

**SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT DUNFERMLINE**

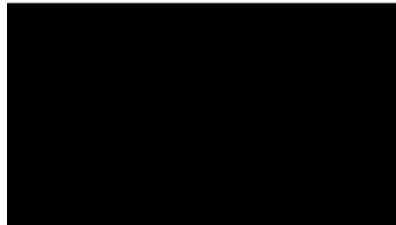
**REPORT OF TAXATION**

**Account of  
Mrs C Flanagan, Solicitor, Dunfermline**

**as Reporter**

**in causa**

GP v MD



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DUNFERMLINE, 10 February 2000

**Background to taxation**

1. This is the report of taxation held here on 1 February 2000 in relation to a dispute over an account submitted by Mrs C Flanagan, Solicitor, Dunfermline to the Scottish Legal Aid Board. Mrs Flanagan was the reporter, appointed by the Sheriff at Dunfermline on 7 October 1998, in the case of [REDACTED]
2. Mrs Flanagan lodged her report in court on 1 December 1998, and in due course, submitted a detailed account for £924.21 to the Scottish Legal Aid Board for all work connected with the report, including Value Added Tax and outlays. A dispute has arisen in connection with one item in this account, i.e. the charge for framing the account (9 December 1998 - £65.40). The nominated solicitor has referred this matter to me for taxation, in terms of Regulation 12 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989. The account submitted to the Board was prepared detailing charges in terms of Chapter III of the Act of Sederunt (Fees of Solicitors in the Sheriff Court)(Amendment and Further Provisions) 1993.
3. At the hearing the Board was represented by [REDACTED] Solicitor, and the Reporter and Nominated Solicitor by [REDACTED] Accountant. (Mrs Flanagan, the Reporter, and Mrs E Sumpter, the Nominated Solicitor, were also present.)

**Submissions made on behalf of the Board**

4. The position of the Board in this dispute is that the Reporter's fee is an outlay in the account of the nominated solicitor, and as such falls to be taxed in terms of Regulation 4 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989. This provides that the nominated solicitor "shall be allowed such fees and outlays as are reasonable for conducting the proceedings in a proper manner, as between solicitor and client, third part paying."

5. The Board's first ground of objection is that, in terms of paragraph 3 of Chapter III of 1993 Act of Sederunt, a charge is only allowable for drawing "necessary" papers. In this respect [REDACTED] for the Board relied on the decision of the Sheriff and the Joint Auditor at Edinburgh in *Hamilton v Hamilton* (27 February and 2 September 1998, unreported). In this case the Auditor following consideration of the Sheriff's decision abated the charge for drawing an account as he took the view that it was not a "necessary paper" for which the reporter should be able to make a charge.
6. [REDACTED] for the Board also drew my attention to a decision of the Auditor of Court at Inverness (*Walker v Walker*, 14 April 1997), in which the Auditor considered that the Board was entitled to a free accounting in terms of paragraph 1(c) of Chapter II of the Law Society of Scotland's Table of Fees for Conveyancing and General Business. This provision, however, has since been deleted and therefore does not apply here.
7. The Board's second ground of objection is that they are entitled to a free accounting from the nominated solicitor in respect of both fees and outlays. The "authority" for this ground of objection is paragraph 7.3 of the Board's Taxation Guidelines 1994. I was also advised that the Board do not receive requests for payment for charges for preparing fee notes from social workers or advocates, who prepare reports.

#### **Submissions made on behalf of the Reporter and Nominated Solicitor**

8. [REDACTED] for the reporter and nominated solicitor, in reply referred me to the Joint Auditor's original report in *Hamilton v Hamilton* (12 January 1998) and to the decision of the Sheriff at Dunfermline in *Henderson v Henderson* (8 March 1994). The argument for the Reporter in *Hamilton v Hamilton*, which Mr Quinn reiterated, was that the test of whether a charge was allowed for preparation of an account was whether it was "reasonable". By requiring a detailed account from a solicitor reporter, the Board was able to scrutinise and assess the fees being charged. In appropriate cases this enabled the Board to dispute particular charges and call for taxation, if the dispute could not be resolved. As such the charge for preparing a detailed account was a reasonable charge.
9. [REDACTED] further submitted that this taxation was governed by the Civil Legal Aid Regulations, which provide that charges for fees and outlays must be reasonable. If the Board, as third party paying, insist on a detailed account, they should pay for it and not the Reporter. The decision of the sheriff in *Henderson v Henderson* also supported the argument that the test was one of reasonableness.
10. [REDACTED] further submitted that the charge for preparing a detailed account in this case should, in any event, be allowed, as an account was necessary for the purpose of this taxation. He also moved for the expenses of the taxation hearing to be awarded against the Board.

#### **Conclusions**

11. I was advised that since the decision in *Henderson v Henderson* the practice which has developed, at the insistence of the Board, is for solicitor reporters in all cases

to submit detailed accounts in terms of Chapter III. It was accepted at the taxation hearing, however, that there is no statutory regulation of the fees of reporters.

12. As regards the use of Chapter III it should be noted that in *Henderson v Henderson* the sheriff took the view that "the Auditor has a wide discretion and in the exercise of that discretion can have regard to all or any of the tables of charges". I note also that in *Hamilton v Hamilton*, the sheriff questioned the basis for using Chapter III, but accepted it, as parties were in agreement that it should be used as the basis for drawing the account.
13. The relevance of this issue is that the Board's argument as to whether or not the drawing of the account was "necessary" is founded on Chapter III being the correct basis for charging in the case of the fee of a solicitor reporter. In light of the decision in *Henderson v Henderson*, Chapter III in my view may only be a used as a guide in determining what is a fair and reasonable fee. It cannot be relied on for every dot and comma. In particular the issue of whether a charge should be allowed for drawing an account cannot be determined solely on the narrow ground of whether the papers were "necessary" in terms of paragraph 3 of Chapter III. This provision relates solely to papers drawn by solicitors, which are necessary for the conduct of a litigation. The reporter, however, as the Board acknowledges, is neither conducting a litigation, nor is she acting as a solicitor.
14. The issue, therefore, of whether a charge may be made for drawing a detailed account falls to be determined in my view by the test of fairness and reasonableness. In considering this issue, I accept that advocates, social workers and psychologists, who also prepare reports, do not make a charge for preparation of fee notes. However, as I understand it the Board does not insist on detailed accounts from such reporters.
15. I have to say that it is not entirely clear why a detailed Chapter III account is required in all, and only in, cases where the reporter is a solicitor. Nor is it clear why a fee note setting out the time expended, the length and number of papers drawn and the rate charged should not suffice. As an auditor of court, with some experience of taxing accounts, including outlays for expert witness, counsel and reporters. I would have thought that a detailed fee note would be acceptable in most cases. However, if Board, as third party paying, insist on a detailed account the reporter really has no option but to comply. In these circumstances it is, therefore, in my view reasonable for the reporter to be entitled to the cost of preparing and submitting the account.
16. Turning now to the issue of whether the Board is entitled to a free accounting, I was advised that the authority for this is the Board's Taxation Guidelines. This guidance, as I understand it, applies only to the nominated solicitor. The reporter, however, is an independent person, appointed by and accountable to the court. The Board's guidelines do not, therefore, in my view apply.

**Expenses of Taxation**

17. As regards the expenses of the taxation hearing, [REDACTED] submitted that if successful there should be an award of £130 (2 hours at £65 per hour) against the Board for preparation for and attending at the taxation hearing. Mr Shearer submitted that there should be no expenses due to or by either party.

18. Having found access the Board in this taxation, I find the Board liable in the expenses of taxation in the sum of £130.



Auditor of court