

Notice of Determination

A notice made under s318 of the *Legal Profession Uniform Law (Victoria)* (“the Uniform Law”).

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

of [REDACTED]

Orders

Pursuant to s292 of the Uniform Law, I have decided to make a binding determination about costs as follows –

1. The complainant is to pay \$4,450.64 as legal costs, less \$500 already paid on 10 July 2015. The total amount due and payable to [REDACTED] is the sum of \$3,950.64.

Statement of Reasons

BACKGROUND

1. [REDACTED] Investments Pty Ltd (“the company”), as trustee of the [REDACTED] Family Trust, was the registered owner of [REDACTED], [REDACTED] Victoria (“the property”).
2. During 2009, the complainant instructed [REDACTED] (“the first law practice”), as the company’s sole director, to transfer the property to her daughter, [REDACTED] (“the trust beneficiary”). This transfer was successful.
3. During 2014, the State Revenue Office (“SRO”) advised the first law practice that it was investigating whether the transfer of the property was one made under equity or for consideration. The consideration in this case was said to be the payment of the existing mortgage on the property.
4. In January 2015, the SRO advised that the complainant’s submission had been refused and payment of \$60,000.00 in duty, penalty and interest in relation to the transfer was sought.
5. In or about January 2015, the complainant approached [REDACTED] (“the second law practice”) for advice concerning the merits of a claim against the first law practice for negligence in the transfer of the property.
6. On 16 January 2015, the second law practice sent the complainant an email attaching a cost disclosure document. The disclosure document provided an estimate of between \$1,200 - \$1,500 for “advice only”. After receiving this email and reviewing the cost disclosure document the complainant decided she would **not** engage the second law practice.
7. On 24 April 2015, the complainant and her daughter, the trust beneficiary, issued proceedings against the first law practice independently of the second law practice.

8. In about early June 2015, the complainant then instructed the second law practice to act in relation to her claim against the first law practice. The respondent lawyer forwarded an updated cost disclosure document to the complainant with a covering email specifying the costs estimate had changed. The new disclosure statement noted that costs in the matter were now estimated to be between \$6,500.00 and \$8,000.00.
9. On 10 June 2015, the complainant returned a signed copy of the cost disclosure document. The disclosure document returned by the complainant was the earlier disclosure document which related to “advice only” costs.
10. On 10 July 2015, a bill was issued by the second law practice for the sum of \$2,158.81. On this same date, the complainant made a payment of \$500.00 towards these costs.
11. On 11 August 2015 the complainant delivered a bundle of documents to the office of the second law practice. This material related to the Magistrates’ Court mediation organised for the following day.
12. On 22 September 2015, a second bill was issued by the second law practice for the sum of \$3,780.15.

ISSUES IN DISPUTE

13. The issue that remains in dispute is whether the fees charged by the lawyer in his bills dated 10 July 2015 and 22 September 2015, totaling \$5,938.96, are fair and reasonable in all the circumstances.

COMPLAINANT’S CASE

14. The complaint has made the following objections to the lawyer’s bills both in her complaint of 9 September 2015 and in her submissions dated 10 May 2016:-
 - She believes that she was not provided with ongoing costs disclosure and expected that total legal costs would amount to no more than \$1,500, the amount specified in the first disclosure statement.
 - She considers some of the work undertaken by the lawyer to be unnecessary and the fees charged to be excessive for the work completed. It is her assessment that the sum of \$500 is a fair price for the lawyer’s work.
 - She should not have to pay for the services of the senior lawyer as he was not mentioned in the costs disclosure documents.
 - She believes that the lawyer is only entitled to charge for one hour of work done on the 12 August 2015 as this was the duration of the mediation.

RESPONDENT LAWYER’S CASE

15. The respondent lawyer made a submission on 19 October 2015 in which he makes the following comments:-

- The respondent lawyer identified a number of errors had been made in commencing the proceedings, which included naming the incorrect plaintiff and defendant.
- In an attempt to resolve the matter without amending the Magistrates' Court Complaint, the respondent lawyer arranged for the matter to proceed by way of mediation on 12 August 2015.
- In the lead up to the mediation the respondent lawyer made numerous requests for the complainant to supply any further documents relevant to the proceedings. He was aware that there was further material as the complainant had told him that she was withholding this material so as not to increase her costs.
- On 11 August 2015 the complainant delivered a bundle of documents to the second law practice. It was the respondent lawyer's view that these documents complicated the case, revealing a clear concern about the strength of the complainant's case. It was therefore the firm's advice that the complainant seek to settle her case.

FINDINGS ON ISSUES IN DISPUTE

16. I find that written costs disclosure was provided to the complainant in accordance with section 3.4.9 of the *Legal Profession Act 2004*, as applied at the time it was given and I find it to be compliant.
17. An updated estimate of total legal costs was also clearly given to the complainant on 10 June 2015 and the bills fall within the estimated amount of between \$6,500 and \$8,000.
18. I find that the complainant received the update with the covering letter. She then received the first bill which was above the estimate contained in the earlier disclosure but continued to instruct the respondent lawyer without dispute. I am satisfied therefore that the complainant understood the estimated costs had increased and that the earlier disclosure statement was no longer relevant.
19. I find that the work for the senior lawyer was properly incurred in the circumstances where material potentially detrimental to the complainant's matter was supplied the day before a mediation. The respondent lawyer acted appropriately in seeking the involvement of the senior lawyer and his attendance at the mediation. I have however reduced the hourly rate of the senior lawyer as set out below.
20. Particularly with respect to the costs charged, the total amount billed by the second law practice, as set out in points 10 and 12 above have been reduced from \$5,938.96 to \$4,450.64 for the following reasons:-
 - i. Insufficient material on the file documenting tasks undertaken on 12/6/2015 and 1/7/2015.
 - ii. Incorrect hourly rate applied for the items charged on 24/6/2015 and 12/8/2015.
 - Some of the work completed on 24/6/2015 could be described as an administrative charge and thus I have applied a lower hourly rate of \$160.00 per hour.

- Fees charged on 12/8/2015, relating to the senior lawyer, were calculated at an hourly rate of \$556.80. This pay rate was not contained in the costs disclosure document and therefore I have applied the disclosed hourly rate of \$495.
 - The fees charged for work completed by the respondent lawyer on 12/8/2015 I reduced from \$275.00 to \$225.00 in accordance with the hourly rates set out in the costs disclosure document. The amount of hours charged was also decreased from 4 hours to 3.5 hours.
- iii. Fees charged for tasks completed on 25/6/2015, 29/6/2015, 8/7/2015 and 4/8/2015 I considered too high for the work undertaken and have been adjusted accordingly.
- iv. Certain charges on the 25/6/15 and 13/7/15 were disallowed as they related to subject matter that cannot be charged for. Such matters include the preparation of costs disclosure documents and conversations relating to costs.

Note: Please refer to attached Costs Calculation Table

DETERMINATION & REASONS

21. 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.
22. In making a determination as to costs, I have determined that the amount is fair and reasonable in all the circumstances having regard to s200 of the Uniform Law. I have also considered the principles in s172.

Michael McGarvie
Victorian Legal Services Commissioner

Date: 21 June 2016

Costs Calculations Table

Item	Costs Billed(\$)	Costs allowed (\$)
12/06/15 - Telephone attendance	96.53	Nil
17/06/15 -Telephone attendance & perusal of statute of limitations	155.93	Nil
24/06/15 – Preparing file documents & drafting letter to [REDACTED] Lawyers	542.03	305.00
25/06/15 – Finalising letter, preparing cost agreement, telephone call [REDACTED] and Complainant	297.00	Nil
29/06/15 – Emails to defendant’s solicitor	99.00	56.25
01/07/15 – Reviewing emails for settlement conference	49.50	Nil
08/07/15 – email to client	22.28	Nil
13/07/15 – Telephone attendance on Complainant	44.55	Nil
04/08/15 – considering emails from defendant solicitor	99.00	37.50
12/08/15 – Senior lawyer- reading & preparing for mediation, attending mediation	2,227.50	1,980.00
12/08/15 – respondent lawyer - collating documents from client, preparing & attending mediation	1,100.00	866.25
	<u>4,733.32</u>	<u>3,245.00</u>