

A Primer on Fees, Billing
& Collections

Camille Stell, President
Lawyers Mutual Consulting & Services
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1

Evolve
and
thrive

If you are operating the fees, billing,
and collections component of your
practice as you did twenty years ago,
chances are you are missing
opportunities for work

2

Clio

- Clio is a cloud-based legal practice management solution designed for solo and small law firms; discount offered as an affiliate member benefit of the NC Bar Association
- Clio serves 150,000 customers spanning 90 countries, approved by 65 bar associations and law societies globally
- **Clio Legal Trends Report** provides information on the most important issues faced within the legal profession. By analyzing aggregated and anonymized data from tens of thousands of legal professionals in the US, supported by extensive survey research, the report offers unique insights into law firm efficiencies, hourly rates, and other key metrics for success
- **COVID-19 Impact Report** - As part of Clio's ongoing research for the Legal Trends Report, they have undertaken new research to learn more about the impact of COVID-19 on the legal industry
- **Clio Cloud Conference** – gathering of 2,000 lawyers, legal professionals, consultants, and leaders from across legal and technology industries. The 8th annual conference will be **VIRTUAL October 13-16, 2020**
- **The Client Centered Law Firm: How to Succeed in an Experience-Driven World**, Jack Newton, Clio founder and CEO

3

Clio COVID-19 Impact Research Briefing May 4, 2020

Research highlights consumer concerns:

- 49% of consumers agree they would put off a legal issue
- 13% of consumers expect a coronavirus-related legal issue
- 57% **are worried** about making a living over the next few months compared to 46% of consumers **are very worried** about making a living over the next few months

Research highlights lawyer concerns:

- **Drastic deceleration in new matter creation** – 30% decrease in the first 5 weeks of 2020, 40% decrease by mid-April
- 77% of law firms agree day-to-day operations have been significantly impacted
- 67% of legal professionals surveyed are much more worried about the success of their practice
- 11% of firms surveyed have laid off staff, and 15% expect layoffs in the next 3 to 6 months
- **24% of firms are strongly considering changing or broadening their area of legal specialization in the next few months**

4

Martindale-Avvo Survey May 2020

- 52% of consumers surveyed said they would still hire a lawyer during the pandemic
- 44% of consumers would be willing to hire virtually if the attorney communicated via video call, phone call or email
- 81% of law firms have seen revenues drop, while 27% report revenue decline by more than half
- 18% of firms have laid off or furloughed staff
- 60% believe it will take from four months to a year for their firms to revert back to their financial position before COVID-19
- **50% plan for their staff to continue work remotely in some fashion when pandemic is over**
- **42% of attorneys are considering adding one or more new practice areas**

5



6

Clio 2018 Legal Trends Report

1,500 consumers surveyed:

- 57% said they had had an issue that could have been handled legally but wasn't
- 22% said they'd prefer using the law to handle an issue whenever possible
- 31% said using a lawyer was too costly
- 35% said the benefits didn't justify the cost
- 28% didn't like the uncertainty of the final cost of a service

7

Status of various practice areas

- Trial attorneys impacted with courts and administrative offices closings, many legal matters are dormant
- BigLaw making draconian cuts in staffing, paycuts, and trimming or freezing budgets – 64,000 lawyers laid off from firms in April
- Banking work continuing with workouts and bankruptcies
- Bankruptcy attorneys are expected to be in demand later, but with limits on evictions and foreclosures, bankruptcy firms are experiencing stagnation now
- Family lawyers initially reported seeing reduction in cases, result may be people separate but don't file for divorce or decreased assets result in simple divorces which generate lesser fees for lawyers, but anecdotal evidence by late summer shows uptick in work
- Business lawyers are seeing deals sidelined, delayed or completely derailed. However, advice regarding COVID-related issues, PPP loans, tech and life science are robust
- Home-Owners Association work is up
- Particularly in NC metro areas, real estate activity is still robust. Concerns about the impact of long-term Work From Home policies on commercial real estate
- Estate planning is robust, lawyers concerned about whether this will continue if the economy continues to deteriorate
- Insurance coverage lawyers are needed to define coverage exclusions
- The advice of employment lawyers has been vital in helping employers navigate increasingly complex issues of employee safety and layoffs
- Cybersecurity lawyers are in demand

8

How do clients find you?

Clio 2019 Legal Trends Report:

- When comparing methods of searching for a lawyer, **59% of clients sought a referral from someone they know** or have been in contact with, but **57% searched on their own** through some other means
- **16% did both** request a referral from someone they know as well as searched on their own
- Methods of searching on their own included: using an online search engine (17%), visiting a lawyer's website (17%), online reviews (8%), lawyer blogs, articles, videos (7%), social media (5%) – all online presence

9

What are clients looking for?

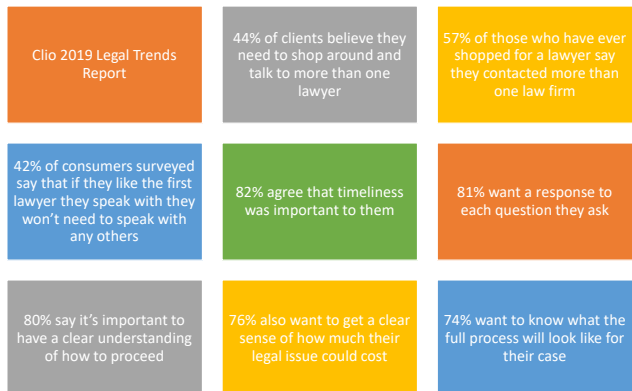
Clio 2019 Legal Trends Report:

- 77% want to know a lawyer's experience and credentials
- 72% want to know what types of cases they handle
- 70% want a clear understanding of the legal process and what to expect
- 66% want an estimate of the total cost for their case

The surprise here is your clients want transparency in process and pricing in addition to your expertise

10

What do clients expect?



11

Law firm responsiveness

Clio 2019 Legal Trends Report

- How quickly do potential clients expect firms to respond when leaving a phone message or email?
- 10% expect a response within an hour
- 24% within a few hours
- 45% within 24 hours

In other words, responding beyond 24 hours means missing the expectations of 79% of those who reach out

12

How do clients want to communicate?

Clio 2019 Legal Trends Report

Of those who indicated how they first reached out to a law firm:

- 68% reached out by phone
- 25% reached out by email
- 26% reached out in person

Clients have diverse preferences for communication. Be prepared to deliver a great client experience from the start by determining your client's preferences and offer a variety of methods

13

Do you drive clients away?

Clio 2019 Legal Trends Report

When asked why they didn't hire the lawyers they reached out to, consumers said:

- 64% said the law firm never responded
- 65% didn't get any indication on what to do next
- 62% didn't understand the process for their case
- 61% didn't get enough information they could understand
- 52% said the lawyer they spoke with wasn't likeable or friendly enough

Most lawyers want more clients, yet many law firms are failing to convert the clients that reach out to them

14



Setting Fees

15

Are Your Fees Competitive?

Google search - how much for a divorce lawyer?

- This search resulted in an ad for a family law firm. Clicking on the ad would provide insight about how other lawyers are promoting their services
- This search provided an average of fees from the lawyers.com website which appears to be from the results of a consumer survey they conducted:

*On average, **North Carolina divorce lawyers** charge between \$230 and \$280 per hour. Average total **costs** for **North Carolina divorce lawyers** are \$9,700 to \$11,700 but are typically significantly lower in cases with no contested issues. Jul 22, 2020*

- This search revealed other frequently asked questions (and answers) such as average retainer fee and average cost of a divorce

16

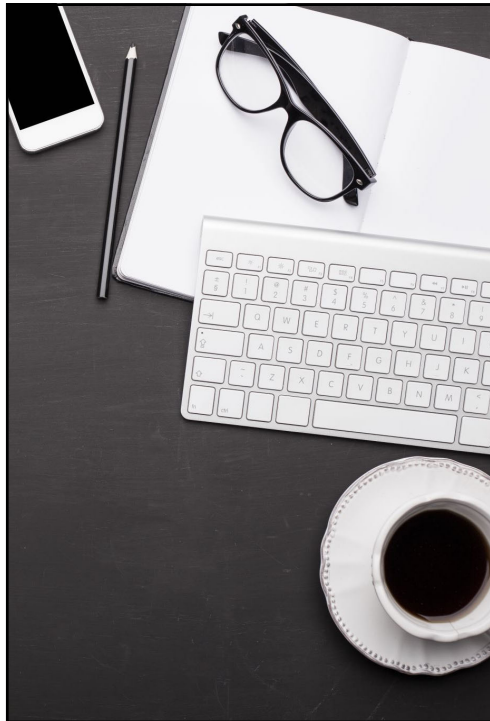


Setting Fees

In general, lawyers avoid asking other lawyers because they fear such discussions could lead to claims related to antitrust or price fixing

- Clio Legal Trends Report – fees reported by state or region of the country
- Recruiting firms often publish online Salary Guides that include regional billing rates – look at Special Counsel, Robert Half or Apple One
- Ask trusted clients and referral sources what they feel is reasonable
- “Mystery shopper” program – law firms call other firms to inquire about rates
- Ask judges what rates they typically award for lawyers in your area with your area of experience

17



Experiment

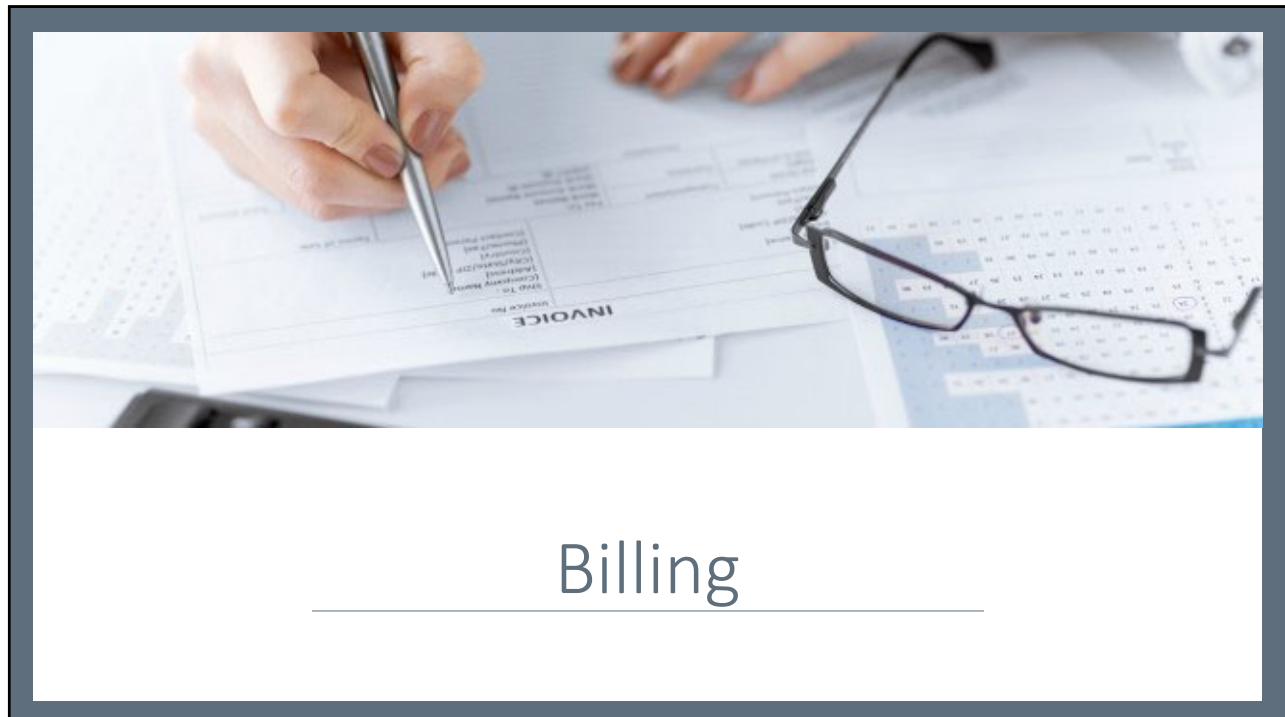
- Try out fees and then tweak them if they don't work
- Consider alternative service offerings such as unbundled services, packaged services, subscription services, educational programs, consulting services
- Offer service, if no one signs up this might be a sign the price is too high
- Break project down into parts so that clients have more payment flexibility by buying in phases and they determine the scope of the project

18

Advice from other lawyers . . .

- It is really hard to figure out what to charge and keep up with what others are charging in your area. When calculating my flat fees, I tend to use my hourly rate x the number of hours something will normally take me + build in time for one round of edits or questions.
- As someone who does litigation, I find fee affidavits in other cases or in my own cases to be a helpful way of gauging whether my rate and calculations are reasonable or not.
- Given my experience of talking with law firms, you probably aren't the highest and you may be the lowest.
- Solos and small firms do not seem to change their pricing at the pace of mid to larger firms due to client pushback concerns. Based on your expertise and length of time with no increase in fees, there is often room to increase fees.
- Often you need to increase your fees to get the kind of client you want.
- **Know how much it costs to do the work and calculate that into your fee setting process.**

19



Billing

20

Clio 2019 Legal Trends Report

Data based on responses from 150,000 solo and small firm Clio users in the U.S. and Canada, 2,507 legal professionals interviewed, 2,000 customers surveyed

- Average daily utilization rate – **2.5 hours** of billable time
- Average daily realization rate – **2.0 hours** billed to clients
- Average daily collection rate – **1.7 hours** collected from clients

21

Alternative billing model - Crisis billing arrangement

- The average law firm bills clients for work roughly within 30 days of performance, and gets paid on average 90 days later presenting a four-to-six-month gap in cashflow
- Speed up the process by which you get paid and simplify the process by focusing on the essentials
- Jordan Furlong suggests offering your clients a “crisis billing arrangement” – for any matters arising out of the pandemic and recession, rather than billable hours, your client will pay a monthly “pandemic flat rate” on the lower end of your billing scale, with a unique billing code that all timekeepers in your firm will use (for simplicity), with automatic electronic payments (to ensure financial stability)

22

Voice of the client

From their perspective, nothing annoys your client more than surprises when it comes to billing. Here are the excuses or delaying tactics:

- "The case was more complicated than we thought"
- "I've already written off some of my time and had an associate do a lot of the work to keep your bill low"
- "I'll check with the managing partner and get back you"

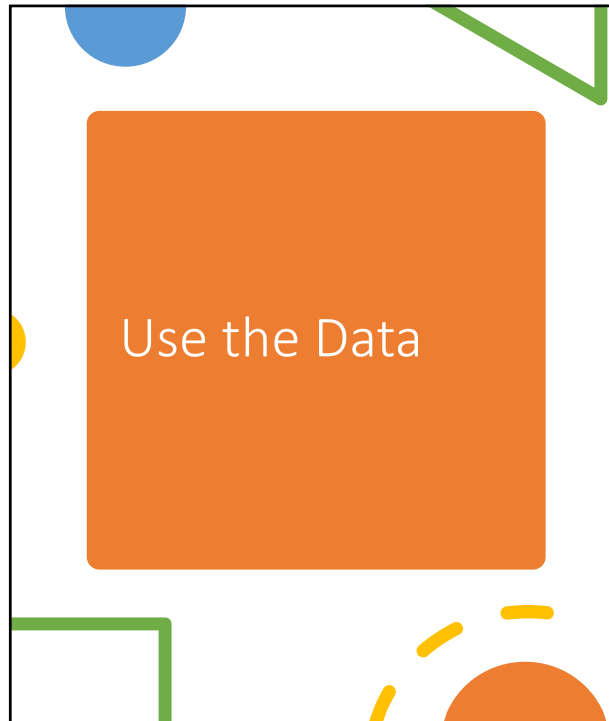
23

Voice of the client

Your client would say:

- You're the lawyer, you should know what this case is going to cost
- How many of these cases have you tried before? The data is in your billing records, use it
- Before we start a matter, give me a worst-case scenario in terms of cost so I can decide if I really want to pursue it
- If there is a wrinkle in the case that may cost me more money, pick up the phone and call me

24




Use the Data

- Review your financial reports for the prior 18-24 months for clues, data, insights, trends – talk this over with your accountant or CPA
- What is your most profitable work? Your least profitable work?
- Are you staying in touch with clients? Referral sources? Networking from 6 feet is not only possible, it is necessary.
- Do you know where your work comes from? Use this time to be strategic about building your referral network and thanking them for their efforts.
- Look for opportunities. What work have you been doing that should be expanded? What are new practice areas to explore?

25

Make billing a priority

- Put processes in place to ensure you are adequately capturing your time which should be billed to clients
- Document your billing process in order to improve billing workflow
- Timely billing results in greater collections – is it necessary to bill once a month? Is it time to change the process? Rather than hold all bills to the end of the month, do you want to process bills a few times during the month?
- Does your process involve multiple layers of time keeping, review, editing, and processing?
- Streamline the process and you'll collect more money and have happier clients



26



Collections

27

Clio COVID-19 Impact Report

- 71% of legal professionals are more concerned about their clients' ability to pay legal fees than before the pandemic
- 25% of law firms are losing revenue due to unpaid bills than before the pandemic
- 75% of clients would prefer to pay their legal fees via payment plan, while only 53% of law firms are equipped to offer payment plans

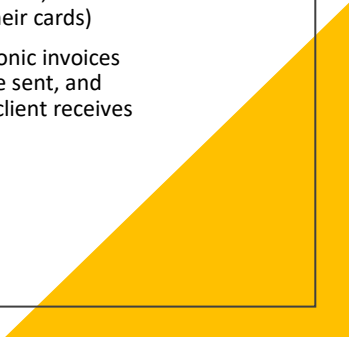
28



Online payments as a marketing tool

- The 2019 Clio Legal Trends Report showed that 50% of consumers in need of legal services are more likely to hire a lawyer who accepts online payments.
- 40% of individuals in need of legal services said they would **not** hire a lawyer unless they accepted credit or debit cards.

29



Your clients want online payment options

- A recent study conducted by Total System Services (TSYS) showed that as many as 75% of customers today prefer to pay with a credit or debit card (in addition to the convenience, customers enjoy credit card rewards, cash back and other perks of using their cards)
- Studies show that 85% of electronic invoices are paid the same week they are sent, and 57% are paid the same day the client receives the invoice

30

You need online payment options

- Taking credit cards means you get paid faster
- The money is deposited in your account sooner than a check
- Integration between your credit card processor and your time and billing / accounting system reduces duplication of payment information
- Using a credit card processor avoids the risk of client credit card numbers jotted down on sticky notes in your office

31

Credit cards and Trust Accounts

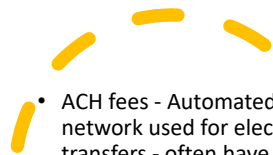
- No credit card fees from the merchant should ever be taken out of the trust account
- If the client disputes the charge, the merchant should not remove the funds from the trust account without notifying your firm and verifying your permission
- RPC 247 Payment of Fees by Electronic Transfer (1997)
- 97 FEO 9 Credit Card Chargebacks Against a Trust Account (1998)
- 2009 FEO 4 Credit Card Account that Avoids Commingling (2009)

32

Credit Card Payment Processors

- When shopping for a credit card payment processor consider costs such as transaction fees, monthly rates, integration with your other practice management tools, and Terms of Service language
- While there are many online payment platforms available, LawPay is the Affinity Partner of the NC Bar Association. LawPay was designed specifically for attorneys. LawPay prevents commingling of earned and unearned funds, protects your trust account from third-party debiting, and ensures IOLTA compliance for credit card, debit card, and eCheck transactions. **As a result of the pandemic, LawPay is offering a \$100 credit on processing fees for new accounts.**
- Other legal specific credit card payment processors include ClientPay, Headnote, LexCharge, and MyCase Payments

33



- ACH fees - Automated Clearing House, a U.S. financial network used for electronic payments and money transfers - often have fees that are lower than credit card processing fees
- 2013 Formal Ethics Opinion 13 – Disbursement Against Funds Credited to Trust Account
- Catherine Reach's blog (referenced in the Resource list) provides a link to the ABA Solo, Small Firm Division listserv discussion on the ethics of charging processing or convenience fees to make up for the credit card processing fee – short answer is don't do it
- LawPay and other credit card payment processors can also process ACH, e-payments, and e-checks

ACH and E-
payments

34

Orion Law Management 2019 Collections Survey

- What is the number one challenge your law firm has with collections?
- Policy – 57% - setting a universal payment and collections policy that will apply to all clients
- Enforcement – 29% - how do you handle approaching clients about late payments once they become overdue?
- Tone – 14% - how do you contact the client to get payment but avoid offending them in the process
- Timing – 0% - showing firms struggle more with how to convey the collections message rather than when to send the message

35

Best Practices

- Invest the time to establish a policy and communicate it throughout the firm
- Get attorney buy-in for the process you use and share success stories
- If you use resources other than the attorney, make sure everyone is on the same page about the collections message. In other words, don't have attorneys undermine collections efforts by saying, "it's not me trying to shake you down!"
- Stay on top of accounts receivable with monthly reports so that billing doesn't become delinquent, and if it does, it's not extremely overdue
- Following up with the client on outstanding invoices at billing time can help clients avoid falling too far behind to catch up
- Phone calls can be impactful – it gives you a chance to connect with your client and determine if there is a problem in the process – the work, the amount billed, a personal or business issue with the client
- Asking for money is hard – but forfeiting firm revenue is harder. Be respectful, courteous, and kind. Listen. Look for options to assist your client.

36

Cash is King

In times like these, everything is negotiable

For clients who have outstanding balances:

- Reach out by phone and email and inquire about the status of payment
- Continue to send the bill to your client – their situation may change in a few months
- Send invoices in a different way – if you mailed it, send it via email as a follow up
- Offer payment deferrals
- Consider payment plans
- Consider extending a discount for remitting a balance due
- Make it easy for clients to pay you with online or electronic payment options, including credit card

37

In times like these, everything is negotiable

Assess your accounts payable:

- Reach out to your creditors to inquire about options for payment
- Request payment deferrals
- Request a payment plan
- Ask for a discount for remitting a balance due

Cash is King

38

Modernize your law practice

The pandemic may be giving you more time than you usually have, invest it in building your business

- Use this time for strategic planning – growth plan, recruiting and retention, succession plan
- Use this time to rethink your service offerings to clients
- Cross train your staff - make sure you have the right people doing the right jobs
- Create a strategic networking plan
- Update your internal process and procedures
- Write a book, an eBook, a white paper for marketing purposes – this can be accomplished with the help of contract employee or service
- Enable electronic billing and payment options
- Move your documents and data to the cloud
- Refresh your website
- Review your data with a financial expert to calculate client and practice area profitability

39

Resources

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- **The Client Centered Law Firm: How to Succeed in an Experience-Driven World**, Jack Newton, Clio founder and CEO
- **2020 ABA Profile of the Legal Profession** - 150-page report covering statistics and trends in 10 areas of the legal industry
- **Attorney at Work** blog – one really good idea every day from law firm management, marketing, technology and other experts
- **Top Tips on Trust Account: Do's and Don'ts of Accepting Credit Cards** by Peter Bolac, NC State Bar Lawyers Trust Account Handbook
- **NC State Bar RPC 247, 97 FEO 9 and 2009 FEO 4** – credit card ethics opinions
- **The Lowdown on NC Lawyers Taking Credit Cards** blogpost, by Catherine Reach, NCBA Center for Practice Management
- **COVID-19 Will Turbocharge Legal Industry Transformation**, Mark Cohen, March 24, 2020 Forbes
- Technology consultant, Pegeen Turner, visit at www.legalcloudtechnology.com

40

Continue the Conversation

- \$250 for a 90-minute telephone consultation
- Speak at firm retreat or partners meeting, call for pricing
- Hire Camille to be your Coach on Call
- Camille Stell, President, Lawyers Mutual Consulting & Services
- Camille@lawyersmutualconsulting.com
- Toll free 800.662.8843, ext 133, Direct Dial 919.447.3354
- Visit www.lawyersmutualconsulting.com

