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to knowledge, resources and networking

Association of Legal Administrators

CLIENT INTAKE & RISK ASSESSMENT

JOHN T. PODBIELSKI, JR.
CLIENT SERVICES MANAGER
UNGARETTI & HARRIS LLP

AREA OF OPPORTUNITY AT MANY LAW FIRMS

- Many firms do no or minimal due diligence prior to taking a new client on; probably the norm
- Review reasons for write offs for the past 3 years
  - Client did not have the financial ability to pay
  - Client did not want to pay
- Calculate totals for each year = potential lost revenue
- Potential lost revenue > salary + benefits of collection/credit manager?
- Could these write offs have been averted with better information on the front end?

WHAT IS THE FIRM'S OBJECTIVE?

- Goal: successfully balancing risk with the need for new business
- New business is more important than ever with decreased demand for legal services in an ever competitive marketplace and challenging economy
- Every law firm has a different tolerance level for risk
- You need to determine your firm's risk tolerance level
- Bottom line is that firms need to manage risk (better)

AREAS OF CONCERN

- Client’s financial ability to pay anticipated fees and costs
- Client’s willingness to pay
  - Willingness to pay is important consideration because most firms are reluctant to file a lawsuit against a client, yet alone threaten suit because of malpractice concerns
  - Putting aside those concerns, time and costs associated with collections
  - Much more difficult to gauge willingness to pay in advance
  - Not as frequently considered at the client intake level as it should be

WHEN SHOULD YOU START EVALUATING RISK?

- As early as possible in the vetting process:
  - Conflicts check is being performed
  - The firmwide blast email is sent –
    “Is there any reason we can’t represent . . .”
  - Prior to that first meeting with the prospective new client
  - Marketing to potential new clients
  - When the new client matter form is submitted

WHEN SHOULD YOU START EVALUATING RISK?

- Evaluating risk when the new client matter form has been submitted may be too late because the engagement has already commenced and work has already begun; in some instances it is even finished.
- Unless the work has already been completed, risk can still be managed but it becomes more difficult to do so.

YOUR GOAL WHEN EVALUATING RISK

- Obtain as much relevant information to develop a snapshot of the client which will enable you to reach an informed decision regarding their financial ability and willingness to pay for the expected work to be performed.

WHAT CAN YOU DO TO MINIMIZE RISK?

- Evergreen or security retainer
- Increase amount of the retainer
- Guaranty – principals, parent company, spouse or parent
- Increase hourly rate to take into account the increased risk
- Client pay third party expenses directly or advance all costs
- Place on credit watch list and review periodically
- Monitor client’s a/r closely – keep on short leash
- Withdraw, stop work or terminate representation
- Signed engagement letters – all clients

BASIC INFORMATION YOU NEED FROM ATTORNEYS TO EVALUATE RISK

- Client name
  - Business – location, preferably headquarters
  - Individual – full legal name including middle initial (especially if a common name) and address (at least city & state)
- Nature of work being performed
  - Type of practice area, e.g., litigation, transactional
  - Description of matter
  - Lead counsel, local counsel or local counsel +
- Estimated total fees
- Average expected monthly billings

PROPOSED RISK RATINGS

- Three Categories
  - A or Low Risk
  - B or Medium Risk
  - C or High Risk
- Track by client in collection or billing software
- Concerns, reasons for the concerns and measures to minimize risk should be communicated to the billing attorney
- Example in use - Miller Johnson

RISK ANALYSIS - INDIVIDUALS

- Individuals
  - Current occupation or profession
  - Estimated annual salary
  - # of years employed in that profession
  - Industry in which client is employed – strong, depressed or steady?
  - Real estate ownership – estimated FMV
  - Real estate taxes – paid timely or delinquent
  - Vehicles owned
  - Business/Corporate affiliations
  - Prior bankruptcy filings - # of years that have elapsed
  - Judgments, satisfied or unsatisfied
  - Pending litigation in which the client is a defendant
  - Federal or state tax liens, paid or unpaid
  - Client changing firms or counsel
  - Outstanding disputes with previous counsel
  - Filed any legal malpractice cases

RISK ANALYSIS - BUSINESS

- Businesses
  - # of years in business – scrutinize if < 5 years
    - Newly formed corporation/LLC
    - Start-up or recent start-up
  - Industry in which client is engaged in – strong, depressed or steady
  - Publicly traded company – review recent SEC filings on EDGAR
  - Prior bankruptcy filing - # of years that have elapsed
  - Substantial unpaid judgments
  - Pending litigation which is other than routine/expected
  - Substantial unpaid federal or state tax liens
  - Client changing firms or counsel
  - Outstanding disputes with previous counsel
  - Filed any legal malpractice cases

RISK ANALYSIS - BUSINESS

- Dun & Bradstreet
  - Credit limit recommendation, if any
  - Risk category for business – high, medium or low
  - PAYDEX – how fast client pays their bills
  - Commercial credit & Financial stress score classes – 1, 2 or 3 are best; 5 deserves closer scrutiny
  - D&B rating
  - Overall financial strength of company
  - Other red flags

OTHER CONSIDERATIONS IN ASSESSING RISK

- New client related to an existing client
- Source of the referral of business
- Nature of the work to be performed
  - Work presupposes the client has the ability to pay, e.g., estate planning, business purchase, etc.
  - Client may not pay if an adverse result, e.g., criminal liability, judgment, cratered deal, etc.
- Originating or billing attorney’s track record of taking on risky clients, managing their a/r and history of prior write offs

WHAT RESOURCES ARE AVAILABLE ON INDIVIDUALS?

- Low or No Cost Resources
  - LinkedIn
  - Google/Bing
  - Clerk of Circuit Court’s website for county in which the client resides
    - Past and current case filings
    - Judgments
  - County Treasurer’s office – real estate taxes paid timely or delinquent?
  - Municipality’s Assessor’s office – FMV of real estate owned
  - Last but not least, the attorney

WHAT RESOURCES ARE AVAILABLE ON INDIVIDUALS?

- Leverage Existing Resources at Low or No Cost
  - Westlaw PeopleMap or People Finder
  - LexisNexis SmartLinx
  - PACER – www.pacer.gov
    - Bankruptcy filings
    - Federal court cases
- Costs Involved
  - LexisNexis Accurint for Legal Professionals

WHAT RESOURCES ARE AVAILABLE FOR BUSINESSES?

- Low or No Cost Resources
  - Client's own website – does it have one?
  - EDGAR - edgar.sec.gov
    - for publicly traded companies only
  - LinkedIn – company profile
  - Delaware's Secretary of State's website or
  - Secretary of State or Division of Financial Institutions website in which the client is incorporated
  - Clerk of Circuit Court's website for county in which the client is located
    - Past and current case filings
    - Judgments
  - Google/Bing
  - Last but not least, the attorney

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    - Federal court cases
- Businesses – Costs Involved
  - Dun & Bradstreet – DNBi Risk Management Report
  - Experian Smart Business Credit Report
  - Equifax Commercial Credit Report
- Check with your Librarian or Marketing Dept. for additional resources available

WHO SHOULD BE MAKING THE CREDIT DECISIONS/RECOMMENDATIONS?

- Experienced Credit/Collections Manager
- Firm Administrator
- Managing Partner
- Finance or Billing & Collections Committee
- Staff Counsel
- Respected Partner w/business acumen, financial background and/or who is a CPA/accountant
- Not the attorney opening the new client matter but they should be cognizant of the concerns

WHO CAN DO THE LEGWORK?

- Leverage your existing staff particularly those that may have downtime
  - Conflicts coordinator or conflicts staff
  - Librarian or library staff
  - Billing assistants
  - Receptionist?
  - Credit/collection staff
- Develop “specialists” in this area for the best results

REAL LIFE EXAMPLES – NEW CLIENTS

- Setting up a new corporation and the initial operating agreement for an individual who you've never had a relationship with
- Setting up a new corporation for the principal of a good paying existing client
- Estate planning
- Civil appeal for a new client who lost a substantial case at the trial level handled by another law firm
- Temporary injunction for a small to mid-size corporate client
- White collar criminal proceeding for an individual
- Individual who filed a Chapter 7 the prior year

SOME FINAL THOUGHTS

- You have to start somewhere
- Providing information in advance of the engagement will help raise the awareness among attorneys regarding a client’s financial and willingness to pay
- Attorneys need to be aware of your concerns because they can help
- Credit review and risk assessment is ongoing throughout the client engagement
- It works!!!

THANK YOU

Contact Information

John T. Podbielski, Jr.
UNGARETTI & HARRIS LLP
70 W. Madison St., Ste. 3500
Chicago, IL 60602
(312) 977-4885
jpodbielski@uhlaw.com