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Your Ref: EEC/YS

Our Ref: JME-B176/06


Date: 5th January 2009

[REDACTED]
Judicial Taxation

[REDACTED] v- Reporter to the Children's Panel

I refer to the above and now enclose copy of my report. A apologise for delay this was due to myself making further inquiries and also due to the holiday period.

Yours faithfully


Jan McEwan MBE
Auditor of Court



A copy of this letter in larger/alternative text can be supplied on request.
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PERMITTED BY THE SCOTLANDS ACT 1978

Judicial Taxation

In causa



-v-

Reporter to the Children's Panel

Wick 10th December 2008

This account concerns an appeal in terms of Section 51(1) of the Children (Scotland) Act 1995 and the dispute is in respect of the account lodged by Hamilton, Burns, Solicitors, Glasgow to the Scottish Legal Aid Board (SLAB).

The issues in dispute are the claim made to SLAB by Hamilton Burns for fees and outlays dated 16th November 2006 and 14th December 2006 in the account of expenses.

Hamilton Burns requested a taxation by letter dated 1st October 2008 (copy attached) but omitted to lodge the account or appropriate fee. Their office was contacted and the account was subsequently lodged with me on 27th October 2008 (copy attached).

I retrieved the process from the archives to familiarise myself with the papers and also contacted the Authority Reporter and Sheriff Sutherland to make enquiries with regard to the two dates in dispute.

By letter dated 28th October 2008 (copy attached) I assigned 10th December 2008 at 2.15 pm as a diet of taxation drawing to Hamilton Burns attention that having looked at the interlocutors of 16 November and 14 December 2006 (copies attached) it had not been necessary for their firm to attend. It was my intention to bring this to their attention to enable them to focus on my initial thoughts and that I would require evidence to substantiate their attendance on these dates. It is not the normal practice nor in this case was it best practice to send to the other side a copy of the Auditors letter assigning the diet of taxation.

I had sight of submissions lodged by both parties prior to the taxation.

A letter from Hamilton Burns dated 10th December 2008 was faxed to me at 9.30 am on the morning of the taxation (copy enclosed). I left the issue contained in the letter to the taxation later in the day as I believed parties would already be en route and I would have no way of contacting them.

[REDACTED] Solicitor appeared on behalf of the Scottish Legal Aid Board and Mr Kevin Murphy, Solicitor appeared on behalf of Hamilton Burns.

Mr Murphy had two preliminary issues:-

Firstly, that I excuse myself from the taxation;

Secondly that the taxation be limited to the original objection by SLAB (entry of 16th November 2008 11:55 to 17:00 travelling from court to hotel);

Having heard parties thereon; I am of the view that as an Auditor of Court I can professionally disregard all that has gone before and objectively make a decision on what is argued before me at the diet and that it is my understanding that when an account is submitted for taxation the whole account is to be taxed.

Having heard parties with regard to the entry 16th November 2007, when the hearing was discharged, Mr Murphy advised that the hearing was discharged due to the failure of his client to appear and that he had had every intention of running an evidential hearing and further that the original disputed travel time entry should have been an entry for travel and work carried out in the case.

In view of what I heard and what is evidenced in the account. I am prepared to accept that Mr Murphy was prepared to run an evidential hearing and therefore could not have instructed local agents; however there was no evidence produced from his file or in the account lodged to justify 5 hours 05 minutes work/travel time. Accordingly, I propose to deduct 4 hours.

At this stage and before proceeding with the next disputed entry, I advised parties that the local practice here was to enquire, in relation to an evidential hearing, of any type, 2/3 days beforehand as to whether the hearing is proceeding, so that the presiding Sheriff can be made aware of his likely caseload and have

appropriate papers placed before him to allow preparation.

I advised I had done this and I had also recently made enquiry (with regards to 14 December 2006) of the Authority Reporter and the presiding Sheriff, the Authority Reporter advising that in view of the review of the Children's Panel on 12th December 2006 that the Appeal would not now be necessary and not be proceeding;

There being no evidence, in the account or produced from file as to what enquiries Hamilton Burns made to find out what the decision/outcome of the Children's Hearing on 12 December 2006 was, I find it surprising they attended Court in view of the time, distance and expense incurred.

Having heard both parties on the necessity of principal agents appearing to abandon the evidential hearing on 14th December 2006 and account entries dated 27th November 2006 and 18th December 2006, I have to consider Regulation 4 and 7 as between solicitor, client and third party paying. It is my opinion that if proper enquiries had been made by the solicitors on 12th December 2008 it would have negated the attendance of principal agents and said attendance could have been effected more economically by instructing local agents.

Accordingly, I am disallowing all charges detailed in entries for 13th and 14th December 2006.

On the question of expenses of the taxation I consider it fair that this should be born equally.

I have taxed the account at the sum of £1,833.10 which includes £173.00 taxation fee, which should be made payable to Scottish Court Service at this office.

This report is humbly reported by me and issued 5th January 2009



Jan McEwan MBE
Auditor of Court