

CONCERNING

an application for review pursuant
Section 193 of the Lawyers and
Conveyancers Act 2006

AND

CONCERNING

a determination of the
Wellington Standards
Committee 1

BETWEEN

DZ
of [North Island]
Applicant

AND

WA
of [North Island]
Respondent

The names and identifying details of the parties in this decision have been changed.

DECISION

[1] *Background.* Lawyer VZ, who had acted for Mr DZ (the Complainant), died in November 2009. The practice attorney appointed to manage his firm was Ms WA (the Practitioner).

[2] In sorting out the files the Practitioner perceived that the Complainant had an outstanding debt with Mr VZ for work done but not yet billed. She sent him a bill for \$541.50.

[3] It was also part of her responsibilities to transfer files to other lawyers. In transferring the Complainant's file, the Practitioner also sent him a bill for \$112, of which \$12 was a disbursement for courier charges.

[4] When the Complainant received the accounts he contacted the firm in May 2010 and made arrangements to pay the bill at \$10 a week. Later that month he

contacted the office again with a query about the charges for the work done by Mr VZ for his son and for alleged phone usage. He later spoke directly with the Practitioner and told her to take the matter to the Disputes Tribunal. In a further telephone call the next month the Complainant informed the Practitioner he would not pay that bill as he could not debate it with Mr VZ. He was willing to pay the smaller account for the transfer of the file.

[5] The Practitioner encouraged the Complainant to take the matter up with the NZLS and she agreed to not pursue the matter with the Disputes Tribunal until the Law Society had dealt with it.

[6] The Complainant filed a complaint with the NZLS. He disputed the file notes made by Mr VZ, and perceived that the bill sent by the Practitioner (which he described as “extravagant”) was based on her interpretation of those file notes. He then also questioned being charged for his file being sent to another lawyer.

Standards Committee decision

[7] *Re: Bill for transfer of file.* The Standards Committee informed the Practitioner that it was of the view that the Complainant ought not to have been charged for the transfer of the file, referring to its Guidelines for the Retention of Files, Rule 4.4 of the Client Care Rules and recent decisions of this office. The Practitioner said she had understood that the charge could properly be made but she was nevertheless agreeable to withdrawing it except for the courier fee of \$12 which she suggested was properly incurred.

[8] She asked the Standards Committee for a written opinion about whether, as practice attorney, she could charge Mr VZ’s law practice for her personal time spent on administering and sending on files. The Practitioner had further dialogue with the NZLS about this and it was finally resolved that transfer of files should be done without costs being incurred by the client. The Practitioner agreed to wipe the feel and to only charge the courier fee of \$12.

[9] The Standards Committee decided to take to no further action on this part of the complaint because it accepted that the Practitioner had been mistaken as to her understanding of charging in these circumstances.

[10] *Bill for \$541.50 (for work done by Mr VZ).* The Standards Committee noted that it had no jurisdiction to review a bill below \$2,000 unless special circumstances existed.

The fee of \$541.50 was under that threshold and the Committee did not see any special circumstances in this case.

Review

[11] The Complainant sought a review of the Committee's decision on the grounds that he said he had received a further demand from the Practitioner for \$553.50 of which he says that only \$12.00 (the courier fee) is payable. He believed that he does not owe any money for work previously done by Mr VZ. He said that he has been falsely billed. The outcome sought by the Complainant is that he does not want the Practitioner to send him any more demands for money.

[12] In accordance with the normal practice of this office, the Standards Committee file was requested, and a copy of the review application was forwarded to the Practitioner who provided further comments.

[13] The parties have consented to the review being determined 'on the papers' pursuant to section 206 of the Lawyers and Conveyancers Act 2006. This section provides for a review to be conducted on the basis of all of the evidence and materials provided by the parties and without a hearing in person, if the LCRO is of the view that the review can be determined in the absence of the parties. In the circumstances that I consider that the review can properly be conducted on the material available to me, I have proceeded with the review on the basis of that information.

Considerations

[14] I have reviewed the evidence and information on the Standards Committee complaint file. The complaints related to two different bills that the Practitioner had sent to the Complainant.

[15] In contending that the Practitioner had wrongfully sent him a bill for \$553.50, it is not apparent that the Complainant understood that this comprised the fee-related bill of \$541.50 plus of the courier fee of \$12. These total \$553.50. The Standards Committee decision resulted in these amounts remaining payable by the Complainant. The review issue is whether the Committee's decision was correct.

[16] *Regarding the bill for \$112.50.* This was made up of a fee of \$100 and a courier charge of \$12. The Standards Committee's view was that the Practitioner ought not to have charged the Complainant a fee to transfer his file to another lawyer.

The \$100 fee has been wiped. The Complainant has accepted responsibility for on the \$12 courier charge.

[17] In deciding to take no disciplinary action against the Practitioner the Standards Committee noted that the Practitioner had in fact wiped the fee, and the Committee accepted that there had been a misunderstanding about whether a fee was properly chargeable. The decision to take no further action is a discretionary one, and it is unlikely that such a decision would be altered on review without good reason.

[18] Having read the information on the file my view that there were no special circumstances that justified the Committee reviewing that bill. My view is that it was open to the Committee to take decided to take no further steps in this matter.

[19] *Regarding the bill for \$541.50.* The Standards Committee did not make a decision on the complaint for the reason that the Committee considered it had no jurisdiction to do so.

[20] Rule 29(b) of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008 prohibits a Standards Committee from considering a fees related complaint if the amount involved in less than \$2,000 unless special circumstances exist. The Rule is set out as follows:

If a complaint relates to a bill of costs rendered by a lawyer or an incorporated law firm, unless the Standards Committee to which the complaint is referred determines that there are special circumstances that would justify otherwise the committee must not deal with the complaint if the bill of costs—

...

(b) relates to a fee that does not exceed \$2000, exclusive of goods and services tax.

[21] The review question is whether the Standards Committee was wrong to decide that there were no special circumstances.

[22] The circumstances from which the invoice arose was unusual insofar as the bill related to work that the Practitioner, as practice manager for a deceased practitioner, had assessed as having been done on the basis of her examination of the file and Mr VZ's time sheets. Did the above situation amount to 'special circumstances' that justified further enquiry?

[23] That the Standards Committee turned its mind to this question is shown by information on the file. However the Committee took the view that no special

circumstances existed. The power to make assessments of this kind is given to Standards Committee by Rule 29. On review of such an assessment a review applicant would need to provide a basis for showing the Committee was in error.

[24] In this case the Complainant challenged the accuracy of the time charged for. There was a Letter of Engagement, and also a copy of the Practitioner's time sheets that was sent to the Complainant. The time sheet showed that services had been provided on 14 different days over a 12 month period.

[25] It appears that the Standards Committee accepted Mr VZ's times sheets as correct, and also the Practitioner's calculation based on the time sheet. Although the Complainant disputed that Mr VZ had done the work as recorded, there is no reason to suppose that Mr VZ did not properly record his attendances. I also noted the time span involved during which time no bill had been sent, which suggests that Mr VZ was not a lawyer driven by financial concerns such as prompt payment by his clients.

[26] The fact that Mr VZ is no longer around to have debated the bill with the Complainant does not mean that the bill not payable if the charges were properly incurred. The Complainant said he was not prepared to pay for any work in relation to his son. Only one unit (in the time sheet) referred to his son, showing that the son was the subject of a discussion between the Complainant and Mr VZ. There is no reason why this should not be charged to the Complainant. There does not appear to be anything else on the timesheet relating to the son.

[27] Having considered the information and the review application I find no basis for taking a different view to that taken by the Committee. The application is declined.

Decision

Pursuant to section 211 (1)(a) of the Lawyers and Conveyancers Act 2006 the Standards Committee decision is confirmed.

DATED this 6th day of October 2011

Hanneke Bouchier
Legal Complaints Review Officer

In accordance with s.213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr DZ as the Applicant
Ms WA as the Respondent
The Wellington Standards Committee 1
The New Zealand Law Society
The Secretary for Justice