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A New Take on Client Collections

The pandemic led to a variety of billing and payment process changes — which some law firms are continuing to embrace as they move forward.

Law firms saw an uptick in business during the COVID-19 pandemic; a number of their clients, however, experienced a very different trajectory.

ERIN BRERETON
Owner
Chicago Journalist Media

In the first few months of the pandemic, more than 3 million small businesses became inactive — the largest drop on record, according to one economist's analysis. Nearly two years later, many still faced challenges: A 2022 Goldman Sachs survey found 71% said the Omicron variant had negatively impacted their revenue.

Small businesses weren't the only organizations with continuity challenges. Corporations, too, struggled during the pandemic, with oil and gas, recreation and other industries suffering significant losses.

Fairly early on in the pandemic, to reduce the risk of clients defaulting on their payments, some law firms began either preemptively offering or accepting requests for different fee structures.

"We certainly saw them at the beginning of the pandemic," says Michael Rynowecer, President and Founder of BTI Consulting Group. "You had a lot of very customized billings as companies tried to figure out their cashflow. Some firms said, 'For the next six months, we'll defer billings, or we'll change the billing structure.'"

In 2021, the year after the pandemic's onset, law firm profits rose to record levels across all market sectors, according to a report from Thomson Reuters and the Georgetown University Law Center on Ethics and the Legal Profession. Seventy-four of the Am Law 100 firms experienced an increase in gross revenue.

Law firms' billing practices, according to research from the Private Bank Law Firm Group and Hildebrandt Consulting, played a key role in helping firms perform better than they expected during the pandemic.

REVISITING PAYMENT PROSPECTS

By summer 2021, the demand for alternative fee arrangements (AFAs) in North America had increased by 28%, according to a survey conducted by legal tech provider BigHand.

The options that law firms offered ranged from introducing fixed or capped fees, a technique 40% employed, to providing extended payment terms, which 41% of firms initiated.

Thirty-five percent utilized upfront billing practices or charged clients at certain milestones in a matter; 39% offered some type of discount, such as supplying a lower version of their standard rates or reducing their overall fee if they received payment early.

Miami-based Novela Law had used flexible billing practices with some clients prior to 2020. During the pandemic, the firm took on more fixed-fee engagements, says founder Daniel Novela.

“We represent some restaurant groups that were hit very hard; even people in real estate development, for a while, it was all kind of frozen,” Novela says. “People really became cost flow-conscious. They didn’t know where things were going to be in the future, so they were really pushing [the notion of], ‘We don't want some open-ended engagement; we want to know what this is going to cost.’”

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Novela priced matters by drawing from past experience and incorporating specific parameters.

“I try to be very, very precise — because I don’t know exactly where things are going to go,” he says. “[I would say], ‘The engagement is for these four things, and this is the price. Anything beyond that, we have to revisit either the fixed fee or go hourly.’”

His firm has tried to be flexible in other ways, as well.

“Sometimes it isn’t just a question of fixed-fee billing,” Novela says. “If a company is in distress, they may need to make other changes from time to time. We’ll work around that. If there’s a transaction that’s pretty significant for them, we’ll say, ‘We could spread out those payments over a period of time.’”

BILLING ADJUSTMENTS’ FORTUITOUS EFFECT

In addition to ensuring funds continued to flow into the firm, providing a greater amount of payment choices helped some law firms strengthen their relationships with clients, Rynowecer says.

“The firms that offered flexible arrangements, even if they ultimately didn’t take hold, very much improved their relationship,” he says. “They were able to gain and improve the trust levels they had. Clients felt law firms really understood their business because they would know these organizations might be more affected by cashflow.”

Business litigation firm Chatow Law adjusted some of its billing and payment practices during the pandemic, including entering into a trade agreement with one of its clients, a popular local restaurant that paid for some of the firm’s work with gift cards.

Principal Mark Chatow had traditionally taken some cases on contingency, but he realized early in the pandemic that it might present an opportunity to grow that part of his practice — and began more aggressively marketing the contingency fee option.

"I created a bunch of content for my website," Chatow says. "I really started to home in on outreach [to] other attorneys I would talk to, and the referral basis started to grow. It was good timing because there were a lot of attorneys getting cases that weren't a fit for them, so they were happy to refer cases, and maybe they'd make some money from it. [For] one that got referred to me during the pandemic by an attorney, we just wrote a check for $124,000 for his referral fee."

Chatow's promotional efforts resulted in more potential work coming through the door — giving him, he says, a better selection of contingent cases to choose from.

> "It's great to be aligned with the client and be on their side, not just in principle, but in reality. Something I noticed that really changed was I was helping a lot of people who wouldn't have gotten help otherwise and that made me feel good. It made my clients feel good; and it's going to pay dividends for the firm in the long run, because happy clients tend to tell other people."

"I was able to really pick the ones that made sense," he says. "Surprisingly, there were some other ones that didn't make sense on a contingency basis, but they liked my approach, and we ended up working hourly [for them]. It turned out to be a good lead generator for some hourly cases."

Although strengthening client relationships may not be a central concern for Chatow's firm, which doesn't generally handle a lot of repeat business, contingency work, he says, can potentially be more lucrative than hourly billing — and may also provide other indirect benefits.

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THE IMMINENT PAYMENT LANDSCAPE

Despite the various payment-related changes firms have made in recent years, a number, Rynowecer says, have since returned to their pre-pandemic hourly billing practices.

"Those largely started to dissipate, as both clients and law firms realized cashflow, with all the government aid and fiscal policies, wasn't going to be nearly the pervasive issue they thought," he says. "There's been a decline in alternative fee arrangements because the workload is so compelling in litigation, for example, and regulatory and labor and employment. And the turnover at law firms and corporate counsel offices makes it difficult to hammer out exactly what those fee arrangements would be, because they haven't reached the trust point one needs to."

Some firms, though, have continued to use the billing and payment structures they adopted during the pandemic.

Shield Law Group, APLC, for example, saw an influx of roughly 50% more bankruptcy inquiries during and after the pandemic, says John Sarai, the firm's Owner and Managing Attorney.

The subsequent increase in business allowed the firm to relax the timeframe involved in clients completing a series of payments leading up to their Chapter 7 filing. While typically, the firm hadn't extended the duration beyond three months, during the pandemic, some clients took up to a year.

"There have been times where the situation they're in, they can afford maybe a $100 a month, and we set up automatic payment plans," Sarai says. "When it comes to bankruptcy, the more cases that come in, the more return on investment you have and the more profitable the business becomes because it's a flat fee. [The] increase in clients makes up for any reduced fees or costs we incur by having to drag a case out."

Shield Law Group also, in some instances, offered to reduce its fees during the pandemic if clients could pay off the total sooner — which, after exemptions like rent moratoriums became available, some were eventually able to do, Sarai says.

In Chapter 13 cases, where debtors pay a certain amount each month on an ongoing basis that's distributed to creditors by a trustee, the firm was able to charge less upfront.

> "Proactively taking steps to adjust billing methods, when it seems appropriate, can potentially help build goodwill — and strengthen clients' sense of loyalty."

"A Chapter 13 bankruptcy fee, set by the courts, is a maximum of $5,000," Sarai says. "But we would say, 'We can get your case filed for $2,000, and then whatever's left gets paid over five years as a small percentage of your bankruptcy payment.'"

With the threat of a potential recession currently looming — which could again cause client solvency issues — to increase the likelihood law firms will continue to be paid on a timely basis in the future, Novela suggests ensuring your firm remains a useful asset.

"Clients have a lot of vendors that need to get paid, and you're just one of them," he says. "When things aren't going so well, they don't see the value in the legal work the way they used to. If they feel like you've provided all the service you can and they don't need you anymore, it's going to be harder to get paid. But if they see this is a relationship [they] need to continue — even if it's a discounted amount because they're in financial distress — you're going to get something."

Law firms don't need to wait for a health crisis or faltering economy to accommodate clients' financial needs; proactively taking steps to adjust billing methods, when it seems appropriate, can potentially help build goodwill — and strengthen clients' sense of loyalty.

"We'll be working on a deal for months, and the deal doesn't close — things just change, or the client decides they don't want to buy it anymore," Novela says. "A lot of times, we'll give the client a discount, because I get it — there was an intention to do something, and now there's a big bill to be paid. I know there's going to be another deal later. It's just a question of working with your client; long-term, if you're their partner, they'll be your partner, too."

About the Author

Erin Brereton is a freelance writer, editor and content strategist who has written about the legal industry, business, technology and other topics for 20 years.

Email
Website
Twitter