


Sheriff Court, Alloa.

Taxation: i.c. P. F.- v - [REDACTED]

KM

Alloa: 19th December, 2000.

The Auditor, having resumed consideration of the taxation, and for the reasons given in the note appended hereto, taxes off £361.95 of fees and £4.62 of outlays.

  
Auditor of Court.

**Note:-** This account was remitted to me by the firm of Ian H. Angus and Co., Stirling, with a request to assign a diet of taxation in relation to a dispute with the Scottish Legal Board in respect of their abatement of fees and outlays in the case of H.M.A. v [REDACTED] legal aid reference no. SI/9164600399.

On assigning the diet of taxation I requested parties to provide me with authorities or correspondence which would be referred to at the taxation.

At the commencement of the taxation I confirmed from parties precisely what items and sums were in dispute. These were as undernoted:-

(a) page 5 dated 18/11/99 for £10.55 (b) page 6 dated 18/11/99 for £6.00, 19/11/99 for £42.20, £109.60, £21.10 and an outlay for £2.97 (c) page 7 dated 11/1/00 for £10.55 (d) page 8 dated 13/1/00 for £41.10 and £10.55 and an outlay for £1.65, dated 15/2/00 for £2.40 and £6.00. (e) page 9 dated 22/2/00 for £6.00 and (f) dated 16/3/00 for £21.10.

An item on page 6 dated 22/11/99 for £137.00 was initially disputed, but after discussion and by agreement of the parties was abated by the sum of £74.80.

Mr. Crawford addressed me first, making the following points,

(1) Some years ago, approximately 4, he had been involved in a summary trial where a precognition on oath had been undertaken without the prior approval of the Legal aid Board.



- (2) The guidelines issued by the board were their own views on how matters should be interpreted, had no statutory authority and were therefore not binding on solicitors.
- (3) The precognition on oath had been undertaken by the solicitor for the co-accused.
- (4) He was only safeguarding the rights and interests of his client in these proceedings.
- (5) A precognition on oath was not work of unusual nature.

Mr Crawford readily admitted that he had not sought the prior approval of the legal aid board before proceeding with the work objected to (precognition on oath). He had considered contacting the board but because of the tight time scale involved and his own experience he did not think prior approval was required.

In reply [REDACTED] referred me to the under noted articles:

- (a) Copy article from Recorder No. 16, issued January 1997.
- (b) Criminal fees and taxation Guidelines, issued March 1998 (page 50, paragraph 7.3.5.).
- (c) Extract from Scottish Legal Aid Board Handbook, issued August 2000 (pages 54 and 55).
- (d) *Venter v Scottish Legal Aid Board* 1993 SLT 147.
- (e) *Christie v W. A. Dawson Ltd* issued 4 May 1999.

In particular he referred me to section 4 of the Legal Aid (Scotland) Act 1986. This section contains the boards statutory right to maintain a fund known as the "Scottish Legal Aid Fund". Section 4(2) contains the boards authority to make payments from said "Fund" and section 4(2)(a) contains the authority to make regulations in regard to how such sums as are due are paid. He then referred me to regulation 14(1) (d) of the Criminal Legal Aid (Scotland) Regulations 1996, which came into force on the 1<sup>st</sup> November 1996. This regulation was not concerned with the nature of the case but with the work done in the conduct of the case. Specific guidelines in this regard were issued to all solicitors in March 1998 and are contained in (paragraph 7.3.5. of the Criminal Fees and Taxation Guidelines). The paragraph is headed "work of an unusual nature or likely to involve unusually large expenditure" and details clearly when approval of the board is required before certain work is undertaken. Some



examples, contained in this paragraph, of when prior approval is required are “inspecting a distant locus, attending at client’s home in some distant town or place and conducting the precognition of a witness on oath”. These guidelines are also contained in the “Scottish Legal Aid Handbook – 6<sup>th</sup> May 1999” clause 20.5 and 20.6 and also the Criminal Accounts Assessment Manual. Solicitors should have received all of the aforementioned publications and been made aware of the changes contained there in.

██████████ then produced an opinion from Banff Sheriff Court, in the case of ██████████  
██████████ This case dealt with a precognition of a witness on oath, regulation 14(1)(d) of the Criminal Legal Aid (Scotland) Regulations 1996, and whether or not prior approval was required before proceeding with the precognition. The Auditor taxed off all work carried out in regard to the precognition on oath and the objections to his decision were refused by the Sheriff.

After Mr. Crawford had perused this decision he suggested that it was not a binding decision as it had been dealt with in another Sheriffdom. He reiterated that the boards guidelines only contained there views and submitted that they were not binding on the Auditor.

I am of the opinion that, in terms of regulation 14(1)(d) of the Criminal Legal Aid (Scotland) Regulations 1996, the prior approval of the Legal Aid Board should have been obtained. I appreciate the difficulties involved in these cases and have some sympathy for the solicitor particularly where, as in this case as, he was only representing the interests of his client at a precognition instigated by the solicitor for the co-accused. Regardless, however, I consider that I have no discretion in the matter and that the terms of the regulations are binding on those who seek aid from the public fund. In these circumstances I have taxed off the sums initially abated by the Legal aid Board.

