



SCOTTISH COURT SERVICE
Sheriffdom of Grampian, Highland and Islands
Sheriff Clerk's Office
Sheriff Courthouse
Low Street
BANFF
AB45 1AU

Your Reference: JDH/AH

Our Reference:

Date: 21 September 2004.

[REDACTED]
Legal Services Dept.
Scottish Legal Aid Board
DX ED555250
Edinburgh



Dear Sir,

[REDACTED] CI/1018408/01

I enclose herewith a copy of my decision in the audit of the above.

Yours faithfully

DAVID ALTMAN
Depute Auditor of Court



INVESTOR IN PEOPLE

NOTE BY DEPUTE AUDITOR OF COURT

DG v RG i.c.

[REDACTED]

This case came before me for taxation on 8th September 2004 at the request of Mrs. Daley, the solicitor for the Pursuer.

The point at issue was a dispute between Mrs Daley and the Legal Aid Board on the terms of Schedule 2 of the Civil Legal Aid (Scotland)(Fees) Regulations 1989.

The action in question is a divorce which originally proceeded on the basis of two years separation with consent. The Defender thereafter refused to give his consent and a Minute of Amendment was lodged by the Pursuer which converted the basis of the action to unreasonable behaviour. Decree of divorce was eventually granted on that basis.

Mrs. Daley subsequently lodged an Account of Expenses with the Legal Aid Board in which she sought to claim fees for 'all work up to and including the period of notice' allowed under Tables A and B of Chapter I of Schedule 2 of the above Regulations.

The Legal Aid Board had refused to allow payment of both fees and had only allowed the fee claimed under Table B.

As no agreement could be reached on the matter, a referral for taxation by the Auditor was made.

At the taxation Mrs. Daley appeared personally but the submissions of the Legal Aid Board were made by the letter attached.

Mrs. Daley's submission was that the action as originally raised was an undefended action based on two years separation with consent. Warrant to serve had been granted and service effected. Only thereafter did it become apparent that consent would not be forthcoming. Amendment to an 'unreasonable behaviour' divorce was then allowed and the amended writ re-served. She was therefore entitled to charge for 'all work up to and including period of notice' under both headings of the table of fees. She pointed out that there is no provision in the Regulations which indicates that fees cannot be claimed under Tables A and B.

The submissions of the Legal Aid Board are in the letter attached.

I am persuaded that the terms of paragraph three of Chapter I indicate that it is envisaged that a charge may be made under either Table A or Table B but not both. I am, however, prepared to allow the higher rate allowed in Table A to reflect the additional work done and will disallow the charge of £163.20 made under Table B.

The fees for 'Post and Incidentals' and 'Process fee' require to be reduced to £45.97 and £42.91 respectively.

I therefore tax the foregoing account at the total sum of Six Hundred Pounds and Three Pence (£600.03).

A handwritten signature in black ink, appearing to be 'DAVID ALTMAN', written in a cursive style.

DAVID ALTMAN
Depute Auditor of Court
20 September 2004.

LEGAL SERVICES DEPARTMENT

44 Drumsheugh Gardens
Edinburgh EH3 7SW

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Legal Post LP2 EDINBURGH 7
Telephone (0131) 226 7061
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The Auditor
Banff Sheriff Court
Banff
BY FAX: 01261 818394

Please ask for extension number: 689

Your ref:

Please quote the department above and
our reference: JDH/AH

8 September 2004

Dear Sir

CI/1018408/01

TAXATION 8 SEPTEMBER 2004 AT 11AM

I refer to my telephone conversation with a member of your staff and enclose, as arranged, written submissions. A copy has been sent, by prior arrangement, to Morag Daley of Walter Gerrard & Co.

Before I deal with the issue which has arisen in this case, can I simply confirm, for the avoidance of doubt, that if the solicitor considers that the fee set out in the Schedule 2 part II does not provide reasonable remuneration a detailed account can be prepared and lodged under Schedule 3. Also, although the Board has abated the paragraph I (unreasonable behaviour) inclusive fee, we could equally have abated the paragraph (two year separation) inclusive fee and allowed the slightly higher rate of £198.60. This is academic, at the moment, because the solicitor is insisting on being paid a part I inclusive fee twice.

This is the first time, as far as the Accounts Area is aware, that a solicitor has sought to charge twice under part I of the inclusive Fee Table.

Schedule 2 of The Civil Legal Aid (Scotland) (Fees) Regulations 1989 is, in my view, unambiguous in its terms. The fees payable under Chapter I of Schedule 2 can only apply to any action in respect of which civil legal aid has been made available. As far as I can see there was only ever one cause or action (and the solicitor would not, I think, depart from this view) and "all work", to quote from part II, has been carried out in the one process. Accordingly only one fee is chargeable. Indeed you will no doubt be aware that a legal aid certificate only ever covers one action or cause.

I disagree with the solicitor's interpretation of the Table of Fees. The fees are designed quite clearly as the sub-paragraphs of each of the Tables A and B indicate to reflect the various stages in the process, sub paragraph one providing for "All work to and including within the period of notice" in an action of divorce or separation and aliment. It is only when "all work" has been carried out that the full fee is chargeable. There is therefore a measure of swings and roundabouts in any case where the solicitor will be paid the same fee regardless of how little or much work is necessary. The Table envisages a block fee in two broad situations no matter how much or how little is done.

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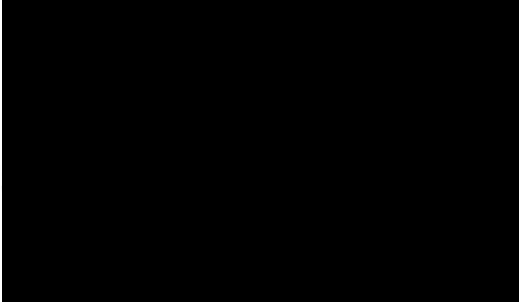
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That the Table of Fees does not recognise charging twice is clear from the terms of paragraph three which states,

"If - ...the pursuers solicitor charges an inclusive fee under either paragraph one or paragraph two of this Part; ...

The fees regulations allow payment to be made to a solicitor or reasonable fees for conducting the proceedings in a proper manner, as between solicitor and client, third party paying. I believe our offer reflects reasonable remuneration for the work undertaken in this case.

The inclusive fee can only be applied once to an action. A legal aid certificate can only relate to an action for which it was granted. No subsequent application was made for legal aid. If there were two actions only one was cover by civil legal aid.



cc. Walter Gerrard & Co
By Fax: 01261 818 584