

Taxation Report

13th June 1997

TC



McAuley McCarthy & Co

Summary Time & Line

Preparation

KES - FOR INFO

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[REDACTED]
Scottish Legal Aid Board
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Please reply to: K MacKenzie
Auditor of Court

Your reference: -

Our reference: -

Date: 27 June 1997

Dear Sir

C

PF Paisley

-v-

I refer to the taxation of McAnley McCarthy Co's
Legal Aid Account here on 13 June 1997 and
I enclose the brief note I promised to prepare.
I hope it is of some use to you in
defining "preparation" as it relates to summary
renewal trials.

If not, no doubt you will simply refrain
from mentioning it in front of other Auditors!

Yours faithfully

K MacKenzie
Auditor of Court
Paisley

Note of Taxation

in causa

Procurator Fiscal, Paisley

against

[REDACTED]

This taxation involved a Legal Aid account submitted by Messrs McAuley McCarthy & Co, Solicitors, Glasgow, in which the Scottish Legal Aid Board declined to pay any fee for preparing for trial. The solicitors' account covered the case until the preliminary diet, when [REDACTED] failed to appear and a warrant was taken for his arrest.

At the diet of taxation on 13 June 1997 Mr Hughes and [REDACTED] appeared for Messrs McAuley McCarthy & Co and the Legal Aid Board respectively.

[REDACTED] submitted that preparation for trial, which was paid for in respect of time occupied, did not cover as wide a range of work as many solicitors supposed. In developing his argument he referred me to three authorities. These authorities are, firstly, the Criminal Legal Aid (Scotland) (Fees) Regulations 1989, Regulation 7, which subject to the provisions of other Regulations dealing with levels of remuneration, outlays etc., states that a solicitor may be paid for work actually and reasonably done and travel and waiting time actually and reasonably undertaken, due regard being had to economy. Schedule 1 of the Regulations provides fees for specific elements of work done and time spent on various elements of the conduct of each case; secondly, the Scottish Legal Aid Board Legal Aid Fees and Taxation Guideline, Section B, which elaborates on the Regulations and how they are put into effect; and thirdly, an opinion by Mr Weir, sometime Auditor of the Court of Session, in the case of Gavin Devaney v Greater Glasgow Health Board which, at paragraph 3, deals with the definition of preparation, at least in so far as it applies to a solicitor preparing for a Court of Session civil case. Put shortly, his opinion was that the solicitor's preparation in such a case properly consists of no more than marshalling papers in preparation for the proof to ensure that all are in good order for the start of the proof. It does not include time spent on

miscellaneous matters attended to during the course of the case through the court which have not, through inadvertence or otherwise, been specifically charged for.

[REDACTED] argument, as I understood it, was that having regard to the Regulations, including Schedule 1, the Guidelines and Mr Weir's opinion, this case had not reached the stage at which preparation for a trial was applicable, and the charge should be disallowed, and that in any event paragraph 2.5.1 of the Guidelines at page B/7 requires that a charge for preparation should be supported by file notes detailing preparation undertaken with an appropriate narrative in the account. This charge is not so supported.

Mr Hughes argued that preparation should not be viewed so narrowly, and that throughout a case work could be done in preparation for a trial. In the instant case there had been checking of statements and authorities on behalf of the client. I take the view that checking statements should be specifically charged for as a perusal, and the document perused or checked should be described in the account. As to authorities, in any account between a solicitor and his client, where a third party is paying, I must assume that the solicitor knows the law and allow no charge against that third party, unless, perhaps, in a particularly difficult case in which the permission of the third party had been sought and granted for researching the law at his expense.

Generally, I think that in a summary criminal case, preparation for a trial cannot be so restricted as Mr Weir proposes in *Devaney v Greater Glasgow Health Board* for a solicitor in a Court of Session proof. It must include, in my view, consideration of the evidence and of how best the case can be argued and conducted in court, as well as the marshalling and checking of papers.

However, I cannot agree with Mr Hughes that preparation can include matters which arise during the whole currency of the case. Preparation is essentially that which is done when a hearing is imminent to ensure that the solicitor can enter the court with all the necessary papers, and as sound a grasp of the facts of the case as he can muster.

Ken Ackerson
Solicitor
Glasgow