



Week of **December 16, 2008**

## A Law Firm Should Not Be a Bank

In today's credit market conditions, more than ever, a law firm cannot afford to bankroll a client. That lesson came home to me forcefully in a recent coaching session, when a lawyer described to me her experience trying to work with "the client from Hell." The client continually missed deadlines, failed to turn over necessary documents, constantly needed to reschedule court appearances, all the while letting tens of thousands of dollars in fees pile up. When the lawyer finally reached the end of her rope and emailed an interim invoice to the client, saying that no more work could be done until the fees were paid, the client "couldn't open the attachment"—an issue the lawyer got around by cutting and pasting the bill into the body of an email.

Such situations are extreme, but all go back to the initial engagement letter. Make sure clients understand that they're entering a two-way relationship. The lawyer agrees to perform to the best of his or her ability in accord with professional standards, and the client agrees to communicate and cooperate fully—which includes paying the bill. Going through this process of detailing and negotiating to prepare the engagement letter should enable you to avoid a client with unrealistic expectations or demands and who wants to start now and pay later, or contest the fee.

If the client hasn't paid the fee while you continue to work on their matter, you have in essence extended a no-cost loan to the client. It makes no sense to do this with a vague hope of being paid as expenses pile up. The engagement letter should clearly state the consequences to the client for failure to honor the agreed-upon payment commitment. Track clients who are behind on their payments. Never hesitate to contact clients when they are late with payments. In a worst case situation, cut your losses and end the engagement. The ABA's Code of Professional Conduct, Rule 1.16, allows lawyers to withdraw if the client has not met an obligation to



**Collecting  
Your Fee:**  
Getting Paid from  
Intake to Invoice

By Edward Poll

(6x9", 143 pages + with CD of forms soft cover, ISBN: 1-59031-153-1, Published by American Bar Association, 2003)

The CD contains forms for intake, engagement letters, status report, budget, sample bills and collection letters, accounts receivable aging reports and more.

**[Click here to purchase the book and CD for only \\$79.95](#)**

### What Readers Are Saying...

"Ed Poll has done it again. He's created a down-to-earth guide for lawyer to collect his or her unpaid bills. The book is full of practical advice such as, 'if you don't create a collection policy, your clients will create one for you.'

pay and the lawyer has given adequate warning that representation will end.

There are other ways that lawyers unwisely bankroll their clients. For example, client costs advanced is a major issue, particularly for intellectual property firms that often pay thousands of dollars in fees for patent and other filings before being reimbursed by the client. This again is in essence an interest-free loan to the client that can stay on the books for months, eating up considerable cash flow—not to mention partner compensation. Some cash basis law firms deduct such advances in the year paid as ordinary business expenses, with the firm taking repayment of the costs as ordinary income in the year received. Others try to treat such advance costs as an actual loan to the client. Commentators have indicated the IRS increasingly rejects the tax-deductibility of both approaches, taking instead the position that advanced costs can only be deducted on the law firm's tax returns as a bad debt.

The best way to stay off this slippery slope goes right back to the engagement letter. Stipulate what is to be paid, when it is to be paid [[click to hear podcast](#)]—and allow no exceptions.

Best wishes,

Ed Poll

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"The book offers lots of good advice on engagement letters, detailed bills, fee agreements and intake forms. Plus it's loaded with useful forms.

"If you read this book, you'll have a lot less trouble getting paid for your work."

*-Larry Bodine, Web and Marketing Consultant*