WORKING FOR FREE

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This year you will provide more than a month of legal services for free. Services for which you bill and collect nothing. Nada. Zip. Zilch. I'm not talking about pro bono work here, which you know you are going to do for free. I'm talking about work that you take on which you expect to get paid for. According to the trends tracked over time by Altman Weil's *Survey of Law Firm Economics*, by 1999 the average billable hours per year neither billed nor collected was 203 for partners, and a whopping 221 for associates.

While the enormity of the above paragraph sinks in, take a moment to do some math. First, summon your secretary. Multiply the hours in the paragraph above by your average billable rate. That's the lost revenue for one attorney. Put a nitro tablet under your tongue. Now proceed to multiply the lost revenue figure by the number of attorneys at your firm. Motion to your secretary to call 911.

As you mentally tick off the sacrifices and rewards of your life as an attorney during the ambulance ride, consider that while the number of hours worked for free has increased, the overall number of hours you have worked has also increased. It's not your imagination that you're working harder and earning less, and that your workload has increased faster than that of your associates. Altman Weil's five year trend for 1995 to 1999 shows that billable hours for partners with over 25 years experience increased by 7%, or 107 hours per year. Billable hours for associates with five years of experience increased by 3%, or 56 hours per year. Enjoy the playback of the wonderful moments in your life before you go "code blue."

Is there any way to improve these statistics at your firm? Absolutely. Let's start with the first step in the client relationship: the intake process. This is the most critical phase in the relationship, and the place where many firms set themselves up for collection problems and even malpractice claims.

You should know the background of your client. Have they left a scorched trail of unpaid law firms behind? What is their financial situation, and do they have the capacity to pay your bill? Do you have the expertise and capacity to properly handle the matter? Have you determined what the client's expectations are in terms of cost and outcome, and have you appropriately educated the client to ensure they are realistic given your experience?

Pay particular attention to client expectations. Be consistently clear in this area, and be sure to reduce it to writing in your engagement agreement, which the client should

sign. Failure to meet client expectations is always reflected in write-downs of time and write-offs of receivables.

Don't forget to keep a vigilant eye on expectations as the matter progresses. If events change the anticipated outcome, you must communicate that to the client verbally, and reduce it to writing as well. If you cannot create a "meeting of the minds" with the client regarding expectations, you are better off expending no further resources, and you should probably even consider withdrawing from the matter.

Your engagement agreement should be very clear on payment terms, and include provisions for charging interest on past due invoices, getting reimbursed for reasonable attorney fees and costs for collection efforts, withdrawal for non-payment, evergreen retainer, and binding arbitration for fee and malpractice disputes. You should also include language about file retention and destruction. (That's the topic of another article. If you want a copy, please contact me.) You should also consider offering alternative means of payment, particularly by credit card. And don't forget to get the signed agreement back for your file.

Following intake, vigilance is required during the billing phase. Throughout the life of the matter, you must ensure that time entries recorded are clear and concise, so that the client knows not just the amount of time expended, but the value of what was done. Emphasize results and value, not just time and cost, whenever possible. Your bills should be issued on a timely basis, meaning that your bills should arrive each month on the client's desk within the first 10 days of the month. If you have a very "heavy" month of work, consider sending out another bill mid-month. Clients find it easier paying smaller bills.

There should not be any "surprises" when your bill arrives. The client should be sufficiently informed and involved in the strategy and handling of the matter such that there are no nasty surprises when that envelope holding your bill is opened. It's your responsibility to ensure that is the case.

At one firm, a litigation partner went on a "fishing expedition" and conducted 58 depositions without ever discussing it first with the client. When the client first saw the bill, he literally gasped for air. Not only did the firm NOT get paid for those depositions, it ultimately lost the client for future matters. The partner should have discussed his desired strategy with the client in advance. It should have ultimately been the client's decision to decide whether or not they could afford that type of strategy.

As your bills go out the door, follow-up becomes critical. Sporadic phone calls when cash is tight will not produce the desired results. And let's be honest, if you're going to trade billable hours for collection calls, it's going to be sporadic at best. So YOU should not be making those calls. Someone at your firm, specifically someone who is very customer-service friendly, should be making phone calls regularly for every bill in excess of thirty days, and regularly thereafter until payment in full is made. For example, if a call results in a promise of money in two weeks, another call should be made 14 days later to ensure the check has gone out.

Take it from someone who used to run the accounting departments of companies with severe cash flow problems —they LOVE it when a promise made gets you off the phone and you don't call back again for 30, 60 or more days. Heck, for those types of creditors, they'll promise you ANYTHING just to get you off the phone, because they know they don't have to deliver. On the other hand, those few creditors who are smart enough to diary every promise and follow up with another call get nothing but the truth, because they know they can't get away with anything else.

One final thought. For those of you operating in firms large (and lucky) enough to have administrators, consider that perhaps the administrator is better suited to review business arrangements such as billing and payment terms, file retention rules and so forth with the new client. Often attorneys are uncomfortable with the "nuts and bolts" part of the conversation, whereas administrators are consistently having those types of discussions with vendors, and are comfortable doing so. This part of the intake process is critical to making sure you can bill and collect for your hard-worked hours, so have the best person do the job. It also ensures that the administrator has a personal relationship established with the client when receivable follow-up is required during the billing phase.

Every attorney will have some billing write-downs and receivable write-offs. That's reality. Should you be working one month out of twelve for free? Absolutely not. To get your firm ahead of the statistical curve, pay close attention to client expectations, refine the intake process at your firm, keep focused on providing value to the client, and bill promptly and follow-up consistently. It's not rocket science, but I'm consistently amazed at how many firms fall short in one or more of these areas. Make sure you're not one of them.

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