



SCOTTISH LEGAL AID BOARD

BUSINESS ACCOUNT
incurred by MESSRS. DIGBY BROWN & CO

Acting for

JR [REDACTED], [REDACTED], Dundee
PURSUER

LARey 33/61/701878/87.

against

AR [REDACTED] Flat [REDACTED], Dundee
DEFENDER

1987

Dec . Fee for all work to and including period of notice £113.55

1988

Jan Fee for all work from period of notice to and including swearing Affidavits 54.35

June Fee for all work from swearing Affidavits to and including extract decree 29.60

£197.50

process fee (10%) 19.75

£217.25

Post and incidents @ 12% 26.07

£243.32

Outlays

Court dues 40.00

Notarial Fee (Pursuer and witness) 16.00

to paid Ross Strachan & Co for Affidavits from Defender and witness covering welfare fo children (see copy account) 109.41

£403.73

Dundee 24 April 1990

The Sheriff, having heard Parties' Procurators on the Pursuer's objections, and having considered the matter, Repels the objection for the Pursuer and Approves the report of the Auditor of Court dated 30 January 1990; Grants decree for expenses amounting to £407.80; Finds no expenses due to or by either party in respect of the hearing on 14 March 1990.

David Lally

NOTE: The Pursuer's account of expenses in this case was framed in terms of Chapter 1, Schedule 2, Table B of the Legal Aid (Scotland) (Fees in Civil Proceedings) Amendment (No. 2) Regulations 1987, hereinafter referred to as "the Regulations". Schedule 2 of the Regulations 1984 as amended sets out in Chapter 1 a series of block fees by means of which a solicitor may charge to the Legal Aid Board fees for work done by him. In Chapter III it sets out a table of fees which may be used by a solicitor for the purpose of charging his fees on a "time and line" basis, specifying each item of work carried out. A solicitor is free to elect to charge either on the block fee basis or on the detailed charge basis, but in terms of paragraph 3 of Schedule 2 to the Regulations, it is not competent to charge the fees partly on one table and partly on the other.

This case was an undefended divorce action where it was necessary to lodge affidavits dealing with the welfare of the children of the marriage. The children were, and still are, in the custody of the mother who is the Defender and who had instructed Messrs Ross Strachan and Company, solicitors, to represent her interests. In the circumstances it was appropriate for the Pursuer's solicitors to ask Messrs Ross Strachan and Company to prepare the affidavits about the welfare of the children and have them sworn. Messrs Ross Strachan and Company did so and submitted to the Pursuer's solicitor an account for £109.41 for their services in connection with the affidavits. The fees charged in the said account appeared to have been charged at the rates provided in Chapter 11 of the table of fees which is the block scale for defended actions, but the account was in the form of a detailed account.

In the Pursuer's business account of expenses which was taxed by Auditor of Court the Pursuer's charged a fee of £54.35 "for all work from the period of notice to and including swearing affidavits". The charge is exactly in accordance with the block fee set out in Table B. In

addition, the solicitors charged as an outlay the account for Messrs Ross Strachan and Company. The auditor taxed off the amount of the account of Ross Strachan and Company, expressing the view that the words "all work including the swearing affidavits" means all work up to that point regardless of by which solicitor it was done. The Auditor said that he might well have taken a different view had a detailed account been submitted by the Pursuer's solicitor in terms of Chapter III of the Regulations. In reaching that conclusion the Auditor took account of the decision in the case between Drummond and Company, Solicitors, Bathgate and the Scottish Legal Aid Board concerning the inclusive fees in a criminal case.

The Pursuer's solicitor argued that the Auditor had been in error in failing to allow Messrs Ross Strachan and Company's account as an outlay. She said that when it was clear that the account would have been allowed as an outlay if she had charged her account under Chapter III, then it was illogical to exclude it because she had charged her account under the block fees in Chapter I. She submitted that in the circumstances it had been necessary to have the work done by Ross Strachan and Company, and that it should be allowed as an outlay. She pointed out that had it been an account from someone else who was not a solicitor it would have been allowed as an outlay. She submitted that the practice followed in criminal cases was of no relevance.

For the Legal Aid Board the solicitor who represented it submitted that it was not competent to charge partly under Chapter I and partly under Chapter III. Chapter II was not apt for these proceedings since the proceedings in the present case were undefended proceedings. He submitted that if the Pursuer's solicitor had charged the account under Chapter III, and submitted the account of Ross Strachan and Company, that account might well have been allowed as an outlay but would have been only if the Auditor of Court was satisfied that it had been properly charged. As it was, having elected to charge under the block fee for all work from the period of notice to and including swearing affidavits, then that meant it must be held to include the work done by Ross Strachan and Company.

Having considered the matter, I have concluded that the Pursuer's objection to the Auditor's report is not well-founded. When she was making up their account for taxation the Pursuer's solicitor had an unfettered right to charge fees either under the block fees in Table B of Chapter I or under the detailed fees in Chapter III. In making that selection the solicitor must assess whether the block fees in Table B provide an appropriate remuneration for the work done. If they do not, he will doubtless opt to charge on a detailed account basis under

Chapter III The amount charged by Ross Strachan and Company, shall to be considered by the solicitors in deciding under which Table to charge. Even if the Pursuer's solicitors had decided to charge under Table III, the account of Ross Strachan and Company would have been allowed only if it was properly charged (and this seems at best doubtful since it bears to have been charged under Table II).

I did not feel that the reference to an account from someone for work other than legal work was of much assistance because it is only legal work that the Auditor is entitled to consider.

In the whole circumstances I can see no reason for not giving the words "all work including swearing affidavits" their normal meaning, and the inevitable result of that is that the objection must fail.

David Lilliput

THE SCOTTISH LEGAL AID BOARD

Messrs Carlton Gilruth & Co
Solicitors
30 Whitehall Street
DUNDEE

44 Drumsheugh Gardens, Edinburgh EH3 7SW
Telephone: 031-226 7061 Ext:
Rutland Exchange No: ED250 237

Our ref: [REDACTED] A.P.
33/61/701878/87
DA/CW

Your ref: JH

February 9, 1990

Dear Sirs

[REDACTED] -v- [REDACTED]

I refer to my recent telephone conversation with your Mr Herald when he kindly agreed to act on behalf of the Scottish Legal Aid Board in connection with the Objections to the Auditor's report following taxation of the Pursuer's legal aid account. To assist you in this matter I hereby provide the relevant papers together with a brief note of the background to this case.

A full legal aid certificate was issued to the pursuer to cover an action of divorce based on two years separation. The pursuer's wife had custody of the child of the marriage and accordingly it was necessary to obtain affidavits on welfare to satisfy the Court that decree should be granted. Agents acting on behalf of the defender, Messrs Ross Strachan & Co prepared the necessary affidavits and submitted a note of their fee to the Pursuer's Agents. At this juncture I should say that we accept in principle that the pursuer's legal aid certificate covers the charges for this work.

A dispute arose in the Pursuer's account as they elected to charge their account on the basis of inclusive fees contained in Chapter 1, Part II and claim the defender's agents fee as an outlay. The defender's agents charges were abated on the basis that the inclusive fee covered all work in connection with an undefended action of divorce, including the necessary affidavits on welfare. A taxation took place at Dundee Sheriff Court on 10 January, 1990 at which the Sheriff Clerk Depute heard submission and made avizandum. The Auditor's Report was issued on 30 January and the Pursuer's Agents intimated their Objections on 7 February.

Messrs Carlton Gilruth

9 February, 1990

With reference to the Objections I would inform you that I regard the statement that the Board agreed to allow the defender's agents charges as an outlay in an account charged under Chapter III to be somewhat misleading. At taxation the writer in fact said that we would regard charges incurred by the Defender's Agents as a fee element chargeable on the Legal Aid scale and that we would assess their charges on that basis. Should the Pursuer's Agents elect to charge under Chapter III then we would examine the Defender's fees as stated above and purely from an administrative viewpoint allow their agreed fee to be paid as an outlay in the Pursuer's account. The fees of a correspondent employed to carry out formal court work on behalf of the nominated Solicitor are usually dealt with in this manner.

The writer is not entirely 'au fait' with the procedure involved here and would be grateful if you could take appropriate steps to protect the Board's interest in this matter. I believe that it is competent to lodge formal Answers to the Objections and would welcome your views as to whether such a step should be taken in this case. The Board does not regard this dispute as a serious issue and is simply looking for a decision one way or the other.

Once you have had an opportunity to consider the papers I would be grateful if you could contact the writer in order that we may consider the next move. As I mentioned during our telephone conversation, the Board might wish that one of its Solicitors represent it at the forthcoming hearing, however I shall keep you informed of any developments on this front. Last, but not least I would advise you that your own charges for work undertaken at our request will be met on the Private Court Scale.

I thank you in anticipation of your assistance and shall await hearing from you.

Yours faithfully


Assistant Manager
CIVIL ACCOUNTS DEPARTMENT

OBJECTION TO TAXATION OF TAYSIDE, CENTRAL AND FIFE AT DUNDEE

OBJECTION

for the Pursuer

in causa

[REDACTED] residing
at [REDACTED],
Dundee.

PURSUER

against

[REDACTED]
[REDACTED], residing
at Flat [REDACTED]
[REDACTED], Dundee

DEFENDER

The Pursuer objects to the Auditors taxation of the Pursuer's account of expenses as regards the following grounds; The Auditor has disallowed an outlay of £109.41, which sum was paid to Messrs. Ross Strachen & Co for the preparation of Affidavits regarding the welfare of the child of the marriage. Messrs. Ross Strachen & Co are the Defender's agents and the said child resides with the Defender.

It is agreed that the account of expenses were framed in accordance with Chapter 1 of the Table of Fees (The Civil Legal Aid (Scotland) (Fees) Amendment No 2 Regulations 1987). Said account fell within Schedule 2, Table B of the aforesaid Regulation. In accordance with said Schedule which cover block fees it is agreed that the entry of £54.35 covers all work from period of notice to an including swearing Affidavits. It is however disagreed that this fee covers all work which cannot practicably be carried out by the Pursuer's Agents. It is also disagreed that the work carried out by Messrs. Ross Strachen & Co in accordance with their account attached would be treated as a fee for the purposes of Legal Aid. The account of expenses incurred by Messrs. Ross Strachen & Co is an outlay and falls therefore to be charged as such. The Scottish legal Aid Board agreed that should the account have been charged under Chapter III of the aforesaid Regulations

... account of expenses incurred by Messrs. Ross Strachen & Co should have been treated as an outlay in that account and paid as such. It is therefore submitted that the Auditor's decision is erroneous (Firstly) by finding that the block fee covered the work carried out by Messrs. Ross Strachen & Co (Secondly) that the Regulations relating to criminal cases are in any way relevant and (Thirdly) by failing to consider the account by Messrs. Ross Strachen & Co should be treated as an outlay instead of part of the Pursuer's account.

A copy of the account of expenses lodged with the Scottish Legal Aid Board, outlay from Messrs. Ross Strachen & Co and the Auditor of Court's decision in the case are attached and referred to for their terms.

IN RESPECT WHEREOF

Solicitor,
Discovery House,
5 Cowgate,
DUNDEE.

Agent for the Pursuer

John Kelly

Mrs C. Paterson, Solicitor, Dundee

[REDACTED], Legal Aid Board

DUNDEE, 30th January 1990. Having resumed consideration of the foregoing account and in respect that I have taxed off outlays to the extent of £109.41. I therefore tax the account at FOUR HUNDRED AND SEVEN POUNDS NINETY EIGHT (£407.98) (including the statutory audit fee of £20).

NOTE

Arthur
Depute Auditor of Court

This account is in respect of an undefended divorce action at the instance of the husband against his wife who has custody of their one child. The grounds of the divorce are 2 years non cohabitation and the consent of the defender. There are no ancillary craves regarding custody, access etc.

At the diet of taxation it was agreed between Miss Patterson and [REDACTED] that the only matter in dispute was the outlay of £109.41 submitted by Ross Strachan & Co for the preparation of the affidavits regarding the child's welfare.

Mr Arthur's view was that the Pursuer's account had been charged under Chapter I of the Table of Fees (Sheriff Court) and therefore included all work including the preparation of all affidavits including, in his opinion those regarding the welfare of any children, no matter who prepared them.

Juterson explained that the defender had her own agents looking after her interests in this case and it seemed proper that her agents (Ross Strachan & Co) should prepare the required affidavits regarding the welfare of the child and that the fees incurred should be treated as an outlay.

Having considered this very narrow issue and bearing in mind the wording of the regulations, I am of the opinion that in this particular case the outlay of £109.41 should be disallowed. In my view the description of the inclusive fee means what it says - a fee that includes "all work to and including sending extract decree". This definition I feel was meant to take into account all affidavits (including those for the welfare of the children) necessary to satisfy the Court that decree can and should be granted.

I appreciate that in some cases it is necessary for other agents to be involved in "undefended" cases and I accept that those agents must be compensated for the work they perform. It is therefore a question of who pays for that work. If a detailed account under Chapter III had been submitted I do not think I would have been persuaded to come to the same decision. It is only because of the precise wording of Chapter I that I feel unable to allow Ross Strachan's fee as an outlay.

In light of my decision it may well be that more Solicitors will be "encouraged" to prepare all their accounts under Chapter III with an end result of the Scottish Legal Aid Board approving larger accounts.

In support of my conclusion I considered the recent decision in the case between Messrs Drummond & Co, Solicitors, Bathgate and The Scottish Legal

...with the inclusive fee in a criminal case.
...illustrated that no matter how many different agents are involved
...one case, an inclusive fee cannot be "enlarged". In that particular
...the agents involved had to "share" the maximum fee. Although the
...regulation that applied in that case has now been altered to remove the
...maximum fee in such a situation, I, like the Auditor in that case am bound
...by the regulations that are in force at the time the work was being
...performed.



REFERENCE SLIP TO YOUR REPLY

701878/87

DA/VB



DIGBY BROWN & CO
S O L I C I T O R S

25 SCOVRY HOUSE, 5 COWGATE, DUNDEE, DDD 7 5
TELEPHONE 0382 22197 FAX 0382 23098
RUTLAND EXCHANGE BOX DD26

REF: CAP/MR91/KA

29 December 1989

Scottish Legal Aid Board
Civil Accounts
Box No 250
Rutland Exchange
EDINBURGH

For the Att. of [REDACTED]

Dear Sirs

[REDACTED]
Legal Advice & Assistance Ref : 33/61/701878/87

We refer to your letter dated 7 April 1989 and our subsequent telephone conversation with your office. We confirm we have now arranged the taxation in this matter at Dundee Sheriff Court on Wednesday 10 January 1990 at 10 am. We are enclosing herewith a copy of the principal account in this case as abated by you together with a copy of the account which we have lodged with the Sheriff Clerk. This account was typed for ease of reference and confirms that we accept that abatement of the notarial fee. Should you require any further information do not hesitate to contact our Miss Paterson.

Yours faithfully

Digby Brown & Co

Encs

CIVIL ACCOUNTS PAYABLE

Report on Taxation

Assisted Person: [REDACTED]
Reference Number: 33/61/701878/87
Solicitor: DIGBY BROWN & CO, DUNDEE
Nature of Proceedings: DIVORCE - 2 YEAR SEPARATION.
Auditor: SHERIFF CLERK DEPUTE
Taxation Date: 14TH JANUARY, 1990.

A full legal aid certificate was issued to the pursuer to cover an action of divorce based on two year separation. The pursuer's wife had custody of the child of the marriage and accordingly it was necessary to obtain affidavits on welfare to satisfy the Court that decree should be granted. Agents acting on behalf of the defender prepared the necessary affidavits and submitted a note of their fee to the pursuer's agents.

A dispute arose in the pursuer's account as they elected to charge the account on the basis of the inclusive fee contained in Chapter 1, Part II and claim the defender's agents fee as an outlay. It is agreed, in principle, that the pursuer's legal aid certificate covers the work relative to the welfare affidavits, however, the defender's agents' charges were abated on the basis that the inclusive fees covered all work in connection with an undefended action of divorce, including the necessary affidavits on welfare.

A taxation took place at Dundee Sheriff Court on 10th January, 1990 at which the Sheriff Clerk Depute heard submissions and made avizandum. The Auditor's report was issued on 30th January and found in favour of the Board, but the pursuer's agents intimated their objections on 7th February and the matter proceeded to a hearing before the Sheriff on 14th March, 1990. Agents were instructed to represent the Board at the Hearing and after hearing submissions the Sheriff made avizandum and subsequently issued her decision on 24th April wherein she repelled the objections and approved the Auditor's report. Reference is made to the Auditor's report and the Sheriff's judgement.