

## Getting Paid Shouldn't Be Like Pulling Teeth *What Lawyers Can Learn from Dentists*

By Peter A. Johnson, Esq., Law Practice Consultants

I arrived early for my root canal last week, and as if the anticipatory anxiety wasn't bad enough, it was heightened when I realized that I left my wallet at home. Why the increased anxiety? Because I knew that dentists require payment before you leave the office. As I was worrying about my wallet, I had an epiphany — lawyers can learn a lot from dentists, especially when it comes to establishing billing and collecting expectations.

Think about your last visit to the dentist. One of the first questions asked well before you sat down in the chair was, "How will you be paying for today's services?" There was that prominent sign advising that patients are responsible for payment for all services, including those not covered by dental insurance.

Nobody enjoys visiting the dentist, but everybody knows you still must pay him or her *on the day of service*. This is known as an "up front agreement." The dentist is going to be paid despite the fact that the procedure may be painful and may require more work than initially anticipated.

Let's compare a visit to the dentist to an initial meeting with a new law firm client. Few people retain a lawyer for fun. If they are sitting across the desk from you then there is a difficult issue to be resolved. Although you are on the "same side," the attorney and client may begin in a slightly opposing position, based in large part on the traditional hourly billing rate.

Clients want their problem solved as quickly and as least costly as possible. The attorneys want to solve the client's problem, but be compensated based upon the number of hours they spend on a matter. Thus, the client wants the attorney to spend less time, while the attorney's compensation is generally based upon hours worked and billed.

Attorneys have historically let the client lead the payment dance. Lawyers do the work and hope/expect to be paid without waiting too long or discounting the invoice too steeply. Yet, here we are at the beginning of another year with many law firms still waiting anxiously for overdue checks to arrive. Shame on us for letting this happen. What can we do differently?

As old Pogo cartoon character said: "We have met the enemy and it is us!" It is time attorneys take a cue from dentists and take control of the billing process by being open and direct from the first meeting. It is not unreasonable for clients to ask for an estimate. Even a dentist publishes rates for procedures. Attorneys, however, have resisted reducing their services to a fixed fee.

Most firms still bill on an hourly basis. If you have ever found yourself telling a client, "We can control our billing rate and what we do on a matter but not what happens in the courtroom," you are guilty of obfuscation. It is OK to "ballpark" what you think a project might eventually cost, but include a "your mileage may vary" disclaimer.

If a new client appears to be fixated on fees, take it as a warning sign. A client who begins the relationship by obsessing over costs is waving a red flag. The relationship with this client will not get better, and could get significantly worse, resulting in late payment, steep discounts, or non-payment of your invoices. Too many firms

also lose money on the “loss leaders” but rationalize discounts on the basis that they will be awarded more lucrative work, which generally does not come.

Have the courage to say “no” and mean it. It is at this point you should have the confidence to say, “It seems like cost is of the most important criteria in your decision to engage an attorney. If that is the case, perhaps we’re not the right firm for you.” It may hurt to lose the work now, but it is likely to save you a lot of wasted time chasing your money later. Use that time to market to “A” type clients.

Come to an upfront agreement that everyone understands and signs onto. Explain your fees, how you arrived at them, when an invoice will arrive, what it will look like, how it may be paid, and when you expect it to be paid. Let the client know that you will alert them in advance if more time is required and the fee goes up. All of this should be included in an engagement letter, and no work should commence until the letter is signed.

This approach to professional billing practices must be backed up with a commitment to internal control and discipline. If you told your client to expect an invoice monthly, be sure your firm’s time keeping system can deliver accurate and current hours and rates, and that partners, associates and support staff are held accountable for reporting their time — on time. Don’t let last month’s hours spill over into this month’s invoice — this is sloppy and generates distrust and, quite likely, a discount. Despite all of your best efforts, you may find that more time was spent than you expected, and a larger fee will be billed to the client. The resulting invoice will likely produce a client reaction of surprise and dismay — sticker shock. Prevent this by keeping a close watch on billable hours as they accumulate. If the hours creep up, or if unanticipated work becomes required, let the client know in advance.

A client who is forewarned is less likely to explode on contact. Discuss why and how the budget needs to change. Call the client before the invoice hits the mail, explain the reasons so many hours were billed and offer ways to attempt to minimize costs in the future.

Avoid discounts! Once given, clients will ask for more. Too often, we provide both “front-end” (reduced rates), “back-end” (receivable write offs), and “volume” discounts. A discount should be a rare exception. Some attorneys argue that because a client has paid the firm thousands of dollars in the past, they should receive a discount. I purchase thousands of dollars each year for groceries. Can you imagine what the reaction would be if I asked to pay my bill in a week or so, or requested a 20% discount off the final tally?

Address fees and billing in an open and professional manner from the beginning and, in turn, your clients are more likely to fulfill their obligation promptly.

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