

NOTICE OF DETERMINATION

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

Complainant: [REDACTED], on behalf of [REDACTED] ("representative")
Respondent Lawyer / Law Practice: [REDACTED]
Case reference: [REDACTED]

Orders

1) Pursuant to section 290(2)(d)(i) of the Uniform Law, I make the following order –

That the Respondent Lawyer undertakes a professional development course with focus on practice management: specifically, appropriate billing and compliance with costs disclosure obligations, to be approved by me **within 6 months** of this date.

2) Pursuant to section 290(2)(e) of the Uniform Law, I make the following order –

Under section 308(3) of the Uniform Law, the Respondent Lawyer must **repay \$855.14 to the Complainant's representative within 30 days**.

I have made this order in relation to legal costs charged by the Respondent Lawyer to the Complainant regarding the following bill –

- Bill dated 29 March 2016, for an amount of \$2,338.50.

I consider the amount of legal costs that are fair and reasonable in relation to this bill, pursuant to section 292 of the Uniform Law, to be \$1,483.36 (GST inclusive).

Statement of Reasons

Background

1. On 16 November 2015, the Complainant and his representative engaged the Respondent Lawyer to arrange probate for the deceased estate of their father. The Complainant's representative was executor of the estate.
2. On 16 November 2015, the Respondent Lawyer provided a verbal quotation of \$500.00 at the first meeting with the Complainant and his representative.
3. On 23 March 2016, the Respondent Lawyer emailed a quotation to the Complainant for a sum of \$1,109.30, including disbursements, to represent him in his matter.
4. On 29 March 2016, the Respondent Lawyer's retainer ended.
5. On 30 March 2016, at the second meeting with the Respondent Lawyer, the Complainant and his representative were provided with a bill for legal costs in the sum of \$2,338.50.

6. On 4 May 2016, my office received the Complainant's complaint about the Respondent Lawyer.
7. The Complainant and Respondent Lawyer attempted to resolve the dispute informally. Both made offers to one another. However, these offers did not result in a satisfactory resolution of the matter for each other.

ISSUES IN DISPUTE

The issues that remain in dispute are whether –

- (a) The Respondent Lawyer's fees are fair and reasonable;

Complainant's Case

The Complainant raised the following concerns in her complaint –

a. *Legal costs*

The bill dated 29 March 2016 for \$2,338.50 far exceeded the initial verbal quote of \$500.00 on 16 November 2015 and the later quote of \$1,109.30, including disbursements, on 23 March 2016.

The two quotes were given in relation to the grant of probate and no estimate was ever given in relation to administration of the estate, warranting a refund of the difference, being \$1,229.20.

The Respondent Lawyer failed to provide written, compliant costs disclosure.

On 12 May 2016, the Complainant advised that she would accept a refund of \$500.00. This offer was rejected by the Respondent Lawyer.

Respondent Lawyer's case

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

a. *Legal costs*

The costs were fair and reasonable. A lot of work was done on the file. The value of the estate was \$496,959.46, and under the Appendix to the *Supreme Court (Administration and Probate) Rules 2014* (which bases the professional fees chargeable on the gross value of the estate) in relation to the application for probate, the Complainant could have been charged \$960.00 in professional fees. The Complainant's fees were reduced to \$500.00 because of a connection between the Complainant and one of his staff.

On 9 February 2016, the Complainant attended his office to sign the Probate application. On that occasion, the Complainant instructed his office to proceed with further administration and finalisation of the estate after the granting of probate.

Work done on the administration was charged at the hourly rates – his rate was \$400.00, the probate clerk rate was \$200.00.

Advice was provided in relation to the legal costs to be charged for the administration work. However, no costs disclosure was provided in addition to that referred to above.

On 12 May 2016, the Respondent Lawyer offered to refund \$150.00. This offer was rejected by the Complainant.

Findings on Issues in Dispute

a. Fair and reasonable legal costs

A costs review has been undertaken of the Respondent Lawyer's file, which concluded that \$1,483.36 (including GST and disbursements) represents fair and reasonable legal costs for the Respondent Lawyer's bill. This amounts to a reduction of \$855.14 from the Respondent Lawyer's bill. I accept the findings of the costs review.

The estate administration aspect of the Respondent Lawyer's file was assessed in accordance with the Professional Remuneration Order ("PRO") relevant at the time the bill was issued.

i. *Costs Disclosure*

I have reduced the Respondent Lawyer's bill because he did not provide a compliant costs disclosure to the Complainant, in breach of section 174 of the Uniform Law.

The limited costs disclosure given was provided (i) verbally and (ii) in writing, but only in a series of emails between the Respondent Lawyer and the Complainant in the absence of an initial costs disclosure document.

In my view, due to the lack of compliant disclosure –

- the estate administration aspect of the file should be (and was) costed under the PRO;
- no skill and care loading should be applied;
- a further reduction of 20% of professional fees assessed should be applied pursuant to sections 172(3) and 200(2) of the Uniform Law, to reflect the seriousness of the failure to disclose.

ii. *File notes lacking sufficient detail to support charges or attendances not supported by any file note*

I have also reduced the Respondent Lawyer's bill as a result of the poor state of his file. Some file notes of conversations were grossly inadequate in that they were

either undated, illegible, and/or did not contain details of the instructions provided or advice given, and were consequently disallowed or reduced in line with how the Costs Court of the Supreme Court of Victoria would deal with the matter.

Some documents appeared to be missing. For example, a note of the very important conversation alleged to have occurred between the Respondent Lawyer and the Complainant on 9 February 2016, referred to above under *Respondent Lawyer's Case*.

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 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, and the following matters. I have also considered the principles in section 172.

Further, I am satisfied that the prerequisites for making a compensation order (pursuant to section 309 of the Uniform Law) have been met.

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
23 December 2016