President's Message

Where Art Thou Credit & Collection Policy?

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It continues to amaze me, although having been in the legal industry for some time now, I shouldn't be surprised by the number of firms that have no credit and collection policy in place. I've found that it certainly doesn't discriminate based on firm size. In fact, one of the largest and most profitable firms per partner in the world doesn't even have a collection department or for that matter a manager. I guess why need either when the firm and its partners are raking in money hand over foot. Right? The small firms perhaps do a better job than the larger ones. Imagine a law firm of 1000 attorneys, all with different and distinct credit and collection policies, depending on who the billing attorney is.

In some ways it is surprising. Law firms are a type of business. Aren't they? They look, feel and sound like a business. In fact, they are businesses – partnerships, service corporations and LLCs. They hire business people with MBAs, CPAs and JDs to help them run their firms. Law firms mandate the minimum number of hours their partners and associates should bill so they can have a job and to get a bonus and for that matter a nice bonus. They tell them how much they can charge a client on an hourly basis. They tell them when they need to get their time in and when they need to get their bills out. But many give their attorneys free reign in selecting clients and when it comes to collecting their bills.

Firms are certainly trying to run their firms more like businesses. Part of that is increasing pressure by clients for firms to run more lean and efficient ships. They've hired project managers to manage their clients' matters and their own internal projects. They're cutting costs where they can and asking their staff to do more with less. They're outsourcing just about every aspect of firm operations from the mail room, word processing, reception and even library services to save money. Secretary to attorney ratios are now common at 5 to 1 and in some cases even higher. They're even starting to squeeze partners and associates into same size offices as they look to move into new real estate.

I look at firm staffing levels. I think that says a lot about firm priorities. Which departments have the most? Hands down it has to be IT almost all the time. Justified? Maybe so. A second – probably marketing – the department that helps the firm's attorneys get future business and potential revenue. Which department has the least, if the department even exists? Collections, the individuals at the firm charged with collecting from clients for work already performed by its attorneys – the firm's existing revenue source. Does that make sense to you? It doesn't to me.

I think to myself – what if other businesses handled customer selection and collections like law firms? The closest analogy I can think of is in sales. Although salespersons are typically not "owners" of businesses like partners of law firms, I don't know that it matters. What if salespeople could dictate who their company's customers are and when and how their collection efforts take place? What would happen if a salesperson could have a say on whether an order could go through without knowing whether the customer had the financial ability or willingness to pay for the goods? Think of what would happen if new orders could be shipped even though the customer hadn't paid for past orders? Imagine what would happen if sales professionals told company management to hold off on collection efforts because "I have it handled," "they're good for it" or "they will pay"? It's frankly comical to think this could ever happen, but this is a common occurrence in law firms every single day.

Why don't more firms have credit and collections policies? At least for the largest and most profitable firms, there is no reason to. Gross revenues, revenue per lawyer, and profits per partner are already at firm record levels and continue to increase year after year. Why topple the apple cart to upset a good thing you have going? Who wants to be the fall guy when attorneys push back or things don't go as anticipated in implementing such a policy? Not many people when law firms are more interested in short term objectives like how much partner distributions will be at year end.

I think part of it, in my opinion, is that firm management accepts and shares the billing attorney's distorted view that someone else other than themselves contacting their clients will impair, harm or damage their relationship with the client. The problem is that billing attorneys themselves don't want to contact their clients to address their receivables either. A 2014 LexisNexis survey of 309 U.S.-based law firms found that for many lawyers asking a client for money they earned was embarrassing, uncomfortable and for some, even "distasteful." They're comfortable sending a reminder statement month after month – hardly an effective collection strategy. Instead what is needed is a telephone call, an email or even a meeting with the client and escalated collection efforts if the client is not responsive.

Hand in hand with the above observation is an obvious misunderstanding of how professional collectors work in a law firm or professional services setting. What probably is needed is some additional education on this subject for firm management and attorneys. A good number of attorneys seem to think that collections is synonymous with confrontation and that any conversation a collector would have with their client would be "ugly" at best. (Perhaps that is how they envision the conversations they would have if they called a client, and the reason they don't call.) This is far from being the case. Professionally trained collectors really perform more of a client service function. They answer questions. They provide documents – bills, reminder statements and payment histories.

They know the distinction between soft collections and hard collections. They know the correct approach to take, what to say and how to say it depending on the particular circumstances. Attorneys with this misguided line of thinking would probably be surprised that a professional collector would initially contact the accounts payable department or the controller at the client and the conversation (resulting in payment, by the way) would take place without even using the words late, past due, demand or collect.

Firms also seem to have little confidence that increasing credit and collection resources will have meaningful impact. When a law firm faces economic challenges, their focus is not to seek ways to increase revenue particularly with increased collection efforts but to cut costs and expenses. And there is a great deal of incentive for them to do so. By focusing on decreasing costs and expenses, they are able to see almost immediate guaranteed results. In today's drive thru society, results are needed yesterday, not tomorrow. On the other hand, increasing collection efforts may mean spending more money in the short term to bring in more resources for what firm management views as a potential increase in revenue which is tenuous at best. Again, who wants to be the fall guy when that strategy doesn't work? Not many.

You would have thought that the recession several years ago would have had more of an impact on law firms to change their ways with respect to credit and collections. For some firms it did, but for many it did not. Instead, their focus was on the expense side. The stories of associates and staff being laid off, summer class sizes shrinking, offers being rescinded and partners being deequitized seem distant now considering the good times firms are now experiencing. I am not suggesting that it was wrong to do, but an approach coupled with an emphasis on best practices in credit and collections, could have been much more impactful and meaningful in the short and long run. Undoubtedly, it would have been one of the most opportune times in recent history for law firms to make some significant inroads in this area. Remember the quote by Winston Churchill: "Never let a good crisis go to waste." Many firms squandered that opportunity.

The time is now and not before the next economic crisis for law firms, small and large, to run like businesses and true partnerships instead of offices with individual sole practitioners with distinct credit and collection policies. Bold and courageous leadership willing to take risks is necessary along with management buy-in, backing and support to initiate these changes. It will also require being steadfast and staying strong in the face of likely push back by attorneys. Maybe someday I'll be writing on an entirely different topic. While I am a generally optimistic person, I think we'll be revisiting this issue again.

President, Greater Chicago Chapter of
the Association of Legal Administrators

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