

SHERIFFDOM OF LoTHIAN & BORDERS AT EDINBURGH

REPORT

by

Francis M. McConnell, S.S.C.,
Joint Auditor,
24 York Place,
Edinburgh.

in causa

SH v WH

PURSUER

against

DEFENDER

EDINBURGH

2 September 1998

My Lord:

On 24th February 1998 you sustained a Note of Objections and remitted the matter back to me for further consideration. This was on the basis that parties having agreed Chapter III [Act of Sederunt] (Fees for Solicitors in the Sheriff Court) dealt with the matter and the issue for me to determine is whether in the circumstances certain papers were necessary papers under para 3 of Chapter III on the basis of the application of the agent and client scale, third party paying.

There was a delay in the process being remitted to me but in accordance with your Lordship's direction I assigned a further diet and heard representations on behalf of the reporter and the Legal Aid Board.

[Handwritten signature]

Having heard further representations I share your Lordship's view that Chapter III is not relevant. There is no prescribed table of fees for a reporter. In absence of such a table the Auditor has to determine whether a fee charged by a reporter is fair and reasonable. How is this achieved? I took into account that the reporter in this case was a practising Solicitor and an experienced reporter who has had many such cases remitted to her. I therefore respectfully agree with your Lordships observations in page two of your Note. However in determining what is a fair and reasonable fee I had regard to various Tables of Fees applicable to Solicitors for a range of legal work carried out by them and also regard to the principles enunciated in the well known authorities *Park v Colvilles Ltd.* 1960 SL143 and *Hood v Gordon* 1896 23 R 675. However the difficulty faced is that the reporter in this case is not an agent. She is not acting for a client. Her primary duty is to the Court and her fee will either be agreed between the parties or determined either by the Auditor or by the Sheriff. A further difficulty for an auditor is to apply "the customary rate if notorious custom could be proved" because, so far as I am aware there is no such notorious custom; certainly nothing was advanced to me by the parties at the taxation. Therefore the rate has to be fixed by the Court.. I also respectfully agree with your Lordship's observations that because a reporter happens to be a Solicitor it does not mean that she should submit an account as a Solicitor when not acting in that capacity. For practical purposes however very few Advocates or Solicitors would accept the appointment as a reporter unless they were reasonably remunerated for their trouble. Therefore, it seemed to me, as a general proposition the fee chargeable would have to equiparate with what the Solicitor or Advocate could reasonably expect to earn for work of similar importance taking into account the skill, specialised knowledge, responsibility, time expended, the importance and function of the report prepared and the place or places where, of necessity, the services had to be performed. In my approach I did not consider any of the Table of Fees should be strictly applied but plainly I had regard to them in determining whether the reporter's charges were fair and reasonable in the context of her appointment.

As I have said I share your Lordship's doubt that the proper approach was to charge the account on the basis of Chapter III but in so far as I am bound by the agreement between the parties on



this issue I have, in terms of your Lordship's interlocutor, to reconsider whether the work done under the guise of precognitions and the preparation of accounts is necessary in terms of para 3 of Chapter III.

To give the word "necessary" its ordinary meaning is to suggest it is something "indispensable, requisite, that of not being done without" to quote from the Shorter Oxford Dictionary. Applying that strict test I have to say that upon reconsideration the work done under the guise of precognitions was not "necessary"; that it was reasonable I have no doubt. The cost for preparing such a detailed account applying the same test was not "necessary". I come to this conclusion with some reluctance and hesitation because for the reasons I gave in my original report I considered the production of such an account to be helpful to the Board and it seemed reasonable that they should pay for it. That said it is highly unlikely that any other reporter from other disciplines would go to such lengths in preparing a fee note incorporating such detail. Therefore on balance I have considered it was not a "necessary paper" for which the reporter should be able to make a charge.

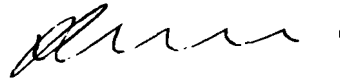
Accordingly I have made the necessary abatements to the account. It was however conceded by the Board that in the event of my concluding that the precognitions were not "necessary papers". They would have no objection to my allowing a charge for the reporter considering the notes taken by her in preparing a report to the Court - it was suggested 7-10 minutes for each interview. I have allowed, in terms of Chapter III, a quarter hour charge of £15.00 for this purpose in relation to each interview.

In summarising therefore the position is this. The fees claimed for 1] framing precognitions, 2] extending same and 3] framing and extending the account amount to £316.92. To this sum falls to be added Posts and Incidents at 12% £38.02 and V.A.T. at 17½% £62.11. Accordingly from the originally taxed account of £2216.38 there falls to be deducted £417.05 reducing the sum payable to the reporter of £1799.33. The reporter however has to give consideration to her interview notes in preparing her report. She conducted eight separate interviews and as



indicated above I consider she is entitled to charge two hours [i.e. 8 x 15 minutes] for subsequently considering her interview notes in preparing her report. Accordingly I have allowed an additional fee of £120.00 to which falls to be added Posts and Incidents at 12% £14.40 and V.A.T. of £23.52 a total of £157.92 thus bring out a figure of £1957.25 payable to the reporter.

Humbly reported by



F.M. McConnell
Joint Auditor