

SOLICITOR REFERRAL – DIET OF TAXATION

Assisted Persons Name : [REDACTED] EP
ABWOR Reference : C642460911
Solicitors Name : Freelands

Date of Taxation & Location: Auditor Hamilton Sheriff Court 5 June 2013 @ 10:30 am

Type of Case : Civil Legal Aid

1. Nature of the case:

The solicitors applied for and were granted civil legal aid to defend proceedings in relation to a breach of contract which had been initiated under the ordinary cause sheriff court rules

2. Fees allowable to solicitors

Solicitors are entitled to payment in terms of The Civil Legal Aid (Scotland) (Fees) Regulations 1999. As the action was a defended action the solicitor must charge his account on the basis of Schedule 6, Chapter II. The Table of Fees provide for payment of a number of block fees linked to stages undertaken in the court process (unless the solicitor has successfully applied for exceptional case status which he has not in this case).

The blocks are payable on the basis of a number of units each unit being payable at £21.00.

The basis of charging is agreed by both the solicitor and the Board.

Provision is made for taxation in the event of any question or dispute in terms of Regulation 12(1) of the Fees regulations.

12. (1) If any question or dispute arises between the Board and a solicitor or counsel as to the amount of fees or outlays allowable to the solicitor, or as to the amount of fees allowable to counsel, from the Fund under these Regulations, other than regulation 11 above, the matter shall be referred for taxation by the auditor.

3. Nature of dispute:

The solicitors online account is very brief and consists of 3 entries – see below.

22 March 2012 - 6. Conduct & Waiting	£ 21.00
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<i>Nature of hearing and conduct : HEARING ON EXPENSES - EXPENSES AWARDED AGAINST PURSUER</i>	
12 Dec 2011 - 5b. Preparation for debate	£168.00
12 Dec 2011 - 6. Waiting and advocacy (10.00hrs-15:00hrs)	£420.00
<i>Nature of hearing and conduct : DEBATE ON DEFENDER'S PRELIMINARY PLEA - DEFENDER'S PLEA ULTIMATELY UPHeld BY SHERIFF AND PURSUER'S CASE DISMISSED</i>	
Total Fees Claimed	£609.00

The taxation is restricted to the 2nd entry 12 December 2012 "12 Dec 2011 - 6. Waiting and advocacy (10.00hrs-15:00hrs)". The restriction relates solely to the period in which the court has adjourned for lunch. The Board has therefore restricted the fee during this period by 4 units or in monetary terms £84.00.

4. Reasons for the restriction

The fees prescribed under Chapter Schedule 6, Chapter II consist of inclusive fees linked to key stages in the court process. Paragraph 6 prescribes a fee as follows "To waiting for or attending by solicitor at the conduct of any hearing not otherwise prescribed (including any continued hearing and ancillary hearing on expenses or other miscellaneous subsequent hearing) per quarter hour".

The period over lunch has never been chargeable. The exception to this rule is in circumstances where the account is chargeable on a detailed basis and the solicitor can demonstrate that chargeable work has been done over this period.

This is a block fee case and accordingly fees are only payable for conduct and waiting time at court. Lunch periods even where work is being done is not "waiting" at court. Waiting is only payable prior to when the courts calls.

Solicitors Submissions

The solicitors view is simple. He contests the abatement on the following basis "Abatement for lunch is not accepted. No 1 hour break for lunch was taken. In line with what I do every day I worked through lunch on the case papers eating lunch as I did so. My own submissions concluded at 12.25pm and the pursuers submissions commenced before lunch. I spent lunchtime going through the copies of his authorities and considering what my response to his submissions would be".

Boards Submissions

The Boards submissions are equally as brief. We have responded in the following terms "I appreciate what you are saying however the work you have described is subsumed within the preparation fee"

The solicitors responded to this to the effect "that the submissions were not part of the preparation".

Although small sums are involved here this involves a potential change to the Boards practice and policy not to pay for waiting time or even work done during this time unless the work is chargeable having regard to Schedule 6, Chapter II.

There are a few issues here.

1. The preparation fee for debate as prescribed in paragraph 5(b) covers "Preparation for Debate- Fee to cover all work in connection with preparing for any debate, where such debate takes place prior to proof or Proof Before Answer.

The fee by definition covers "all work" in preparation. It is an all encompassing fee and this includes any ancillary work after the debate has commenced. Neither the auditor or the Board has any remit to increase or indeed decrease that fee.

2. Waiting and Conduct as prescribed in paragraph 6 covers "To waiting for or attending by solicitor at the conduct of any hearing not otherwise prescribed (including any continued hearing and ancillary hearing on expenses or other miscellaneous subsequent hearing) per quarter hour".

Waiting is not chargeable over the lunch adjournment period as the solicitor is not "waiting" for court to rise. The court has simply adjourned for lunch. In a block fee case even where the solicitor undertakes work during this period we can only pay for that work where there is a prescribed fee. There is no prescribed fee for additional "preparation" which effectively is what the solicitor had done during lunch – considering authorities and formulation his response. If that is not preparation it is unclear what is.

Waiting and conduct is only payable in terms of Schedule 6, Chapter II, paragraph 19 "The fee under paragraph 6 is payable on the total time engaged per day and is payable cumulatively between waiting and conduct time, rounded up to the nearest 15 minutes. The fee is payable–

- (a) from the time appointed by the court for the hearing; or
- (b) from the conclusion of any other business (including non legal aid cases) ending prior to the hearing,"

whichever is the shorter."

3. The auditor in terms of Schedule 6, Chapter II, paragraph 2 has authority as follows "2. It shall be competent for the Auditor to disallow any fee which he shall judge irregular or unnecessary".

He does not however have the authority to increase a fee or allow a fee which is not otherwise prescribed.

The work that the solicitor has done here is subsumed with the block fees that are payable. If the solicitor considers that those fees do not provide reasonable remuneration (almost certainly do given the work done) then there is provision to apply for exceptional cases status that will allow him to charge on a detailed basis – but not at the rates that he being paid here. For example court time is being paid at £84.00 hour whereas his detailed fees would be £75.16 (12% difference). When compared to non advocacy which is effectively the issue here the difference between the block hourly rate for waiting and details is £84.00 compared to £58.12 per hour (45% difference).

6. Similar Taxations

There has been one taxation on a very similar but not identical argument (as we are comparing blocks with detailed charges) . In a criminal detailed account the auditor disallowed the solicitors waiting time during lunch period.

1. Auditor of Stirling Sheriff Court case of [REDACTED] – 10 November 1999;

7. Appendixes

Appendix 1 – Online civil legal aid account and correspondence

Appendix 2 – Taxation decision Auditor Stirling Sheriff Court.

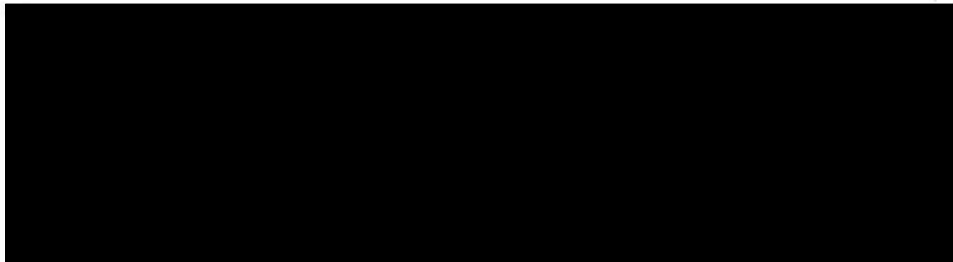
Note online accounts do not look at all professional but if the auditor requires sight of these sadly that is what we will have to produce – assume the agent has lodged this however.

Referred by: [REDACTED]

Date: 21-05-2012

Steven Carrie

From:
Sent:
To:
Cc:
Subject:
Attachments:



This is one of your cases from memory that proceeded to taxation. The diet was yesterday and the Board were successful. There is no written decision the auditor simply gave a verbal decision at the end of the diet.

Regards



The message is ready to be sent with the following file or link attachments:

DIET OF TAXATION - Freelands  5 June 2013

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