

# Issuing of Summonses by Practitioners for Recovery of Costs

*by Western Australia  
Legal Practitioners Complaints Committee*

*Recently the Committee considered guidelines for practitioners in respect of issuing accounts and summonses for legal fees. The Committee requested Brief magazine to publish the following article for the attention of members of the profession.*

The Committee has recently had occasion to consider whether certain approaches taken by practitioners when issuing legal proceedings for the recovery of fees amount to unprofessional conduct. Without attempting to lay down rules, the Committee draws attention to considerations which should be borne in mind by practitioners.

There are certain circumstances where it is appropriate to issue a summons for recovery of fees and other circumstances where it is not. For example, where a Notice of Rights on the bill states that clients have 30 days in which to request an itemised account, clients often assume that the practitioner is not entitled to take legal action within that period. Section 65 of the Act contemplates that practitioners may issue proceedings before the expiration of the 30 day limit from the date of service of a lump sum bill. Section 66(b) of the Act enables a taxing officer to order that any proceedings in that regard be stayed until such time as the taxing officer may direct.

It will generally be preferable not to issue proceedings before the 30 day period for requesting itemisation of the account has expired.

It may be appropriate for practitioners to adopt the following guidelines:

1. Practitioners may require the payment of bills by clients within a reasonable period of time and that time should clearly be stated on the account.
2. A reasonable period of time may be considered to be 30 days or longer and;

3. If practitioners wish to issue proceedings after the expiration of 30 days, before doing so a further letter should be sent to the client advising that proceedings will be taken should the account not be paid.

There will be exceptions to this approach, such as, for example, where a practitioner is aware that a client is about to leave the jurisdiction or dispose of funds with a view to avoiding payment of a practitioner's account. However, practitioners should, where at all possible, ensure that the above guidelines are followed.

Another area of potential concern is in relation to practitioners who render accounts several months or years after the matter in which they acted has concluded. Generally, a final account 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 outermost 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.

Members of the profession are asked to take these guidelines into account in relevant circumstances.