

SHERIFF COURT AIRDRIE

REPORT BY

the Auditor of Court

on the Reporter's Account of Expenses

I.C.

AK v. JK

against

RESPONDENT

(c) party's present account was none

The account in this case was submitted for taxation on a joint remit by Mr Campbell, Solicitor, Airdrie (the Reporter appointed by the Court) and the Legal Aid Central Committee. Although Mr Campbell maintained that I could not tax the account as it had been approved by Mr Campbell personally at the diet of taxation. The Legal Aid Central Committee was represented by its Deputy Secretary, Mr Marshall.

The account relates to Mr Campbell's charges for the preparation and submission to the Court of a child custody report in the above mentioned case. The Law Society for General Purposes represented by Solicitor At the outset, I questioned the propriety of a Reporter's account being submitted for taxation. However, I was assured that the Auditor of the Court of Session had, with the approval of the Court, undertaken taxations of Reporter's accounts in similar cases and, in the absence of procedure in the Sheriff Court for resolving a disputed account, I thought it proper to follow the Court of Session practice and accordingly I accepted the remit.

The matter in issue between the parties was the basis on which the account should be taxed. In the Sheriff Court, there is no prescribed scale of charges for the work in question and Mr Campbell proposed for my consideration four approaches, any one of which he suggested I might adopt in taxing the account, viz:-

Firstly, I could apply the Table of Fees for Solicitors in the Sheriff Court, although Mr Campbell felt that this was not appropriate since it related only to accounts between -

(a) Solicitor and client, client paying

(b) Solicitor and client, third party paying and

(c) party and party, and the present account was none of these; or

secondly, I might apply the fees agreed between the Legal Aid Central Committee and the Vice Dean of the Faculty of Advocates for the preparation of child custody Reports in the Court of Session although Mr Campbell maintained that I ought not to do this since there had been no consultation with, nor agreement by, Solicitors in the Sheriff Court to this table; thirdly, he suggested that I might fix the fee on an honorarium basis but this approach was not favoured by either side as being particularly appropriate in the circumstances; finally, Mr Campbell suggested that I might tax the account according to the Table of Fees approved by the Council of the Law Society for General Business transacted by Solicitors in Scotland and, indeed, he submitted that this was the only realistic basis upon which the charges could be assessed.

I heard Mr Marshall on behalf of the Legal Aid Central Committee in reply to Mr Campbell and was invited by him to tax the account on the basis of the scale of charges agreed upon in 1976 by the Legal Aid Central Committee, the Auditor of the Court of Session and the Vice Dean of the Faculty of Advocates for payment of Counsel and Solicitors appointed as Reporters in

the Court of Session. This latter Table has since been updated and appears to be kept under regular review.

Mr Marshall represented to me that the General Business Table was not appropriate in the circumstances since it related to "professional services" rendered by a Solicitor when instructed in that capacity.

The account submitted by Mr Campbell is, of course, drawn on the General Business Table.

In my view, the General Business Table is not a suitable basis for taxation in this case for that Table is intended to apply only where the Solicitor is providing a "professional service". The Court is not bound to appoint a Solicitor to prepare a child custody Report although frequently, as a matter of convenience, it does so. However, the statutory provisions contained in Section 11 of the Matrimonial Proceedings (Children) Act, 1958 enable the Court to appoint either "an officer of the Local Authority" or "any other suitable person" to report. In the instant case, the Court appointed a Solicitor but not, in my view, in his professional capacity, simply as "a suitable person". Moreover, to allow fees on the scale laid down in the General Business Table would result in Reporters in the Sheriff Court being paid at a much higher level (almost 100% more) than Counsel and Solicitors providing a similar service in the Court of Session and such a discrepancy in remuneration for the same work could not, in my view, be defended upon any ground.

Accordingly, I am of the opinion that the General Business Table cannot apply in this case.

I have examined the alternative bases of charge suggested by Mr Campbell and have rejected the honoraria basis as being a haphazard and wholly unsatisfactory approach, leading as it inevitably would to taxation in every case. Further, I have examined the fees prescribed in Chapter III of the Table of Fees for Solicitors in the Sheriff Court to ascertain whether these might provide a suitable basis of charge in this case and I am satisfied that the application of that Table would have similar consequences (depending upon the method of drawing the account) to taxation on the General Business Scale i.e. it would result in substantially higher charges in the Sheriff Court to those payable in the Court of Session for the same work.

Since there is no scale of charges that would provide a reasonable basis for taxing Reporters' accounts in the Sheriff Court, I have followed the Court of Session practice and applied to the present account the fees agreed between the Legal Aid Central Committee and the Vice Dean of the Faculty of Advocates for Reporters' in the Court of Session. This approach can only benefit the Reporter for traditionally fees in the Sheriff Court are lower than those in the Court of Session.

The agreed Table of charges for the Court of Session seems to me to provide fair and reasonable remuneration for the work done in the present case and accordingly I have taxed the account on the basis of that Table at the sum of £114.82

The application of the agreed Table of Fees will result in Reporters in the Court of Session and the Sheriff Court being remunerated at the same level for similar work and will thus avoid the invidious situation of Sheriff Court Reporters being paid at substantially higher rates than those

in the Court of Session.

Neither party asked for expenses of attendance at the diet of taxation and accordingly I have allowed none. Since this was a Reporter's account and the first to come before me I have not thought it necessary to charge an audit fee.

AIRDRIE: 22nd October, 1980.

H. F. ...
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Auditor of Court, Airdrie

SUMMARY OF ENTRIES

31st. January : Noted instruction and perused copy Writ.
 5th. February : Phone attendance to arrange meeting with parties
 7th. February : Attendances 10.50 to 2.20 travelling to Cumbernauld;
 attendance with Defender and child at Defender's
 parents home and at his own home; attendance with
 Pursuer and parents at parents home fully discussing
 Mileage: 18 miles
 12th. February : Drawing Report (5 sheets) with 3 copies
 Lodging principal and writing Agents with copies

Chapter 1 Basis:

Time:	4 hours at £30.00	=	£120.00	
Drawing:	5 sheets at £12.00	=	£ 60.00	
Copying:	15 sheets at £0.60	=	£ 9.00	
Normal letters:	2 at £ 1.50	=	£ 3.00	
				£192.00

Add:-

Posts & Incidental Outlays	£ 8.00			
V.A.T. at 15%	£30.00			
Travelling	£ 2.70			40.70
				£232.70

Revised Account
is substituted
by Auditor of
Court.

Time	—	65.00	
Drawing	-	32.50	
		97.50	
VAT @ 15%		14.62	
		112.12	
Travelling		2.70	
		£ 114.82	

Auditor, 22nd October, 1980
Taxed at the sum of
One Hundred and Four
Pounds Eighty Two P
(£114.82), Sterling.