

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 bill dated 31 May 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 \$2,405.70 (GST inclusive), which the Complainant must pay the Law Practice.

Statement of Reasons

Background

1. On 5 February 2016, the Complainant first instructed the Respondent Lawyer, when he sought urgent advice relating to an Australian Taxation Office ("ATO") bankruptcy matter, which related to his family law matter.
2. The Complainant had engaged [REDACTED] ("other Legal Practice") to deal with his family law matter.
3. The Complainant states that as his other Legal Practice were not specialists in ATO matters, he sought the advice from the Respondent Lawyer's Law Practice.
4. On 7 February 2016, the Complainant emailed 87 pages of material to the Respondent Lawyer. On 10 February 2016, the Complainant attended a lengthy conference with the Respondent Lawyer. On 11 February 2016, the Complainant emailed a further 172 pages of material to the Respondent Lawyer, comprising correspondence from the other Legal Practice's Law file.
5. On 11 February 2016 the Respondent Lawyer emailed the Complainant. The email contained legal advice and a combined, compliant draft Costs Agreement/Disclosure Statement. The document stated that:
 - Costs would be charged on various hourly rates;
 - Total legal costs (including GST and disbursements) were estimated at \$35,000.00.
6. After provision of the legal advice, the Complainant thanked the Respondent Lawyer and indicated he would contact her after 17 February 2016.
7. On 24 March 2016, the Respondent Lawyer communicated with the Complainant. On that date, the Complainant indicated that he had retained different lawyers.
8. On 31 May 2016, the Respondent Lawyer rendered an itemised bill to the Complainant for \$2,843.50 (professional costs = \$2,585.00, GST = \$258.50).

9. On 15 June 2016, my office received the complaint about the Respondent Lawyer.

ISSUES IN DISPUTE

The issues that remain in the dispute are whether –

- (a) The Complainant provided instructions for the Respondent Lawyer’s Law Practice to do any work;
- (b) The Complainant did in fact seek a specialist at the Law Practice in ATO matters, and whether the Respondent Lawyer is a specialist;
- (c) The Respondent Lawyer’s Law Practice “unreasonably” attempted to have the Complainant transfer his family law matter from his other Legal Practice.

Complainant’s Case

The Complainant said the following in his complaint –

a. Instructions not provided

He did not provide instructions for the Law Practice to do any work.

In the initial meeting, he was never advised that there would be costs charged.

He had, in effect, been “lawyer shopping” to find the best person to help him with his matter.

The initial meeting was a “sales meeting” (typical in the professional services industry) to ascertain whether he should retain the Respondent Lawyer.

b. He sought a specialist

He sought a specialist in ATO matters, which the Respondent Lawyer was not.

c. Law Practice wanted other matter transferred

The Respondent Lawyer’s Law Practice “unreasonably” attempted to have him transfer his family law matter from his other Legal Practice.

The Complainant did not make any offers to settle the matter.

Respondent Lawyer’s case

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

a. Instructions not provided

The Complainant sought urgent assistance and legal advice and provided a bundle of documents to her for this purpose.

At the initial meeting, the Complainant met with two lawyers, but was only charged for the attendance of one lawyer.

Costs disclosure was provided the day after the initial meeting.

b. Complainant sought a specialist

She is a family law specialist and brought the relevant legislation governing the Complainant’s matters to his attention.

c. Law Practice wanted other matter transferred

There was no attempt to “unreasonably try to take over” the Complainant’s family law matter.

The Respondent Lawyer offered to reduce her by \$330.00. This offer was rejected by the Complainant.

Findings on Issues in Dispute

(a) Whether instructions were provided from the Complainant

A costs review has been undertaken of the Respondent Lawyer’s file to address the issue of whether instructions had, in fact, been provided by the Complainant. Given a costs review was undertaken, fair and reasonable legal costs were considered. I have concluded that \$2,405.70 (including GST) represents fair and reasonable legal costs for 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	Description of Attendance	Amount Charged	Amount Allowed
7 February 2016	Perusal of email from client with various documents including letter from [REDACTED], Federal Circuit Court of Australia Documents (exceeding but say 30 minutes)	\$235.00	\$235.00

7 February 2016	Telephone attendance on client in relation to the Court Proceedings in the County Court of Victoria and the Federal Circuit Court of Australia and need to file Notice and Defence in the County Court as discussions with the ATO not sufficient (7.38pm-8.19pm)	\$329.00	\$329.00
9 February 2016	Drawing & Engrossing email to client with detailed Summary/Chronology in accordance with review of urgent instructions and perusal of documents as provided by client to date	\$47.00	\$47.00
10 February 2016	Conference with Client obtaining further instructions	\$705.00	\$705.00
10 February 2016	Attending file and perusing ATO communications	\$235.00	\$235.00
11 February 2016	Perusal of bundle of documents received by email from client being file of [REDACTED]	\$470.00	\$470.00
11 February 2016	Perusal of email from client acknowledging conference and discussions with [REDACTED] and will wait from hearing on 17/02/2016 before addressing ATO proceedings further	\$47.00	\$47.00

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

Attendance Date	Description of Attendance	Amount Charged	Amount Allowed
8 February 2016	Drawing & Engrossing Notice of Address for Service for Federal Circuit Court of Australia Proceedings as listed on 17/02/2016 and matter urgent	\$47.00	\$25.00
Reason Reduced	Disallowed at the lawyer rate as it is a pro-forma document		

Attendance Date	Description of Attendance	Amount Charged	Amount Allowed
11 February 2016	Drawing & Engrossing email to client with documents (this was claimed on the 10 th February but the email is dated the 11 th)	\$141.00	\$94.00
Reason Reduced	Disallow 1 folio for reference to costs agreement		

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

Attendance Date	Description of Attendance	Amount Charged	Amount Allowed
10 February 2016	Attending with JC re County Court Writ	\$94.00	\$0.00
Reason Disallowed	No file note		

Attendance Date	Description of Attendance	Amount Charged	Amount Allowed
10 February 2016	Attending file and discussions with [REDACTED]	\$235.00	\$0.00
Reason Disallowed	No file note		

In relation to the aspect of the provision of instructions, the costs review concluded that an inference could be drawn that the provision of documents and emails by the Complainant to the Respondent Lawyer equated to the provision of instructions. At no time did the Complainant ask the Respondent Lawyer not to review the documentation, indeed, the provision of this documentation could be interpreted as the Complainant providing instructions to review the information based on his initial email seeking urgent advice, and

ongoing emails. This resulted in a lengthy phone call, further information being provided, and a lengthy conference. The conference notes discussed the future strategy.

In addition, I note the following –

- The Complainant advised the Respondent Lawyer that the matter was urgent. This is inconsistent with the Complainant's submission in his complaint that he was seeking to test the skills and approach of the Respondent Lawyer and other lawyers before selecting which one to instruct.
- At no stage either prior to or at the initial meeting with the Respondent Lawyer did the Complainant suggest or advise that he was in effect looking to find a lawyer which he felt most comfortable with, as was suggested by him in his Complaint. Documents were provided by him to the Respondent Lawyer and further information was subsequently given.
- In an email sent on 11 February 2016, legal advice was provided and Costs Disclosure sent to the Complainant. On the same day, the Complainant emailed to thank the Respondent Lawyer for her email and for the time that day, adding "you guys were very helpful". The Complainant provided some further information in relation to the matter and concluded that he was "happy to hear your thoughts".
- The documents provided by the Complainant comprised 87 pages of material (attached to the email from the Complainant dated 7 February 2016) and his other Law Practice's correspondence (172 pages attached to the email from the Complainant dated 11 February 2016).
- At no stage did the Complainant indicate to the Respondent Lawyer that no work was to have been performed.

For the reasons above, I find that this aspect of the complaint has not been made out.

(b) Whether the Complainant sought a specialist in ATO matters, and whether the Respondent Lawyer was such a specialist

I find that the Complainant did in fact make it clear from the outset that he wished to see a lawyer with expertise in the area specified by him. The file indicates, however, that there were two lawyers present at the initial conference and that the Respondent Lawyer spoke with a tax and solvency specialist at the Law Practice prior to meeting with the Complainant, and that the Complainant was informed of those discussions at the initial conference. At no stage, at that time, did the Complainant advise the Respondent Lawyer, either in the initial conference or thereafter, that he did not wish the Respondent Lawyer to be involved in the matter on the basis of an alleged lack of experience in the area.

For these reasons, I find that this aspect of the complaint has not been made out.

(c) Whether the Respondent Lawyer's Law Practice "unreasonably" attempted to have the Complainant transfer his family law matter from [REDACTED]

There is no evidence on the Respondent Lawyer's file that the Law Practice "unreasonably" attempted to have the Complainant transfer his family law matter from [REDACTED].

For this reason, I find that this aspect of the complaint has not been made out.

Determinations & 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 of \$2,405.70 is fair and reasonable in all the circumstances having regard to section 200 of the Uniform Law, and the above matters. 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.

[REDACTED]

Michael McGarvie
Victorian Legal Services Commissioner
21 February 2017