

NOTICE OF DETERMINATION

A notice made under section 318 of the *Legal Profession Uniform Law (Victoria)* ("Uniform Law").

Complainant: [REDACTED] (made on her behalf by [REDACTED] –
"Complainant's Representative")
Respondent Lawyer / Law Practice: [REDACTED] / [REDACTED] Lawyers
Case reference: [REDACTED]

Pursuant to section 292 of the Uniform law, I make a binding determination about the costs of the Respondent Lawyer's bill dated 1 July 2016, which is the subject of the dispute.

I consider the amount of legal costs that are fair and reasonable in all circumstances in relation to this bill to be \$460.46 (GST inclusive), which the Complainant must pay the Law Practice.

Statement of Reasons

Background

1. On 7 June 2016, the Complainant was issued with two infringement notices by Victoria Police, for –
 - (i) driving a motor vehicle with a breath alcohol level of 0.07% or more, but less than 0.10%; and
 - (ii) exceeding a speed limit by 10km or more, but less than 15km.
2. On 8 June 2016, the Complainant attended a conference with the Respondent Lawyer after being referred to him via the Law Institute of Victoria's 'Find Your Lawyer' referral service. Throughout the matter, the Complainant's Representative assisted the Complainant, and attended this conference by telephone.
3. On 10 June 2016, the Respondent Lawyer provided costs disclosure to the Complainant under the Uniform Law, which indicated an hourly rate of \$425.00 (including GST) for the services of a partner level lawyer, and \$330.00 for a standard lawyer. The estimate given was \$1,000.00 "for all work subsequent to initial attendance involving submissions to Police and considering your options on response."
4. On 17 June 2016, the Respondent Lawyer wrote a letter to the Traffic Camera Office seeking that the charge relating to excess alcohol be reduced to one of drive with a Blood Alcohol Level of between .05 and .07.
5. On 1 July 2016, the Respondent Lawyer issued a bill to the Complainant for \$673.00 including GST ("Respondent Lawyer's bill").
6. On 7 July 2016, my office received the complaint about the Respondent Lawyer.
7. The Complainant's Representative and Respondent Lawyer have attempted to resolve the dispute informally but that did not result in a satisfactory resolution of the matter for either of the parties.

8. The Respondent Lawyer's bill remains unpaid.

Issues in Dispute

The issues that remain in dispute are whether –

(a) The Respondent Lawyer's bill is fair and reasonable.

Specifically, whether some of the Respondent Lawyer's charges in the bill were unnecessary.

(b) Instructions given by the Complainant's Representative, on behalf of the Complainant, were followed.

Complainant's Case

The Complainant's Representative raised the following concerns in the complaint –

a. *Legal costs*

The Respondent Lawyer's bill was excessive.

Some of the charges in the Respondent Lawyer's bill were unnecessary, including a charge for research to answer what he considered a question that should not have required him to pay for research by a practitioner practising in this area of law.

b. *Instructions not followed*

Instructions that he gave were not followed - in particular, the Respondent Lawyer's letter dated 17 June 2016 ("letter") sent to the Traffic Camera office was not worded in accordance with his instructions, as set out in an amended draft letter.

Contrary to instructions, the letter sent to the Traffic Camera Office excluded the reference to a blood test being initially denied to the Complainant, which was of vital importance, and that accordingly, the item in the Respondent Lawyer's bill relating to the letter should be withdrawn.

The Complainant's Representative said that the Complainant was willing to pay a reduced amount of \$247.94 for the Respondent Lawyer's bill. The Respondent Lawyer rejected this offer.

Respondent Lawyer's case

The Respondent Lawyer said the following in response to the Complaint –

a. *Legal costs*

His bill was fair and reasonable.

It was appropriate for him to charge in relation to research.

b. Instructions not followed

Prior to sending the final version of the letter, he communicated to the Complainant’s Representative that not all the suggested amendments to his draft would be incorporated “because it would not be of assistance in achieving his objects, although most of it was”.

The letter was redrafted and couriered, which he did not charge for.

The Respondent Lawyer said that he was willing to accept \$550.00 for payment of his bill. The Complainant’s Representative, on behalf of the Complainant, rejected this offer.

Findings on Issues in Dispute

(a) Fair and reasonable amount of costs

A costs review has been undertaken of the Respondent Lawyer’s file, which concluded that \$460.46 (including GST) represents fair and reasonable legal costs for the Respondent Lawyer’s bill. This amounts to a reduction of \$212.54 from the Respondent Lawyer’s bill. I accept the findings of the costs review.

I have *allowed* amounts that the Respondent Lawyer is able to charge for the following attendances –

Attendance Date	Attendance Description	Amount Charged	Amount Allowed
8 June 2016	‘Telephone attendance you’	\$32.20	\$32.20
Reason Allowed	This charge was fair and reasonable.		

Attendance Date	Attendance Description	Amount Charged	Amount Allowed
10 June 2016 to 17 June 2016	‘Draft letter to police’ ‘Instructions your agent’ ‘Final letter’	\$322.00	\$322.00
Reason Allowed	This attendance included a number of steps undertaken by the Respondent Lawyer, including – <ul style="list-style-type: none"> • Drafting a covering letter to the Complainant (of 		

	<p>one folio in length – i.e. up to 100 words);</p> <ul style="list-style-type: none"> • Drafting a letter of 3 folios in length to police (between 200-300 words); • Perusing two emails from the Complainant's Representative (both 17 June 2016 at 11.59am and 12.52pm, one folio each); • A telephone call on 17 June 2016 with the Complainant's Representative; and • Finalising the draft letter. <p>In relation to the totality of the steps taken by the Respondent Lawyer, the amount claimed of 50 minutes was fair and reasonable.</p>
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I have *reduced* the amount that the Respondent Lawyer is able to charge for the following attendances –

Attendance Date	Attendance Description	Amount Charged	Amount Allowed
8 June 2016	'Research BCA issue, letter you'	\$64.40	\$32.20
Reason Reduced	It was not reasonable for the Respondent Lawyer to charge for the research undertaken. However, it was reasonable for a letter to be written, considering it contained the provision of legal advice and was seeking further instructions.		

Attendance Date	Attendance Description	Amount Charged	Amount Allowed
8 June 2016	'Attend you'	\$128.80	\$32.20
Reason Reduced	The file note for this attendance was brief. There was also a lack of times notated on the file note.		

I have *disallowed* the amount that the Respondent Lawyer is able to charge for the following attendance –

Attendance Date	Attendance Description	Amount Charged	Amount Allowed
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27 June 2016 and 29 June 2016	'Short letters you'	\$64.40	\$0.00
Reason Disallowed	This attendance related to the Respondent Lawyer sending letters chasing up the payment of \$500.00 into trust. It was therefore not properly chargeable.		

(b) Instructions not followed

I have reviewed the Respondent Lawyer's file in relation to the Complainant's Representative's claim that the Respondent Lawyer did not follow his instructions by failing to include a blood test being denied to the Complainant by the Victoria Police in a letter drafted by the Respondent Lawyer. I have found the following –

- On 10 June 2016, a draft letter to the Traffic Camera Office was sent to the Complainant's Representative by the Respondent Lawyer.
- On 17 June 2016 at 12.52pm, the Complainant's Representative emailed the Respondent Lawyer to confirm that he would send out the "updated draft" letter with revisions made by him. The Complainant's Representative described his revisions "as updated into the letter and the two underlined paragraphs". The file contained a letter with underlined passages, which appeared to be the updated draft.
- The file contains what appears to be the final version of the letter sent, dated 17 June 2016. There were some differences in the wording between the Complainant's Representative's draft and the final version sent out by the Respondent Lawyer.

Although a lawyer is obliged to follow a client's lawful, proper and competent instructions (rule 8.1 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules*), there is no rule or general legal principle which requires that the *wording* of a letter or document be prepared by a lawyer *exactly* as instructed by a client, so long as the client's lawful, proper and competent instructions are carried out to the best of the lawyer's ability taking into account his skill, care and knowledge of the area.

Furthermore, what appears to be the final version of the letter sent out by the Respondent Lawyer does in fact include a reference to the blood test being denied.

For the above reasons, I am not prepared to reduce the Respondent Lawyer's bill or provide the Complainant with compensation based on the Complainant's Representative's claim that the Respondent Lawyer did not follow instructions.

Determination & Reasons

Having considered all of the evidence and relevant law, and having made the above findings on the issues in dispute, I determine that it is fair and reasonable in all the circumstances to make the order detailed above.

Further, in making a determination as to costs, I have determined that the amount is fair and reasonable in all the circumstances having regard to section 200 of the Uniform Law, and the matters set out above. I have also considered the principles in section 172.

Michael McGarvie
Victorian Legal Services Commissioner
6 February 2017