

The Billing Practices Check for small law firms

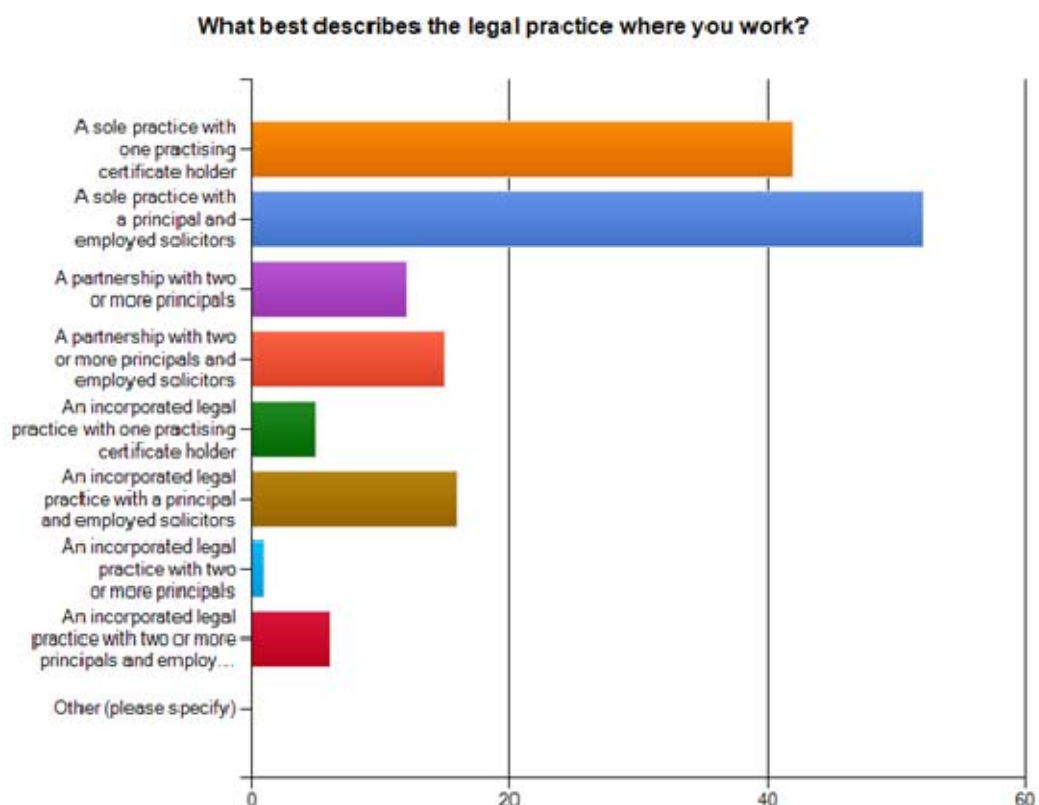
We published our fifth e-newsletter to 9224 solicitors in Queensland in May 2012, inviting them to complete one of two billing practices Ethics Checks – one for small law firms (with six or fewer practising certificate holders) and one for medium-sized and larger law firms (with seven or more practising certificate holders), the latter of which repeated the Billing Practices Check we ran in 2010.

We invited both groups to complete their respective surveys either as interested individuals or as firms, which meant assigning a survey manager within the firm to devise a code that all members of the firm could use, preserving the anonymity of individuals and of the firms as a whole.

This survey is a major modification of the billing practices survey for medium to large law firms. The updated survey was run as a pilot with 8 practitioners from small firms before the final version was developed and released in the May E-Newsletter. 225 people answered the survey, with 46% opting to answer the survey as a firm, and 54% as interested individuals. Of the 103 people opting to answer the survey as a firm, 7 codes were entered with two or more people using the same code, and 59 codes were entered with one person supplying the code.

Demographics

Practitioners from the following legal practices participated in the survey –



A sole practice with one principal and employed solicitor/s 34.9%
 A sole practice with one practising certificate holder 28.2%
 An incorporated legal practice (ILP) with one principal and employed solicitors 10.7%
 A partnership with two or more principals and employed solicitors 10.1%
 A partnership with two or more principals 8.1%
 An ILP with two or more principals and employed solicitors 4%
 An ILP with one practising certificate holder 3.4%
 An ILP with two or more principals 0.7%

Their law practices are located in a regional city 34.9%, Brisbane suburbs 31.5%, Brisbane CBD 19.9% and a regional town 13.7% The major primary areas of practice of the lawyers responding are general practice 33.3%, commercial 18.4%, family law 11.6% and other at 24.5% included information technology, crime/criminal law and property law. Their role in the practice is as Principal 67.8%, Employed solicitor 25.3% and Other 6.2%. By gender, 61.1% of the people answering the survey were male and 38.9% female.

They held a practising certificate for –



<5 years 18%
 20-24 years 13.2%
 30-34 years 13.2%
 5-9, 10-14, 14-18 and 25-29 years all 11.8%
 40+ years 4.2%
 35-39% 1.5%

Initial discussions with clients about billing

At a client's first interview, the majority of participants say they discuss the basis for calculating their bill for legal costs (92.4%), who in the practice will be working on the matter and their charge out rates (86.1%), the preferred billing method (e.g. hourly rate, fixed fee etc) (84%), how and when the payment will be made (78.9%) and arrangements for on going costs disclosure.

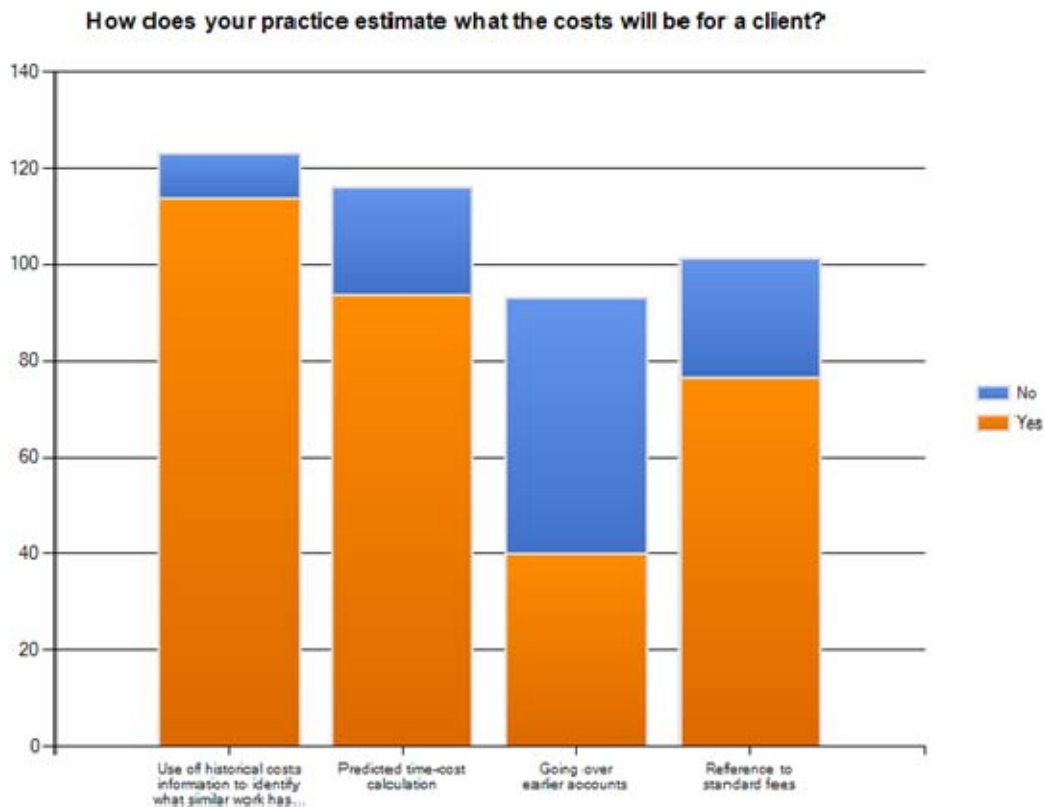
A minority discussed the preferred format of bills (26.2%) arrangements for dealing with complaints (38.7%) and how often the client would like to receive accounts (39.7%).

Several people described other topics of discussion with clients at the first interview, including discount arrangements, a set out written fee proposal and various available billing methods. One person commented that these issues are all covered in the cost agreement sent out to clients. Others commented that costs and outlays are speculative, and in speculative fee arrangements the client paid at the end of the matter. One person commented that in speculative fee arrangements interim billing was not done as it was very time-consuming, and that clients were protected by the fee-capping rule. One person commented

Most clients are repeat clients. I send out cost agreements early in the file. I regard it as more essential to deal with the issue the client wants to discuss rather than how to pay my account. I do tell them I will be sending out a cost agreement and to ask any questions when they get it. I have very few accounts that do not get paid, and usually for small amounts. I collect over 95% of accounts p.a. I have a high repeat clientele.

Cost estimates

In estimating what the costs will be for a client, the majority of people responded that their practice uses historical costs information to identify what similar work has cost (92.7%), a predicted time-cost calculation (81%) and reference to standard fees (76%). A minority went over earlier accounts to estimate costs (43%). People could choose multiple methods, not just one, and most people chose more than one method of estimating costs.



Several people chose “Other” and some said they used all of the options suggested or an amalgamation or combination of the suggested options. Several other people estimated costs based on talking with the client about their budget, what needed doing and what was involved to work out the scope of work within their means and provide a fixed cost estimate. One of the people describing that method of estimating costs said that they do a lot of legal aid work. Several other people referred to market expectations and feedback, and a fixed fee determined by the market. Other methods included reference to set fees, including court costs scales and uplift factors, all captured in a client agreement, and one person commented that in speculative matters most pi firms retain an independent professional cost assessor to calculate costs to enable them to withstand scrutiny. One person commented with regard to the options provided –

The above plus advising that hourly/time will be charged for work not in scope/additional work. Also do interim billing and updates, give a range of fees at the beginning for work that is not “standard”.

Billing methods used

Participants could select all the methods they used from the options provided in the question. The majority of survey participants used time based (hourly) billing methods (91.9%), fixed fee by agreement (87.6%), interim billing (84.3%), task based billing (for routine work e.g. production of wills, EPAs) and hybrid arrangements (e.g.

part fixed/part time-costing) 55%. A minority of people used an hourly fee with cap or limit (42.2%), value billing (value agreed at the end of the matter) (23.4%), other (partial) conditional fee arrangements (19%) and no win no fee (17.1%).

People responding to “Other” commented that they use retrospective billing, they include discounts for early payment and one person offers fixed fee for a compulsory conference and thereafter uses time billing.

Policies and procedures

In ensuring estimate consistency and adherence to cost agreements, people responding to the survey said they had policies and procedures in place to adhere to the costs agreement (92.4%), make valid costs disclosures (89.6%), ensure the costs being charged are consistent with the practice's own internal costs/billing policies (81.5%), manage the matter to ensure consistency with the original estimate(s) (73.3%) and discuss a provisional bill with the client (55.4%). People responding “Other” commented –

Use the scale of fees or charges provided to the client at first attendance.

Being a small firm, we have never deviated from a proposal regarding fees and costs

We use a professional independent cost assessment and never had a justified complaint in 30 years

Normally matters take on a life of their own, instructions received from a client are not those agreed by the other side, costs are never easy, also as a sole practitioner this is one area that you certainly wish that you had more time to spend on.

Costs updates

74.5% of people responding provide clients with regular costs updates, 11.3% do not and 14.2% chose the answer “The matters I deal with have short time frames only”.

Of the people who do provide clients with costs updates, the methods or procedures they most frequently use are IT systems (time recording/accounts) to prompt when milestones are met in terms of accrued WIP (19%), a personal bring-up system (38.8%) and regular itemized accounts unless inappropriate e.g. for a routine conveyance (68.6%). “Other” comments include -

File author review of WIP on file and advice to client if estimate is to be exceeded.

Finance manager also checks against cost agreements before invoices are sent out.

We do not use sophisticated IT systems. Most of our work is performed on a fixed fee basis; however, where hourly rate work is performed, then the client receives fee updated weekly or monthly, depending on the matter.

Event based accounts with costs update for next anticipated step, and Giving cost estimates in correspondence prior to undertaking the next stage in a matter.

Telephone, and We also phone or email and client to discuss invoicing and payment from time to time if the file is ongoing.

Reviewing bills before sending

The majority of people answering say their practice reviews a client's bill before sending to ensure the costs charged are consistent with the client agreement (97.2%), ensure the costs charged are consistent with professional obligations (97.1%), ensure that disbursements claimed have been reasonably incurred (97.9%), ensure that disbursements claimed are reasonable in amount (95%) and ensure the amount of the bill is fair and reasonable and not excessive (97.9%). People answering "Other" comment:-

We usually under bill

NB this is done by each individual fee-earner

Disbursements amounts are set by outside organisations and are provided to clients before undertaking

With disbursements we enclose and charge exactly what we have been charged

Estimate accuracy

66% of people say their practice measures estimate accuracy (e.g. by comparing initial estimates to the actual bill).

Participants could select as many answer options as appropriate for this question. If it seems a client's bill will be different to the original estimate for dealing with their matter the majority of people answering say they send an email to the client detailing the change (77.8%), discuss the change in person with the client (82.1%), follow up an initial phone call with a letter that requires a response (56.8%) and/or

inform the client of the change and assume they have no objection to the change if they do not respond (50.9%).

Several people selected “Other” and in the majority of comments, said that they talked with the client about the change. A lesser number of people said they reduced the bill to confirm to the estimate, with one person saying they either reduce the bill or contact the client to discuss the appropriate amount that they agree is acceptable.

Itemized accounts

In answer to the question of whether their practice provides clients with an itemized account (“itemized” in this question broadly means that the account allows the client to readily see what services are being charged at what fees), 69.9% said routinely at regular billing intervals and 63.9% said routinely at the completion of the matter. A minority said they provided itemized accounts not routinely, only when requested by the client (39.1%) and dependent on agreed client preference at the start of the matter (47.1%).

In answer to “Other” a number of people provide itemized accounts dependent on the type of matter. For example, as one person describes –

Dependent on arrangements at start of matter in accordance with firm policy. E.g. – if fixed fee – no itemization. Family Law and other matters fully itemized. Estate matters – short form assessment by cost assessor.

A number of other people give a breakdown of costs with their tax invoices itemizing the services provided and the relevant fee, or ensuring that items on account match the fixed fee quote. The extent to which detail is provided varies a little, with several people saying that fixed fee accounts are not itemized, which other people say that they provide summary details for fixed fee accounts. Others describe their willingness to allow clients to scrutinize their accounts, one person saying that in fixed fee matters time is still recorded and an itemized version provided if requested. Another person says –

We are very specific, offer clients the opportunity to have their file, review every itemised item against every piece of work on their file so they can clearly confirm the work and charge is consistent with the work done. We are not perfect but we work with our clients.

Appropriate billing

This question provided a series of options and people could choose to answer yes or no. The majority of people answering said their practice had billing

policies/procedures in respect of when it was appropriate to bill for draft/document preparation (79%), travel (71.9%), research (69.9%), waiting (e.g. for court meetings) (63.2%), administration (60.9%), internal conferences (59.2%), file management (57%) and internal reviews of files (52.7%). A minority of people responding said their firms had such policies and procedures for supervision meetings (46.9%) and recycling a document prepared for another client (35.8%).

A number of people answered the “Other” option. Several people said that all bills/costs are reviewed before sending out, and that in many cases what it was appropriate to bill for was considered on a case by case basis, rather than the firm having a general or formal policy for particular items. For example -

No formal policy, but all bills are discussed with principal and those issues discussed on a case by case basis before bill sent out.

A number of people said they either did not charge at all for some items or they had informal policies about the matters.

Care and consideration

When asked if their practice usually billed for care and consideration, 80% said they did not, and 20% said they did. When asked if it was appropriate to charge care and consideration when the bill is drawn up on a time basis, 66.7% said no, and 33.3% said yes. When asked if it was appropriate to charge care and consideration when the bill was drawn up on a court scale, 63% said yes and 37% said no.

Participants were provided with text boxes to enable them to answer the question “Under what circumstances do you believe you are entitled to claim care and consideration?”

A number of people do not charge care and consideration, for example –

Never - Care and consideration is not an "extra" - it is a component of all our work

I do not charge care and consideration because it is implied and expected that this would automatically be provided as part of the service to the client, we charge by hour for work actually done only.

A number of participants said that complex or difficult matters would entitle the claim of care and consideration, as would charging by court scale. Other reasons that were given related to the amount of skill used in the matter, the value of the outcome for the client, the risk involved and several people said that they would be entitled to charge care and consideration if costs were to be assessed or in the recovery of costs. Other people always charge care and consideration.

In some cases, there were multiple reasons, for example –

Where the matter has some complexity, where there is some volume of documents to be perused or considered, where the matter is important to the client, where there is research involved and there is a reliance on skill and responsibility

Professional obligations and billing practices

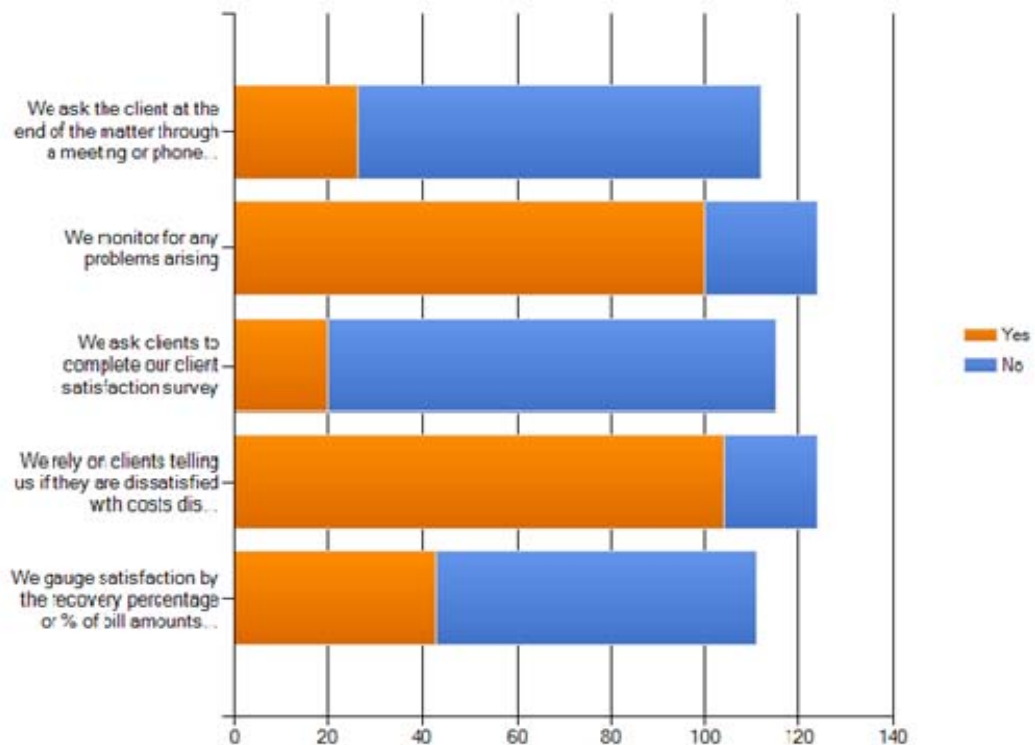
Participants were asked if they reviewed their billing practices to ensure they complied with their professional obligations. They were able to check any of the options that applied. The majority said they reviewed their billing practices to ensure their compliance with their professional obligations when there are legislative changes (62.2%), regularly as a matter of course (52.6%) and if prompted by good advice received when attending external training (54.1%). A minority said they reviewed their practices if it seemed problems were arising with clients (42.2%) and 25.2% said they were confident that their billing practices always complied with their professional obligations.

Gauging client satisfaction with costs disclosure and/or billing

Participants were asked if their firm gauged client satisfaction with cost disclosure and billing, and could answer yes or no to each option. The majority said that they monitored for any problems arising (80.6%) and that they relied on clients telling them if they were dissatisfied with costs disclosure or billing. A minority said they gauged satisfaction by the recovery percentage or percentage of bill amounts that are ultimately recovered (38.7%), that they asked the client at the end of the matter through a meeting or phone call (23.2%) and that they asked their clients to complete their client satisfaction survey (17.4%).

In the “Other” category, the response that came up most often was that people gauge client satisfaction by the repeat work they get from them, or referrals. Others communicate throughout, and for the larger clients, they tailor the communication to suit them. Some participants say that all negotiations are conducted at the start of the matter, or, they adhere to their quotation, and there is no dissatisfaction.

Does your firm gauge client satisfaction with costs disclosure and/or billing?



Training from external providers

We asked how much training people had received in the last 12 months from external providers on billing practices with 47% saying none, 25.4% one to two hours, 16.7% less than one hour and 10.9% more than 2 hours. They were asked to describe the training received.

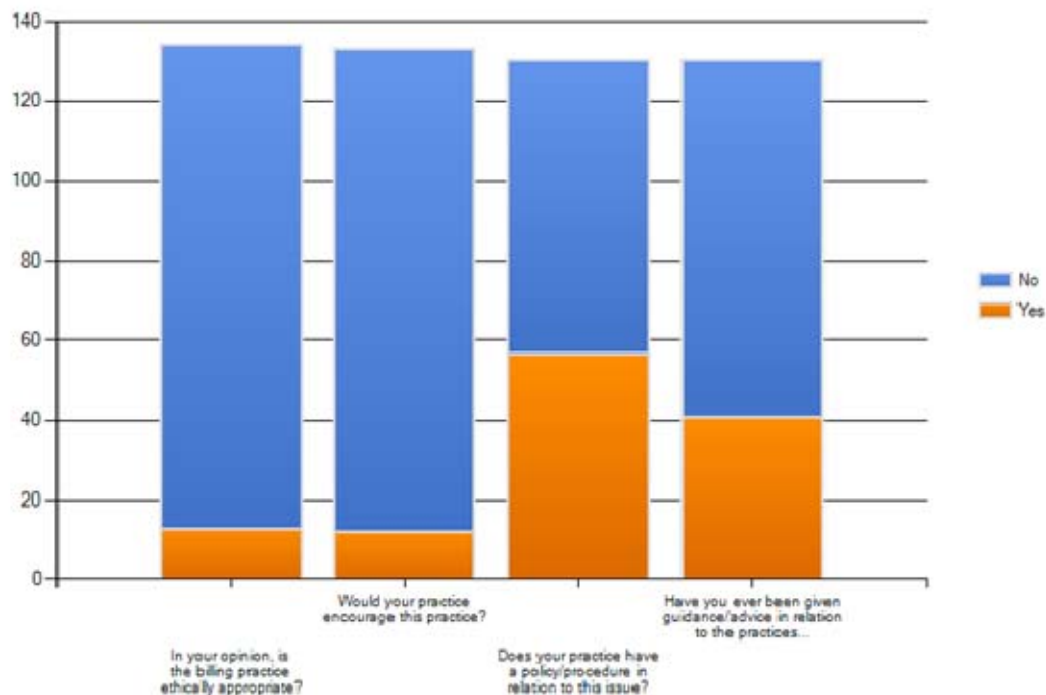
A number of people named CLEs and other seminars and conferences as their source of training, with a majority of responses also naming training from, or discussions with, costs assessors.

One person described multiple sources:-

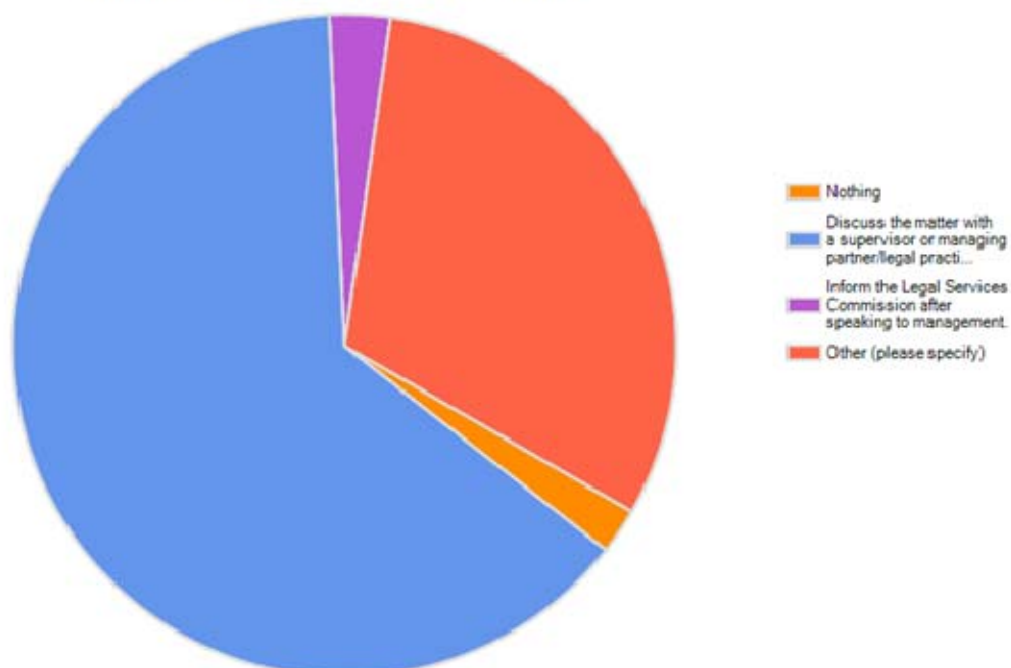
Part of the risk management seminar tailored to our firm by Lexon. Also, paid instruction from an accounting firm about elements of cost agreements relating to trust accounting and retention of records. The QLS trust accounting auditor also provided us with some helpful hints for cost agreements.

Billing practice scenarios

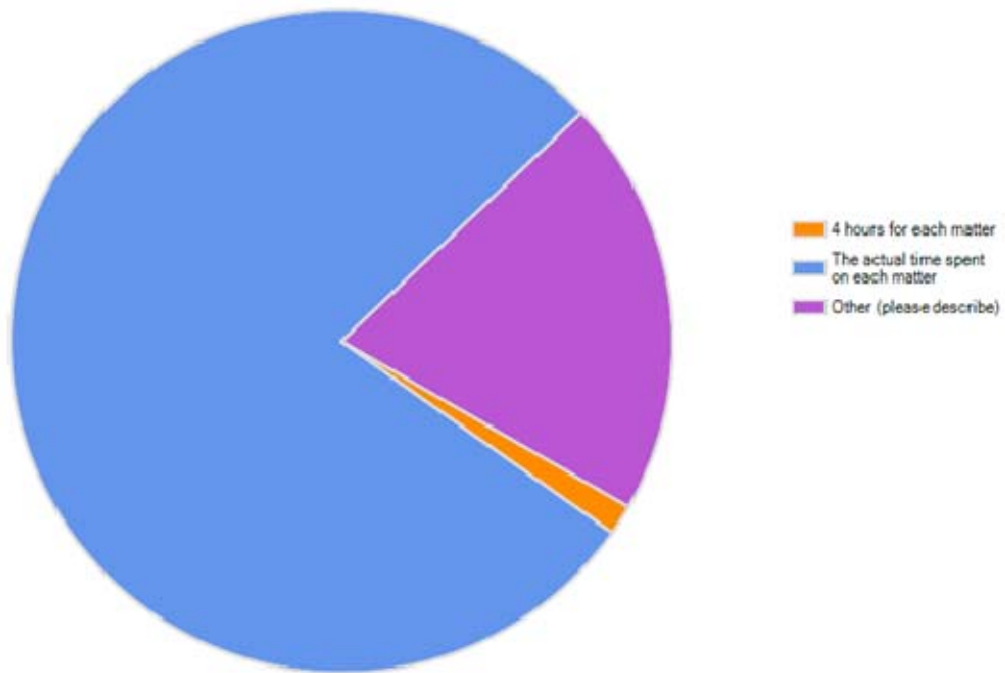
A client retains a firm on the basis that they will be charged on an hourly rate. The client is given an estimate of work for \$10,000.00. At the conclusion of the matter, the account comes to \$5,000.00 on a time costing basis. The practice charges the client \$9,000.00 as the work performed by the firm was of a high quality and the outcome exceptional.



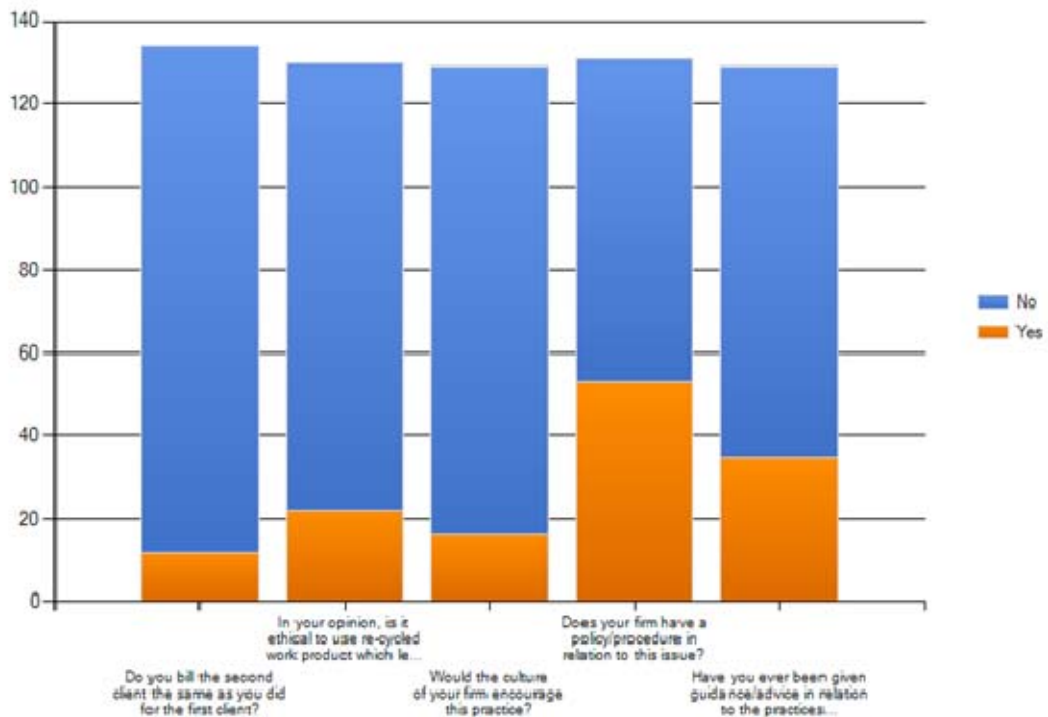
You work in a conveyancing practice where clients agree to pay professional fees plus disbursements. You become aware that your firm commenced a policy of including a surcharge of \$10.00 in all property search disbursements. (eg property search actual costs is \$20.00, The bill would show the disbursement as \$30.00). What would you do?



You act for a client in litigation and schedule court appearances for three different files on the same day which deal with the same issue (eg they are all applications by your client to strike out three different claims for want of prosecution). You spend a total of four hours at court (including waiting time). What do you bill the client?

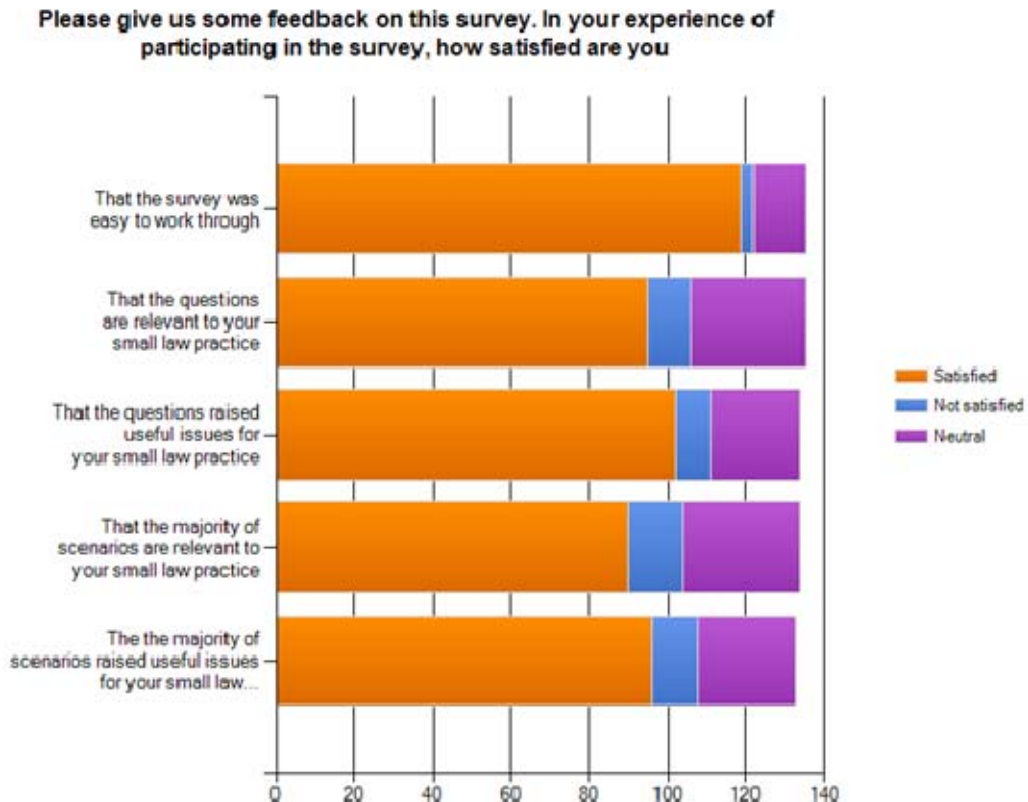


You research an area for one client which takes two hours. A few months later the same issue arises in respect of a second client and as a result of the previous work product, the time to complete the advice for the second client takes only one hour.



Feedback for us on the Ethics Check

We asked for feedback on the ethics check, and provided a text box for comments.



Comments

The majority of scenarios in the survey do not relate to the nature of our particular small law practice, but they seem like a good representative sample of scenarios for other types of small law practices.

All of the "experts in marketing" spruik that if we are specialists we can charge a "premium" for our work. The so called "Picasso" factor. Your attitude would have us billing for half an hour on a job worth 2000 because that is all the time it took. The client pays for the expertise, and he agrees a fee, he should pay it. This is why I might pay \$100k for a Volvo, but the other guy pays \$20k for a Holden. Both do the same job. I prefer the premium product so am happy to pay for it. The same goes for the profession. As long as the client knows what his fee might be, and is happy to pay, that is the ethical way to do business.

I need more external training

My firm is a very specialised commercial firm and we generally only do work on a fixed fee basis - so a lot of the scenarios do not apply to the practise. But always useful to refresh and turn your mind to billing issues and ethics.

This survey and the scenarios in particular, are geared toward time billing and does not easily account for other billing methods. Questions regarding fees for 'Care and Consideration' are irrelevant to our firm, but only Yes/No options were available. An explanation of 'care and consideration' in the billing context would assist.

Small firms do not tend to have formal "policies" as such, so some questions if answered strictly are not that relevant.

I think that there are more difficult issues around managing a cost system which is inherently inaccurate - most lawyers in big and small firms do not record time for all time spent on a matter for a client - so most clients do not pay the true value of the work performed using a time based cost system. In reality invoicing a client involves a more complex system of assessment and judgement taking into account the time recording issues of the practitioner involved and the value of the work performed (irrespective of time recorded). For example I had a practitioner who regularly recorded 2.5 to 3 chargeable hours a day when that person was at work for an average of 10 hours a day. Just a chronic under recorder. So based upon that time recording it might appear that clients were overcharged but at point of invoicing a professional judgement has to be exercised based upon a number of factors most importantly the work done on the file and the value of the work assessed on a reasonable time recording basis and not necessarily actual time recording.

Provided some issues for thought –

It is always of concern that no matter how we want to be 100% efficient, we realise we will not achieve this on every file, but it is more important that we keep striving to achieve the best that we can every time, learn from our client, to date we have had a great rapport with all our clients and it is more important that your Firm gets a good rep and we get a lot of referrals from previous clients this in itself, word of mouth compliments that our work is paying off.

Happily, none of these are new issues for us and we have dealt with these issues quite some time ago, but it is good to have a refresher / reminder of these issues and to have other professional staff in the firm review them too.

I believe that the issues raised are generally common sense and best practice.

Not satisfied is not correct, it should be not applicable. We are a small firm with limited practice areas and as such have more limited billing practices.

I consider your questions are based on time costing billing practices. Many small firms now use a quotation basis for a large proportion of their billing. Many of the circumstances you are gathering information on do not apply where there has been an agreed quotation given and accepted prior to the work being commenced.

Given the wide disparity in practices involving hourly rates, fixed fees and value billing some more information and examination during the course of the survey would be instructive.