

## Is a bill required prior to transferring monies held in trust to a firm's general account?

The authorities suggest that it is not necessary for a solicitor to have rendered a bill of costs prior to the transfer of funds from the firm's trust account to a general account for professional costs. **However**, it is necessary that solicitors ensure that the authority given in the costs agreement is in fact wide enough to permit such a transfer. In addition, section 58(3) of the [Legal Profession Regulation 2007](#) (LPR) entitles a law practice to withdraw the trust money, **if the practice has given or sent to the client a request for payment**, referring to the proposed withdrawal, and one of the following is also satisfied:

1. The money is withdrawn in accordance with a valid costs agreement that authorises the withdrawal (the costs agreement is required to be signed by the client);
2. The money is withdrawn in accordance with client instructions, written or confirmed in writing, that authorise withdrawal; or
3. The money owed to the practice is by way of reimbursement of money already paid by the law practice on behalf of the client.

The LPR also prescribes an alternate to the above, which permits a law practice to withdraw trust money if it has given the client a bill and:

1. The client has not objected to the withdrawal of the money within 7 days after being given the bill;
2. The client has objected within 7 days of being given the bill but has not applied for review of the legal costs (via assessment) within 60 days of having been given the bill; or
3. The money otherwise becomes legally payable.

In *Re a Barrister and Solicitor* (1979) 40 FLR 26 at 40 the full Federal Court noted as follows:

When a solicitor wishes to make a disbursement on behalf of a client, or to satisfy a claim for costs, for disbursements, or for costs and disbursements, out of money standing to the credit of the client in the solicitors trust account, he can do so, consistently with [statutory authority] only if he has the client's authority to do so. This will usually be express authority; it is possible, however for the authority to be implied. It must in nearly all cases, be a simple matter to get the client's express authority.

In *re Nelson* (1991) 106 ACTR 1 at 10-11 Higgins and Foster JJ said:

Solicitors need to ensure however that the authority, (if any) which they in fact have is wide enough to permit such a transfer.

It is strongly recommended that solicitors comply with the requirement of section 58(3) of the LPR by having the appropriate notation on a bill of costs delivered or sent to the client.

If relying on a costs agreement, that costs agreement would need to be valid in accordance with the provisions of the LPR and have been signed by the client.