Maximizing Leverage Opportunities to Achieve Success in Collections

By John Podbielski

For those unfamiliar with the collections process at many law firms, to say it is unique may be an understatement. It still remains very much attorney driven notwithstanding all the compelling reasons why it probably should not be. While law firms have made strides to take a more businesslike approach to collections, they fall behind their peers in other industries. One area of opportunity, which often isn't discussed, is the way law firms can maximize leverage they have over their clients to obtain timely payment.

Perhaps the best time for attorneys to focus on collections is when the law firm is performing work for the client. The odds of getting payment are much higher during the course of the engagement. This is the time the client needs the firm the most and it has considerable leverage. If the client doesn't pay, they are well aware of the possible consequences -- the lawyer can terminate the relationship and/or withdraw from the case. Even better if those consequences are clearly spelled out in the engagement letter which is signed by the client. When the engagement is over though, and the client no longer needs the firm, it may not be as easy to collect, particularly if the client never expects to engage the firm again. If the client is experiencing financial difficulty, it will certainly not be difficult for the client to put the law firm's bill at the bottom of the priority pile vis-à-vis other competing creditors.

Firms seeking to maximize leverage while work is being performed should also consider having a stop work policy. Typically, this policy is triggered when the client's accounts receivable (plus Work in Progress (WIP) = Firm Investment) reaches some designated dollar amount and days of aging. These numbers can vary from firm to firm depending on the firm's tolerance for risk and culture. When the client's receivable reaches the designated dollar amount and days of aging, the attorney is reminded of firm policy and that work for the client will need to be stopped subject to and limited by the Rules of Professional Responsibility. Under the policy, the attorney is then obligated to notify the client that work will be stopped unless they bring their account current within some time period. If the client still wishes to use the firm's services, it will bring their account current or reach some other accommodation.

Matters in which the firm has achieved a good result or a successful outcome for a client is another leverage opportunity for law firms. It is probably one that firms do not avail themselves of as frequently as they should. It could include a number of different scenarios such as prevailing on a motion for summary judgment, a defense verdict in a case with signficant financial exposure or the closing of a very complicated transaction. These are the times to make sure that the firm gets the bill out to the client as soon as possible and, if there is a past due balance, to bring it to the client's attention. It is human nature that as time passes, gratitude diminishes and memories fade. Firms need to take full advantage of times when the client thinks highly of the firm and the work that was performed.

The same can be said for many types of transactional matters. In anticipation of a closing, any open invoices and a pro-forma should be presented to the client for review. Furthermore, a line item should be included on any closing statement for fees and costs through the close of the transaction. Lawyers who are really on top of it will even ask for a "cushion" for pre-closing work to cover disbursements that don't hit until later and anticipated post-closing work. Unless there is a legitimate reason, it is going to be difficult for a client to object to payment at closing under these cirumstances. If the client does voice an objection, it certainly will provide the attorney an opportunity to address any possible issues which may have been raised. It starts the conversation earlier, rather than later. The goal would be to resolve those issues resulting in payment at the closing or by wire shortly thereafter.

Leverage opportunities exist at the client intake stage as well for new clients to the firm. In exercising this leverage, firms can minimize the risk of financial loss. One such leverage opportunity would include a firm policy requiring that all new clients to the firm whose financial ability to pay is unclear, pay a reasonable retainer in relationship to the anticipated work to be performed. Clients asking about the retainer would be told that the firm requires a retainer for all new clients without an established payment history. Clients that truly wish to engage the firm and have the financial ability to pay, will pay the retainer. Other clients who are unwilling to pay the retainer or seek to negotiate the amount, are the same ones who balk at paying their balance down the line. Alternatively, they may want a discount. Is this a client that the firm really needs or wants? It certainly doesn't start the relationship off on the right foot.

Leverage opportunities also exist at the client intake stage for existing clients of the firm. This is more so the case for clients asking the firm to perform work on a new matter when they have a past due balance. New client matters for existing clients meeting some receivable dollar and aging threshold (> 60 or 90 days) should be flagged at intake. When this occurs, the billing attorney is notified that the matter has been flagged and is "on hold" until payment is received or firm management is satisfied that payment is forthcoming. This usually generates prompt action by the attorney to resolve the issue so the matter can move forward.

Other leverage opportunities also exist at client intake to establish the tone of the financial relationship between the law firm and the client early on. Some firms have enacted policies to ensure clients pay agreed upon retainers and return signed fee agreements. At these firms, clients who do not pay the retainer or return the signed fee agreement are subject to having their matters shut down until they have complied with the firm's conditions for being engaged. For firms that enforce these policies and not view them as merely perfunctory, clients recognize that the firm is serious about getting paid.

In summary, numerous leverage opportunities exist for law firms over their clients to ensure timely payment. It is important to recognize these opportunities and to seize upon them when presented. In maximizing these opportunities, firms will be able to achieve success in collections.

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