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LawBiz® TIPS – Week of April 3, 2012

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Time is fast approaching for our LawBiz® Practice Management Institute - The Path to Prosperity. There are only a few seats left. If you want to dramatically reduce your stress and increase your revenue, you must join us April 20th and 21st at the Shore Hotel in Santa Monica. **Sign up NOW** at www.lawbiz.com.

Last week, I attended the ABA's Legal Technology show in Chicago. A number of the presentations were outstanding, the LPM books are always good, but the camaraderie and reconnection with leaders of law firm technology are always the best parts of the show for me. This year, several of the new offerings that struck me the most were:

- Fujitsu's new portable unit that fits in my briefcase along with my laptop; I'm going to get one.
- Netdocuments which is a cloud hosted document (including emails) storage and retrieval (great search engine); I'm looking forward to an on-line demonstration the beginning of next week. If it is as good as what I saw at the show, I'm going to modify my entire system.
- Clio, a practice management system that just keeps getting better as the years go by.
- MyCase practice management system that just announced going to the cloud.

While not displayed at the show, I took the opportunity to wander up the Magnificent Mile (Michigan Avenue) and talk to the Verizon and Apple folks. I've concluded that I will buy a Motorola Smartphone - Razzr Maxx; and an iPad. The former will be my workhorse phone to replace an outdated iPhone and the latter will allow me to experiment and learn what so many people are talking about. I'm looking forward to learning how I can monetize (make money) with both instruments.

This show probably has had a greater impact on my wallet than any in recent time; but technology companies are finally getting the message that integration of various tasks is the key to increasing lawyer efficiency and productivity. We're getting closer than ever before.

In this issue:

[Yes, You Have a Right to Get Paid](#)

[Secrets of The Business of Law®](#)

[Video: Check Clearing Policies](#)

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Yes, You Have a Right to Get Paid

Ethically You Can Retain a Collection Agency

A new opinion by the New Jersey State Bar's Advisory Committee on Professional Ethics raises a major alarm bell for any lawyer who has trouble collecting money from a current client. The Committee's Opinion 723, issued on March 7, affirmed a position that I have long held, namely that it is ethically permissible to retain a collection agency to secure payment from former clients who have not paid their bills. The caveat the Committee made, namely that only such information as "is reasonably necessary for the agency ... to collect the debt" should be revealed, is simply common sense; confidentiality of files is a fundamental lawyer responsibility.

A Non-paying Client Cannot Be Left High and Dry

The troubling part of the opinion is a flat statement by the Committee: "Lawyers may not initiate collection action against current clients." This flies in the face of everything embodied by "The Business of Law®" and is, I believe, not required by the Rules of Professional Conduct. It is true that lawyers cannot leave a non-paying client high and dry. Rule 1.16 ("Declining or Terminating Representation") allows lawyers to withdraw from a representation if "the 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." An attempt to withdraw without adequate notice, for example right before a trial date, and without careful records of the client's billing and payment performance may bring a state bar disciplinary action.

Have an Engagement Agreement

But if a lawyer continues the client representation, and has reviewed the client file to make sure that there has been no negligence in that representation, using a collection agency or initiating fee arbitration on current clients who are not paying is perfectly justified if an engagement agreement is in place. Such an agreement essentially states the responsibility of the lawyer (provide the best representation possible) and the client (cooperate with the lawyer and pay the bill). If the law firm has a collection policy it should be enforced, including by the retention of a collection agency. Otherwise, the representation becomes a pro bono assignment, and if pro bono service is not stipulated in the engagement agreement, it is not necessary.

There is Nothing Unethical About Wanting to Get Paid

Some say that law is different from other businesses, and with respect to ethics issues that may be true. But there is nothing unethical about wanting to get paid and taking steps to get paid, while continuing all ethical obligations. Lawyers are subject to the Rules of Professional Conduct; but law firms are and will continue to be subject to the rules of economics.

Secrets of The Business of Law®
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What Clients Are Saying:

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MVO
Los Angeles, CA

"I would highly recommend the services of Ed Poll to anyone in need of assistance with understanding their business, improving its operations, or valuing it for sale or transition to some other operational format."

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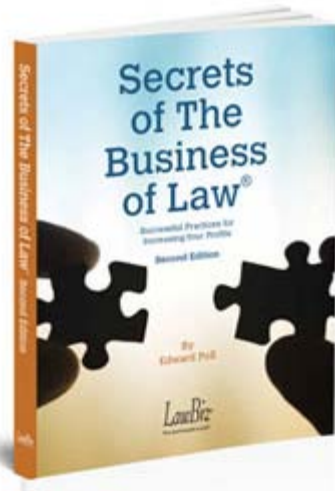
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