances. With the reliable database information resources available today, there is no reason to be surprised that publicly traded entities and/or insurance companies are experiencing financial difficulties.

### **Think about the bottom line**

Attorney compensation should be affected by individual performance in the receivables-management area. While

this is a sensitive topic, it is often the most effective way of ensuring compliance with the firm's new intake, billing and collections policies. The measurement criteria must be fair and equitable to all attorneys being measured. Toward that end, firms should consider the following statistical criteria: twelve-month average percentage of receivables aged beyond 60 days; total dollars written off as a percentage of total dollars billed; total dollars billed as a percentage of total dollars worked; and average days of work in process v. the standard billing cycle for the attorney's practice area.

The owners of the firm have the right to know if they have made a sound financial investment toward implementing these enhanced processes. To provide them with this information, one can quantify the impact of the enhanced processes by measuring the firm's progress in the receivables performance areas in a number of ways. For example, firms can develop monthly performance objectives for days billing outstanding, days of work in process, percentage of dollars aged beyond 60 days, writeoffs, write-downs and billed realization of dollars worked.

Another method is to issue periodic receivables reports and graphs to all owners in the firm that compare the current year's actual results with the objective and with the prior year for each of the above categories. If the firm bills, on average, \$50,000 per day, a permanent reduction in one's days billing outstanding of 10 days results in a onetime financial benefit of \$500,000. The owners need to know this information if they are to remain committed to the new process.

Finally, billed and collected realization statistics should be maintained by the billing attorney, the practice group, the respective office and by the firm as a whole. This information should be forwarded to the owners annually. NLJ

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