

The Hazard: Suing to Recover Fees

BY PHILLIP D. FRAIM

Every practitioner surely has heard the admonishment more than once that suing a client for fees is likely to trigger a counterclaim for malpractice. But if lawyers have heard, they apparently are not listening.

Claims experience suggests that the number of malpractice actions filed in response to a suit for fees is on the rise. In 1997, some insurers reported that as many as 20 percent of claims filed against lawyers were responses to suits for fees.

A few simple rules should govern the behavior of lawyers regarding fee disputes with clients:

The first general principle is to avoid suing for fees.

Second is to avoid potential fee disputes by using preventive measures:

- Execute a specific fee agreement at the outset of representation.

- Fee agreements should include scope of representation and proposed billing method.

- Use interim billings, typically monthly, to avoid one large bill, and itemize the services provided.

- Be consistent with both billing and compensation methodology.

If you must pursue a suit for fees, make sure all critical considerations have been made:

- Is the amount at issue critical to your firm and worth the risk of a malpractice claim?

- Did the client receive a satisfactory result?

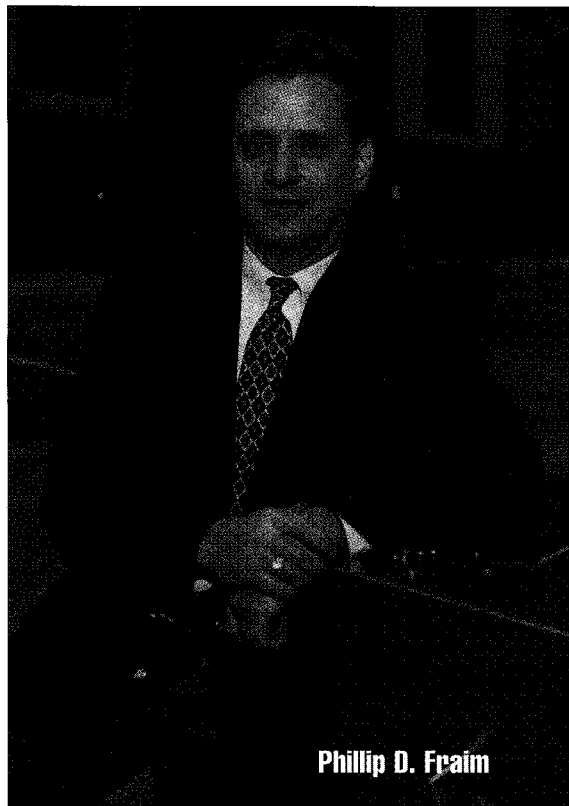
- Has an objective third party reviewed the file and found it above criticism?

- Have you considered fee dispute resolution?

- Would any judgment be collectable?

- Would you accept a lesser amount as a compromise?

Maybe one reason why the pat-



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tern of fee disputes and malpractice claims continues is that lawyers never dig deep enough to identify the underlying source that creates their perceived need for the suit for fees.

The first critical consideration in determining whether a suit for

fees should be pursued is whether the amount owed by the client is sizable enough to warrant a collection suit. Perhaps it would prove beneficial, however, to examine whether allowing the amount to grow to such a substantial size is really the main problem.

As noted, one step in avoiding fee disputes is to bill periodically instead of sending one massive final billing. Many firms, in fact, do use periodic billing, but they, too, often stop there.

A critical administrative step in managing any successful business, including a law practice, is to work the receivables and keep them current. The older the receivable, the less likely the collection effort is to succeed.

All of us can identify with the pain of paying bills, and a carryover of that feeling is the discomfort many feel in requesting payment, at least until rage and rejection take over.

Yet lack of action in this area only compounds the problem as more small bills grow into one large amount due. Often the total amount due grows until paying it off becomes nearly impossible.

This problem could be avoided by quicker action when amounts due are smaller and more affordable.

Another helpful measure is to seek feedback from the prospective client before reaching a proper fee agreement at the outset of the case.

The initial client intake form is probably the best opportunity for client feedback during the fee agreement stage. Clients are asked to describe what they desire the legal services to accomplish. This then allows the attorney to ascertain the reasonableness of the clients' expectations.

The clients also are asked what they expect to pay for these legal services, which allows the attorney to determine whether a balance

exists between the desired outcome and the fee.

By improving collection of fees before they build up, lawyers will presumably be able to avoid suing to recover fees and then hoping that the payback does not come in the form of a malpractice lawsuit. ■

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