

Money Matters: Challenging Assumptions and Implementing Systems for Managing Account Receivables

by Susan Ann Koenig

After I racked up six figures in uncollectable accounts receivable I realized there was more to being a successful solo practitioner than being a good lawyer. When I saw that those unpaid hours represented a retirement account unfunded and time away from my loved ones, it got my attention.

I had to face the truth that for far too long I failed to recognize the need to be intentional about the business of running my firm. I eventually discovered how integral it was to fulfilling my intention to be a good lawyer.

The obstacles to managing the collection of money are many. Most lawyers are not well trained in best business practices, including those having to do with fees. Challenging our assumptions, finding the meaning for focusing on client accounts, and developing systems help overcome those roadblocks.

Many of us have fears around money. Fear that we'll lose business. Fear that others will conclude we are, indeed, the worst stereotype of the greedy lawyer. Fear that we are being heartless when we quote the retainer that is the equivalent of three months of our client's wages.

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Underlying our fears might be certain assumptions. Let's see if they hold up.

Six Assumptions to Challenge

Assumption #1: I'll lose clients.

Truth: Yes. You will lose some clients. You will lose the clients who are either not able or not willing to pay your fees. A good question to ask yourself is: *Do I need more clients or do I need more clients who are willing and able to pay?*

There are plenty of clients who cannot pay. If you need one, just call Carol Cleaver at the NSBA's Volunteer Lawyers Project at (402) 475-4091. She will gladly provide you a long list of people who would hire you today. In fact, I hope you make that a goal before the month is out. If you also want clients with an ability to pay to keep their promises for payment, keep reading.

Assumption #2: Talking about money impairs the attorney client relationship.

Truth: Trust and integrity are at the heart of any good client-attorney relationship. Failure to be clear about fees invites miscommunication and loss of trust. The entire relationship is placed at risk and your client made vulnerable when they stop contacting you because they owe money. Clients then proceed to act without the advice of counsel, their interests are not protected, and the relationship is no more.

Assumption #3: Friends and family will be upset if I charge.

Truth: People who care about the success of your law practice will understand that it is a business. While we may from time to time perform favors for friends, educate others about the costs of legal representation so they better understand that rep-

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resenting your third cousin in a contested custody and removal from jurisdiction case is beyond your family discount budget.

Assumption #4: Any client who cannot afford my fees will be left without representation.

Truth: Some will. Every lawyer “should aspire to render pro bono legal services” in keeping with Section 3-506(1) of the Nebraska Code of Professional Responsibility. Many an attorney has joked, “I do plenty of pro bono. You should see my accounts receivable.”

A quick review of the code reveals that pro bono work is not the same as neglecting to collect fees from clients who have an ability to pay.

When lawyers focus on being intentional about fees, your firm has sound and sustainable financial health which creates a greater capacity to contribute to greater pro bono work. You will have no business if your practice is not financially stable. I have seen many an excellent lawyer pack up their shingle and close up their shop because they did not face the discomfort of dealing with the dollars.

Assumption #5: People just don't have the money.

Truth: Some people have the money and some do not. To have an enduring practice, one has to have a business model that works for continuing to keep the lights on. If your entire practice is made up of the indigent, you might be better suited

to a position at Legal Aid, a public defender's office, or a non-profit. If you intend to earn an income from services, it's critical to distinguish between the “Can't Pay” and the “Won't Pay” client.

Divorce is a practice area where the client is often at a financial low point. Many times money is at the root of the demise of the marriage. When the personal safety of your client or their children is at stake, it's hard to quote a large retainer.

Being compassionate is both a beautiful way to live and an important way of being if one is going to have a practice area that deals with matters of the heart. But any strength out of balance is a weakness and thus becomes a liability.

The clearer you get about your intentions, the easier it will be to make financial decisions in keeping with your values.

Assumption #6: Money isn't that important to me.

Never been accused of making this statement? Great. But if you have, remember this: The failure to employ consistent systems for managing client accounts prevents you from doing greater good.

Getting paid by clients with an ability to pay frees your time to contribute in other ways, including contributing to the profession. My work on the first edition of my book, *Divorce in Nebraska*, took two years to complete. If I had spent those hours working for clients with an ability but unwillingness to

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pay, it never would have been completed. Instead, today this book now in its second edition, co-authored by my law partner Angela Dunne, answers over 450 questions about divorce and is being replicated in over 25 states across the country, helping people to navigate the divorce process with more ease and lower cost.

Finding the Meaning in the Money

Reach meaningful money goals.

Most of us can find reasons for wanting to increase our personal income ranging from contributing to our child's college tuition to donating more to our local library. One of the most meaningful financial goals I set years ago was to earn enough to start a small retirement savings plan for my employees. As a solo practitioner, I often struggled to contribute to my own retirement, let alone my employees'. When I realized how much this would mean to me, I got serious about taking action to better manage my client accounts. Within a year I was able to reach my goal.

Support clients to be in integrity

When a person breaks a promise, they fall out of integrity. It feels bad. When a client breaks a promise to pay us, most are not going to feel great about it, despite any efforts to justify their neglect of a promise.

When we act in a way that supports clients to keep their promises for payment, we help them to feel good by doing the right thing and doing what they said they'd do.

Maintain and strengthen client and referral relationships

Consistent communication, transparency, and keeping your word promote a positive attorney client relationship. When we fail in any of these areas, we experience the pitfalls of a damaged client relationship. Communication breaks down. Our ability to fulfill our ethical duty to be zealous advocates is impaired. We are forced to withdraw. We lose a current client, the possibility of them being a future client, and most probably any referrals that might otherwise have come from them.

Have more time

If you are the lawyer who still represents clients for a living and you have zero desire for more time in your life, please give me a call so I can learn your secret. Most of us wish we had more hours in the day to shorten our to do list, and we'd definitely delight in more time for everything from playing golf or learning to play the guitar to working out or walking our dog.

Is there anything else you'd rather be doing than providing free legal services to the client who has the ability to pay you but won't? I thought so.

Creating Systems With Your Team

Begin where you are. Developing robust systems for keeping accounts receivable under control takes time. Once you have the basics, set goals for moving your methods to the next level. Put your systems in writing so everyone in the firm is clear.

Great systems only work when followed. Having everyone working in the firm understand the principles that guide the management of accounts, be trained on their role, and be held accountable is essential to successful accounts management.

Have a Designated Account Manager

In life and in the practice of law, when a skill is not your strength you want to have others support you to perform it. Asking for payment and managing accounts will not be a strong suit for every attorney, but it is necessary for the success of any business. We must either develop competence in the skill or have someone else on our team who can perform it successfully.

The time and energy you spend managing this aspect of the business is better spent on fee generating work, finding more fee paying clients, or performing intentional pro bono work.

If quoting a retainer to a potential client is difficult for you, your account manager can also support you with this task.

Free yourself up to focus on lawyering while your accounts manager supports you to have more profitable and less stressed days.

Business from the Beginning---The Potential Client Call

Who are you willing to give your time away to at no cost? If you are a solo practitioner just starting her practice, you may be more open to talking to prospective clients who are calling one lawyer after another after finding your name online.

How much time are you willing to give away to potential clients? Do you limit the amount of time you spend talking on the phone? How much time are you willing to spend before you either make a referral or schedule them for a consultation? Should your paralegal or receptionist screen any potential clients?

Whatever you decide, revisit your choices from time to time. When you find yourself giving away so much time that you can't get to the legal work on your desk, it's time to reconsider. If you weren't giving away your time, perhaps you could you be investing it more wisely. Have I mentioned time is money?

The Initial Consultation

If you charge for an initial consultation, have your staff collect the fee before the start of the consultation. If you don't, you put yourself at risk for "I'm going to run to the car to get my wallet" turning into an accidental loss of an hour of your billable time.



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Fees are top of mind for any client consulting on a divorce matter. Early in the consultation, assure the client that you will discuss fees during the consultation. This will both provide relief that they don't need to ask the question and also convey that speaking openly about fees is how your firm does business. Transparency builds trust.

Providing the client a sample retainer agreement at the time of the initial consultation gives them time to read and understand the terms. If a client retains you because of an urgent legal matter, it's important that they not be rushed to sign a detailed retainer agreement which they are seeing for the first time.

The Retainer Agreement

No matter the size of the engagement, your written retainer agreement is critical. It sets forth with specificity both what you expect from the client and what the client can expect from you. The scope of the work, the fees and expenses, the billing process, and terms of withdrawal should be included. Be especially clear in limited scope agreements. Also, be sure you have a follow up system for tracking the receipt of a signed retainer agreement.

Retainers: The First is Not the Last

If you don't have a designated accounts manager, you must master the skill of asking for retainers. When you realize that the discomfort of stating a dollar amount only lasts a few

seconds, you will see that you are quite capable. Remember, if the client can't afford the initial retainer, it's likely they cannot afford the services of your firm.

The client is better served by you quoting an appropriate retainer from the outset. If the client cannot afford your firm you can give them a great referral and save them the expense of you having to withdraw due to non-payment of fees.

Unless a matter is being handled on a flat fee basis, clients need to know that their first retainer may not be their last, and the earlier the conversation about supplemental retainers and a trial retainer the better.

Having "evergreen" client trust accounts benefits both you and your clients. By requiring clients to keep a minimum credit balance with the firm, you reduce the risk that the matter will rapidly move into an account receivable status. By having clients keep their account in the black, you also have the chance to observe the history of a client keeping their promises to make payment. This makes future decisions about extending credit or possibly withdrawing easier.

If a client is not motivated to pay you when you are in the middle of advocating for them, what are the prospects that they will be motivated to pay you *after* you have knocked yourself out to bring their matter to conclusion?

An additional bonus of evergreen accounts is being able

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to send a client a refund rather than a bill at the close of their case. How's that for contributing to a strong attorney client relationship?

Litigation Budgets

Greater clarity contributes to higher integrity in the attorney-client relationship. Litigation budgets contribute to helping clients to see a clearer picture of their potential costs.

Too many attorneys neglect to disclose the true cost of going to court, leaving clients to unknowingly spend far more on attorney fees than the value of the judgment or asset they fought over.

Most family law clients are insufficiently educated to know to ask for a litigation budget. They shouldn't have to. We should inform them about the potential costs so that they can make sound financial decisions about what is in their interests. For a sample litigation budget, visit page 55 of *Divorce in Nebraska: The Legal Process, Your Rights, and What to Expect*, 2d Ed. (Angela Dunne and Susan Ann Koenig, Addicus Books).

For a case that is at risk for being litigated, the litigation budget helps the client understand the need for a trial retainer. Getting the trial retainer sufficiently in advance of the setting of a trial date reduces the risk of the client being harmed by a lack of representation if you have to withdraw or that the court will deny your motion to withdraw, and you will be headed towards an expensive trial underfunded.

Best Billing Practices

Timely, accurate and consistent billing is always the best practice. Using billing software, having dedicated support for processing billing, and developing the habit of contemporaneous billing are all parts of a good account management system.

Billing entries should give both a clear description of the action taken together with an explanation of the benefit to the client. Leverage your technology to make this easier by developing shortcuts for descriptions of frequently performed services.

Legal fees are costly. Clients want to know not only what you did, but why you did it. It's an important part of helping clients understand the value of your services.

Account Reviews

Weekly reviews of client accounts empower you to take action on the account sooner rather than later. Every week we have cases where the facts, the judge, the opposing counsel, or the status change. Taking a small amount of time to monitor your accounts reduces the risk that an account balance is a shock for you or the client. Create a recurring event on your calendar to resist the temptation to skip this important task, and ask your support staff to help keep you accountable.

Consider an interim invoice to a client whenever a large sum of fees is incurred in a short period of time. There are

enough surprises for our clients in the course of our representation without fees being one of them.

A Stop Work Policy

There aren't many people who would show up for work each day if they weren't collecting a paycheck. Yet there are times when clients have expectations that their attorney will continue to work for them even when no payment has been made for months. You can adjust this expectation.

Consider a "stop work" policy. At what point will you push the "pause" button on legal services when a client has stopped making payment? Ensuring that you do not compromise your ethical obligations to your clients, there are times when waiting to perform additional services until fees are paid is appropriate.

A clear retainer agreement, timely billing, and continuous communication with clients are all needed for the successful implementation of a "stop work" policy.

Talking Fees with the Client

Talking about money can feel messy and uncomfortable when we are not clear ourselves. We might find ourselves struggling to find for the right words or sliding into an "I'm right/You're wrong" conversation with the client who says, "I haven't gotten anything for my money."

Now that you have decided to have a designated accounts manager, you can encourage them to use language that we've seen be effective in talking to clients about money. It sounds like this:

Unfortunately, I cannot give you a guaranteed price quote like a roofer or mechanic. This is a complicated process, and every case is as unique as the individuals involved.

I appreciate you for taking this difficult news so well.

There's no need to apologize for your emotions. This is an extremely stressful situation you are facing. You're not only coping with your divorce, you're dealing with managing this large expense. That would be a lot for anyone.

As important as the words selected for our retainer agreements are the qualities you demonstrate in all of your client communication, that is, how you are "being," such as:

Clear about your expectations

Courageous about saying what needs to be said

Compassionate about the client's situation

Truthful about your intentions, e.g., to withdraw

Flexible, recognizing that policies are important but that no two situations are identical

Supportive, helping the client to recognize that you want to help them manage costs

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When we are at our best during our fee conversations with clients, we further the fulfillment of our ethical duty under Rule 3-501.4(2) to “reasonably consult with the client about the means by which the client’s objectives are to be accomplished.” Fees are among the means needed.

Tips for Controlling Legal Fees

A great way to let clients know you are on their side when it comes to controlling the costs of legal serves is to provide them with some tips. A list of these suggestions can be found on page 57 of *Divorce in Nebraska* in the chapter on Attorney Fees and Costs.

Partnering for Payment

Not all clients are great problem solvers. When the sticker shock of the cost of legal fees hits them, they may not see the possibilities for financing important services. They need your support to encourage them to think about their options for borrowing from friends and family members, seeking credit options, or finding additional income. Consider this:

You're not alone. This is an expensive process. Many people have family and friends supporting them with these expenses.

Be your client’s partner for empowering them to have the representation they need for matters important to their lives.

When It’s Time to Withdraw

The best protection against having to withdraw from representation is to follow Stephen Covey’s advice to “begin with the end in mind” by using effective client screening practices followed by strong systems for managing client accounts.

When a client has failed to comply with the terms of the fee agreement, your withdrawal should not be a surprise to them. Starting with your retainer agreement and continuing throughout your management of the account, the client should know this is a possibility.

Section 3-501.16(5) of the Code reminds us that our withdrawal is permitted when a “client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled.” Let your systems ensure that there is no doubt of the reasonableness of your warning.

Collection at the Conclusion

With each passing day an account receivable becomes more difficult to collect. We recognize the familiarity of Jay Foonberg’s humorous curve of client gratitude, which is at its zenith when a great settlement has been reached or the judge has issued a ruling favorable to your client. That curve tends to roll downward as time passes, sounding like this:

My lawyer was incredible—I owe them everything!


I could have represented myself.

My lawyer is crazy if they think I'm going to pay.

The best practice is to not have an account receivable at the conclusion of the matter. When this is not possible, expediting collection is essential, recognizing the increased risk of a malpractice claim as time passes and client gratitude declines.

Be a Role Model

If you want all of the attorneys in your firm to be accountable for supportive effective account management, you must set the standard. Others will pay more attention to your burgeoning accounts receivables than your lecture about account management. By demonstrating the practice of your policies and principles, you will create a culture where clients have clarity and the firm has prosperity.

Challenging your assumptions, remembering why money matters, and developing systems for managing client accounts will empower you and your firm to make a greater contribution while enjoying your life as a lawyer more. Can you buy that? 



If you are aware of anyone within the Nebraska legal community (lawyers, law office personnel, judges, courthouse employees or law students) who suffers a sudden, catastrophic loss due to an unexpected event, illness or injury, the NSBA’s SOLACE Program can likely assist that person in some meaningful way.

Contact Mike Kinney at mkinney@ctagd.com and/or Liz Neeley at lneeley@nebar.com for more information.

We have a statewide-and-beyond network of generous Nebraska attorneys willing to get involved. We do not solicit cash, but can assist with contributions of clothing, housing, transportation, medical community contacts, and a myriad of other possible solutions through the thousands of contacts available to us through the NSBA and its membership.

“Losing my son has been the hardest struggle ever. I am proud to be a member of such a compassionate bar. I moved to Arizona over a year ago and it is amazing at the love and generosity from my friends and from strangers that I received from you all. My children and I THANK you for lightening the burden. Bless you.”