



# LEGAL LEG BREAKING

by Richard Baumann, Esq

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FINANCIAL MANAGEMENT

We all would agree that clients are the lifeblood of a law firm.....but they can also cause you to bleed to death! After supplying valuable legal services to our clients, an attorney's secondary role should focus on diligent follow up of monthly billings to assure prompt payment of outstanding receivables. Close monitoring of unpaid invoices gives an attorney an opportunity to not only assure a constant positive cash flow, but at the same time maintain good client relationships. Nothing is more disturbing to a client, and will relegate your invoice to a place on the bottom of the pile, than to receive a billing which does not appear to be consistent with the services rendered. Early contact with the client after a reasonable period of time (30 days) enables an attorney to explain away any lingering doubts the client may have about the billing and resolve irritations quickly. The net result will be better client relationships and a quicker payment of your invoices.

When a client fails to honor your billing after a reasonable period of time, many firms impose an administrative level into the collection process. The firm's Accounting Department and/or Office Administrator should send a brief cover letter noting that the indebtedness is past due and recommending that if there is any question regarding the nature or extent of the invoice that the client should contact either the attorney or administrative personnel. If, after a respectable period of time there is no response from the client to these friendly overtures, it is then time to consider utilizing outside professional assistance. Do not procrastinate; the situation will not change.

Utilizing an independent third party lawyer, with professional expertise in the area of collections, accomplishes several functions. It removes the "heavy role" from both your attorney, and the firm, and conveys to the client the seriousness of the situation. Most professional organizations (doctors, CPA's and attorneys) are reticent to seek outside collection agency assistance, due to concerns of alienating the client and, of course, professional liability. Obtaining the help of an outside law firm, experienced in sophisticated attorney/client relationships, can in many instances, resolve the collection amicably without causing the loss of the client. This assumes you want to continue to do business with that client, while at the same time avoiding any firm exposure. An outside collection lawyer, being removed from the emotion of the situation, can calmly analyze the nature and extent of the services rendered vis-à-vis the billing, and act as an informal arbitrator between the parties resolving any irritations before situations become volatile.

Don't conjure up images of harassing phone calls and visits in the dark of night. It's about a professional and legal

approach to a business problem. Assistance from a sophisticated outside law firm versed in handling professional collection items also assures that all of the proper legal steps are taken in the attempt to effect collection. It is about making sure there has been proper compliance with the California Business and Professional Code, dealing with Federal Fair Debt Collection Practice Act, and assuring that the appropriate Notice of Right to Arbitrate goes out to the client.

It is significant that collection matters are usually handled on a contingency fee basis. Thus, it becomes economically feasible to retain outside counsel, without incurring additional lost attorney and administrative staff time, or hourly legal expense. Finally, in the instance that outside counsel is not able to resolve a situation amicably and you wish to force the matter, attorneys specializing in this area of recovery are able to represent your firm in an arbitration before your bar association or, if the client has failed to request arbitration within the time parameters, your collection counsel can represent your interests by bringing a suit in the Superior Court.

Traditionally, many firms simply wrote off unpaid receivables as a cost of doing business. Today's economics makes this less affordable. A series of small write offs can be hurtful, and law firms have died from lots of those small wounds that were left untreated. Utilizing the services of a law firm specializing in professional collections is the more economical solution.

Remember that even after you turn over a receivable for collection, you still have ultimate control over your claim. You can direct how you want the collection activity to proceed. Some clients have a "scorch the earth" policy and instruct outside counsel to institute suit after the expiration of the 30 day notice period. Others will instruct their outside attorney to make personal contact with the debtor/client and attempt to negotiate a mutually agreeable amortization program. Some law firms wish to maintain an ongoing relationship with slow paying clients and simply utilize outside counsel as a face saving way the client can reestablish the relationship with the firm's attorneys. The approaches utilized by outside collection counsel are as varied as the client's request.

In every situation where an account receivable is referred to outside counsel, the collection attorney should immediately acknowledge the claim in writing and, generally, send a letter to the recalcitrant client. The attorney will make a demand upon the debtor by advising them in writing that the law firm has been retained and will also attempt to contact the debtor by telephone. On occasion, personal visits and meetings may

be necessary to discuss the matter directly with the debtor. In all instances, the collection attorney should first attempt to collect the money amicably, without threats of suit. Constant contact is maintained with the referring law firm, and written reports are periodically rendered advising the administrative personnel as to the progress of the attorney's collection efforts. The collection attorney will also attempt to resolve any disputes and is always guided by client law firm's instructions. When a debt is acknowledged or confirmed by a debtor client, but the debtor is unable to make a lump sum payment, the attorney will try to arrange a pay out program, subject to your approval, backed up by a signed Promissory Note or Stipulation for Judgment. Ultimately, if the collection attorney is unable to obtain either a voluntary payment or payment schedule and the attorney believes that suit will be effective in bringing about collection of the claim, the attorney will then submit suit requirements to you. The attorney will not file any legal proceeding without written authorization from the claimant law firm.

The entire time-consuming process is thus removed from your law firm which is free to move forward with other productive paying clients. Finally, in the event that suit was necessary and a judgment ultimately obtained, the outside attorney will also proceed to secure the judgment by way of appropriate real and personal property liens, as well as going forward with other post judgment activity to force payment of the obligation.

At any point along the way, the collection process may be hampered by some form of insolvency proceedings. These may take the form of a Bankruptcy Petition (which acts as an automatic stay against further action by a creditor), an Assignment for the Benefit of Creditors (wherein a debtor assigns all of its assets to an independent third party for the purpose of liquidation), or a State Court Receivership (similar to a bankruptcy). In any of these instances, it is important that the outside counsel protect the rights of the creditor by timely filing a Proof of Claim and thereafter continuing to monitor the situation and await the results of the proceeding.

Hopefully, this information has given you some "comfort level" about referring your delinquent receivables to outside collection attorneys to help you in the recovery process. Remember, if you lose a little bit on every case that you handle, you cannot make up for it by taking on more cases.

*About the Author: Richard Baumann is a partner in the Los Angeles law firm of SulmeyerKupetz. Mr. Baumann concentrates his practice on creditor's rights, commercial collections and civil trial matters. Mr. Baumann received his J.D. degree from the University of Wisconsin Law School. He is a past national President of the Commercial Law League of America, has been elected as a Fellow of the Commercial Law Foundation, and a member of the Benchers Society. Mr. Baumann is Board Certified as a Creditor's Rights Specialist by the American Board of Certification. He is the author of "Legal Aspects of Collecting an Account Receivable." Mr. Baumann is listed in Who's Who in America; Who's Who in American Law, and was named a Southern California Super Lawyer for 2004 by the publishers of Los Angeles Magazine.*

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*"In the modern world of  
business, it is useless to be  
a creative original thinker  
unless you can also sell  
what you create.*

*Management cannot be  
expected to recognize a good  
idea unless it is presented to  
them by a good salesman."*

*- David M. Ogilvy*