

“Good Clients Gone Bad – When Clients Don’t Pay; Collecting Your Firm’s Receivables”

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For lawyers, our time may be our most valuable commodity. Hard work – often including night or weekend hours, stressful negotiations, a compact timeframe – ends in a good result. A job well done. An invoice is mailed . . . but the client does not pay.

Initial Relationship with Client

There are steps we can take at the inception of the client-relationship that will improve the likelihood we will get paid for the services we agree to perform. No lawyer or law firm wants to unintentionally provide free services.

- Use engagement letters that clearly identify the fee arrangements (yes, have an up-front discussion with the client about fees), how the services will be charged and billed (whether paid in full, fixed amounts to be paid each month, flat fee, etc.), who is responsible for payment and when payment is to be made.
- Use of one of the many forms of retainers (fee estimate funded in full or in part in advance; deposit held as security for payment and not to be used for payment of current invoices; evergreen replenishment of retainer as used).
- Evaluate the creditworthiness of the client – can they afford to pay for what you may need to do?
- Check the Wisconsin Circuit Court Consolidated Case Automation Program (“CCAP”) at <http://wcca.wicourts.gov/index.xsi>
- A law firm may obtain a credit report on a potential consumer client provided it complies with the Fair Credit Reporting Act. A commercial credit report may be obtained on a non-consumer client (one such resource is Dun & Bradstreet).
- Consider collateral security for payment (mortgage on real estate; pledge of stock; guarantee of payment by another person or entity).
- Offer credit card usage as an available

means of client payment; thus shifting collection risk away from the law firm.

- Charging interest if a payment plan is negotiated from the onset; charging a late fee if the bill is not paid within agreed terms.

Slow Paying Client

For a multitude of reasons, a client may not pay as agreed. What can we do?

- Communicate with the client – ascertain the reason for the failure to pay as soon as practical.
- Use periodic interim billings – helps detect a payment problem early.
- Reevaluate the client’s creditworthiness (review information previously obtained; require new financial information, check CCAP).
- Consider whether or not to charge a late fee.
- Obtain security for future payment.
- Withdrawal as counsel of record in pending litigation.
- Establish an internal screening process that includes an inquiry of the attorney responsible for the client and/or the work performed as to the absence of a potential malpractice claim or other defense or reason for nonpayment. The process should also recognize that there is a receivable amount below which it is impractical and unwise to sue. For one firm, that amount might be \$1,000, for another firm \$5,000, and for another firm \$20,000.
- If the lawyer who worked on the case will diligently pursue collection of the receivable, that is fine. Sometimes it is more effective to have someone else within the law firm (paralegal, staff, or even another lawyer) pursue the collection of the receivable.

Outsourcing the Receivables

Consider using the services of a third-party collection agency or collection attorney.

- Benefit of a new party heard from.
- Ups the ante.
- Signals urgency.
- Reaches the distant client.
- Investigate outsourcing fee arrangements (contingency fee; flat fee; hourly rate).
- When a law firm engages another law firm to collect a receivable, the forwarding law firm now assumes the role of a client and communications between the two law firms are subject to attorney-client privilege.

Litigation

Should a law firm file suit against its client? If we sue a client, the client may pay upon being served with legal process. It is possible that the client will pay some time thereafter in the litigation process. Some clients will pay upon your obtaining a judgment. And, some clients may defend and assert a counterclaim for malpractice.

- Image and publicity (might be perceived as a sign of either good or bad business practices).
- Creditworthiness – will your client be collectible?
- Suit for fees – a “naughty” word as far as malpractice insurance carriers are concerned.
- Alternatives such as arbitration/mediation through the Bar.
- Who to sue? Is your client an individual or an entity (what form)?
- Will need account documentation to prove the balance due.
- The law firm may file suit in small claims court where the amount due is \$5,000 or less.
- The applicable statute of limitations for recovery of fees for professional services, such as legal services, is the six-year statute of limitations applicable to contracts (Wis. Stats. § 893.43).

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What is the Effect of a Judgment?

- Once docketed, the judgment is a lien for a period of ten years on real estate owned by the client in the county in which the judgment is docketed.
- The life of a judgment is 20 years, so whether or not a judgment is a lien on real estate the judgment may be enforced by execution or garnishment for 20 years from the entry of judgment.
- The usual enforcement remedies are execution, garnishment (earnings or non-earnings garnishment), or supplemental examination. These procedures may be instituted in any order and without limitation as to the number of times any particular procedure may be utilized.
- A judgment is not a lien on personal property until the client is served with an Order to Appear at a supplemental examination (a "Receiver's Lien" is thereby created, even though there may have been no receiver appointed by the Court). At a supplemental examination the client may be questioned under oath as to financial matters. Information obtained at a supplemental examination may lead to successful collection.
- If the client owns a non-exempt asset, a turnover order as to that asset may be sought from the Court to apply that asset, or its value, to your judgment.
- A judgment obtained in Wisconsin may be enforced against a client who

has moved to another state under the Uniform Enforcement of Foreign Judgments Act (adopted in all but a few states).

- Some clients will be judgment proof and thus uncollectible (perhaps because of a lack of non-exempt or unsecured assets or a limited income stream).
- Consider whether under Wisconsin's marital property law what property (including wages of a client's spouse) may be available to be applied to your judgment.


What do you do if you Receive Notice that your Client has Filed Bankruptcy?

- Stop all collection activity – you are subject to an automatic stay.
- File a Proof of Claim with the bankruptcy court in which the case was filed.
- If the client filed a Chapter 7, most likely you will not recover any of the account balance then due.
- Recovery to some extent is more likely under a Chapter 13 or a Chapter 11.
- Notify all personnel in the firm who have worked for this client of the bankruptcy filing.

Are your Debt Collection Activities Subject to Regulation?

- Law firms collecting their own debts, for services rendered by the law firm and not paid by the client, are

excluded from coverage of the federal Fair Debt Collection Practices Act and thus do not need to comply with the Act.

- The Wisconsin Consumer Act does apply to law firms collecting debts owed to them by clients, if the client was an individual (as opposed to an entity or organization), and the debt arose from a consumer transaction (where the services were rendered for personal, family, household, or agricultural purposes). The Wisconsin Consumer Act only, however, does not apply to transactions where the price of the services rendered exceeds \$25,000. The law firm engaging in a practice prohibited by Chapter 427 of the Wisconsin Statutes is subject to potentially significant penalties.
- Be aware of the federal Servicemembers' Civil Relief Act of 2003 and the Wisconsin Soldiers' and Sailors' Relief Act – they may impact your firm's collection activities and the underlying obligation owed by a client. 

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