THE LAW SOCIETY
OF NEW SOUTH WALES

Legal Costs, Cost Agreements, Disclosure & Billing under the The Legal Profession Uniform Law

NSW Law Society Seminar

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THE LEGAL PROFESSION UNIFORM LAW

Regulated Costs

Section 59 contains the provisions relating to fixed costs in some matters. Most of the fixed costs will be ones we are already familiar with such as:

- workers compensation matters;
- probate and administration; and
- for recovery of certain debts & enforcement of certain judgments.

The new scales for these matters can be found in Schedules 1-3 of the *Legal Profession Uniform Law Application Regulations* 2015 ("the Regulations").

In addition, the following sections restrict costs in particular types of matters as follows:

- Schedule 1 to the *Legal Profession Uniform Law Application Act* 2014 ("the Application Act") relates to maximum costs in personal injury matters and provides the contracting out mechanism;
- Schedule 2 to the Application Act relates to costs in matters where there are no reasonable prospects of success.
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LEGAL COSTS GENERALLY

Section 172 of the Legal Profession Uniform Law (NSW) 2014

Section 172 of the *Legal Profession Uniform Law (NSW)* 2014 ("the LPUL") is the crux of the legislation as relating to costs and to a large extent mirrors section 363 of the LPA. However, it is to be noted former section 363 was a specific section for assessment of legal costs by an assessor. Section 172 has a wider application. It is not simply limited to assessment but requires practitioners at all times to charge "no more than fair and reasonable" legal costs.

Section 172(1) contains the "umbrella" provisions against which costs will be measured. It contains a number of similarities with section 363(1) of the LPA in that costs must be "fair and reasonable" overall together with being "reasonably incurred" and "reasonable in amount".

One major change is the addition of the concept of proportionality in section 172. Legal costs now must be "proportionately and reasonably incurred" and "proportionate and reasonable in amount". It is arguable costs assessors already dealt with the notion of "proportionality" of legal costs under the LPA by reference to the criteria contained in section 363(K), being "any other relevant matter" and in inter-partes assessments by reference to section 364(2)(f) "the outcome of the matter". In any event the concept has now been specifically codified in the LPUL. Civil Litigators will be familiar with the concept of "proportionality" contained in s60 of the *Civil Procedure Act* 2005 where it notes the practice and procedure of the court must be implemented in a way that is proportional to the costs of the proceedings. Cases like *April Fine Paper –v- Moore Business Systems* [2009] NSWSC 867 have noted the section extends to reviewing legal costs on the basis of proportionality. Namely, in assessing whether a legal cost has been fairly and reasonably incurred will necessarily involve an investigation of the complexity and quantum in dispute of the proceedings.

Section 172(2) contains the indicia which must be considered in determining whether the legal costs charged are no more than fair and reasonable and in particular are proportionate and reasonable in amount and proportionately and reasonably incurred. For the most part the criteria are identical to section 363(2) of the LPA. Some interesting additions include;

- The notion of "experience, specialization and seniority"
- The "extent to which the matter involved a matter of public interest"
- The number and importance of any documents involved"

Section 172(4) of the LPUL provides that a cost agreement is "prima facie evidence that legal costs disclosed in the agreement are fair and reasonable" but only if disclosure obligations have been complied with and the cost agreement doesn't contravene anything in Division 4 of the LPUL.

It's a positive move towards an acknowledgement of the terms of the contractual relationship between the practitioner and client as they enter into a cost agreement. It also provides a balance for the removal of S363 (1)(c) of the LPA which provided practitioners with some protections.

Section 363(1)(c) stated "the fairness and reasonableness of the amount of legal costs in relation to the work, except to the extent that section 361 or 362 applies to any disputed costs". Sections 361 & 362 were references to a complying cost agreement. These provisions have been interpreted in cases like *Boyce –v- McIntyre* as authority that where costs are agreed as a lump sum or at agreed rates in a complying cost agreement these are not subject to assessment by cost assessor. Namely, the client is precluded from disputing the quantum of the gross fee or the quantum of the rate charged. However, what is then assessed is the reasonableness or performance of individual items.

Accordingly, the major changes concern the concept of proportionality to legal costs and the introduction of the notion of "prima facie" evidence which is a positive outcome.

<u>Security for legal costs</u>

Section 206 provides that a practitioner may "take reasonable security from the client for legal costs (including security for the payment of interest on unpaid legal costs". Where such security is not provided the practitioner may refuse or cease to act.

The legislation doesn't provide guidance on what would constitute "reasonable security". In all likelihood you may consider such options as money in trust or undertakings to see to payment of your fees afforded by another practitioner. Anything further, such as mortgages, caveats or charges over property may raise issues of conflicts of interest and in any event will certainly need to be entered into by way of a separate agreement with independent legal advice sought by the client.

<u>Avoidance of increased legal costs</u>

Section 173 creates a positive obligation on law practices to;

- not act in a way that unnecessarily results in increased legal costs; and
- to act reasonably to avoid unnecessary delay resulting in increased legal costs.

There are no specific provisions concerning the consequences for breaching the provision. However, section 298 of the LPUL provides that a breach of any provision in the LPUL is conduct capable of constituting unsatisfactory professional conduct or professional misconduct.

COST AGREEMENTS

S179: provides the client's right to require the practitioner negotiate and enter into a cost agreement with the client.

S180: provides the requirements for a cost agreement. Nothing much has changed, the agreement must be in writing, can be accepted by other conduct (but not if it's a conditional costs agreement) and cannot oust the client's right to assessment (except for commercial / government clients where assessment doesn't apply to them in any event).

S181: deals with the requirements for a conditional cost agreement. They are fundamentally identical to those contained in section 323 of the LPA. The exception is the removal of some of the exceptions in section 323(4) and (4A). Namely, as between law practices conditional costs agreements must be signed and include a statement as to the client's rights to seek independent legal advice.

S181(8): that contravention of these provisions could amount to unsatisfactory professional conduct or professional misconduct.

S182: provides for conditional cost agreements with uplift fees. The new legislation removes the prohibition on uplift fees in a claim for damages. The requirements otherwise the same as the former section 324 of the LPA. In particular the cap of 25% on uplifts in litigious proceedings.

S183: contains the prohibition on contingency fees in litigious matters, the same as section 325 of the LPA. Note 183(3): unsatisfactory professional conduct or professional misconduct if you contravene the section and section 185(4) prohibiting recovery of any fees under a contingency fee agreement.

S184: provides that a complying cost agreement may be enforced in the same way as any other contract.

S172(4): provides that a complying cost agreement will be prima facie evidence the legal costs disclosed in the agreement are fair and reasonable provided disclosure obligations have been complied with.

<u>Void cost agreements</u>

The section is, once again, fundamentally the same as section 327 of the LPA.

S185(1): a contravention of any of the provisions of the division renders a cost agreement void.

S185(2): a practitioner is not entitled to recover an amount of legal costs in excess of the amount which would have recovered under the agreement had it not been void.

S185(3): a contravention of the uplift provisions means the practitioner cannot recover the uplift fee and must repay any amount received on account of the uplift fee.

S185(4): a contravention of the contingency fee provisions means the practitioner is not entitled to recover any fees and must repay all amounts received on account of the matter.

Commercial & Government Clients

One important section to take note is section 170 which deals with Commercial or Government Clients. This is a rebranding of the old "sophisticated clients" in the LPA. The criteria for a commercial or government client is identical for the most part to that under the LPA except for the following additions;

S170(2)(v): a subsidiary of a large proprietary company, but only if the composition of the subsidiary's board is taken to be controlled by the large proprietary company…"

S170(2)(e): a body or person incorporated in a place outside Australia.

Rule 71 of the *Legal Profession Uniform General Rules* 2015 ("the General Rules"): State owned enterprises within the meaning of the *State Owned Enterprises Act* 1992 (Vic) and the *State Owned Corporations Act* 1989 (NSW).

Interestingly the exemption no longer applies to an "Australian legal practitioner" only to a "law practice" as defined in section 6 of LPUL. Accordingly, practitioners who don't fall within the definition of law practice (for example employed solicitors not practicing in their own right) are no not commercial or government clients.

One important difference is the operation of the exemption. Under s395A of the LPA the "sophisticated client" had to contract out of the assessment provisions – if they didn't arguably they retained their right to assessment. Whereas, section 170 of the LPUL Part 4.3 (which encompasses all of the costs sections) simply states Part 4.3 doesn't apply to commercial / government clients. There is no need to contract out. There are some exceptions, the following provisions do apply to commercial and government clients:

1. 181(1): dealing with conditional costs agreements;
2. 181(7): prohibition on conditional cost agreements involving family law or criminal matters;
3. 181(8): a contravention of the requirements for a conditional cost agreement may have disciplinary sanctions;
4. 182: conditional cost agreements involving uplift fees;
5. 183: contingency fees are prohibited in litigious matters; and
6. 185(3,4 & 5): effect of entering into cost agreements in contravention of provisions

The exceptions place the same restrictions on practitioners when dealing with commercial and government clients as with their "retail" clients when it comes to conditional cost agreements and contingency fee agreements. Without the exceptions otherwise banned agreements could be entered into with commercial and government clients.

Third Party Payers

The third party payer provisions are found in section 171 of the LPUL.

Section 171 is for all intents and purposes fundamentally identical to section 302A of the LPA which deals with third party payers.

There are no significant changes in relation to third party payers. The LPUL continues to require a "legal obligation" to pay the legal costs. Accordingly, the decision of *Shillington –v- Harris* [2013] NSWSC 1202 would continue to be the law regarding a third party's standing to commence an assessment. In particular, beneficiaries will not have standing to have the executor's legal costs assessed.

COSTS DISCLOSURE

Under the LPUL there will be three levels of disclosure;

No Disclosure

S174 (4): no disclosure is required where the total legal costs in the matter (excluding GST and disbursements) do not exceed the "lower threshold".

Schedule 3 Part 3 Section 18(3) of the LPUL states the lower threshold is $750.

Alternative Disclosure

S174 (5): "alternative disclosure" can be made where the total legal costs in the matter (excluding GST and disbursements) do not exceed the "higher threshold".

Schedule 3 Part 3 Section 18(4) of the LPUL states the higher threshold is $3,000.

Alternative disclosure is made by providing the client with the "uniform standard disclosure form prescribed by the Uniform Rules". The form is to be found in Schedule 1 to the General Rules or alternatively in word format on the Legal Services Council's website at www.legalservicescouncil.org.au The form provides a short form disclosure together with an information sheet which can be provided to clients explaining the disclosure process and their rights. Please note the disclosure form itself is not a costs agreement.

One advantage of using the uniform standard disclosure form where available is that compliance with S174(3) is not required.

Full Disclosure

Where the total legal costs in the matter (not including GST and disbursements) are likely to exceed the higher threshold full disclosure will be required. Sections 1 and 2 of S174 stipulate the requirements for "full" disclosure.

Fundamentally a practitioner must disclose the basis on which legal costs will be calculated together with an estimate of the total legal costs and where there is any "significant change" to anything previously disclosed to provide the client with a sufficient and reasonable amount of information about the change and its impact on the legal costs what will be payable to allow the client to make informed decisions about future conduct.

The obligation to give an estimate of the total legal costs cannot be complied with by providing a range of estimates as was the case under the LPA. The legislation is clear a single figure estimate of legal costs must be provided. However, it is acceptable to provide an estimate of the total legal costs of each stage of the matter.

In litigious matters the obligation to disclose estimates of possible inter partes costs at the commencement of the matter has been removed. The obligation arises now where settlement negotiations are taking place as noted below.

In addition to the obligations contained in S174(1) the law practice must include the following information about the client's right to:

- negotiate a costs agreement with the law practice;
- negotiate the billing method (by time or task) or frequency;
- to receive a bill from the law practice and their right to request an itemised bill; and
- to seek the assistance of the Legal Services Commissioner in the event of a costs dispute

<u>Changes in the amount of total legal costs estimated</u>

S174 (7): where a practitioner has previously provided no disclosure and becomes aware the total legal costs are likely to exceed the lower threshold the practitioner must:

- inform the client in writing of that expectation; and
- make the disclosure required (either full or partial disclosure).

S174(8): where the practitioner has previously provided alternative disclosure and becomes aware the total legal costs are likely to exceed the higher threshold the practitioner must:

- inform the client in writing of that expectation; and
- make the disclosure required (being full disclosure).

<u>The obligation to take all reasonable steps</u>

S174(3): where full disclosure is given to a client **"the law practice must take all reasonable steps to satisfy itself that the client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs."**

The last obligation is an acknowledgment of the need for good clear communication between a practitioner and their client. You will note the wording is close to that contained in Rule 7 to the Solicitors Rules being;

> *"A solicitor must provide clear and timely advice to assist a client to understand relevant legal issues and to make informed choices about action to be taken during the course of the matter."*

The question for practitioners will be what constitutes "reasonable steps". The answer will in all likelihood depend upon the circumstances of the case and the characteristics of the client. Certainly good clear communication with the client, file notes, cost agreements and follow up conferences will in all likelihood form part of those reasonable steps.

S174 (6): as under the LPA disclosure must be made in writing. Verbal disclosure will be insufficient. Also note the requirement to make written disclosure does not abrogate the obligation to take all reasonable steps in S174(3).

ADDITIONAL DISCLOSURE REQUIREMENTS

Disclosure where another law practice is retained

S175: is the provision regarding disclosure where a second law practice (including a barrister) is retained to act on behalf of the mutual client. The section is fundamentally identical to former section 310 of the LPA.

The obligation to disclose to the mutual client the information necessary to comply with S174(1) in relation to the second law practice's legal costs falls on the first law practice. For example, it is the solicitor who must disclose to the client information regarding the barrister's fees. The second law practice is required to "disclose to the first law practice the information necessary for the first law practice to comply" with its disclosure obligations to the client.

An interesting consideration is whether the second law practice needs to provide an estimate of its total legal fees as part of the "information necessary" to assist the first law practice. The position under the LPA was considered in *Autore t/as Autore & Associate Solicitors & Barristers v Folino-Gallo* [2014] NSWSC 777 where Harrison ASJ noted

> *"The wording contained in both ss 309 and 310 are consistent. Those sections specify it is the solicitor who has the obligation to make the disclosures in relation to legal costs to the client. The barrister's obligation under s 310(2) is to disclose to the solicitor the information necessary for the solicitor to comply with s 310(1)."*

Given the consistency in wording between the LPA and the LPUL whilst the decision is not on point it's arguably relevant and persuasive.

Disclosure to Associated third party Payers

S176: is the provision regarding disclosure to associated third party payers and is fundamentally identical to former s318A of the LPA. Essentially the law practice must disclose to the associated third party payer everything disclosed to the client but only "to the extent that the details or matters disclosed are relevant to the associated third party payer".

S171: contains the definitions for associated and non-associated third party payers and is fundamentally to that contained in s302A of the LPA.

One change is the removal of an associated third party payer's right to "progress reports" which is no longer present in the LPUL.

Disclosure in settlement of litigious matters

S177: deals with disclosures regarding settlement of litigious matters and is identical to the current S313 of the LPA.

"Litigious matter" is defined in the LPUL as "a matter that involves, or is likely to involve, the issue of proceedings in a court or tribunal".

Where a law practice is negotiating the settlement of a litigious matter it must disclose to the client, prior to execution of settlement:

- a reasonable estimate of the amount of legal costs payable by the client if the matter is settled including any legal costs of another party that the client is to pay as a result of the settlement; and
- a reasonable estimate of any contribution s towards those costs likely to be received from another party.

Note in this instance the disclosures do not need to be made in writing. However it would be prudent to do so at the least to make a file note of the making of the disclosures.

Disclosure in Personal Injury matters

The maximum costs provisions fixing legal costs on a claim for personal injury damages not exceeding $100,000 are found in Schedule 1 to the LPUL. The provisions are substantially identical to those found in former sections 337-343 of the LPA.

The maximum costs provisions will apply to solicitor client costs in claims for personal injury damages unless a law practice contracts out. In order to effectively contract out of the maximum costs regulation 28 of the Regulations provides the law practice must disclose to the client information going to the effect of the costs agreement in particular:

a. a statement that but for the entry into the costs agreement the LPUL would limit the maximum legal costs payable by the client;
b. particulars as to how those maximum costs would be calculated;
c. particulars as to how the costs would be calculated under the cost agreement; and
d. a statement that the costs agreement relates only to the costs payable between the law practice and the client such that in the event that costs are recoverable the maximum costs so recoverable will be fixed under the LPUL.

In addition to the above a complying costs agreement must be entered into with the client. However, the disclosures as noted above must be made before the cost agreement is entered into.

Disclosure & Offers of Compromise

Schedule 1 Section 5 of the LPUL states in a claim for personal injury damages where the client receives an offer of compromise the law practice must after receipt of the offer make certain disclosures to the client. Regulation 29 of the Regulations stipulates the particular disclosures required to be made as follows:

a. a statement setting out the details or a summary of the offer and its reasonableness;
b. a statement about the risks associated with refusing a reasonable offer, namely, an adverse indemnity costs order being made against the client; and
c. a statement about the specific effect of declining a reasonable offer will have on the interests of the parties.

The law practice must make the disclosures in writing as soon as reasonably practical after the offer is received and before the law practice communicates the client's acceptance or otherwise.

Failure to comply with the disclosure obligations may result in adverse orders being made against the law practice by the Court should the client or another party have incurred further costs as a result of the client's refusal of a reasonable offer.

Exceptions to the requirement to disclose

S174(4): provides that disclosure is not required where the total legal costs are less than the "lower threshold" which in all likelihood will be $750.

S170: provides that Part 4.2 does not apply to a commercial or government client or a third party payer who would be a commercial or government client if the third party payer were the client of the law practice. Accordingly, both the disclosure obligations and the assessment provisions do not apply to commercial or government clients.

Consequences of non-compliance with disclosure obligations

Section 178 contains the consequences for failing to disclose as follows;

1. 178(1)(a): the cost agreement concerned if any is void. The impact of a void cost agreement being:

    a. it will no longer operate to provide prima facie evidence the costs are fair and reasonable; and
    b. the costs recoverable by the law practice cannot be in excess of what would otherwise be recoverable under the agreement were it not void.

Importantly there may be further significant ramifications for proceedings under the *Motor Accidents Compensation Act* and claims for personal injury damages under the *Civil Liability Act* where to contract out of the cost capping / regulated costs provisions a practitioner must have a valid cost agreement in place with the client. Query whether a failure to disclose could mean this section renders any attempted contracting out by the practitioner ineffectual.

2. 178(1)(b): postponement of the client's obligation to pay your legal fees until assessment or determination of the costs dispute. Arguably you may lose entitlement to a general retaining lien over monies held in trust for any outstanding legal costs under section 144 of the LPUL given the costs are no longer "owing by the person to the law practice".

3. 178(1)(c): inability of law practice to commence or maintain proceedings for recovery of legal costs until assessment or determination of costs dispute by regulatory authority or "jurisdictional legislation" : query whether that provides a statutory stay on an appeal to a cost assessment / determination of the regulatory authority and for all subsequent appeals?

4. S178(1)(d): capable of constituting unsatisfactory professional conduct or professional misconduct.

Some matters which have been removed from non-compliance;

1. Basis for setting aside a costs agreement. Former section 317(3) has been removed.

2. Reduction of legal costs on assessment for non-disclosure. Former section 317(4).

BILLING AND RECOVERY

The billing provisions are contained in Divisions 5 sections 186-195 and are familiar:.

- A bill can be lump sum or itemized – section 186;
- A law practice cannot charge for the production of a bill – section 191
- The client can request progress reports of the costs without charge – section 190 (note under the LPUL this doesn't extend to associated third party payers);
- A bill must include a statement of the client's rights – section 192
- Interim bills can be assessed at the time of their issue or upon being given the final bill – section 193
- A law practice cannot commence recovery until a) a complying bill has issued, b) 30 days have expired since its issue c) and/or the local regulatory authority has closed any costs dispute in relation to the bill – s194
- A client may request an itemized bill at no charge **but only within 30 days after the date on which the costs became payable** and the law practice must comply with the request within 21 days after the request – section 187.

You will note section 187 of the LPUL has placed a 30 day time restriction on a client's right to an itemized bill at no cost. Under section 332A of the LPA an itemized bill could be requested at any time by a client even where the stipulated 12 months to have the bill assessed had expired : *Yang –v- Stephen Paul Firth trading as Firths The Compensation Lawyers* [2013] NSWSC 676.

However, as was noted in Firths at paragraph 39 the Court retains its inherent power to order a legal practitioner to give a client or former client a bill of costs, in addition to any statutory power to do so (for example s472 of the LPUL). Accordingly, a Court will always retain power to order a practitioner comply with a request for an itemized bill even where it may be made out of time.

The definition of itemised bill is contained in Rule 5 of the General Rules and states as follows;

> "itemised bill means a bill that specifies in detail how the legal costs are made up in a way so as to allow costs to be assessed".

Former Regulation 111B detailing the specific content of an itemised bill has not been carried over. Accordingly, what will satisfy the requirement is now somewhat unclear.

<u>Service of a Bill</u>

Rule 73 of the General Rules provides the means by which a bill can be given to a client. Most of the avenues will be familiar given they were available in former S332

of the LPA. However, electronic service of bills has been expanded beyond e-mail in Rule 73(f) which now says;

"in the case of a client who has consented to receiving bills electronically to the client or an agent of the client by means of:
(i) the client's usual email address or mobile phone number (or other email address or mobile phone number specified by the client) – by transmitting the bill electronically, addressed to the client, to that address or number; or
(ii) different arrangements agreed to by the client or an agent of the client-by transmitting the bill electronically in accordance with those arrangements".

The Responsible Principal

A major change to the billing provisions is section 188 which provides that every bill issued must;

- be signed by a principal of the law practice designated in the bill or letter as the responsible principal for the bill; or

- nominate a principal of the law practice as the responsible principal.

Where the bill is not signed by the responsible principal or the bill or letter doesn't nominate a responsible principal the default position is that every principal of the law practice will be taken to be the responsible principal.

The ramifications for responsible principals are found in section 207 which provides that a contravention by a law practice of the obligation to charge no more than "fair and reasonable legal costs" can have disciplinary consequences for:

- the responsible principal for the bill; and
- each legal practitioner associate or foreign lawyer associate "who was involved in giving the bill or authorizing it to be given."

Section 207(2) states disciplinary action applies whether or not the responsible principal had actual knowledge of the bill or its contents and whether they had actual knowledge the legal costs in the bill were unfair or unreasonable.

Section 207(3) provides a defense for responsible principals where they can "establish that it was not reasonable for him or her to suspect or believe that the legal costs in the bill were unfair or unreasonable in the circumstances (otherwise than by the mere assertion of someone else involved in the law practice).

Notification of Client's Rights

In order to issue a bill which complies with LPUL it must comply with section 192 by including in the bill or covering letter a written statement setting out the client's rights in the event of a costs dispute together with any time limits which apply. The Law Society has issued a precedent notification for use with bills. Please keep in mind the time limits that apply are referable in some instances to the terms in your cost agreement. For example, if your cost agreement provides that bills will become due and payable 14 days after service, the time limit for the client to request an itemised bill is 44 days (30 days after the bill became due and payable).

Interest on Unpaid Legal Costs

S195 of LPUL contains the interest provisions contained in section 195. The normal requirements we are familiar with still apply. Namely, that in order to charge interest you need the bill to state that interest is payable and the rate of interest, it can be charged pursuant to the terms of a cost agreement or if there is no term 30 days after a bill is given. The rate must not exceed the rate specified in the Rules.
The major change comes in s195(5): that interest may not be charged on a bill given to a client more than 6 months after completion of the matter. 195(6) provides the exceptions – where the law practice has provided a lump sum bill within the 6 month period and there has been a request for an itemized bill or the bill has not issued at the request of the client or associated third party payer.

Rule 42 & Removing monies from trust

Rule 42 of the General Rules provide that money can be withdrawn from a trust account for payment of legal costs in four separate ways;

Option 1: R42 (3)

By issuing a bill to the client relating to the money and referring to the proposed withdrawal and the client has not objected to the withdrawal:

- within 7 business days after the bill was given, or
- the client objects but has not referred the matter to costs assessment or to the OLSC and 30 days has expired from the date they were given the bill or received an itemised bill, or
- the money has otherwise become legally payable.

Option 2: R 42(4)

The money is withdrawn in accordance with instructions received which authorise the withdrawal before effecting the withdrawal the law practice gives or sends the client a request for payment referring to the proposed withdrawal or written notice of the withdrawal.

Option 3: R 42(5)

The money may be withdrawn where:

- it is owed to the law practice by way of reimbursement of money already paid by the practice on behalf of the person; and
- before effecting the withdrawal the practice gives or sends the client a request for payment referring to the proposed withdrawal or a written notice of withdrawal.

Option 4: R 42(6)

In the case of a client who is a commercial and government client the law practice may withdraw the funds where the practice has given the client a bill and:

- the money is withdrawn in accordance with a costs agreement; and
- the costs agreement complies with the legislation and authorises the withdrawal; and

- before effecting the withdrawal the practice gives or sends to the client a request for payment, referring to the proposed withdrawal.
