BY JOHN T. PODBIELSKI JR.

Bringing Home the Bacon

Collection of accounts receivables represents a growth opportunity for any law firm despite the worldwide economic slowdown.

While economists continue to debate whether the economy is in the middle of a recession or heading toward one, in many respects, it may already be a moot point. A housing market slump, record-setting gasoline prices, ever-increasing grocery prices, and surging job layoffs are evidence of what many of us already know – that we are experiencing a significant economic slowdown.

It was once thought that law firms were insulated from the effects of a poorly performing economy, but that is no longer true. In fact, the economy's negative impacts on law firms have already materialized. Within the past few months, many law firms have trimmed administrative staff, associates, and even partners for both financial and purported performance reasons. More cuts are likely to follow. A recent survey by Lateral Link, a legal placement firm, reveals that nearly 30 percent of associates at major law firms are afraid of losing their jobs.

One area that law firms tend to overlook, but which presents a significant opportunity for increasing revenue in an economic downturn, is collection of the firm's accounts receivables. Implementation of some or all of the suggestions in this article can contribute to the financial success of your law firm as it weathers the current economic storm.

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> In hiring a collections manager, it is important to consider the individual's management style and philosophy. An autocratic or authoritarian management style has its time and place, but on a long-term basis, will likely result in low morale, resentment, absenteeism, and high staff turnover.

HIRE AN EXPERIENCED COLLECTIONS MANAGER

Many law firms are failing to capitalize upon the valuable experience a collections manager can offer to maximize the collection of its receivables. Many law firm directors of finance, chief financial officers, and controllers simply do not have the time, interest, or requisite experience to manage collection of their firms' accounts receivables. The same could probably be said of many law firm administrators, office managers, and billing managers who have been asked to oversee collections for their firms or offices. The result: Substantial amounts are being written off annually, even when all available options may not have been exhausted.

An experienced collections manager, collaborating with management, can greatly assist the firm with available collection options, the latest collection, asset location and skip tracing techniques, and suggestions on how to motivate collections staff in order to optimize productivity. The successful manager should also possess the skills to professionally develop the firm's collection staff through proper training, direction, and coaching. Because collection of a law firm's own receivables is not the same as third-party collections, the manager must be capable of collecting the firm's receivables without impairing client relationships. Any manager should also possess strong client service skills in order to fulfill various internal and external requests from billing attorneys, legal secretaries, and clients. Finally, the manager should personally handle the firm's most complicated billing and collection issues.

In hiring a collections manager, it is important to consider the individual's management style and philosophy. An autocratic or authoritarian management style has its time and place, but on a long-term basis, will likely result in low morale, resentment, absenteeism, and high staff turnover. On the other hand, a manager with a consultative or participatory management style draws upon the collections staff's collective educational, employment, and life experiences, and further encourages staff input, suggestions, and feedback. This style allows collections staff to be true partners in the collections process and for them to achieve their full potential. The collections manager's performance should be measured by his ability to fulfill the above criteria, meeting and exceeding the firm's collections target, and improving the firm's days fees outstanding.

EMPHASIZE A YEAR-ROUND COLLECTIONS STRATEGY

Many large law firms collect as much as 25 percent to 40 percent of their gross receivables in the last two to three months of the year. Clients have become accustomed to the fact that many of their law firms will be contacting them for payment during that time of year. In turn, for payment by year end, the client ordinarily requests and obtains some discount from the firm, notwithstanding that payment was due some time ago. Some firms have recognized the flaws with the approach of emphasizing collections only at year end and the resulting consequences. Year after year, they vow to change things; however, for various reasons, they eventually find themselves in the same situation they were in the previous year (and every year prior) regardless of their best intentions.

Partnering with the firm's collections manager, the firm should develop a comprehensive collection strategy that encompasses every aspect of credit and collections, from initial client intake to referral to agencies and collection law firms. The strategy must be well thought out and, with few exceptions, include a systematic approach to collections. As an example, the strategy should provide for a specified collection activity depending on the age of the receivable. The directive to establish the collection strategy should come from firm management. Because each law firm has its own distinct culture, there is no "one-size-fits-all" solution. Rather, the strategy should be formulated through a consultative process that allows all the partners opportunities to provide their suggestions and input. The draft strategy should then be run by the practice group chairs and a "focus group" consisting of a cross section of the firm's billing attorneys from different offices.

After the practice group heads and focus group have provided their feedback, and the strategy is put into final form, firm management should announce the new collection strategy. Thereafter, it should be rolled out to the partners in small group sessions for them to understand the rationale behind the strategy and ask any questions. For the collection strategy to be successful, it must be fully supported and embraced by firm management.

FOCUS ON COLLECTIONS, NOT REPORTING AND "CLEAN UP" OF ACCOUNTS

Many firms request various different reports from their collections staff on a weekly or biweekly basis in order to monitor collections. Often, the type and frequency of the reports requested are redundant, and these reports contain dated information and may result in more questions than answers. Even worse, the reports are not reviewed and, if reviewed, do not result in any substantive action being taken. Furthermore, all of the time that staff spends on preparing reports is time that could be devoted to collections.

This is not to suggest that certain reports are not useful in monitoring and even collecting the firm's accounts receivables. Firm management certainly has a duty and obligation to be aware of the status of its larger receivables and work in progress. What is important is what occurs following a review of these reports, and that a greater amount of time and resources is devoted to collections. Furthermore, the type and frequency of reports must be consistent with the objective of collecting the firm's delinquent receivables. Reporting for the mere sake of reporting does not lead to the increased collection of revenue. The firm should review its processes to determine if its current collection approach emphasizes reporting and "clean up" of accounts over collections. If the approach is heavily weighed toward reporting and clean up compared to collections, then the firm should reevaluate its approach.

The heavy emphasis by firms on reporting often leads to some confusion by collections staff on their primary objective – is it reporting or collecting? The collections staff's primary goal should be to expediently collect the firm's receivables in a professional and ethical manner. Timely, accurate, and meaningful reporting that furthers the firm's primary objectives should be the staff's ancillary objective.

INVEST IN SOPHISTICATED COLLECTION SOFTWARE … AND USE IT

With millions of dollars often at stake, it is surprising how many law firms do not utilize collection software or do not fully utilize the available features of its collection software. Some firms opt to use Microsoft Outlook and Excel to collect their accounts receivables.

Sophisticated collection software should streamline and automate the firm's collections processes, including any reporting requirements. Typically collection software will allow you to maintain contemporaneous records of all client contacts and diaries for payment due dates and follow up. Client contact information including addresses, telephone numbers, and e-mail addresses should also be readily accessible.

The ability to send automated email messages to billing attorneys when an account is "x" days past due should also be a component of any software, as should the ability to create merge templates for correspondence, facsimiles, and e-mail messages. The collection software should also have the capability of producing aging reports in a concise format that firm management can easily understand and utilize. Moreover, the software should provide the firm with the flexibility of preparing aging reports at the client, matter, and invoice levels. Lastly, the software should allow the collections manager to produce work effort reports in order to monitor staff productivity.

In addition to available law firm collection software, firms may want to consider software utilized by agencies and collection law firms for third-party collections. The firm should be able to integrate any such software with its billing program, but it may require some custom programming by the software vendor or the firm's IT department.

ALLOW YOUR STAFF TO WORK SERIOUSLY PAST DUE ACCOUNTS

Like other businesses that provide services, law firms are entitled to have their invoices paid in a timely manner. As one law firm chief operating officer aptly told me, "No client should rightfully be offended if we are calling regarding an account that is 60 days past due."

Billing attorneys should be allowed to collect their own receivables until such time that firm management agrees that accounts are considered seriously past due. This could be at the 45-, 60-, 75-, or 90-day threshold, depending on the firm. Unless payment is forthcoming or satisfactory arrangements have been made with the billing attorney, the firm's collections staff should be permitted to contact the client regarding payment.

Frequently, client contact will consist of soft collections – a warm telephone call to the client's accounts payable department. A friendly reminder letter or e-mail that gives the client the benefit of the doubt should be utilized if the client is unresponsive.

REFER ACCOUNTS OF CLIENTS THAT WON'T PAY

When a firm runs out of options for collecting its receivables, its ability to collect decreases considerably. If a client remains unwilling to pay despite the firm's best efforts to persuade it otherwise, the law firm has to be prepared to escalate the collection process. Referral of an account to a collection agency or collection law firm and filing a lawsuit are several options to escalate the collection process. For a variety of reasons, law firms are typically hesitant to take this next step. However, law firms are leaving way too much money on the table by ending the collections process with merely internal collection efforts. The firm's belief that the client

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relationship may be salvaged or that the client may send additional business its way is at best wishful thinking. The relationship between the client and the firm has probably already been irreparably damaged. Furthermore, why would the firm want to do any additional work for the client to again face the prospect of not being paid?

A demand letter from a collection law firm in the area where the client is located conveys a powerful message that that matter has escalated to a new level. Most clients know that, compared to collection agencies, collection law firms have the ability to sue. Numerous collection law firms represent businesses, including law firms, collecting their receivables on a contingent fee basis. Firms typically charge a fee between 20 percent to 33.3 percent of the amount collected, plus court costs.

The firm's collections manager may already have established contacts with some of the leading collection law firms. The Commercial Law League of America (*www.clla.org*) is another excellent resource. Small-balance accounts under $5,000.00 may be referred to collection agencies. Prior to referring an account to either a collection agency or law firm, the firm's collections manager should send a final demand letter informing the client of the firm's intended action and allowing the client one final opportunity to make payment. A final telephone call may also be in order. The firm, however, should not threaten the client with any action it has no intention of taking.

The firm should ask several questions as it considers whether to refer an account out to a collection law firm or to file a lawsuit for the recovery of fees and costs:

- Is the client not paying because it can't pay or won't pay?
- Does the client have any legally justifiable reason for not paying the debt?
- Has the client acknowledged orally or in writing that it owes the debt?
- Is the firm performing any legal work for the client, a related entity, or a principal for the client?
- Will referral of the account or filing suit adversely impact any other existing or future client relationships?
- Is the client collectable? Have assets and income been verified? Will the client likely be collectable in the future?
- Does the state or country in which the client has assets have an effective enforcement mechanism for collection of any judgment?
- Is the billing attorney comfortable with the referral or filing suit?
- Has the practice group chair or a colleague reviewed the invoices and file for any potential legal problems?
- Has the firm's general counsel reviewed the invoices and file for any potential legal problems?
- When does the statute of limitations for legal malpractice expire? Can suit on the firm's claim be filed after the statute of limitations for legal malpractice has passed?

LEARNMORE

ALA Resources

These titles are available through the ALA Bookstore at *www.alanet.org/bookstore*:

- *Collecting Your Fee: Getting Paid from Intake to Invoice*, by Edward Poll
- *Secrets of the Business of Law: Successful Practices for Increasing Your Profits*, by Edward Poll
- *The Essentials of Finance and Accounting for Nonfinancial Managers*, by Edward Fields

The following articles are available in the *ALA Management Encyclopedia*SM (ALAME), *www.alaencyclopedia.org*:

- "A Cost Accounting Tool"
- "E-Billing Management"
- "Value Billing: How to Implement Alternative Billing Arrangements"

The following articles are available in the Publications section of ALA's Web site at *http://www.alanet.org/publications/legalmgmt.aspx*:

- "Balance Paid: Avoid Common Mistakes in Managing Accounts Receivable," September/October 2007 issue of *Legal Management*
- "Understanding Leverage: The Secret to Increased Profitability in a Competitive Market," September/October 2007 issue of *Legal Management*

On the Web

- *Law Practice Today*, "Two Techniques to Dramatically Improve a Law Firm's Net Profit" – *www.abanet.org/lpm/lpt/articles/fin04081.shtml*

If the law firm determines after running a cost-benefit analysis that suit should not be filed, it can direct the collection law firm to explore settlement with the client or simply close the file.

CONSIDER ACCEPTING ONLINE PAYMENTS

In addition to accepting bank wires and lockbox payments, a law firm should consider establishing a secure Web site to accept ACH payments and possibly even credit card payments. By setting up a Web site and informing clients of the address on all invoices and statements (e.g., *paybiglawfirm247.com*), clients could pay their invoices 365 days a year, 24 hours a day. Similar to PayPal, or businesses that accept payments via their own secure Web sites, clients could pay their bills online by simply entering their bank routing numbers, account numbers, matter or invoice numbers and the dollar amounts. In order to keep unapplied payments to a minimum, a client who failed to enter a matter or invoice number would be unable to complete the transaction until the information was provided. For most law firms, the cost of accepting ACH transactions via a Web site is very economical – merely pennies on the dollar, if that. Many vendors can assist a firm with implementation.

Although there may be some initial reluctance to accept credit card payments because of the associated costs, the fees are probably not discernibly more that those charged by some third party e-billing providers. Alternatively, the firm may consider accepting credit card payments only upon the request of a client or limit transactions to a maximum dollar amount to keep costs low.

Implementing this additional payment option will also assist law firms during their year-end collection pushes as they attempt to collect every last dollar prior to closing out their books. At that time of the year, firms often provide their clients with the account numbers for their preferred overnight couriers. This practice and the associated expenses incurred by the firm would be virtually eliminated.

Accepting client payments via a secure Web site should increase the firm's cash flow and decrease the firm's days fees outstanding. With clients constantly looking for additional ways to reduce costs, this may eventually become the preferred method of payment. ❋

about the author

John T. Podbielski Jr. is the owner of Leading Change, an accounts receivables management consulting firm. He is also the managing partner of The Podbielski Law Group Ltd., a Wisconsin collection law firm. Contact him at *jpodbielski@wi.rr.com*

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TECHNOLOGY FOR THE BUSINESS OF LAW

Common Sense

Accounts Receivable

BY STU KNAZIK

I am considering two different promotional gifts for everyone who finishes reading this article. You only need to tell me which you would prefer – $1,000.00 now or $1,000.00 in three years?

The offer is hypothetical, of course, but if you are like most people, you would choose to receive the $1,000.00 now. After all, three years is a long time to wait. Why would any rational person defer payment into the future when he or she could have the same amount of money now? For most of us, taking the money in the present is the biggest "no-brainer" imaginable.

There are two primary reasons for this. The first is the "time value of money." This concept is based on the likelihood of inflation, the prevailing interest rate, and the assumption that you would prefer to have your money in your bank earning interest for you rather than in your debtor's bank, earning interest for it.

The second reason is that the probability of collection decreases over time. Overall, according to collection industry statistics, at six months, you are likely to collect your money only half the time. This is an overall average. Your situation may be better or worse – consider how often your debtors pay you after six months.

TYPICAL EXCUSES

Debtors have varied reasons for not paying your firm. Here are the most common:

- **Your bill is not a priority.** Most debtors who delay paying you are still paying the bills they feel are important: mortgage or rent, taxes, utilities, etc. The challenge is to help them prioritize your bill – to place it nearer the tops of their lists. You probably won't supersede food, shelter and clothing, but how about their charge cards, cell phone, cable TV, school fundraisers, etc.?
- **Your business doesn't "need" the money.** A common attitude among your debtors may be that you or your firm doesn't "need" the money – or that they "need" it more than your firm does.
- **Waning gratitude.** As time goes by, the debtor become less appreciative of your services, or less grateful that you were able to help solve their problem.
- **Embarrassment.** As more time goes by, the debtor is embarrassed, is unlikely to want to even raise the issue, and may not even open your mail.

Ultimately, what happens the next time the debtor needs you? One of two things – either the client is too ashamed to call, so he or she elsewhere. Or, the client does call again because he or she knows your firm does not insist on being paid in a timely manner.

THE SOLUTION

The most cost-effective way to collect outstanding accounts is to take the following steps:

- Contact all debtors at 45 to 61 days by phone, e-mail and/or fax, as well as by mail.
- Verify that they received the bill(s).
- Make sure they understand the bill(s).
- Confirm that they intend to pay.
- Resolve all disputes now.
- Set up reasonable payment schedules now.
- Monitor the accounts for promised payments.

At 45 to 61 days, you should adopt the tone of a friendly, customer service call rather than a "collection" call. At this point, you are attempting to work with your debtor, trying to solve two problems (the debtor's and yours), and trying to create a win-win solution. Remember the adage about catching flies with honey instead of vinegar?

MAXIMIZING RESULTS

Consider these common sense tips in order to be most effective in collecting accounts receivables in your firm:

- Schedule contacts early – early in the day, early in the week, early in the month.

- Make contact often – if there is no response to your phone call, send an e-mail, follow up with a fax, and then a letter until you have some response.
- At each actual contact, if the debtor is unable to pay the balance in full, ask for some payment now. It is helpful to suggest this in terms of a good faith payment – the debtor's affirmation of the debt and intention to pay.
- Every payment promise should include an amount (either payment in full or some other amount), and a due date. "I'll send you something as soon as I can" is not an effective promise.
- Effective payment arrangements do not extend beyond three payments. If your debtor needs more time than that, say something like: "OK, you'll be sending us $100.00 tomorrow, at least $300.00 in 30 days, and at least $300.00 in 60 days. After that, if you're not in a position to pay off the balance, we'll talk about increasing either the amount or frequency of your payments."
- Schedule timely and consistent follow up. Contact every debtor when each payment is due. If the payment has been received, thank the debtor. If payment has not been received, make sure it is on the way. The debtor needs to know that you are monitoring the account.

EFFECTIVE COLLECTORS

Successful accounts receivables personnel have a lot in common. They exude a professional demeanor and have proven communication skills – verbal and written. They are comfortable with negotiating and have solid time-management skills. And, perhaps most importantly, they view collections as a priority – not something that is squeezed in after other work is completed.

If you and your firm start now, you can vastly increase your own chances of getting that $1,000.00 today instead of three years from now. And wouldn't that help the firm's cash flow, increase profitability, and add to the bottom line?

about the author

Stu Knazik is the President of Velvet Touch Consulting, which has helped to manage accounts receivables since 1999. Contact him at *sknazik@friendlybillcollector.com*.