

## Easing the Pain of Bill Collection

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One of the first things Tracey K. Dewrell's attorney father told his son when he graduated from law school was, before carrying out any legal transaction, get paid first.

So when Dewrell, a real estate attorney, took on mortgage broker Phillip E. Hill Sr. as a client in 2001, Dewrell noted Hill's financial troubles and suits.

"I was cautious about the way I proceeded," Dewrell recalls. "I made sure we had plenty of written correspondence in the file related to [payment] to make sure my invoices were fully secured."

Included in that correspondence was the acknowledgement of receipt of invoice Dewrell had Hill sign monthly. But during the 18 months Dewrell worked with Hill, Hill fell farther behind on payment, even though he would sign the documents acknowledging how much he owed. Dewrell was forced to sue. While he won't discuss the trial details, the 2002 judgment was in Dewrell's favor: He was awarded Hill's grand piano and Jaguar.

"Phil was probably the only one of my clients I ever had a problem with," Dewrell says. That experience has secured his father's advice, he adds. "If there's anything I've learned from that, it's to get your money up front."

While Dewrell's situation is extreme, many firms would like to be paid up front, if only to avoid unpleasant confrontations with clients or tireless amounts of paperwork when chasing overdue payments. Each firm has its own procedure and philosophy on collections. Securing cash can be relatively pain-free if firms implement and stick to a system -- and remember to involve clients along the way.

"It's all about the same dynamics as any relationship," says E. Jackson "Jack" Hardin, a partner in Rogers & Hardin. "You've got to be open and have continuous communications."

For firms who deal in multimillion-dollar transactions and cases, a few outstanding payments may seem insignificant. If it becomes increasingly difficult to collect and the client is not responding, why bother?

According to an article by William F. Brennan, a senior consultant with Altman Weil Inc., every accounts receivable amount has value. Assuming a firm's average profit margin is 40 percent -- meaning for every \$1,000 of revenue collected, just \$400 is profit -- an outstanding bill of \$2,000 means the firm must do an extra \$5,000 of business to cover that uncollected bill, he writes.

Collections can be uncomfortable, attorneys acknowledge. "The first time you [try to collect] it is difficult," says Hardin. Everyone who succeeds as an attorney eventually masters the art of collection, but sometimes it still requires a third party within the firm, he adds. "If you're acting as an adviser to somebody and you're constantly dealing with them, you might feel more comfortable if there is anything unpleasant in the relationship that it be handled by someone else."

So how can firms better handle collecting what they are due?

**1. Discuss cost before agreeing to represent the client.** "The thing that makes collections so difficult is if there are surprises," says Hardin. "The most important thing is who you agree to represent on the front end. Then you have to have a very clear understanding with the clients about what your expectations are and what it will cost. If something happens during the course of our relationship, where we change our assumptions and it will cost more, it's about keeping the client informed well in advance."

**2. Require replenishable retainers.** That's how Adam R. Gaslowitz of Adam R. Gaslowitz & Associates, a trust and estates firm with five attorneys, handles his clients. Each new client must sign a retainer agreement that includes a replenishment clause and a credit card number.

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If the retainer is \$10,000, for example, and the client is billed \$1,000, the client then is required to replenish the account by \$1,000. The fee agreement allows the firm to charge the credit card if the client does not pay within 30 days, but "we've rarely invoked that," Gaslowitz says. But, he adds, the firm needs to know that the client is secure enough that he will pay. "If we don't get a credit card from somebody, we don't take them as a client."

**3. Realize litigation work is more difficult to collect on.** "We take on very limited litigation files and the ones we do take on, we require at least a large nonrefundable retainer up front," says Dewrell, who handles real estate transactions. That rule depends on the size of the corporation or entity. "If it's a large corporation, there really won't be a problem collecting, but if it's someone who finds us on the Internet or in the Yellow Pages, we will [require the retainer up front]."

Gaslowitz, who does all litigation, tries to be empathetic. "Legal work is expensive, particularly for litigation. It can get out of hand and overwhelming pretty quickly," he says. "Sometimes, that overwhelms a client and takes them a while to catch up. Before you know it, they have a big past-due balance."

**4. Consider a flat fee.** That's what E. Jay Abt, a criminal defense attorney, does. Rarely do attorneys in his field have collection problems, he says. "If you're facing jail time, the last thing you want to do is stop paying your lawyer. You pay that before you pay your rent," he says. Like many criminal defense attorneys, Abt charges a flat fee depending on the crime, and the money is due before he begins working. If he puts someone on a payment plan, he makes sure the fee is paid in full before making an appearance for that client, he says.

**5. Keep the engagement partner engaged.** At Rogers & Hardin, it is the responsibility of the partner who secured the business to communicate financial information because "they're the ones who have the most familiarity with the relationship," says Hardin. Because their clients are businesspeople, they understand the need to discuss the issue, he adds. "It is a process, a continuing relationship management issue -- you constantly communicate with the client."

Hardin's firm uses its own accounts receivable department to send the bills and inform partners of overdue balances. It is the responsibility of the engagement partner to follow up with the client on unresolved billing matters.

**6. Sue, but sparingly.** Dewrell was vindicated, but suing a client for overdue money raises a red flag for malpractice insurers, attorneys explain. Often, clients will countersue and charge malpractice, says Dewrell. "You have to be real careful about that," he says, because that means the insurance premium will rise and the carrier will have to tender a defense. Hill had filed a counterclaim against Dewrell, but Dewrell says Hill dismissed all charges before the case went to trial.

**7. When all else fails, write it off.** "Sometimes it's healthier for your personal well-being, instead of dwelling on it month after month and agonizing over it, to just put it behind you and move on," says Gaslowitz. It's not easy, he admits. "It means you've worked for free when you could have spent that time with your family or doing something else."

Dewrell says he does not regret going to court to collect from his former client. After all, Hill was one of his larger clients. "Certainly, whenever he fell behind, that definitely cut into my income," Dewrell says. But today, having built a real estate firm with three offices and a secure collections procedure, he rarely thinks about that case. "We've grown substantially since my Phillip Hill days."