

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]
Case reference: [REDACTED]

Orders

- 1) Pursuant to section 290(2)(d) of the Uniform Law, I have decided to 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 sections 290(2)(e) of the Uniform Law, I have decided to make the following orders –

- (a) Under section 308(3) of the Uniform Law, the Respondent Lawyer must **repay \$2,000.00 to the Complainant within 45 days.**

I have made this order in relation to legal costs charged by the Respondent Lawyer to the Complainant regarding Invoice Number 1496, dated 25 February 2015, for an amount of \$5,500.00. 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 **\$3,000.00** (GST inclusive). The Complainant has already paid a sum of \$5,000.00 to the Respondent Lawyer and a further \$500.00 was sought by the Respondent Lawyer.

- (b) That **within 45 days**, the Respondent Lawyer is to provide to the Complainant certain documents to which he is entitled from his file, relating to the Complainant's legal matter which is the subject of the complaint. This order is made under section 308(4) of the Uniform Law.

Statement of Reasons

Background

1. On or around 24 November 2014, the Respondent Lawyer was engaged by the Complainant in relation to the revocation of an intervention order that was obtained against him by his former wife.
2. On 2 December 2014, the Respondent Lawyer issued Invoice 1481 to the Complainant ("the 2014 invoice").
3. On 25 February 2015, at a Magistrates' Court directions hearing, the Respondent Lawyer appeared on behalf of the Complainant. The Magistrate requested that the Complainant provide funds for a three day hearing.

4. On 25 February 2015, the Respondent Lawyer issued Invoice 1496 to the Complainant ("the 2015 invoice"). The 2015 invoice was issued as a result of the Magistrate's request at the directions hearing. This invoice was issued in advance of the Respondent Lawyer's services being provided. The Respondent Lawyer did not have authorisation to receive trust money and the amount was quoted as a fixed fee.
5. On 9 July 2015, the Respondent Lawyer appeared at a Magistrates' Court hearing on behalf of the Complainant. There was a dispute between the parties resulting in the Respondent Lawyer declining to further act for the Complainant. The Complainant was self-represented for the remainder of the Magistrates' Court hearing.
6. The intervention order issued against the Complainant was revoked. This had been sought by the Complainant.
7. On 24 July 2015, my office received the Complainant's complaint about the Respondent Lawyer.
8. By letter dated 12 November 2015, the parties to this dispute were informed of my decision that the 2014 invoice did not form part of this dispute as it fell outside of my jurisdiction.
9. The 2015 invoice is in the amount of \$5,500.00. There is a dispute between the parties as to whether the Complainant paid the full \$5,500.00, or only \$5,000.00.

Issues in Dispute

The issues that remain in dispute are whether –

1. the Respondent Lawyer's 2015 invoice is fair and reasonable; and
2. any further action should be taken against the Respondent Lawyer as a result of the issues raised in the Complainant's complaint.

Complainant's case

The Complainant alleged the following about the Respondent Lawyer in his complaint:

- a. he did not make reasonable efforts to resolve the matter with his former wife;
- b. he did not submit detailed documents to the Court, despite requesting a time extension to do so;
- c. he conspired with his former wife against him;
- d. he failed to communicate adequately;
- e. he provided generally inadequate service and advice in his matter;
- f. he failed to provide an itemised bill;

- g. he improperly declined to further act on the first day of a hearing listed for 3 days;
- h. he charged legal costs that were not fair and reasonable.

The Complainant raised further concerns about the Respondent Lawyer, as follows:

- i. he had not provided him with written costs disclosure; and
- j. he had not provided his file.

Respondent Lawyer's case

1. The Complainant terminated the retainer on 9 July 2015, when the Respondent Lawyer refused his client's instructions to put submissions that the Respondent Lawyer believed would improperly mislead the Court.
2. The Complainant has not paid:
 - a. \$500.00 outstanding from the 2015 invoice;
 - b. unbilled travel expenses; and
 - c. unbilled fees for the two hour conference that occurred a couple of days before the hearing on 9 July 2015.

Findings on Issues in Dispute

1. Fair and reasonable amount of costs

A costs review has been undertaken of the Respondent Lawyer's file, which concluded that the 2015 invoice should be reduced from \$5,500.00 to \$3,000.00 on the basis that \$3,000.00 represents the fair and reasonable amount for professional legal costs charged.

This figure is comprised of the following findings in relation to the 2015 invoice:

- a. \$1,000.00 for preparation and appearing at the directions hearing on 25 February 2015 is fair and reasonable.
- b. the \$4,500.00 component billed in the 2015 invoice is prima facie excessive, unfair and unreasonable, because it is expressed to be for work at a "future day". It appears to equate to costs for appearing at the contested hearing over the course of three days, rather than the one day in which the Respondent Lawyer ultimately appeared.
- c. \$2,000.00 represents a fair and reasonable amount to be allowed for preparation and appearing at the Magistrates' Court hearing on 9 July 2015.

I am of the view however, that \$500.00 should be deducted for the Respondent Lawyer's failure to provide on-going disclosure to the Complainant, pursuant to his obligation under section 3.4.17 of the *Legal Profession Act 2004* ("the LPA").

I am also of the view that the generally poor state of the file and billing methods of the Respondent Lawyer warrants a further reduction of the amount he charged in his 2015 invoice by \$500.00. There is a lack of order and poor record keeping throughout the file. There is also a substantial amount of material and documentation missing from the file, which had been rendered throughout the course of the retainer.

Further, the Respondent Lawyer was not permitted to bill for work outside of his quoted \$4,500.00 fee, given he does not hold a trust account. He is not permitted to bill for future work.

2. Disclosure / Notification of Client's Rights

The Respondent Lawyer provided a Disclosure Statement and Costs Agreement in compliance with the LPA as applicable at the time. The Respondent Lawyer's file provides substantiation that it was provided to the Complainant on or around 24 November 2014.

However, the Respondent Lawyer did not comply with on-going disclosure requirements as required under section 3.4.17 of the LPA.

Further, the 2015 invoice does not comply with the LPA. The "Notification of Client's Rights" referred to in the body of the 2015 invoice is inadequate, in that it fails to disclose time limits that apply, pursuant to section 3.4.35(1)(b) of the LPA.

3. Itemised Bill

The Complainant's request for an itemised bill was not made within 30 days pursuant to section 3.4.36 of the LPA, therefore the Respondent Lawyer was not obliged to provide one.

4. The alleged outstanding \$500.00 of the 2015 invoice

The Respondent Lawyer provided his bank account statements covering the period of December 2014 and January 2015. These statements demonstrate that a payment for \$5,000.00 was made by the Complainant on 10 December 2014. On my review of these statements, no other payments had been made by the Complainant. I conclude that \$500.00 of the \$5,500.00 amount remains unpaid.

5. Service Issues

I refer here to the Complainant's allegations of poor service, advice and case management expressed at points a. to e. above under the heading 'The Complainant's Case'. From my examination of the file, I found no evidence supporting the Complainant's allegations as set out. The level of communication was adequate and the case managed satisfactorily. I found no evidence of any collusion between the Respondent Lawyer and the Complainant's former wife, with communications with the opposing party courteous and professional.

There were, however, areas where the Respondent Lawyer may seek to improve his file management. I consider my orders address these concerns.

6. The ending of the Retainer

I am unable to determine that the retainer was terminated improperly as alleged by the Complainant. The Respondent Lawyer maintains the Complainant intended to mislead the Court. Without making any comment on whether or not that was the intention, I accept this was an allowable reason to cease to act, given the Respondent Lawyer's first duty is to the Court and not to the client. Ultimately, there was no prejudice to the Complainant and he was successful in his application.

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, in making the compensation order, I am satisfied that the following prerequisites have been met—

(a) the aggrieved person has suffered loss because of the conduct concerned; and

- evidence as to loss
- evidence as to causation
- assessment of evidence
- finding/s

(b) it is in the interests of justice that the order be made.

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
Date: 25 August 2016