

TIPS FROM THE RISK & PRACTICE MANAGEMENT ADVISOR

BY DEBORAH E. GILLIS, QC
 Risk and Practice Management Advisor

Tips for practicing in a tough economy

As our economy tightens, the always important processes of effective client and matter screening and comprehensive retainer agreements becomes even more critical to your practice success. You do not want to panic and just say yes to every inquiry for representation that you receive. As well, for your practice to be viable you need to take steps to ensure that you get paid for services you provide, unless you make a conscious choice to work pro bono.

Learn to recognize high-risk clients. If you choose to represent them, recognize the extra time and energy they will require from you and your staff and how this will impact on your ability to meet other clients' needs on a timely basis.

In a previous *Society Record* article, www.lians.ca/lossprevention/SRarticles_LIANS/LIANS_SRVol124no5.pdf, I discussed the importance of effective client screening and outlined a number of negative characteristics to be alert to in a prospective client, including one who

- has unreasonable motives or a hidden agenda;
- resists paying the required consultation fee or retainer;
- has unreasonable expectations about the outcome, cost or time involved;
- wants to eliminate necessary steps in the presentation of the matter to reduce costs;
- expects rushed closings or transactions and is pressuring you to do something that just doesn't feel right.

Reread this article for additional client screening tips.

Think carefully before agreeing to act for anyone who won't sign a retainer agreement or pay the requested retainer. Ask yourself, if they can't or won't pay a retainer at the outset, what confidence can you have that they will pay for your services as your bills are rendered?

Once you have agreed to represent a client, reduce that agreement to writing. This is done in your retainer agreement/engagement letter. A retainer agreement that clearly sets out what you have been hired to do is a valuable risk management, financial management and communication tool.

Sign a new retainer agreement for each matter you accept, even with the same clients. Clearly spell out in each agreement what you have been retained to do and what you have not been retained to do. An agreement

that is clear on the services to be provided, your policies and procedures, as well as a legal process, helps reduce misunderstandings between you and your client about the scope of your retainer.

Your retainer agreement should clearly set out billing options, payment methods, payment schedules, interest rate charges, disbursements and HST. Consequences of nonpayment of accounts should also be set out clearly. This conveys the message that you value the work you do. Clients who understand your billing process up front and agree to retain you on the terms you set out are more likely to pay on time, thereby resulting in fewer unpaid accounts and better cash flow.

Do not be reluctant to discuss fees during your initial interview. Be clear that you expect to be paid for your services on a timely basis. Discuss with your client at the outset the best time of the month to be billed. This assists the client in budgeting and reinforces the message that payment of your account should be a priority. Of course, follow through and bill regularly and at the agreed time.

Make sure that the retainer you require is sufficient to cover your initial work and that your agreement requires that the retainer be replenished once the initial retainer has been reduced to a certain amount. Set out the consequences if the top off is not received. Do not begin work on a file until you have the retainer. Be clear and firm about this and your requirement for ongoing "top ups" of your retainer. See www.lians.ca Loss Prevention Resources for sample wording for your retainer agreements.

When screening matters, resist the temptation to dabble in practice areas not familiar to you. It is very risky to do and the likelihood you will make a mistake is high. If you are considering branching out to a new practice area, consider partnering with experienced co-counsel until you are familiar enough with the practice area to be able to practice competently and efficiently.

Most importantly in the current economy, don't panic. If you find you have extra time, see this as an opportunity to introduce new efficiencies to your practice. Update your precedents. Learn more about technology. Also use any extra time you might have to reconnect with your clients. Most new business comes from existing clients, and referrals from them.

Deborah E. Gillis, QC, is the Risk and Practice Management Advisor for LIANS. She may be reached at 423-1300 ext. 345 or at dgillis@lians.ca.