



SCOTTISH COURT SERVICE

Sheriffdom of Tayside, Central and Fife

Sheriff Clerk's Office
Sheriff Court House
Main Street
Camelon
Falkirk FK1 4AR

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Your reference

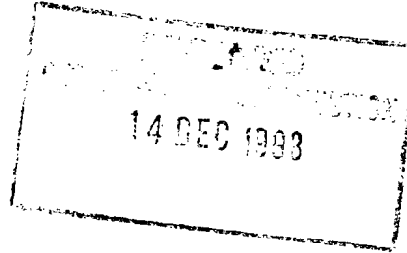
Our reference

Date

11 December 1998



Accounts Division
Scottish Legal Aid Board
DX ED 250
EDINBURGH



Dear Madam

TAXATION : EILEEN DAVIE, ADVOCATE

I enclose my decision following on from the taxation on 24 November 1998.

Please acknowledge receipt.

Yours sincerely

Roland McMillan
Auditor of Court

SHERIFF COURT, FALKIRK

REPORT

by

AUDITOR of COURT

in

Taxation of Counsel's fees under Regulation 12 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989.

Counsel : EILEEN DAVIE.

FALKIRK 11 December 1998.

1. This taxation arose out of a dispute between the Scottish Legal Aid Board (SLAB) and Eileen Davie, Advocate, in relation to Counsel's fees for a 10 day Proof that required to be cancelled due to the illness of the Sheriff.
2. At the diet of taxation [REDACTED] Law Accountant, appeared for Counsel. [REDACTED] Solicitor, and [REDACTED] appeared for SLAB.
3. The case involved an application by Falkirk Council in terms of the Social Work (Scotland) Act 1968 for parental rights of two children. The proof proceeded for 5 days between 13-21 February 1997 when M^{RS} Davie represented the Respondent. The proof did not conclude and was adjourned to Monday 21 April 1997 for a further 10 day hearing. On Wednesday 16 April 1997 the Sheriff Clerk advised the instructing solicitors that the Sheriff was unwell and the proof could not proceed on 21 April. It did not proceed on 21 April 1997. The Sheriff subsequently resigned his commission and the proof required to be allocated to a new Sheriff. M^{RS} Davie then appeared in August at a hearing to determine further procedure. The proof eventually proceeded on 16-19 September, 6-10 October, 11-13 November, and 24 November (a total of 13 days) and again M^{RS} Davie represented the Respondent.
4. /

4. Regulation 9 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 states "*Subject to the provisions of regulation 10 regarding calculations of fees, counsel may be allowed such fees as are reasonable for conducting the proceedings in a proper manner, as between solicitor and client, third party paying*".

Regulation 10(2) states amongst other things that "*Counsel's fees for any work in relation to proceedings in the Sheriff Court shall be 90 per cent of the amount of fees which would be allowed for that work on a taxation of expenses between solicitor and client, third party paying, if the work done were not legal aid*".

5. I note that Counsel claimed and SLAB agreed to pay a fee of £700 for all the days on which the proof proceeded, apart from 2 days when Counsel claimed £350. On these days, I was advised by [REDACTED] that although the case had finished early each day Counsel had been able to do other written work.
6. It became clear during the taxation that Counsel and SLAB were agreed that Counsel should be paid for 2½ days of the 10 day proof. The dispute between them related to the amount per day, Counsel claiming £800 and SLAB offering £300.
7. [REDACTED] advised me that Counsel had not undertaken other work for the period claimed and had required to pass on 3 proofs as she was committed to this case. He referred me to paragraph 5.12 of the Guide to the professional conduct of Advocates and a taxation by the Auditor of the Court of Session in the case of Duncan v. Buchan in support of his submission that Counsel should receive a fee payable at the full rate per day.
8. [REDACTED] submitted it was not reasonable for Counsel's fee to be paid at the full rate. He stated that the Guide to professional conduct of Advocates and Duncan v. Buchan referred to by MR [REDACTED] did not apply in this case as these related to private charging agreements and party and party accounts respectively. He argued that this case should be decided on the basis of Regulation 9, ie Counsel should be allowed such fees as are reasonable for conducting the proceedings in a proper manner as between solicitor and client, third party paying.

I agree with [REDACTED] that this is how I should decide the case.

9. Counsel was involved in 5 days of proof before the discharged hearing on 21 April 1997 and a further 13 days of proof thereafter. She did not do any other work in the 2½ day period claimed for the discharged hearing and had to pass on 3 other proofs due to her commitment to this case. It is reasonable in my view, therefore, that Counsel should be paid a fee of £1,750 for the discharged hearing, although I note a fee of £2,000 was claimed (on the basis of £800 per day).

[REDACTED] moved for the expenses of the taxation. He claimed 2 hours preparation, 1½ hours travelling, and 1 hour attendance at the taxation, at the rate of £75 per hour. [REDACTED] opposed the application on the basis that Counsel's Clerk could have attended on her behalf. I allowed [REDACTED] his expenses for preparation and attendance (3 hours) at the rate of £43.60 per hour (the solicitors legal aid rate), a total of £130.80. He should receive his expenses as Counsel could have appeared or instructed a solicitor to appear on her behalf. On the other hand, a local solicitor could have been instructed without the need to incur travelling expenses.

Roland McMillan
Auditor of Court