

THE LAW SOCIETY OF SINGAPORE

GUIDANCE NOTE 7.1.1

[Formerly GN 2013, para 9; Council's Guidance Note 1 of 2012]

INFORMING A CLIENT OF HIS RIGHT TO TAXATION OR REVIEW OF A FEE AGREEMENT

1. This Guidance Note sets out the relevant principles on the scope of the duty of a solicitor (as defined by the Rules of Court (Cap 322, R 5, 2014 Rev Ed)) in informing a client of his/her right to have the court tax the bill of costs (including an interim bill) or review the fee agreement in all matters, whether contentious or non-contentious.

2. All solicitors “should act on the basis that they can have their bills of costs taxed under the law” and “have an obligation to inform their clients of this option”: *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184 (“ARSA”) at paragraph 33. The court in ARSA was of the view that “[a] solicitor who offers to have his/her bill taxed is ... unlikely to have the frame of mind or intention to overcharge his/her client”.

3. If a dispute arises on a bill or a query is raised about a bill in a contentious or non-contentious matter, the solicitor must inform the client in writing of his/her right to apply to court to have the bill taxed or to review the fee agreement. In this regard, the court in ARSA noted at paragraph 32 that:

“Even where a bill rendered by a solicitor is prima facie excessive, any potentiality of the solicitor’s conduct in rendering that bill being regarded as professional misconduct in the form of overcharging can usually be remedied or ameliorated by an offer to have the bill taxed (if it is taxable) under the Rules of Court (Cap 322, R 5, 2006 Rev Ed) (in this regard, see The Law Society of Singapore v Tan Thian Chua [1994] SGDSC 11 at [5], where the solicitor was merely reprimanded and ordered to pay the costs incurred by the Law Society in the disciplinary proceedings as, inter alia, [his/her] bill, although excessive, had been accompanied by an offer of taxation in the first place). Taxation provides the best means for an aggrieved client to determine what the proper fee is for the actual work done by [his/her] lawyer, and for the lawyer to avoid having to face a disciplinary charge for overcharging. If the bill is not taxable, the prudent course is for the solicitor to negotiate a mutually acceptable amount or even offer mediation.”

4. If the client consents to taxation or if the court orders taxation, it is preferable for the solicitor to draw the client’s attention to Order 59, rules 28(4)–28(5) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), in particular that:

- (a) the delivery of a bill of costs by a solicitor to his/her client shall not preclude the solicitor from presenting a bill for a larger amount or otherwise for taxation; and
- (b) upon such a taxation, the solicitor shall be entitled to such amount as is allowed by the Registrar, notwithstanding that such amount may be more than that claimed in any previous bill of costs delivered to his/her client.

5. Where a solicitor believes that a client knows or reasonably ought to know of his/her right to have the court tax the bill of costs or review the fee agreement, eg, where the solicitor had informed the client of this right in a previous retainer, the solicitor may decide not to inform the client of this right. However, all solicitors should have regard to the words of the court in ARSA

at paragraph 33 that solicitors who “fail or omit to [inform their clients of the option of taxation] do so at their peril”.

6. In complying with this Guidance Note, all solicitors should:

- (a) seek to resolve all disputes on costs with their clients through negotiation or mediation (such as the Law Society’s Cost Dispute Resolve scheme); and
- (b) have regard to sections 108–128 of the Legal Profession Act (Cap 161, 2009 Rev Ed) and in particular the sections 109(6), 113 and 120.

Date: 1 June 2018

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE