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Getting paid may mean getting tough

POSTED: 11:30 AM FRI, APRIL 13, 2012
 BY NANCY CROTTI

Advice about when to be the bad guy

What are the chances you're going to get paid? It depends on the area of law in which you practice, how good you are at sniffing out potential deadbeats, how diligent you are about going after them and whether you decide the fight is worth it.

Criminal defense attorneys ask clients to pay up front because they know the outcome might mean their client will be unable to pay. It's the incidentals in these cases that can add up to unpaid bills, said Deborah Ellis of Ellis Law Firm in St. Paul.

These may include the costs of buying transcripts and paying the sheriff to deliver a subpoena. Ellis discusses costlier expenses such as hiring an investigator or a psychiatrist with her clients early on and asks them to contribute more to their trust accounts to cover those costs.

"You get the money dealt with up front and it's not an ongoing issue with the case," she said.

Unlike civil attorneys, criminal defense lawyers in Minnesota are not allowed to dump a case because the client hasn't paid. "I tell the people why I need to have them pay me by the case because I'm on the case and once I go in there, I'm on it till the end," Ellis said. "You try and just give your best estimate when you quote your fee of how much it's going to take."

Ellis doesn't hire anyone to collect unpaid debts for her. Family law practitioner Nancy Zalusky Berg does. But the Minneapolis divorce lawyer also knows when — and why — to cut bait. "Malpractice carriers don't like clients suing their clients for fees because what does the client do? They countersue for malpractice," she said. "It's not a good idea to sue your client for fees. It's a very good idea to get out of the case."

Collecting unpaid fees is a "huge" problem for small and solo practitioners, said Berg, who is U.S. chapter president of the International Academy of Matrimonial Lawyers. Some clients believe they don't have to pay lawyers because lawyers don't produce anything tangible. "So it's easy to think that we don't do anything because we use our brains," Berg said.

Other divorce clients may expect too much, such as the judge awarding them everything rather than dividing the assets, Berg said. The fact that they're paying their attorney from their own assets rather than relying on an insurance company to pay also affects their willingness to follow through, she believes.

Whether Berg gets paid often depends on whether the judge awards her client the divorcing couple's house, which may then be sold to pay attorney fees.

Berg has been practicing family law for 32 years, and for the past 20, she has used a collection firm. "It means we lose about 25 percent of the bill," she said. "The best thing is we don't let these bills get big."

Berg has also learned to do due diligence on a prospective client's ability to pay before she agrees to accept a case. "I do know the intimacies of my clients' financial situation by the time that I'm on board," she said. "I'm much better now (at) getting off a bad case than 20 years ago when I believed people, and I'm much better at having clients replenish their accounts. I end up fighting with my clients to get paid probably 25 to 30 percent of the time."

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MINNESOTA LAWYER E-BRIEF

If that fight isn't worth your time but it is worth your money, you can hire a collection agency or even a law firm that specializes in collections, such as John A. Halpern & Associates of Minneapolis. Halpern's firm handles cases in state and federal court in Minnesota and North Dakota, seeking judgments against commercial and consumer defendants.

Halpern advises firms to wait no more than three to four months before turning a delinquent account over to a firm such as his. Halpern's firm begins by calling and writing letters to debtors.

Civil debtors are protected by the Fair Debt Collection Practices Act, which governs what the initial collection letter can say. But it can contain what Halpern called "mini-Miranda language" that indicates it's coming from a debt collector. "Those are the magic words," he said.

Commercial clients don't have such protection, and litigation can commence more quickly if the debtor does not pay. There is an administrative default judgment in 90 percent of the commercial claims Halpern's firm pursues.

"Getting a paper judgment is the first phase of the collection process," he said. "Turning that paper judgment into money is the real challenge."

Halpern may pursue a commercial debtor down a few different avenues to obtain payment. Because attorneys are under obligation to protect themselves and their firms from deadbeat clients, he suggested doing a judgment search in advance, as well as doing a broader Internet search.

Berg had several other suggestions, including: Obtain a retainer and replenish it monthly; bill reasonably; work with client for best result given the financial situation; and if client is unsatisfied with your work, find a replacement before the bill gets too high.

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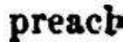
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