

When A Client Doesn't Pay ...

Hi Sezzers,

This is a legal practice management question. Let's say you're in the middle of a trial that has gone on way too long and client has not replenished their retainer, continuing to rack up a balance, and you can't get out since you're in the middle of trial. Let's also say the amount is thousands of dollars.

How do you go about getting your money after the case is over? I'm not looking for answers like "should've known better at the outset." I'm looking for, "here is how I fire a client respectfully, set a deadline for payment" and attorney experiences in obtaining a judgment against a client for fees unpaid.

Thanks!

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Having someone else (a non-attorney) handle collections was one of the best things i've done and increased collections drastically. It removes a lot of conflicting emotions. When clients complain to me I simply say that I am focused on their legal matter and they can discuss that with billing, it rarely comes up twice.

I also agree that you should have a deadline, but it should come from a conversation with the client. Determine why they're not paying. It's usually either that they don't have money or the case is not going their

way. If they're out of money we usually work with them on a payment plan, it's not always ideal but some money is better than none. If they're upset with the case I have my billing specialist push them for specific instances where I've made a mistake, over billed, etc... Once they realize it's not my fault they either get on a payment plan or disappear. If they disappear I make a decision based on how much they owe and if it's worth the time and potential hassles of litigation.

If the amount is right, sue them. Give them plenty of chances to get on a plan, shut down all arguments of poor work or overbilling, and then warn them you will sue, and when everything fails go to court.

Best of luck

D. Mathew Blackburn, Colorado

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Sorry to hear about this. Just in case you haven't heard of the following: when filing suit against a client for nonpayment consider the exposure to a malpractice counter-claim. This is the reason why many are asked about collection lawsuits on our professional liability insurance applications. As a practical point, consider the statute of limitations of legal malpractice against breach of contract.

Hope that helps! Good luck.

Best regards,

Joseph D. Kamenshchik, New York

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Try to let someone else in your office handle the collection. If not possible, simply go to client and say, "You promised me X. You have not paid me. When can I expect payment? " A few days before that time arrives, call client and ask is your payment on schedule. If not, advise that you will have to take additional steps to protect your bill. If client balks, sue him. Clients who walk away from lawyers without paying the bill will let everyone else know that you work for free or that you do not collect your bills.

Robert "Robby" W. Hughes, Jr., Georgia

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Just like you would do if you were any other business. Set a deadline, try to work it out, and if you can't, file a breach of contract action. This is advice independent of the question of whether you SHOULD do it, of which there are differing opinions. Also look into any programs your bar association may have to help resolve the dispute.

Ryan Phillips

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Over at the Lawyerist Sam Glover recently posted about this very topic:

<https://lawyerist.com/86578/how-to-get-paid/>

Good to know we're not alone ;)

Dave Rakowski, Pennsylvania

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While the fear of a malpractice claim should factor into filing suit to collect fees, I find it inconceivable that a lawyer who screwed up a case would file for fees. Those who handled the matter properly should not fear a claim being filed. The money collected far outweighs any increase in your E&O coverage. As a sage lawyer once told me, a lawyer who can't even collect his own bills is hardly the kind of lawyer I want fighting for me.

Robert "Robby" W. Hughes, Jr.

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In the famous words of Taggart, "Ditto".

Robert "Robby" W. Hughes, Jr.

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In CA, the lawyer must offer the client the opportunity to arbitrate the fee dispute, through a system established to handle such matters. The client need not agree to arbitrate, in which case the lawyer can then file a lawsuit.

I don't know if your jurisdiction requires arbitration, but you might consider this.

In CA, most attorney-client fee agreements recognize this requirement, and many also include a mediation clause.

Roger M. Rosen, California

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Ultimately, make a demand for payment, and if they don't pay, sue them.

Whether you sue them yourself or turn it over to outside counsel, I don't know. I've never sued a client for fees; but I also try very hard to not let the fees get that high; if client is behind in billing or even if I think I don't have enough retainer to take it to trial I will tell client I need money, now, right away or I will withdraw. I don't tell client that judge is unlikely to let me withdraw. So far they have come up with the cash.

You need to analyze this, though, just like any other debt; is it large enough that you can justify sending it out? If not, is it large enough for you to spend additional time on it? How collectible is it? does client in fact have any money to pay you? Are they likely to file bankruptcy? What do you have to do to collect judgements and what is it going to cost you to collect?

Ronald Jones, Florida

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Thank you to everyone who responded and spoke with me on and off-list! I

think I know what I need to do.