HOW TO MINIMISE BILLING COMPLAINTS

Diane Howell, Law Complaints Officer
Legal Profession Complaints Committee

The purpose of this paper is:

- To highlight some billing complaints which have been of concern to the Committee over the years;

- To mention some billing provisions of the Legal Profession Act 2008 ("the new Act") which practitioners need to be aware of; and

- To make some practical suggestions on how complaints from clients about bills might be minimised.

It updates a paper presented last year on this topic. Costs related complaints continue to be the largest category of complaints received by the Committee. In light of the costs of litigation and the current financial climate, this is expected to continue. The Committee is concerned to assist clients and practitioners to reduce cause for complaint in this area.

A general overview of overcharging

1. The case of D'Alessandro v Legal Practitioners Complaints Committee (1995) 15 WAR 198 at 214-215 sets out the general principles when assessing whether a practitioner has engaged in excessive or unreasonable overcharging. It provides that:
    a. The inquiry into what amounts to grossly excessive charging would ordinarily involve first, a determination of what, in the particular circumstances, would be a reasonable sum to charge;

    b. Determining what would, in the circumstances be such a reasonable sum will often turn on multiple factors, including:

i. the amount at which the costs in question was or would likely be taxed;
ii. the difficulty of the case;
iii. the novelty or complexity of the legal issues presented;
iv. the experience of the practitioner;
v. the quality of the work;
vi. the amount of time spent by the practitioner on the matter;
vii. the responsibility involved;
viii. the amount or value of the subject matter in issue; and
ix. any costs agreement entered into.

2. These what may be called *"D'Alessandro factors"* have been applied in various cases, including fairly recently a decision of the State Administrative Tribunal, Legal Practitioners Complaints Committee v Mijatovic (2007) WASAT 111 (and on appeal Mijatovic v Legal Practitioners Complaints Committee (2008) WASCA 115).

3. The new Act came into effect on 1 March 2009. Under it the Legal Practice Board ("the Board") now has the statutory responsibility for making Legal Profession Rules with respect to any aspect of legal practice, including expected standards of conduct by practitioners (*Sections 576 and 577*). The Board has published some draft rules on its website as part of the consultation process. Rule 15.4 provides that:

> *"A practitioner may only charge costs which are no more than is reasonable for the practitioner's services having regard to the complexity of the matter, the time and skill involved, any scale of costs that might be applicable and any agreement as to costs between the practitioner and the client"*.

It is in identical terms to Rule 17.4 of the Professional Conduct Rules of the Law Society, which the Board's rules will replace.

4. *Part 10* of the new Act, titled "Costs Disclosure and Assessment" is the costs section of the Act.

5. *Section 301* sets out the matters a taxing officer must or may consider when conducting an assessment of legal costs (the word "assessment" now replacing

"taxation"). These incorporate the D'Alessandro factors. The matters the taxing officer must consider are:

a. Whether or not it was reasonable to carry out the work;
b. Whether or not the work was carried out in a reasonable manner; and
c. The fairness and reasonableness of the amount of legal costs, except to the extent that *Section 302* (costs agreements) or *Section 303* (relevant costs determinations) applies.

In considering what is a fair and reasonable amount the taxing officer may have regard to any or all of the following:

a. Whether the law practice or practitioner acting on its behalf has complied with the Act;
b. Any costs disclosure made to the client under *Division 3*;
c. Any relevant advertisement as to the practice's costs and skills;
d. The skill, labour and responsibility displayed by the legal practitioner responsible for the matter;
e. The retainer and whether the work was done within the scope of the retainer;
f. The complexity, novelty or difficulty of the matter;
g. The quality of the work done;
h. The place where, and circumstances in which, the legal services were provided;
i. The time within which the work was required to be done; and
j. Any other relevant matter.

6. Under the new Act the classification of conduct which attracts sanction is now unsatisfactory professional conduct and professional misconduct (*Sections 402 and 403*).

7. *Section 404* provides that charging excessive legal costs is conduct capable of constituting unsatisfactory professional conduct or professional misconduct.

8. Practitioners should be aware of *Section 307* which provides that if, on a costs assessment, the taxing officer considers that the legal costs charged by a legal practice are grossly excessive the taxing officer must refer the matter to the Complaints Committee to consider whether disciplinary action should be taken against the practitioner. Further, if the taxing officer considers that the costs

assessment raises any other matter that may amount to unsatisfactory professional conduct or professional misconduct it may refer the matter to the Complaints Committee to consider.

Bills attracting overcharging complaints

There are a couple of matters which are continuing to generate a number of complaints:

9. Personal injuries matters – It is of concern that this area continues to receive a number of costs related complaints. Several are complaints of gross overcharging. However, a number raise the issue of a possible lack of adequate communication to the client in respect of the fees and disbursements chargeable to the client when considering an offer of settlement. Clients complain that they received less in hand than they thought they would from the settlement sum, that the costs aspect was not adequately explained to them at settlement, or that they were not adequately informed of the deductions that would be made from the settlement sum, for example, Centrelink and Medicare payments or counsel fees. Clients also complain that they felt pressured or rushed to settle at the time details of the settlement sum and deductions from the sum were discussed.

   The LPCC of course, investigates such complaints. However, it appears that some of these complaints would have been avoided if the practitioner had carefully explained these matters to the client and was satisfied that the client fully understood all the deductions which would be made from the settlement sum under offer and the reasons for them. It is good practice to explain this in writing and to give the client time to consider the matter. If solicitor/client fees and disbursements are more than the proposed party/party costs the reason for this should be fully explained. It is also good practice not to seek a clients authority to deduct legal costs from a settlement sum without explaining the settlement sum and providing the client with an itemised bill of the costs and disbursements. Of course, the client should also be advised of their right to have the account assessed.

10. Small accounts for initial consultations – The LPCC continues to receive complaints about accounts rendered for initial consultations. Many appear to be genuine grievances that the practitioner did not fully explain to the client before the consultation the charges for the consultation, or performed work after the

consultation without instructions, or charged for time spent at the consultation on discussions about general matters unrelated to the legal matter. These sorts of complaints are very often avoidable. If there has been such a misunderstanding through a lack of adequate communication, it is suggested that practitioners review the bill with the client and agree a sum.

11. Exceeding costs estimates – The LPCC continues to receive complaints of this nature. Clients understandably complain if they have been given a costs estimate and are then billed a significantly higher sum. There are stringent costs disclosure requirements in the Act.

12. The following areas of complaints in relation to costs have led to disciplinary action against practitioners, either by way of the exercise by the Committee of its summary jurisdiction power, or by referral of the matter to the State Administrative Tribunal:

13. Costs disclosure

13.1 Failing to provide any costs disclosure to the client at the outset of the retainer or failing to make adequate costs disclosure to the client.

A complaint of this kind may be that a low estimate of fees was provided at the commencement of the retainer and, relying on that, the client instructed the practitioner to act. That estimate was not revised and the client subsequently received a bill in an amount much higher than the estimate that had been provided. The client, understandably, complains to the Committee of overcharging.

13.2 In relation to family law matters, failing to adequately inform the client about costs, failing to provide the client with adequate notification of costs at each court event and failing to provide copies of the costs notifications to the court and/or the other party, all of which are required by Family Law Rule 19.

13.3 The new costs disclosure requirements are in *Division 3 of Part 10* of the Act. They are highly prescriptive and require the closest attention by

practitioners. They include a statutory obligation to disclose to a client any substantial change to anything included in a disclosure already made, as soon as is reasonable and practicable after the law practice becomes aware of that change (*Section 267*).

13.4 The costs disclosure must be written and expressed in clear plain language (*Section 266*). Failure by a law practice to comply with the costs disclosure requirements is capable of constituting unsatisfactory professional conduct or professional misconduct (*Section 267*).

14. Itemised accounts

14.1 Failing to advise the client of his/her right to request an itemised account.

This was a statutory requirement under the Legal Practice Act 2003 and its predecessor the Legal Practitioners Act. The requirement to notify clients of this right continues under the new Act. It forms part of the initial costs disclosure requirement (*Section 260*).

14.2 Failing to comply with the client's request for an itemised account or undue delay in complying with such a request.

Under the new Act, a client who receives a lump sum bill may request an itemised bill. The practice is then required to provide such an itemised bill within 21 days and it is not entitled to charge for its preparation (*Section 292*).

15. Taxation

15.1 Failing to advise a client of the right to request taxation of the account.

Section 291 provides that a bill must include or be accompanied by a written statement informing the client of the avenues that are open to the client if he/she disputes the bill and any time limits that apply to those avenues, namely:

a. costs assessment under *Division 8*;

b. applying to set aside the costs agreement under *Section 288*; and

c. making a complaint to the Complaints Committee (*under Part 13*).

15.2 Failing to comply with a client's request to lodge a bill for taxation, alternatively undue delay in doing so.

Under the new Act the client has 12 months from receipt of the bill to request assessment of the account (*Section 295*).

16. Issuing proceedings against a client for recovery of the amount of an account in circumstances where the practitioner has not complied with the client's request that the account be itemised and/or taxed.

Note Sections 289 and 292 of the new Act which provide that a law practice must not commence legal proceedings to recover legal costs until at least 30 days after the law practice has given a lump sum bill, or an itemised bill, to a person.

<u>Providing accounts</u>

17. Charging a fee for preparing an itemised account or advising the client that there will be a fee payable.

Section 292(6) provides that a law practice isn't entitled to charge the person for preparation of an itemised bill which has been requested.

18. Undue delay in providing a bill of costs to a client who has requested same.

Rule 15.3 of the Board's Draft Rules provides that:

"A practitioner must, within a reasonable time after receiving a request from the client, render an invoice for the work to which the request relates".

Under *Section 269* of the new Act a law practice must give a client, on reasonable request a written report of the legal costs incurred by the client to date, or since the last bill (if any), in the matter, and must not charge a client for such a report.

19. Threatening legal action to recover costs in reliance on a lump sum account, whilst knowing that the client has requested the practitioner provide an itemised account.

Costs agreements

20. Rendering a bill which does not comply with the relevant costs scale, in the absence of a written costs agreement permitting charges outside scale.

20.1 Rendering a bill which is not in accordance with the terms of a costs agreement entered into between the client and the practitioner.

Costs agreements are dealt with under *Division 6 of Part 10* of the new Act. They are still required to be written or evidenced in writing. The Act includes different kinds of agreements and the respective requirements of each.

20.2 Entering into a costs agreement which breaches Section 27A of the Motor Vehicle (Third Party Insurance) Act 1943 (WA). This provides that when acting on a claim for damages for personal injury arising from a motor vehicle accident, you cannot enter into an agreement which provides for any greater reward than is provided for in any legal costs determination that is in force.

20.3 Seeking to have a client acknowledge that the client is obliged to pay and/or pay the practitioner's fees, in circumstances where:

a) the fees were not in accordance with the costs agreement entered into between the client and the practitioner; and

b) the practitioner's firm was acting for another person, whose interests conflicted with the clients and had caused the practitioner to cease acting for the client.

Other billing matters

21. Charging the client fees incurred by reason of a practitioner's neglect or undue delay in complying with court milestones in relation to the client's court action, or charging the client for work performed arising from rectifying matters caused by the practitioner's delay or neglect or that of an employee of the firm.

In one case a practitioner demanded costs and for the client to enter into a written agreement in circumstances where the client faced those costs as a consequence of his firm's failure to bring a matter to the attention of the defendant and the court.

22. Rendering an account in excess of an agreed fixed fee, then threatening to cease acting if the client didn't agree to pay the additional fee.

23. Charging for legal work which was performed without instructions, for example, work performed after the client terminated instructions or before the client instructed the practitioner to commence a legal action.

In one case a practitioner had accepted a retainer from the complainants for settlement of a purchase yet to arise under an option to purchase a lease. He was not retained except for settlement of the purchase. When the practitioner terminated the retainer in circumstances of a conflict of interest the option to purchase had not been exercised and the retainer had therefore not commenced. The practitioner billed the complainants for work he had done without a retainer. When the complainants asked for an itemised account this was provided in an increased amount.

24. Ceasing to act for a client without good cause or the client's consent and shortly thereafter improperly rendering an account to the client.

For example, a practitioner caused a letter to be sent to his firm's client, stating that his firm would cease acting, and threatening to withhold the firm's services at two trials, unless a payment into trust on account of legal costs was made or the firm was the recipient of a grant of Legal Aid. The practitioner knew or ought to have known that the retainer which then existed between the client and his firm, in respect of each of two traffic matters, was in the nature of an entire contract, under

which no immediate right to require payment of his legal costs existed prior to the matters going to trial.

25. Writing to a client's former practitioner improperly coupling a demand that the practitioner waive his fees charged to a former client with a threat to make a complaint to the Legal Practice Board, if he did not do so.

26. Charging interest on outstanding accounts in the absence of an entitlement to do so.

Note *Section 273* of the Act which provides that a law practice may charge interest if the costs are unpaid 30 days or more after the practice has rendered a bill, or in accordance with a costs agreement, but only if the bill contains a statement that interest is payable and the rate of that interest. The rate must not exceed the rate prescribed by the regulations.

27. Obtaining money for professional fees from a client over and above a Legal Aid Commission grant for the same matter in breach of *Section 41* of the Legal Aid Commission Act 1976.

28. Charging the client for an attendance at the client's home at which it was alleged the practitioner drank a significant amount of alcohol.

29. Being invited to a social function by a client and charging for legal work purportedly performed at the function (LPCC v Mijatovic, Supra).

30. Charging fees in great disproportion to the sum in dispute ($350) which was the subject of the retainer in circumstances where the practitioner had failed to inform the client that this would be the case.

This issue of proportionality is one of the D'Alessandro factors when assessing the reasonableness of a charge – the decision refers to the amount or value of the subject matter in issue and the complexity of the legal issues presented. It also features in the draft national legislation.

Other fairly recent disciplinary matters

31. Charging a client fees, in respect of a claim for damages arising out of a motor vehicle accident overseas, which were not in accordance with a costs agreement entered into with the client. The practitioner in his costs agreement agreed to limit his costs to a maximum of $1,500. The clients matter settled for a settlement sum plus a sum for legal fees which was in excess of the amount agreed by the practitioner. The practitioner sought to retain the extra amount which was not in accordance with the costs agreement.

32. Charging excessive fees in respect of a family law retainer – this was by charging an hourly rate in excess of that prescribed by the Family Court scale of costs; charging units of 6 minutes and not for the time actually taken contrary to the Family Court scale; excessive time charging for drafting and editing correspondence; charging for drafting and editing correspondence on a time basis and not by the number of words as required by the Family Court scale of costs and charging a file opening fee in the absence of a costs agreement entitling him to do so.

The same practitioner was found guilty of grossly excessive charges in respect of a criminal law retainer - the basis of this was that he charged in units of 6 minutes and not for the time actually taken contrary to the 2005 determination; charged an hourly rate in excess of the maximum allowed under the determination both in respect of his work and his clerks work; the work of the practitioner did not involve any novel or complex issues of law or fact; the practitioner was not entitled to charge a file opening fee in the absence of a costs agreement; the practitioner's time for drafting and editing correspondence and the client's proof of evidence was unreasonable and excessive and his clerk's time in researching sentencing factors was excessive and/or unnecessary as counsel was instructed.

33. A practitioner was found guilty of unsatisfactory professional conduct in respect of a Family Law retainer by failing to provide a costs notice in accordance with Chapter 19 of the Family Law Rules 2004; seeking payment of 16 interim bills of costs when he was not entitled (in the absence of a signed costs agreement) to do so; procuring the client to sign a costs agreement in June 2007, which provided that it

had effect from August 2005, in circumstances where it was inappropriate to do so; failing to provide the client with a copy of the costs agreement until 10 months after the client signed the agreement and charging, in the absence of a signed costs agreement authorising him to do so, an hourly rate in excess of the family law scale.

The same practitioner was found guilty of unsatisfactory professional conduct by inappropriately proposing as security for his costs his nomination by the client as a beneficiary of part of her life insurance policy in circumstances where the client had not received the benefit of independent legal advice.

34. A practitioner was found guilty of unsatisfactory professional conduct by, in September 2007, withholding $10,000 received from the settlement of a personal injuries matter for a client on account of unbilled costs arising from a traffic offence matter in which the practitioner represented the client. The circumstances were that there was no agreement that the monies could be withheld, no work had been carried out in the criminal matter and an account for unbilled costs in the criminal matter was not rendered until February 2009 for a significantly lesser sum than that withheld.

The same practitioner was found guilty of unsatisfactory conduct by failing to provide the client with a trust statement in relation to the personal injuries matter detailing all trust monies received and disbursed by the practitioner during the course of his retainer.

35. A practitioner was found guilty of unsatisfactory conduct by overcharging in that, in relation to the will of a deceased person of which the practitioner was appointed an executor:

a) The practitioner included a provision in the will providing for him to receive a remuneration fee based on a percentage of the gross value of the deceased estate (executors commission) as well as a provision for the payment of his ordinary fees for administering the deceased estate; and

b) The practitioner improperly charged the estate $9,559.66 by way of executor's commission in circumstances where this was chargeable by

the practitioner only when acting as trustee of the will, a role he was not required to discharge; and

c) In light of the size of the deceased estate and the lack of complexity in the administration of the estate, it was unreasonable for the practitioner to have charged the executors commission in any event.

36. Other matters of complaint in respect of billings, which have led to the Committee publishing an article in the Law Society's Brief Magazine are:

36.1 Issuing a bill to a client for barrister's fees when the barrister was briefed without the client's informed consent. Sometimes the client had not known that the barrister had been briefed until a bill arrived from the practitioner. Before a practitioner briefs a barrister the client needs to agree and must be given the information necessary to make an informed decision. How much detailed information needs to be given ultimately depends on the circumstances. The client must be informed about the basis of the barrister's charges, the scope of the brief, and any other relevant information that is needed so that the client can be properly informed before giving those instructions (Brief Magazine November 2007).

36.2 Rendering a bill for a consultation to a client who had attended for a consultation following an advertisement placed by the practitioner advertising a *"first appointment free"*. To avoid misleading consumers, advertisements that offer a first appointment free should clearly spell out the terms and conditions of the offer. The Committee's view is that where a practitioner doesn't clarify the terms or conditions of the advertised offer of a free consultation, or gives undue prominence in an advertisement to that offer without linking it adequately to the terms or conditions, it may be misleading or deceptive and may amount to unsatisfactory conduct (Brief Magazine February 1998 and September 2006).

36.3 Practitioners rendering bills several months or years after the matter in which they acted has concluded. Generally, a final bill should be sent to clients within 30 days of the matter being concluded, where possible. In

substantial or complex matters or matters awaiting party/party taxation, a different approach may be appropriate. However, it would rarely be appropriate to issue an account more than six months after the matter has concluded, and three months should be the outmost limit. It is unsatisfactory if delay in sending an account conveys to the client the impression that no fees (or no further fees) are payable (Brief Magazine November 2003).

36.4 The Committee received a number of complaints from clients alleging that they were informed by their practitioner at the outset of instructions that they would not be required to pay legal fees until their matter was concluded, but were not told that they would have to pay for disbursements, nor that these would be substantial. The Committee expressed the view that this may be misleading and could constitute unsatisfactory conduct. It recommended that practitioners give such advice in writing to avoid any possible misunderstandings (Brief Magazine November 1997).

36.5 Specifying GST in costs agreements – the Committee considered a complaint that GST was not specified in the hourly rate of a costs agreement. The practitioner had acted for the complainant in a family law matter. The practitioner had provided the complainant with a costs agreement which referred to an hourly rate but was silent on the issue of GST. The practitioner had also provided the complainant with the scale of costs from the Family Law Rules which clearly indicated GST was included. The complainant then assumed that the practitioner's hourly rate included GST. However the complainant subsequently received an account in which the practitioner had charged GST in addition to the hourly rate specified in the costs agreement which added an unexpected $2,300 to the complainant's account. The Committee's view is that costs agreements should clearly set out the position in relation to GST, either that GST is included or that it is additional to the hourly rate (Brief Magazine March 2009).

Minimising billing complaints

37. Ensure that you comply with the new legislative requirements under *Part 10* of the new Act. The sections referred to above deal with only some of the requirements.

38. Better communication on fees will reduce the potential for complaints about them. Make sure clients fully understand the fee arrangements.

39. The Committee is of the view that practitioners should not charge clients legal fees for dealing with administrative matters. This is particularly so in the case of client queries on accounts. This view is reflected in Rule 15.5 of the Boards draft rules which provides that *"Subject to any order made under the Act, a practitioner must not charge a client or former client any costs for answering a complaint regarding the practitioner which is made to the practitioner, the practitioner's firm, the (Law) Society or the Complaints Committee"*.

40. Comply promptly with client requests for itemised accounts and assessment of accounts.

41. Keep clients fully informed of any variation to costs estimates which are provided and explain the reasons for this.

42. Obtain the client's informed consent before you incur large expenses such as briefing counsel.

43. Adequately detail your bill so the client can understand why the bill is in the amount charged.

44. Irrevocable authorities – the Committee's view is that, in circumstances where a client requires access to a file being held pursuant to a solicitor's lien and disputes the amount of the outstanding account, it may raise evidence of possible unsatisfactory conduct for the practitioner to demand, as a precondition to relinquishing his lien over the file, an irrevocable authority to pay the whole of a disputed account. Rather, in such situations the Committee would consider it

reasonable for the practitioner to release the complainant's file on an undertaking by the complainant and/or his solicitor to pay the practitioner's costs as taxed.

45. Check the bills before they are sent to the client, to ensure that they not only comply with legislative requirements but are appropriate in all circumstances. Check for overservicing, duplications of work or other inappropriate charges.

In Law Society of New South Wales v Foreman (1994) 34 NSWLR 408 at 422 Kirby P commented that:

> *"no amount of costs agreements, pamphlets and discussion with vulnerable clients can excuse unnecessary overservicing, excessive time charges and overcharging where it goes beyond the bounds of professional propriety. Time charges have a distinct potential to result in overcharging".*

Note that *Section 290* provides that a bill must be signed on behalf of the law practice by a legal practitioner or an employee of the practice (signing the letter enclosing the bill is sufficient compliance).

46. If there is an error in a bill which is sent out, acknowledge it and rectify it at the earliest opportunity. For example, it may be that a bill is prepared under the misapprehension that the client has entered into a costs agreement.

47. Be open and amenable to concerns expressed by clients in respect of bills rendered by the firm. If the account is properly explained to the client, the client's concerns may well be addressed. Alternatively, the client may raise a very reasonable complaint in respect of an aspect of the bill which the practitioner might review and, upon consideration, amend the bill.

Dealing with billing complaints

48. There are generally two ways clients will complain about a bill:

    a) To the practitioner or a member of his/her firm; or
    b) To the LPCC

49. In relation to the complaints to a firm, it is recommended that you establish a complaint handling procedure. This will reduce the number of complaints made to the LPCC. This involves having a designated complaints handler, clients being informed who they can complain to, and staff being aware to whom complaints should be referred. It may be that a complaint is made to a secretary or finance person in the firm. They need to know who they should refer the complaint to so that it can be addressed.

    The establishment of a good handling procedure will stop many complaints at that stage.

50. In relation to the LPCC, a client may telephone the LPCC's office for information or assistance in respect of an account which is of concern. Wherever possible and appropriate the legal officer will try to informally resolve the matter. This may involve suggesting to the client that they contact the practitioner to discuss their concerns and inform the practitioner that the LPCC has suggested this course as a way to resolve the matter. This is your opportunity to endeavour to resolve the matter with the client. Alternatively, the legal officer who has taken the call may contact the practitioner direct to try to facilitate the matter of concern. Please take a positive approach to these calls – it is your opportunity to try to sort the matter out without a formal complaint being made and the consequent time and costs to you that this will involve.

    If a written complaint is made, the legal officer may also try to resolve the matter, either informally by discussion or formally by way of mediation. Again, by taking a positive approach to this suggested course you will save time and expense in the long term and may also retain the goodwill of a client who may wish to give you repeat work, or refer other people to you.

Looking ahead

National Legal Profession Reform Project

51. Practitioners will be aware of this project and the draft National Legal Profession Laws which were released in May 2010 for submissions. In relation to legal costs, the draft laws provide that a law practice must charge no more than fair and reasonable costs. Legal costs are defined as reasonable if they:

    1. Are reasonably incurred and are reasonable in amount
    2. Are proportionate in amount to the importance and complexity of the issues involved in a matter, the amount of value involved in a matter, and whether the matter involved a matter of public interest
    3. Reasonably reflect the level of skill, experience, specialisation and seniority of the lawyers concerned and
    4. Conform to any applicable requirements of this Part, the National Rules and fixed costs legislative provisions. (Sections 4.3.4(1) and (2)).

    The laws further provide that *"a law practice must not act in a way that unnecessarily results in increased legal costs payable by a client, and in particular must act reasonably to avoid unnecessary delay resulting in increased legal costs".* (Section 4.3.5)

    Breach of these obligations are capable of having disciplinary consequences (4.3.3.0.4.3.34)

Alternatives to time billing

52. You will no doubt be following the public debate on event-based or fixed costs billing as opposed to time-based billing. As you know, time costing was created as a cost accounting tool to enable firms to assess the cost of the service to the firm, rather than a billing tool. The number of costs complaints that the LPCC continues to receive, and their nature, notwithstanding various changes in the costs regulatory legislation, indicates that the debate is timely.

    From my personal perspective as a complaints handler, there is no doubt that time costing, when the work is billed purely on a time basis without reference to other

factors such as the reasonableness of the work performed, whether there was unnecessary duplication and the reasonableness of the time spent, can reward inefficiency and lead to overcharging. From the perspective of a consumer, I think some of us would prefer to agree an event based figure rather than an open ended hourly rate as it provides some certainty. Addressing any conduct concerns in relation to these alternative billing arrangements will evolve as these arrangements become more widespread. For those who have not already done so, the paper delivered by the Chief Justice during this years Law Week is interesting reading on this topic. It is available on the Supreme Court website.

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