RISK MANAGEMENT
INSIGHTS

by W. Brian Ahern, RPLU

To Sue or Not to Sue: Suits for Fees

When a client doesn't pay for services, a law firm is faced with the difficult decision as to whether to initiate a suit for collection of fees. Local professional liability defense attorney Doug Butz cautions restraint when considering a lawsuit, "Law firms should critically think through the issues before deciding to sue a client because there is a good chance it will solicit a counterclaim. While the countersuit may be unmeritorious it is a tactic to neutralize the suit for fees." It is estimated that nearly 50 percent of all suits for fees will generate a counterclaim for malpractice claiming deficient performance by the law firm. Before making the decision to sue, consider the following:

- **The financial benefits versus the negative implications.** In assessing how much can be gained financially it is necessary to deduct costs or expenses of collection efforts.
- **Attorney fees.** It is advised that the law firm not represent itself. Therefore, subtract the costs of hiring an attorney from the anticipated recovery.
- **Taxes.** What is the net gain after taxes have been paid?
- **Partner/associate time.** Suits require attorneys' time within the firm - time that could otherwise be billable.
- **Expert witness fees.** In order to establish what a reasonable fee might be you may need to hire an expert witness.
- **Possible increase in malpractice insurance premiums.** If your firm receives a counterclaim the suit will be reported to your insurance carrier. Claims appearing in your firm's history can impact future premiums.
- **Adverse public image.** A firm's business is dependent on its attorneys' reputations. Making an enemy of a client and scaring away new clients could do far more harm than negotiating or forgiving a fee.
- **Division of net recovery.** When the amount collected is pro-rated among the partners of the firm the amount in controversy appears less significant. A $5,000 possible gain seems much less appealing when it works out to $1,000 for each of the five partners.
- **Be reasonable in the amount you will accept in fee dispute discussions.** Doing this does not denigrate the value of the legal services that were actually provided. Rather this is almost always the most practical and realistic way to end a matter of this type.

At or prior to the time of service of a suit for fees, an attorney must advise the client in writing of their right to voluntary arbitration pursuant to the California Business and Professions Code Section 6200. If the client agrees to arbitration, SDCBA will act as the arbitrator.

If you do decide to pursue the client for fees, wait at least one year from the disengagement of representation (make sure this is sent certified mail) and have someone who has not worked on the file review it to ensure you don't have any issues that may be difficult to defend in the unfortunate event of a counterclaim.

W. Brian Ahern, RPLU, is President /CEO of Ahern Insurance Brokerage, one of the largest independently owned insurance brokerage firms specializing in the insurance needs of law firms. Ahern Insurance Brokerage is the Endorsed Insurance Broker for the SDCBA.