

Sheriffdom of South Strathclyde Dumfries and Galloway at Hamilton

Taxation of Civil Legal Aid Account: C253190313

MJ

Guardianship Application by [REDACTED] in respect of the Adult: [REDACTED]

Hamilton 23 March 2015

I tax the disputed expenses submitted to the Scottish Legal Aid Board by J Quinn & Co. Solicitors, Motherwell at the sum of £158.07 and the Auditor of Court's fees restricted to £40.00.



J Hamilton

Depute Auditor of Court, Hamilton

The diet of taxation was held on 27 May 2014 when it was continued for further discussion between parties without a future date being fixed. Subsequently a continued diet fixed for 9 July 2014. At both diets, Mr Quinn appeared for Quinn & Co. Solicitors Ltd. and [REDACTED] Solicitor, and [REDACTED] appeared on behalf of the Scottish Legal Aid Board.

This taxation was brought in terms of the Civil Legal Aid (Scotland) Fees Regulations 1989, Regulation 12

At the continued diet it was confirmed by parties that the only matters which now remained in dispute were:

18 April 2013: Letter to John Jobling: £16.58

Mr Haggarty provided me with a copy letter from SLAB (Ms Grant was the author) dated 31 March 2014 to Mr Quinn outlining their reasons for abating certain fees sought.

In respect of this matter, SLAB indicated that in their view a 1 page fee was appropriate. SLAB advised that they send a copy of the legal aid certificate to the client and there was no need for the solicitor to do so. They were also of the view that the penultimate paragraph related to fees payable for work done prior to the grant of legal aid which was a solicitor/client matter that shouldn't be allowed. They were also of the view that the final paragraph of the letter was not necessary as the client had instructed the solicitor to act for him.

Mr Quinn submitted that the wordage of this letter was 234. He was unaware that SLAB provided applicants with a copy certificate as mentioned above. They were suggesting that the words "A copy of the Legal Aid Certificate is enclosed" were superfluous. He was of the view that the following sentence - "Please keep it in a safe place in the process." should be allowed as he was of the view that SLAB didn't provide this advice. Mr Quinn went on to add that if you are able to exhibit the legal aid certificate to OPG then you are exempt from certain fees. He indicated that was why that sentence was important.

██████████ added that if necessary SLAB would be in a position to provide a further certificate when required. He was of the view that the whole paragraph was unnecessary.

In respect of the penultimate paragraph, Mr Quinn was of the view that this was an essential part of the communication and could not have been done in any less wordage. In response to ██████████ suggestion that these comments had been covered at earlier meetings, Mr Quinn checked his notes and did not agree.

Auditor's decision

I have perused the letter and I am of the view that that one page is appropriate and the fee of £8.29 is allowed.

If SLAB provided the applicant with a copy of the legal aid certificate then it isn't necessary for the solicitor to do so or at least if they do then the cost shouldn't be borne by SLAB. I accept that Mr Quinn was unaware of this practice however I don't believe that has any bearing on what should be allowed. I am also of the view that

the penultimate paragraph in the letter, whilst relevant, was an agent/client matter. Accordingly, I have not allowed that part of the letter.

18 April 2013: Letter to Chief Social Work Officer - £16.58

██████████ submitted that the Chief Social Work Officer would be familiar with the procedures to be undertaken and would have been provided with a copy of the summary application. He queried the need to provide a 2 page letter and suggested that 1 page was appropriate.

Mr Quinn advised that he still required to write to the Chief Social Work Officer to advise of who he was, who his client was and what he was wanting done. Mr Quinn added that he needed to know if the report could be provided within the timetable.

Mr Quinn disagreed with SLAB's comments on this matter. He was of the view that you required to be polite and respectful and to draw attention to what was required. ██████████ indicated that SLAB would pay fees for work done that was necessary. The correspondence could be concise and polite.

██████████ submitted that in his opinion the last 3 paragraphs of the letter seemed to anticipate what might happen. He suggested that it might be possible to simply diary the date when the report was required and if it hadn't been lodged by that date then the Chief Social Work Officer could be contacted.

Mr Quinn was of the view that he was not anticipating matters, he was simply asking questions.

Auditor's decision

Having perused the letter, I am of the view that the content is reasonable and 2 pages are appropriate and the fee of £16.58 is allowed. The first 4 paragraphs are in my opinion necessary and provide the Chief Social Work Officer with relevant information. With regard to the next 2 paragraphs, I am of the view these are seeking information to determine whether the timescale for submission of the report will be met. Although SLAB have suggested that the CSWO would be acquainted with the drafting of such reports, this letter is asking specific questions to determine if the report can be submitted timeously.

26 April 2013: Letter to Housing & Social Work Services - £8.29

██████████ submitted this was a very short letter enquiring about the timescale for submitting the report and that a formal letter fee was appropriate.

Mr Quinn was of the view that this matter was an essential part of the statutory procedure that he was made aware of the Social Works' timetable. He did not understand why this correspondence should only be treated as a formal letter. The letter was important and not just a basic enquiry. His view was that SLAB failed to understand the importance of the timetable.

██████████ responded that SLAB were aware of the importance of these matters but the issue was what was reasonable in terms of the work undertaken.

Auditor's decision

I have perused the correspondence and whilst I appreciate its importance I do not think it reasonable to allow the fee for a full letter. The content is very brief.

I am of the view that it should be treated as a formal letter and the fee of £3.26 is allowed.

16 May 2013: Letter to Dr A. Caldwell - £24.87

The aforementioned letter from SLAB dated 31 March 2014 to Mr Quinn advised that "the person instructed will be acquainted with drafting the AWI (1) report and will be aware of the test that requires to be applied. The form is also self-explanatory about the information needed. I remain of the view that a page is appropriate."

Mr Quinn queried the test to be applied. ██████████ indicated that the issue was similar to the aforementioned fee sought in relation to the fee for the letter to the Chief Social Work Officer. He submitted that the psychiatrist would be familiar with the process. The relevant information was contained in the summary application and the AWI form was self explanatory. He repeated the SLAB view that 1 page was sufficient.

Mr Quinn submitted that if you consult a professional then you require to be respectful. You need to set it out, if not they would think it disrespectful. He required

to set out matters to encourage them to deal with the request otherwise they might "put it to the bottom of the pile".

██████████ submitted these are professional people and wouldn't take that approach. The issue was what was reasonable and necessary and a 3 page letter in this instance was excessive.

Auditor's decision

I have perused the letter and I am of the view that 2 pages are appropriate and that a fee of £16.58 is allowed. Some of the information contained in the correspondence regarding the Adult is also contained within the summary application and in my opinion is not required. There is other information contained in the letter which in my view is not necessary, such as the reference to acting for ██████████ and that ██████████ has asked Mr Quinn to arrange for him to be appointed as Guardian. This is all self evident from the summary application. I do understand Mr Quinn's comments with regard to being polite etc. however I do not think it necessary to be as expansive.

18 May 2013: Letter to Dr J W Murphy - £24.87

The comments made by Mr Quinn and ██████████ at the previous disputed fee entry were again repeated in respect of this matter.

██████████ submitted that what was contained in the letter was also found in the summary application. Mr Quinn disputed this comment and indicated that only 2 lines in the letter were contained in the application. He was of the view that the doctor required to know where the adult was and the timetable for submission of the report. He was also of the view that again SLAB failed to understand the importance of this process.

██████████ commented that he couldn't understand why it would be deemed disrespectful to be concise in correspondence.

Mr Quinn objected to his letters being characterised as great big lengthy letters. He had observed other agents' letters which had been similar in length although he conceded that he was unaware of what had been allowed.

██████████ indicated that SLAB saw a broad range of letters and their approach was to pay for what was reasonable.

Auditor's decision

For the same reasons as narrated above I am of the view that 2 pages is appropriate here and a fee of £16.58 is allowed.

18 May 2013: Letter to Messrs Watters Steven & Co. - £24.87

The aforementioned SLAB letter of 31 March 2014 to Mr Quinn advises – “I have considered the letter instructing the financial report. I am of the view the only relevant paragraph is the third paragraph instructing the schedule 8 report. This is the only information that the report author needs. Reference to other reports and applying for a reimbursement of outlays is ancillary information that is not actually required. Therefore, I remain of the view that a page is appropriate.”

██████████ went to query why it was necessary to go on at length on other matters when it is a report being ordered. There didn't appear to be any need to include the 2nd last paragraph in page 1 as Mr Quinn had instructed the work. He also enquired if Watters Steven & Co. did such reports was all this information required.

Mr Quinn submitted that the Board's view was an unnecessarily restrictive interpretation of the whole letter. The first paragraph reflected the current position of the case and was essential to setting the timetable. Mr Quinn then went on to detail the timescales for lodging the reports and the impact caused where the medical reports are outwith that period. The reporter required to know who the doctors are and that reports will be copied to him. He confirmed that Watters Stevens & Co. had provided these reports however at that time, this was one of the first occasions they had been requested to do so. It was his view that the whole letter was essential.

Auditor's decision

I have perused the correspondence and I am of the view that 2 pages are appropriate and the fee of £16.58 is allowed. I do not think it necessary that the letter refers to the statutory timetable since it does not affect the reporter. Similarly I am of the view that part of paragraph 4 relating to re-imburement is not required. I am satisfied that the remainder of the letter is appropriate.

9 July 2013: Letter to client - £16.58

In the aforementioned letter from SLAB to Mr Quinn, the author states –
“ Payment of any work carried out prior to the grant of legal aid was on a private basis and you should have advised the client at that stage that payment of the costs could be met from the Adult’s estate once guardianship had been obtained. The remaining costs are met under the client’s grant of legal aid and therefore will not be borne from the Adult’s estate, as these will be paid for out of the Fund. Accordingly, there was no need to advise the client of the likely legal aid costs.”

██████████ went on to state that he was of the view that the aforementioned paragraph was not an appropriate fee to charge. He went on to state that information had been correctly given but it formed part of a letter of engagement and that no client or third party should be expected to pay for such work.

Mr Quinn advised that his letter of engagement to the client was a standard letter and that no fee was charged for same. However this letter was issued further on in the court process. He went on to add that that one would have a better idea of what the fees would be at that stage.

██████████ submitted that a letter of engagement should set out the fee rate and indicate that if legal aid is granted then a fee would not be charged.

Auditor’s decision

I have perused the correspondence and I am of the view that 1 page is appropriate and that a fee of £8.29 be allowed. I am satisfied that ██████████ submissions on this matter were relevant and should be applied.



12 August 2013: Framing execution of citation - £8.29

██████████ submitted this was a pre- printed document which should attract a formal fee. Auditors elsewhere had allowed a formal charge and he undertook to provide me with a copy of such a decision in due course. That information was duly submitted. This related to a taxation dealt with by the Auditor at Linlithgow. His note is not dated but he had, amongst other matters, been asked to consider the question of fees allowed for the completion of similar forms which are the point of issue at this taxation. In his note, the Auditor took the view that such forms were of a formal nature and allowed the lesser fee.

Mr Quinn provided me with a copy of a blank G7 form. He indicated the words which he had highlighted were the only constant factor – these amounted to some 20 words. The rest of the information to be entered on the form required to be done by the solicitor. That was: (a) Place and date (b) date of execution (c) the name of the person receiving the intimation (d) method of service.

Mr Quinn submitted that in his view the fee sought was appropriate.

Auditor's decision

I have perused the Form G7 and the Auditor at Linlithgow's note. I am of the view that this work should attract a formal fee and accordingly I have allowed the fee of £3.26. Given the level of work undertaken in this matter I am of the opinion that such a fee is reasonable.

14 August 2013: Checking Royal Mail website - £14.53

Mr Quinn advised that this work was useful as it allowed you to establish the position regarding service of documents upon parties. This was important to know and indeed having checked the website, he had discovered that one of the intimations had been returned. This information had allowed him to take the necessary steps to effect service again. Mr Quinn maintained that had he not taken this course of action, then when the case called before the sheriff it would have required to be continued for service to be made. He maintained that this type of work actually saved expense.



██████████ indicated that he did not dispute the usefulness of the track and trace facility. However he submitted that this work was of an administrative nature and as such was capable of being done by administrative staff. He acknowledged that Mr Quinn did not employ any such staff but ██████████ could not see why that cost should be borne by the Board.

Mr Quinn submitted that it would only be a solicitor who would read the information from the track and trace system and then ascertain what required to be done to resolve the problem. He was of the view that this was something that a typist could not have dealt with.

Auditor's decision

During the taxation, ██████████ provided me with a copy of an extract from the "SLAB Published Guidance". This document was not dated but contained information for solicitors in relation to what fees could/couldn't be charged for work undertaken. At "4.30 Administrative charges" this entry gave guidance on fee earners and work done by unqualified staff. In this section it states ".....in the event that work could reasonably be allocated to an unqualified member of staff but is undertaken by a solicitor, the charge in the account should be at the unqualified rates as that would represent remuneration nature/type of work undertaken."

Whilst I understand that Mr Quinn does not have administrative support, I think it is unfair if he did not receive any remuneration for such work undertaken. I am of the view that it is appropriate to allow a fee and accordingly I have allowed a fee of £7.27.

16 August 2013: Schedule of service of writ - £8.29

██████████ submitted that the nature of this work should attract a formal fee.

Mr Quinn indicated that if he was successful in obtaining the full fee sought in relation to the framing of the execution of citation then he would not be arguing SLAB's approach to this fee.

CA

Auditor's decision

Having perused the Schedule of Service which extends to the designations of 7 organisations/individual and their addresses, I am of the view that this should be treated as a formal fee and accordingly I have allowed the fee of £3.26.

6 September 2013: Preparation - £87.18

██████████ submitted that initially SLAB had offered 30 minutes preparation time against the 80 minutes sought. This offer was subsequently increased to 60 minutes.

He referred to the checklist provided by Mr Quinn. He was of the view that it wasn't enough to simply provide the checklist to support the fee sought for 80 minutes of work. ██████████ indicated that he had no way of knowing from looking at the list what had been done. He contended further that in relation to the perusal of documents, these would have been prepared and perused at an earlier stage.

Mr Quinn submitted that up until November 2013, when submitting accounts to SLAB for payment, no such detail had been sought but since that date SLAB were now requesting this information.

██████████ indicated that he couldn't comment on previous accounts. He also mentioned that in this particular case after SLAB had queried the initial information provided, subsequent information was provided by Mr Quinn to allow them to increase their offer.

Mr Quinn further submitted that in relation to the perusal of documents, SLAB appeared to be saying that he was simply re-reading the documents. Mr Quinn advised that when preparing for the hearing he required to look at them in a different manner. He maintained it was important to have a grasp of medical technical terms and how these fitted into the application. It was also important to check for any factual discrepancies within the 2 medical reports, the MHO report and the Schedule 8 report. In relation to legal matters, Mr Quinn maintained that it was necessary to consider any developments since the application had been drafted, did the crave require to be amended? what were the observations from OPG? were interim orders required? – all of these required to be considered in a legal context. It was also necessary to address the sheriff on the proposed length of the Order, it was not sufficient to simply peruse the file on the day of the hearing to deal with any issue that may arise when you appeared before the Sheriff.

██████████ commented that we were dealing with this specific case and as far as he was aware this is an objective exercise at taxation. A checklist had been provided and all that is sought by SLAB is a narrative to show the work undertaken. Where longer preparation time is sought then the provision of additional information would assist SLAB.

Auditor's decision

I am of the view that 1 hour is a reasonable period of time to allow for this preparation. It has been narrated above that the initial SLAB offer for this work was 30 minutes but after further information was provided that had been increased to 1 hour. At the diet, ██████████ enquired whether any contemporaneous notes had been taken. From my recollection, I don't recall Mr Quinn providing any such material at the diet. Mr Quinn's comments about the work involved appeared to be more of a generic response rather than case specific. Given the information before me, I am of the view that 1 hour is appropriate and I have allowed the fee of £58.12.

MA

TAXATION HAMILTON SHERIFF COURT

27 MAY 2014 @ 10:00 AM

RE: [REDACTED] C253190313

SUBMISSIONS ON BEHALF OF THE SCOTTISH LEGAL AID BOARD

Background

Legal aid was granted to allow the assisted person to make an application for guardianship under the Adults with Incapacity Scotland Act 2000. The application was heard before Hamilton Sheriff Court.

The Board and J Quinn & Co, Solicitors have been unable to reach agreement on the account submitted for certain items of work carried out by Mr Quinn.

Mr Quinn lodged the legal aid account with the Auditor for Taxation and a diet has now been fixed for Tuesday, 27 May 2014 at Hamilton Sheriff Court.

Standard of Taxation - Third Party, Paying

In considering the account the Board has had regard to its Regulations. Regulation 4 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989, stipulates that "Subject to the provisions of regulations 5 and 7 regarding the calculation of fees, regulations 6 and 7 regarding the calculation of outlays, and the provisions of regulation 8 regarding the submission of accounts, a solicitor shall be allowed such amount of fees and outlays as shall be determined by the Board to be reasonable remuneration for work actually, necessarily and reasonably done and outlays actually, necessarily and reasonably incurred, for conducting the proceedings in a proper manner, as between solicitor and client, third party paying".

The test applicable to a third party paying is defined in Maclaren - Expenses in the Supreme Court and Sheriff Courts, which is the recognised authority on taxation, and is the basis of accepted custom and practice. On page 509 Lord Maclaren explains "*that while the taxation prescribed by the statute be as between agent and client, yet as the expenses in a case like this have to be paid not by the client but by a third party, the principle of taxation, though not indeed identical with that between party and party, must yet be different from that applied in the ordinary case of agent and client*"... "*that where a statute authorises the taxation of expenses as between agent and client, what is given is the expenses which a prudent man of business, without special instructions from his client, would incur in the knowledge that his account would be taxed.*"

2.

This has the effect that the work actually done has to be supported and justified in circumstances where it does not appear on the face of it to have been necessarily and reasonably done. On page 511 Lord Maclaren explains *“In taxing the account of an agent against a third party on the basis of agent and client the fact that the agent had done the work for his own client and may be a good charge against the latter does not conclude the matter in a question with a third party, as many items may be modified or taxed off, though not so great an extent as in a taxation between party and party.”*

Summary of Issues in Dispute

Letters

The following letters have been restricted on the basis that the content is not wholly necessary or reasonable for conducting the proceedings in a proper manner, as between solicitor and client, third party paying. The Auditor is asked to consider the letters having regard to the Board’s letter dated 31 March 2014 and its reasons for restricting; or disallowing the letters in their entirety.

18 April 2013 - Letter to the client

18 April 2013 - Letter to the Council instruction an MHO report

26 April 2013 - Letter to the Council enquiring about the timetable for the report

16 May 2013 - Letter to the Adults Psychiatrist to prepare an AWI (1) report

18 May 2013 - Letter to the Adults GP to prepare an AWI (1) report

18 May 2013 - Letter to Watters Steven & Co to prepare an AWI (8) financial report

09 July 2013 - Letter to client enclosing AWI (8) report and advising on procedure

20 August 2013 -Letter to the Sheriff Clerk enclosing forms

Telephone calls

The following telephone calls have been disallowed in their entirety on the basis that there was either, no contact made with the intended recipient; where the call was answered nothing substantive was discussed sufficient to advance the proceedings, i.e. leaving a message for someone to return the call or vice versa; or the person taking or making the calls was a non-fee earner, whose costs form a general overhead of the firm. The Board does not pay for telephone calls in these circumstances.

3.

The solicitor has admitted that he does not employ administrative support staff and therefore does not have persons available to undertake work capable of being carried out by non-fee earners, such as secretaries that might include making enquiries, such as the timescale for obtaining reports. The Board should not be asked to compensate for a firms lack of administrative assistance.

At a meeting with the Board the solicitor advised that he did not record what was discussed during telephone calls; and suggested re-drafting his file notes to record what he recalled was discussed during telephone calls. The Board's position is that file notes should be contemporaneous and should record the relevant information reflecting what actually occurred at the time.

The Auditor is asked to consider the entries for the following telephone calls having regard to the Board's letter dated 31 March 2014 and its reasons for disallowing the calls in their entirety.

30 May 2013 - Call to Council - message left to return call

13 June 2013 - Call to carers asking them to return the call

13 June 2013 - Call to client who is unavailable - message left to return the call

13 June 2013 - Call to client noting he is on annual leave

14 June 2013 - Two calls to carers - noting carer is unavailable/providing details of telephone number

08 July 2013 - Call to GP chasing up report - supervisor to return call

08 July 2013 - Call to Psychiatrist re: report - noting they will call back

08 July 2013 - Call to GP re: report - being cut off

08 July 2013 - Non fee earner receiving call from carers - message left for solicitor to return their call

08 July 2013 - Two calls to carers - messages left to call back

08 July 2013 - Non fee earner receiving call from GP

22 July 2013 - Call from MHO - message left to call back

22 July 2013 - Call to MHO - unavailable - on another call

22 July 2013 - Call to client - message left for client to return call

25 July 2013 - Call to client - noting he is off site

Preparation

Entry 6 September 2013 - Preparation for hearing, reviewing file, anticipating questions from Sheriff. The narrative is vague and does not detail what preparatory work was actually carried out. The Auditor of the Court of Session in *Devaney v. Greater Glasgow Health Board* was of the view that a solicitor checking over and re-familiarising themselves with the whole material is traditionally a non-chargeable activity. The Board does not recall seeing any evidence on the file of questions noted by the solicitor that the Sheriff was likely to put to him. However, the Board acknowledges that some preparation prior to a hearing is likely to be required. In recognition of this and in the absence of any details of the work actually done, beyond what is described in the file note/account narrative the Board has allowed half an hour as reasonable.

Other work items

Entry 25 July 2013 - Revising the Summary Application - Approximately 180 words have been inserted. The Board proposes that a fee not exceeding a page should be allowed, on the basis that a sheet is defined as 250 words.

Entry 12 August 2013 - Framing execution of citation - The Board allows a formal fee for completing this form. This reflects the view of the Auditor of Linlithgow Sheriff Court many years ago who allowed a formal fee on taxation for completing the form G8.

Entry 14 August 2013 - Checking Royal Mail Website to track and trace - It is the Board's position that checking the Royal Mail tracking system for the purpose of producing proof of service is administrative work capable of being undertaken by non-fee earners whose costs form an overhead of the firm. The Board should not be asked to compensate for a firm's lack of administrative assistance.

Report authors account for preparing AWI (8) report (Watters Steven & Co)

Entry 4 June 2013 - Preparing for meeting with prospective guardian, examining legislation - The report author has considered the Summary Application and should be aware of the circumstances. The Board does not pay for experts or professionals to examine legislation as work of this nature is deemed to be subsumed within their commercial hourly rate.

Entry 26 June 2013 - Travel to and from Wishaw (10 minutes) - The Board has published its position concerning the time and cost payable to experts and professional persons instructed in legal aid cases for travel. The relevant publications are attached for the Auditor's consideration.

5.

Entry 26 June 2013 - Drawing schedule 8 report (12 pages) (2 hours) - The Board is not in receipt of this report. The Auditor is therefore asked to consider the schedule 8 report and to consider its reasonableness having regard to the content; actual sheetage; and the time claimed for drafting it.

Hamilton Sheriff Court



J Quinn & Co.
Solicitors
28 Gateside Street
Hamilton ML3 7JG

Civil Department
Birnie House
Caird Park
Hamilton Business Park
Caird Street
Hamilton, ML3 0AL

DX HA16 / LP4

Date: 29 April 2014

Dear Sirs

Our ref: JGH/JT/022/14
Your ref:

DIET OF TAXATION

LEGAL AID ACCOUNT

A diet of taxation has been fixed in the above case for **Tuesday 27 May 2014 at 10am** within the Sheriff Clerk's Office at the above address.

The diet of taxation should be intimated to all interested parties by Recorded Delivery letter, providing a minimum of 7 days notice of the diet. Proof of intimation must be provided to the Auditor on or before the taxation diet.

The audit fee has been assessed at £115.00. Payment should be made by cheque and made payable to "Hamilton Audit Ltd.". The audit fee should be paid in advance of the taxation diet.

If the diet is not to proceed for any reason, please notify me as soon as possible.

In the event of parties agreeing settlement of your account in advance of the diet of taxation, the audit fee will be calculated in accordance with the percentage sliding scales in Paragraph 39 (c) of the Sheriff Court Fees Order 1997 (as amended).

Yours faithfully

J HAMILTON
DEPUTE AUDITOR OF COURT

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