

NOTICE OF DETERMINATION

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

Complainant: [REDACTED]
Respondent Lawyer / Law Practice: [REDACTED] / [REDACTED]
Case reference: [REDACTED]

Pursuant to section 292 of the Uniform Law, I make a binding determination about the costs of the Respondent Lawyer's bills, dated 6 April 2016, for an amount of \$3,033.80 (Invoice Number 6463) and 14 April 2016, for an amount of \$4,840.00 (Invoice Number 6549), which are the subject of the dispute.

I consider the amount of legal costs that are fair and reasonable in relation to these bills to be **\$5,676.00** (GST inclusive), which the Complainant must pay the Law Practice.

Statement of Reasons

Background

1. On 25 February 2016, the Complainant attended the Law Practice and instructed the Respondent Lawyer about several parenting matters relating to his divorce. At this meeting, the Complainant provided the Respondent Lawyer with three folders of documentation.
2. On 26 February 2016, the Respondent Lawyer sent the Complainant a letter confirming his instructions and stating that the Law Practice could not provide detailed advice until the file was reviewed. Attached to this letter were the Law Practice's Disclosure Statement and Cost Agreement.
3. The Disclosure Statement estimated that total legal costs in the matter were "likely to be about \$30,000 including GST" for "[a]ll work reasonably required to act on your behalf in your family law Parenting matter(s) with [REDACTED]".
4. On 28 February 2016, the Complainant sent the Respondent Lawyer an email containing a hyperlink to documents concerning the family law matter.
5. On 29 February 2016, the Complainant sent back a signed copy of the Costs Agreement Acknowledgement to the Law Practice, along with which he added the following:

NOTE:

1. *Proceed with the first stage (lawyer's assessment of the matter) and then provide the best assessment of the situation before proceeding with acting on the case.*
2. *Three cash deposits have been made (\$2,000 + \$1,600 + \$1,400) totalling \$5,000 into the lawyer's trust account, as requested. These deposit [sic] were made on Sun 28/02/2016 with the reference number '231746' (the bank machine only accepted numeric characters).*

On the same day, the Complainant deposited a total of \$5,000.00 into the Law Practice's trust account.

6. On 6 April 2016, the Law Practice rendered a bill in the amount of \$3,033.80.
7. On 8 April 2016, the Respondent Lawyer sent the Complainant a letter which acknowledged that the final hearing for his family law matter was scheduled for 5 and 6 May 2016. The Respondent Lawyer sought payment of \$22,433.20 into the Law Practice's trust account in order to act on the Complainant's behalf in those proceedings.
8. On 14 April 2016, the Respondent Lawyer spoke with the Complainant and provided him with verbal advice based on her review of the file. On the same day, the Law Practice rendered a bill in the amount of \$4,840.00 for all work completed from the date of the previous bill.
9. On 22 April 2016, the Complainant sent [REDACTED] ("the Law Practice Employee"), of the Law Practice, an email requesting that advice about his case be given to him in writing.
10. On 26 April 2016, the Respondent Lawyer sent the Complainant a detailed letter advising him of his prospects of success, her professional opinion as to the likely outcomes should the matter be decided by the Court and a recommendation of how best to proceed. The Respondent Lawyer also sought payment of \$22,126.20 into the Law Practice's trust account if the Complainant wanted the Law Practice to continue acting for him in the matter.
11. On 2 May 2016, the Respondent Lawyer sent the Complainant a letter ending the retainer as she had not received any further instructions or monies deposited into trust as requested.
12. On 28 May 2016, the Complainant made a complaint to my office about the Respondent Lawyer.

Issue in Dispute

The issue in dispute is whether the Respondent Lawyer's bills are fair and reasonable.

Complainant's Case

The Complainant's concerns appear to be as follows –

- He was forced to comply with the Law Practice's conditions in order to obtain a review of the strength of his case;
- The Law Practice's fees were "excessive for a case review" and he did not expect it to cost over \$7,000.00; and
- The Law Practice did not comply with its costs disclosure requirements.

On 9 June 2016, the Complainant offered to pay \$3,000.00 in full and final settlement of the matter. This offer was not accepted by the Law Practice.

On 28 September 2016, the Complainant offered to pay \$4,000.00 in full and final settlement of the matter. This offer was also not accepted by the Law Practice.

Respondent Lawyer's Case

The Respondent Lawyer says that the costs in relation to the bills in dispute are fair and reasonable, especially given that the work included necessary perusal of a large amount of documentation as well as provision of both verbal and written advice.

The Law Practice Employee, on behalf of the Law Practice, has previously advised the Complainant that the charges were calculated in accordance with the method of charging outlined in the Law Practice's Disclosure Statement and Costs Agreement.

On 12 May 2016, the Law Practice Employee, offered to discount the Law Practice's total fees from \$7,873.00 to \$5,000.00. This offer was not accepted by the Complainant.

Findings on Issues in Dispute

Fair and reasonable costs

A costs review has been undertaken of the Respondent Lawyer's file, which concluded that \$5,676.00 (including GST) represents the fair and reasonable costs for professional legal costs charged for the Respondent Lawyer's bills. I accept that this amount represents fair and reasonable legal costs for this bill. The Respondent Lawyer's file was reviewed in accordance with the Respondent Law Practice's Disclosure Statement and Costs Agreement.

I will now discuss the issues which influenced the findings made in the costs review –

(a) Scanning charges

The costs review concluded that the Complainant provided electronic copies of the documentation (thereby making scanning the hard copy documents unnecessary). I have deemed that the scanning charges should be disallowed.

(b) Charges for review of documents

The Law Practice initially charged for 13.8 hours to review three folders of documents (amounting to approximately 1000 pages) in order to provide the Complainant with advice about his case, including the prospects of success and the recommended course of action.

The majority (12.1 hours) of the time charged for reviewing the documents has been allowed based on time sheets contained within the Law Practice's file.

(c) Other disallowed charges

Fees charged for; (i) opening the file; (ii) provision of the initial retainer letter and costs disclosure and agreement; and, (iii) drafting of a chronology were disallowed.

(d) Costs Disclosure

The Complainant says that when the Law Practice became aware that he only sought advice about the strength of his case, it should have provided him with updated costs disclosure which provided an estimate of the cost of this stage of work, rather than the matter as a whole.

Whilst I accept that it would have been preferable for the Law Practice to provide the Complainant a new costs disclosure statement which narrowed the scope of works and gave a revised costs estimate, in my opinion, this is rectified by the discount given. This was an unusual case in which voluminous documents needed to be read in order to provide the Complainant with advice about the strength of his case.

I note that the costs review did not raise any further concerns with the costs disclosure statement or costs agreement and that it was otherwise compliant with the Uniform Law. I am therefore satisfied that a reduction in the Law Practice's bills adequately addresses the Complainant's concerns.

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 orders 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. I have also considered the principles in section 172.

Non-compliance

Please be aware that a failure to comply with a determination in a consumer matter may amount to conduct capable of constituting unsatisfactory professional conduct or professional misconduct.



Michael McGarvie
Victorian Legal Services Commissioner
7 November 2016