Billing Practices Check for Medium to Large Law Firms 2013

Welcome

At the Legal Services Commission we consistently receive and address more complaints about legal costs than any other single issue. We have developed this Ethics Check to help practitioners reflect on their billing systems and practices and potentially avoid this most common of complaints.

The questions are designed to help practitioners review aspects of their ‘ethical infrastructure’ - the formal and informal policies and procedures, customs and practices that nurture and sustain workplace cultures that encourage and reward ethical behaviour and discourage, deter, detect and deal with ethically questionable behaviour.

This survey is designed for medium to large law practices with 7 or more practising certificate holders. It is for lawyers and paralegal staff who deal with clients and who are involved in billing. It takes less than 30 minutes to complete.

ANONYMITY AND CONFIDENTIALITY

Our Ethics Checks are purposefully designed to preserve the anonymity of the individuals who complete the survey by not seeking any information that could identify individuals or their practices.

The survey complies fully with the relevant national ethical standards. We do not collect IP addresses and we only publish the results in aggregate, so that the results for all the people participating in the survey are shown. Where there are enough numbers, firms can choose to ask their staff to use a code and we can display all results under that code. It enables participants to compare how their firm answered the questions with how practitioners in other firms responded.

The reports overall and by code will be available on our website at http://www.lsc.qld.gov.au/ethics-checks.

TO BEGIN, AND TO NAVIGATE THROUGH THE SURVEY, PRESS THE "NEXT" BUTTON

If you wish to contact us about this survey please email Lyn.Aitken@lsc.qld.gov.au or phone (07) 3235 9215

ACKNOWLEDGEMENT: We want to thank everybody who answered our Billing Practices Check in the last round. The results and comments have contributed to our revisions of this version. We also thank Giles Watson of the Queensland Law Society for allowing us to draw on some of the questions in his presentation to the QLS Core CPD Workshop for Early Career Lawyers. We thank Professor Susan Saab Fortney of Texas Tech University School of Law, Dr Christine Parker of Melbourne University Law School and April Chrzanowski of Griffith University for their helpful comments and suggestions about the version circulated in the last round. We also want to thank Professor Fortney for giving us permission to include a number of the survey questions she asked in the research project she reported in Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture and the Effects of Billable Hour Requirements, UMKC Law Review, Volume 68, 2000-2001.

The survey is being conducted using SurveyMonkey's server which is based in the United States of America. Information you provide on this survey will be transferred to SurveyMonkey's server in the United States of America. By completing this survey, you agree to this transfer.

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Instructions for completing the survey

COMPLETING THE SURVEY AS AN INDIVIDUAL OR AS A FIRM

You can complete this survey simply as an individual and you will get value from thinking about the questions that come up. Experience tells us however that the survey comes into its own when your firm participates as a whole – if all or most of the people at your firm complete the survey – because it often prompts useful conversation about the differences in opinion that can come up in answers to the survey questions when results are published under the codes chosen by firms.

Completing the survey as a firm requires everybody at the firm to use a code devised by the firm. The code allows us to publish the results for the firm as a whole whilst preserving the firm's anonymity. We will publish both your firm's results and the aggregate, overall results for everybody who has completed the survey on our website shortly after the closing date.

We will not, however, publish any reports that tend because of a small sample size to identify any of the individual people who completed the survey or their law firm.

INSTRUCTIONS FOR EVERYBODY COMPLETING THE SURVEY

You can start the survey and return to complete it at any time. To navigate through the survey, use the "next" button at the foot of the page to progress to the next page, or the "previous" button to go back and review your answers if you wish.

You will be able to answer most of the questions simply by clicking the appropriate box, although some of the questions give you the opportunity if you wish to add a comment. If you need to leave the survey at any time simply click 'exit this survey' in the top right hand corner of the page and your answers will be saved until you return.

Please answer every question that applies to you and as many questions as you can. Bear in mind that the survey is not an exam or test and that there are no right or wrong answers as such. Survey questions and answer options are general in nature. If the answer options do not exactly match the response you'd like to give, please select the response that most closely matches or write your preferred response if a comment box is provided.

PLEASE CLICK "DONE" WHEN YOU'VE COMPLETED THE SURVEY.

Thank you for your participation.

INSTRUCTIONS FOR SURVEY MANAGERS AT PARTICIPATING FIRMS

If you wish to participate as a firm, you should appoint a survey manager to oversee the process and to encourage all your staff to participate. The survey manager role is not difficult or time consuming but experience tells us that it contributes to the success of the exercise and that it is best to appoint someone who has some management authority within the firm.

We urge survey managers to familiarise themselves with the following crucial but straightforward instructions:

§ Please decide on a 6 letter code word for your firm to enable us to publish your firm specific results without identifying your firm by name.

§ The code can be random letters or a whole word. The most important thing is for everyone in the firm to use exactly the same code. We recommend that you circulate the code to everyone at the firm who is participating in the survey. There is a reminder about this in Question 2 which asks them to enter a code.

§ Please also circulate the answers to questions 3 and 6 which ask about your firm's business structure and the number of people at your firm who hold practising certificates.

§ You may want to consider convening a staff meeting or other in-house forum to discuss your firm's results. There are often very interesting comparisons to make about how different people within your firm answered the same questions. The results can be very useful in helping you identify any inconsistencies and gaps in how your firm deals with the issues involved in those questions.

Status

This survey is available for anyone to complete, whether as a member of a "participating law firm", using a code devised by the firm, or as an "interested individual", who does not need to use a survey code.

A participating law firm is a firm that has decided to undertake the survey and provided staff with a six (6) letter "survey code".

An "interested individual" is a person doing the survey on their own initiative, or if their firm has too few staff responding to justify using a survey code.

* 1. Are you doing this survey as (please tick)

- ◯ A member of a participating law firm, at your firm's request?
- ◯ An interested individual on your own initiative?

Code entry

***2. If you are completing this survey as a member of a participating law firm, please enter the code for your firm.**

IMPORTANT: PLEASE ENSURE YOU ENTER THE SIX LETTER CODE EXACTLY AS GIVEN TO YOU BY YOUR FIRM'S SURVEY MANAGER

ENTER CODE HERE

Demographics for your firm

3. What best describes the law firm where you work?

- Partnership
- Incorporated legal practice
- Government legal office
- Other (please specify)

4. What are the main areas of practice for your firm? (Select up to 3)

- Administrative law
- Bankruptcy and insolvency
- Building and construction law
- Commercial and company law
- Conveyancing
- Criminal law
- Family/de facto law
- General practice
- Immigration law
- Industrial and employment law
- Litigation
- Mining
- Personal injury and workcover
- Planning and environment
- Property law
- Wills, estate planning, deceased estates and trusts

Other (please specify)

5. Where is your office located?

- Brisbane CBD
- Brisbane Suburbs
- Regional City
- Regional Town
- Interstate

6. How many practising certificate holders are there in your firm?

- 7-9
- 10-19
- 20-29
- 30-39
- 40-49
- 50-99
- 100-200
- >200

First interview and estimating costs

7. On a typical matter, at the first interview, do you (or does the lawyer responsible) talk with the client about

	never	sometimes	always
The work you propose doing (in detail)	◯	◯	◯
The benefits and value that the work you propose doing will deliver to the client	◯	◯	◯
What the total cost will be for the client (if fixed fee)	◯	◯	◯
What the total cost is likely to be for the client (if not fixed fee)	◯	◯	◯
Any contingencies that may add to or subtract from the final bill	◯	◯	◯
The margin of uncertainty that the client can tolerate with regard to the final bill	◯	◯	◯
Arrangements for on going costs disclosure	◯	◯	◯
When and under what circumstances you provide costs updates	◯	◯	◯
How often the client would like to receive bills	◯	◯	◯
Who in the firm will be working on the matter and their charge out rates if applicable	◯	◯	◯
How and when payment will be made	◯	◯	◯
Arrangements for dealing with complaints	◯	◯	◯

Other (please specify)

8. How does your firm estimate what the costs will be for a client?

	never	sometimes	always
Use of historical costs information	◯	◯	◯
Predicted time-cost calculation	◯	◯	◯
Reference to standard fees	◯	◯	◯
Negotiation with the client about the value of the work and the cost	◯	◯	◯
Calculation of the value of the work to the client	◯	◯	◯
Taking client feedback into account	◯	◯	◯
Taking the market into account	◯	◯	◯
Referring to a court scale	◯	◯	◯

Other (please specify)

Costs and Billing Policies

9. Does your firm have a policy or procedures in place to

	Yes	No	I don't know
Manage the matter to ensure consistency with the original estimate(s)	◯	◯	◯
Ensure the costs being charged are consistent with the practice's own internal costs/billing policies	◯	◯	◯
Discuss a provisional bill with the client	◯	◯	◯
Make valid costs disclosures	◯	◯	◯
Adhere to the costs agreement	◯	◯	◯

10. Does your firm use any of the following billing methods?

	Never	Sometimes	Always
Time based (hourly)	◯	◯	◯
No win no fee	◯	◯	◯
Fixed fee - 'menu' fees for standard tasks and instructions (conveyance, wills, EPAs)	◯	◯	◯
Fixed fee - tailored fees fixed to specific client needs, following client interview, with reference to internal costs	◯	◯	◯
Fixed fee - value pricing - where fees are fixed with greater reference to agreed client value than to internal costs	◯	◯	◯
Fixed fee (Legal Aid)	◯	◯	◯
Other (partial) conditional fee arrangements	◯	◯	◯
Interim billing	◯	◯	◯
Hybrid arrangement (eg part fixed/part time-costing)	◯	◯	◯
A court scale	◯	◯	◯

Other (please specify)

11. Where time billing is utilised in relation to hours worked, what is your firm's policy/guideline as to when times should be entered onto a timesheet? (pick one only)

- ◯ There is no policy
- ◯ Immediately
- ◯ Same day
- ◯ Within the week
- ◯ By the end of the month
- ◯ Other (please specify)

12. Does your firm have billing policies and/or procedures in respect of when it is appropriate to bill for any of the following:

	Yes	No	I don't know
Drafting	○	○	○
Research	○	○	○
Travel	○	○	○
Waiting (eg for Court/meetings)	○	○	○
Internal conferences	○	○	○
Internal reviews of files	○	○	○
Preparing internal memoranda	○	○	○
Supervision	○	○	○
File Management	○	○	○
Administration	○	○	○
Recycling a document prepared for another client	○	○	○

13. Does your firm bill for care and consideration?

○ Never

○ Sometimes

○ Often

14. Under what circumstances do you believe you are entitled to claim care and consideration?

15. If you do bill for care and consideration, is it appropriate to charge care and consideration when the bill is drawn up on

	Yes	No
A time basis	○	○
A court scale	○	○

Costs updates

16. What is typically done in your firm regarding costs updates?

	never	sometimes	always
The client receives regular, scheduled bills that include the charges to date, and estimated charges remaining	○	○	○
In our costs updates we try to communicate the benefit of the work to the client, and value for money	○	○	○
IT systems (time recording/accounts) to prompt when milestones are met in terms of accrued WIP	○	○	○
A personal bring up system is used	○	○	○
The client can check WIP or current costs on-line	○	○	○
The matters I deal with have short time frames only	○	○	○

Other (please specify)

Billing

17. What is typically done in your firm if it seems a client's total bill wil be different to the original estimate for dealing with their matter? (please tick all that apply)

	Never	Sometimes	Always
An email is sent to let them know of the changes, seeking their consent by reply email	◯	◯	◯
A formal letter is sent, requesting a response	◯	◯	◯
We discuss the changes in person	◯	◯	◯
We communicate to the client how the work benefits them, and the value for money that they receive	◯	◯	◯
We follow up an initial phone call with a letter that requires a response	◯	◯	◯
We inform the client of the change and assume they consent if they do not respond	◯	◯	◯

Other (please specify)

18. Does your firm review a client's bill before sending it to

	Never	Sometimes	Always
Compare the bill to the estimate	◯	◯	◯
Identify double entries	◯	◯	◯
Identify entries relating to other matters (eg time misallocated to the wrong matter)	◯	◯	◯
Ensure that disbursements claimed have been reasonably incurred	◯	◯	◯
Ensure that disbursements claimed are reasonable in amount	◯	◯	◯
Ensure the amount of the bill is fair and reasonable and not excessive	◯	◯	◯

Other (please specify)

19. Does your firm measure estimate accuracy? (eg by comparing initial estimates to the actual bill)

◯ Yes

◯ No

20. How often does the final bill to the client exceed the estimate by

	never	sometimes	frequently
10%	◯	◯	◯
20%	◯	◯	◯
30%	◯	◯	◯
40%	◯	◯	◯
50%	◯	◯	◯
>50%	◯	◯	◯

21. What is the most common reason for the bill to exceed the estimate? (Tick all that apply and/or add any other reasons in the comment box)

- [ ] Inaccurate initial estimates
- [ ] More time spent on the matter
- [ ] Complex developments with the matter
- [ ] Care and consideration added
- [ ] Our bills never exceed the estimate

Other (please specify)

22. Does your firm provide clients with an itemised bill? ("itemised" in this question broadly means that the bill allows the client to readily see what services are being charged at what fees)

	never	sometimes	always
At the completion of the matter	○	○	○
At regular billing intervals	○	○	○
As requested by the client	○	○	○
Dependent on agreed client preference at the start of the matter	○	○	○

Client satisfaction and training for billing

23. Does your firm gauge client satisfaction with costs disclosure and/or billing? (Tick all that apply)

- [ ] No
- [ ] We ask the client at the end of the matter through a meeting or phone call
- [ ] We monitor for any problems arising
- [ ] We ask clients to complete our client satisfaction survey (on line)
- [ ] We ask clients to complete our client satisfaction survey (telephone call)
- [ ] We ask clients to complete our client satisfaction survey (by post)
- [ ] We rely on clients telling us if they are dissatisfied with costs disclosures or billing
- [ ] We gauge satisfaction by the recovery percentage or % of bill amounts that are ultimately recovered

Other (please specify)

24. How often does your firm offer training (whether internal or external) to all fee earners

	Never	Regularly each year	At induction
About their costs disclosure obligations	○	○	○
On providing estimates to clients	○	○	○
On billing practices	○	○	○

Other (please specify)

Supervision of billing practices

25. Does your firm measure and manage or reward a fee earner's performance in relation to:

	Yes	No	I don't know
The amount the fee earner has billed	◯	◯	◯
The accuracy of their cost estimates	◯	◯	◯
Their use of costs updating	◯	◯	◯
The number of pro-bono hours worked	◯	◯	◯
The amount of supervisory work undertaken	◯	◯	◯
Client satisfaction with their work	◯	◯	◯

Other (please specify)

26. Does your firm

	Yes	No	I don't know
Publish a ranking (or list) of how fee earners are performing in respect of time or monetary budgets/targets vis a vis other fee earners	◯	◯	◯
Audit a fee earner's billing practices to ensure that they have complied with their professional obligations before paying bonuses or approving promotion	◯	◯	◯
Audit and measure the promptness of costs updates to clients	◯	◯	◯

Other (please specify)

27. Does your firm use any of the following to address ethical concerns or queries of employees?(check all that apply)

	Yes	No	I don't know
Designated ethics partner/solicitor	◯	◯	◯
Internal Ethics Committee	◯	◯	◯
Written policy encouraging reporting of misconduct	◯	◯	◯
Referral to QLS Ethics Centre	◯	◯	◯
Scheduled in-firm meetings	◯	◯	◯
Scheduled training on ethics issues	◯	◯	◯
We address concerns informally	◯	◯	◯

Other (please specify)

28. Does your firm have a policy and/or procedure in place for:

	Yes	No	I don't know
Monitoring the billing practices/ activities of the legal practitioner directors/partners?	◯	◯	◯
Reviewing the billing practices of individual partners or legal practitioner directors?	◯	◯	◯
Detection of improper billing practices?	◯	◯	◯
Regular review (at least monthly) of all solicitors timesheets	◯	◯	◯
Regular review (at least monthly) of all non-legal staff timesheets	◯	◯	◯
Reviewing all accounts rendered by the practice?	◯	◯	◯
Supervisors to review all your accounts each month?	◯	◯	◯
Dealing with complaints by clients about an account?	◯	◯	◯
Dealing with employee concerns about an account?	◯	◯	◯
Dealing with ethical concerns, or queries about billing practices by solicitors, other staff or partners?	◯	◯	◯
Reporting improper billing practices to the Legal Services Commissioner?	◯	◯	◯

29. Have you ever had concerns about the billing practices of other legal practitioners/staff in your firm?

◯ Yes

◯ No

30. During your employment with the firm, have you observed any instances of "padding" bills for work not actually performed?

◯ Yes

◯ No

Please comment if you wish

31. If you answered yes to either or both of the previous questions, how did you handle those concerns? (Check all that apply).

☐ I did nothing

☐ I discussed the matter with a supervisor or managing partner/legal practitioner director

☐ I discussed the matter with another legal practitioner

☐ I discussed the matter with the legal practitioner whose practices I questioned

☐ Other (please specify)

32. Do you think sanctions should apply to fee earners who "pad" bills even if the client subsequently agrees to the bill or there is no economic harm to the client?

- ◯ Yes
- ◯ No

Billing practices scenarios

33. 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 firm charges the client $9,000.00 as the work performed by the firm was of a high quality and the outcome exceptional.

	Yes	No	Maybe
In your opinion, is the billing practice ethically appropriate?	◯	◯	◯
Would the culture of your firm encourage this practice?	◯	◯	◯
Does your firm have a policy/procedure in relation to this issue?	◯	◯	◯
Have you ever been given guidance/advice in relation to the practices descibed above?	◯	◯	◯

If you selected "maybe" please explain why

34. 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). You think the client should be charged the property search fee without a surcharge.

◯ Would you do nothing?

◯ Would you discuss the matter with a supervisor or managing partner/legal practitioner director?

◯ Would you Inform the Legal Services Commission after speaking to management?

◯ Would the culture of your firm encourage your course of action?

◯ Does your firm have a policy/procedure in relation to this issue?

◯ Have you ever been given guidance in relation to the practices above?

Other (please specify)

35. You act for a corporate client in litigation (say an insurer) 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).

	Yes	No	Maybe
Do you bill the client 4 hours for each matter?	◯	◯	◯
Do you bill the client the actual time spent on each matter?	◯	◯	◯
Would the culture of your firm encourage the action you decide to take?	◯	◯	◯
Does your firm have a policy/procedure in relation to this issue?	◯	◯	◯
Have you ever been given guidance/advice in relation to the practices described above?	◯	◯	◯

Other (please describe)

36. You are taking a two hour plane trip from Brisbane to Melbourne to conduct an interview in a matter involving client A. While on the plane, you review materials for another file you are working on for client B for the following week. Your firm has a billing procedure whereby you normally bill clients for your time spent travelling/waiting on their behalf.

	Yes	no	Maybe
Would you bill both client A and B two hours each?	◯	◯	◯
Would your firm encourage this practice?	◯	◯	◯
Does your firm have a policy/procedure in relation to this issue?	◯	◯	◯
Have you ever been given guidance/advice in relation to the practices descibed above?	◯	◯	◯

If you selected "maybe" please explain why

37. 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.

	Yes	No	Maybe
Do you bill the second client the same as you did for the first client?	◯	◯	◯
In your opinion, is it ethical to use re-cycled work product which leads a practitioner to billing more than the number of hours actually worked?	◯	◯	◯
Would the culture of your firm encourage this practice?	◯	◯	◯
Does your firm have a policy/procedure in relation to this issue?	◯	◯	◯
Have you ever been given guidance/advice in relation to the practices descibed above?	◯	◯	◯

If you selected "maybe" please explain why

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Demographics

38. Please tick the box below that describes your role in the firm

- ○ Principal
- ○ Partner/Director
- ○ Administration/secretarial
- ○ Paralegal
- ○ Law Clerk
- ○ Conveyancing clerk
- ○ Graduate/trainee lawyer
- ○ 1st to 3rd year lawyer
- ○ 4th + year lawyer
- ○ Associate
- ○ Senior associate
- ○ Consultant/In-House Counsel/Special Counsel
- ○ Practice Manager
- ○ Office Manager
- ○ Other (please specify)

39. What is your gender?

- ○ Male
- ○ Female

40. If you hold a current practising certificate, for how long have you held it?

- ○ <5 years
- ○ 5 to 9 years
- ○ 10 to 14 years
- ○ 15 to 19 years
- ○ 20 to 24 years
- ○ 25 to 29 years
- ○ 30 to 34 years
- ○ 35 to 39 years
- ○ 40+ years

41. Do you have a daily billable hour target or expectation, and if so, what is it?

- ○ No daily billable hour target
- ○ 5
- ○ 5.5
- ○ 6
- ○ 6.5
- ○ 7
- ○ 7.5
- ○ 8
- ○ 8.5
- ○ 9
- ○ 9.5
- ○ 10

Conclusion

42. Please give us some feedback on this survey. In your experience of participating in the survey, how satisfied are you that

	Dissatisfied	Neutral	Satisfied
The survey was easy to work through	○	○	○
The questions have relevance for you and/or your law firm	○	○	○
The questions raised useful issues for you and/or your law firm	○	○	○
The majority of scenarios have relevance for you and/or your law firm	○	○	○
The majority of scenarios raised useful issues for you and/or your law firm	○	○	○

Please comment further if you wish

43. THANK YOU FOR TAKING THE TIME TO COMPLETE THIS SURVEY.

IF YOU WANT TO CHECK OR CHANGE ANY OF YOUR ANSWERS BEFORE SUBMITTING THE COMPLETED SURVEY, SIMPLY CLICK THE <<PREV BUTTON AT THE FOOT OF EACH PAGE AND BROWSE THROUGH YOUR RESPONSES.

ONCE YOU ARE SATISFIED, CLICK ON "DONE" TO SAVE YOUR ANSWERS AND SUBMIT THE SURVEY.

WOULD YOU LIKE TO MAKE ANY OTHER COMMENTS, SUGGESTIONS OR FEEDBACK?