

Executive Summary – Regulation 58 Guidelines

A law practice wishing to withdraw trust money held in a general trust account or a controlled money account for payment to its own account for legal costs owing must comply with Regulation 58 of the *Legal Profession Regulation 2017* (see s258(1)(b) *Legal Profession Act 2007*).

To comply with Regulation 58 requires the law practice to meet one of Regulations 58(2), (3), (4) or (5).

Legal costs means remuneration and disbursements incurred in relation to legal work. Disbursements include outlays.

Regulation 58(3) provides a formula for the withdrawal of trust money for payment to the law practice of disbursements incurred but not yet paid.

That formula has two limbs:

The first requires that there be either :-

- (i) a costs agreement that complies with the Legal Profession Act which authorises the withdrawal; or
- (ii) instructions received by the practice that authorised the withdrawal.

The second limb of the formula requires that before withdrawing the money, the law practice gives to the client:-

- (i) a request for payment referring to the proposed withdrawal; or
- (ii) a written notice of withdrawal.

A bill is a request for payment. It can with appropriate wording be a written notice of withdrawal. The regulation requires both an instruction and either a request for payment or written notice of withdrawal. An instruction alone is not sufficient.

An example of an appropriate instruction authorising the withdrawal of trust money for legal costs would be:

Re: [insert matter details: payment of legal costs]

I (**insert name**) authorise [insert law practice name] to:

- (i) withdraw money/the sum of \$.....held in the law practice trust account for payment to the practice's account,
- (ii) for legal costs owing to the practice, in relation to **[insert matter details]** including such costs incurred but which we have not already paid, and
- (iii) if the relevant procedures or requirements under the *Legal Profession Regulation 2017* are complied with."

Signature:

Date:

If Regulation 58(3) is to be availed of the costs agreement, it must authorise the payment of disbursements that have been incurred. The Society considers a disbursement to be incurred when an obligation to pay arises, not when payment is made.

An example of an appropriate clause is:

"When we hold money in our trust account on your behalf:

- (i) *You authorise us,*
- (ii) *to withdraw money for payment to the practice's account,*
- (iii) *for legal costs owing to the practice, including such costs incurred but which we have not already paid,*

(iv) *if the relevant procedures or requirements under the Legal Profession Regulation 2017 are complied with.*"

It may be unsatisfactory professional conduct if a law practice having complied with Regulation 58(3) in withdrawing money for disbursements incurred then fails to pay the full amount owing to the service provider with whom the disbursement was incurred.

Questions about compliance with Regulation 58 can be directed to the Trust Accounting Team on 3842 5908 or managertai@qls.com.au. A longer form guidance note on regulation 58 can be found [here](#).