

Is it worth suing for unpaid fees?

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The decision to sue for unpaid fees should not be made lightly. The reality is that clients often respond with a counterclaim for damages, asserting negligence.

An often nearly foolproof way to be sued for professional negligence is to sue a client (particularly a disgruntled one) for unpaid fees.

Claims in negligence arising from actions by practitioners in pursuit of their fees are a common source of notification to Law Claims.

Whilst practitioners are entitled to be paid for their services, the risks and cost of being sued by a client will often outweigh the potential benefits of taking enforcement action. Even though there may have been no negligence in the performance of the retainer, resolving

these types of claims can be time consuming.

Practitioners thinking of taking action should firstly address the reasons for the unpaid fees, and consider the following:

- the potential costs that will be incurred;
- the amount of down time that can be lost in defending a cross claim;
- whether or not the unpaid amount is substantial;
- assess the result achieved for the client in the underlying matter;
- whether the relationship with the client was good prior to the fee dispute; and
- is the potential judgment collectable/ what amount can be realistically recovered?

Often a non-paying client will provide the useful information. Communicate with your client to understand why the fees remain unpaid and listen so you understand what the problem really is.

In many instances, unpaid fees result from short comings in one or more of

the following risk management categories, leading in turn to dissatisfied clients:

- client selection (acceptance of clients or matters that should not have been accepted in the first place);
- client communication (lack of clear and timely communications or periodic updates);
- management of client expectations;
- the quality of the services provided; and
- managing the firm's business practices including client billings.

Talking to the client first might assist in resolving the client's concerns and getting the unpaid account paid. Explaining all the work done to justify the account may be helpful. Responding to client questions may also help. An offer to compromise or to mediate may also become a sensible option.

Of course, there are clients who use negligence allegations against a practitioner as a tactic to try and reduce and/or defer, or avoid altogether the payment of fees. In such cases there may be little choice other than to file a claim. However, ultimately, choose your battle carefully. Often a claim for unpaid fees involves significant risks for a firm and this course of action should only be undertaken after a thorough consideration of the individual matter and only if the account is large enough to justify the aggravation and exposure to a claim that could eventuate.

Disputes about fees and disbursements are not indemnified by the Professional Indemnity Insurance Policy. Further, the costs incurred in defending any counterclaim for damages where there is a dispute about unpaid fees, or where the client is then also seeking to recover fees paid, are also excluded from indemnity under the Policy, unless the practitioner grants authority to the insurers to conduct or resolve the dispute with respect to the fees in such a manner as the insurers in their discretion decide.

