Accounts Receivable:

Persistent, Ethical and Careful Collection of Law Firm AR in the COVID-19 Era

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Your speaker:
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Shareholder of Wagner, Falconer & Judd, Ltd., a commercial collections law firm founded in 1932 with decades of experience collecting professional services receivables.

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Introduction

Successful pursuit and collection of a law firm's past-due receivables adds cash and increases the realization rate of attorneys' efforts. COVID-19 has and will continue to impact firms' cash flow and ability to collect fees.

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Overview

- Cash is King
- Avoid AR, Avoid Collection
- Retainer Agreements and Advance Retainers
- Billing Practices
- Internal Collection Efforts
- External Collection Efforts
- Tools to Aid Collectability
- Risks

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Cash is King…

- All business needs cash flow
  - Payroll and benefits
  - Rent
  - Vendors
  - Profit – partner distributions
- COVID-19: cash is more important than ever
  - Cares Act – PPP loan
  - Clients are suffering

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…Cash is King

- Cash in a law firm comes from fees paid
  - Hourly
    - Billed fees are not cash
    - Get advance retainers
    - Most collection issues
  - Contingent
    - Cash upon recovery
    - Attorney lien
  - Flat fees
    - Cash when paid

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Avoid AR, Avoid Collection

- No AR, no need to collect
  - Not realistic
- Ways to avoid or limit AR
  - Consistent billing practices
  - Replenishable retainers
  - Write offs
    - Reduces cash and realization rate
- No collection, no risks
  - Again, not realistic

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Retainer Agreements

- Required under Rules of Professional Conduct
- Communicate Rates and handling of advance retainers
  - Application of money in Trust
  - Replenishable
- Terms and Conditions – interest, costs of collection
- Helps avoid AR and aids collection
  - Cash Flow in COVID-19 era

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Billing Practices

- Regular (Monthly) – do not hold
- Apply money in Trust from advance retainer
- Replenish before gone – stay ahead
  - More important in COVID-19 era
- Bulk vs itemized billing
- Perception of value
  - Enter time as you would like to see it in discovery
- Better billing practices aids collection

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Internal Collections

- Staff collectors/customer service
- Billing department
- Attorneys are responsible for their billing and payment of fees
  - Affects their realization rate
  - Comp plans
  - They have the relationship
  - Good communication – especially in COVID-19 era
- Staff and attorneys work together to limit AR
  - No AR, no collection needed
- Payment Plans, discount/settlement
- Tools

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External Collections - AR happens

- What if you cannot collect internally?
  - Collection Agency
  - Outside Law Firm

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External Collections – AR Happens

- What can they do?
  - Settlement/discount
  - Payment Plans
    - Security
    - Tools
  - Suit
    - When?
    - Risks
- Cost

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Tools to Aid Collectability

- Promissory Notes
- Cognovit Notes – Confessions of Judgment
- Settlement Agreements with Mutual Releases
- Personal Guaranty
- Attorney Lien
- Mortgage

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Risks of Collection

- Malpractice Claims
  - Even bogus claims are a problem
- Ethical Complaints
  - Again, meritless claims are still a problem
- Counterclaims in suits
- Cost
  - $
  - Time
- Reputation

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Case Study

Engagement letter signed in 2013. It provided scope of representation, periodic rate increases and included Terms and Conditions. The Terms provided for interest and recovery of costs and collection. Client had four separate matters since 2013. Client paid up front replenishable retainer the first time but paid monthly bills when retainer was depleted and on other matters with no new engagement letter or retainer.

2019 the same client reached out to attorney for representation in a pending litigation matter. Attorney emailed Client their current hourly rate. Work was done by another attorney in the firm with different rate and bill was sent to the Client for $5,000. The bill itemized all that was done by date but contained no $ amounts for each entry, just a total bill.

Client did not pay. Scope of requested representation increased and attorney provided an engagement letter with limited scope and requiring replenishable retainer or $15,000.

Client paid the retainer. Work was provided and $20,000 billed. Accounting applied the $15,000 in Trust first to the earlier $5,000 bill and then the remainder to the $20,000 invoice leaving a balance owing of $10,000. Client refused to pay and complained the advance retainer should not have been applied to the earlier bill without express permission.

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What was done well?

- Engagement letters
- Terms and conditions
- Replenishable advance retainers
- Communicated rates

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What are the problems?

- No engagement letters for matters in between
- Different rates not communicated
- Applied Trust fund advance retainer without permission or communication
- No advance retainer for matters
- Expanded scope without addressing previous balance

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Recap

- Cash is King
- Avoid AR, Avoid Collection
- Collect when you have to
- Manage Risk
- Increase your cash
- Improve attorney realization rate

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Thank You!

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