

**Stirling Sheriff Court and
Justice of the Peace Court**



[REDACTED]
The Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh
EH3 7SW

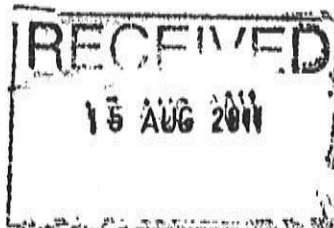
12 August 2011

**Sheriffdom of Tayside Central and Fife
Sheriff Clerk's Office
Viewfield Place
Stirling
FK8 1NH**

DXST15/LP-6 STIRLING

Our Ref: MMCL

PS



Your Ref:

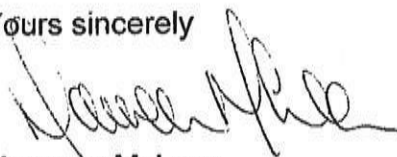
Dear Mr Haggerty

Diet of Taxation : 02 August 2011-08-12

DALLINGS, SOLICITORS - [REDACTED]

I enclose a copy of my decision in respect of the above taxation

Yours sincerely


Maureen McLean
Sheriff Clerk
Direct line 01786 460651
Email contact address : mmclean@scotcourts.gov.uk

Auditors Report

Stirling Diet of Taxation - 02 August 2011 at 2.30 pm

Present: Mr Dalling

SLAB

Account of Expenses incurred by Dalling, Solicitors – in relating to client

Background

appeared from custody on 03 November 2010 on a fresh complaint, she pled guilty to the offence and the court adjourned the diet until 24 November 2010 for reports. On the same date, having been advised that the accused was currently on probation, the presiding Sheriff called for the complaints in which the accused had been placed on probation to be brought to the court. There were three complaints in which the accused had been placed on probation for a period of 12 months from 17 September 2010 (i.e., STI 2009001764 STI 2009001974 & STI 2010001282 commission of the offences being 04th August 2009, 17 December 2009 & 22 August 2010 respectively). The Court found the accused in breach of Probation orders, due to the commission of a further offence.

On 24 November 2010, the Court revoked each of the orders and sentenced the accused for the original offences as follows;

STI 2009001764 – sentence – Admonished & Dismissed

STI 2009001974 – sentence - 3 months imprisonment backdated to 03/11/2010

STI2010001282 – sentence - 3 months imprisonment backdated to 03 /11/2010

In terms of the Advice and Assistance (Scotland) Regulations 1996, Section 8 Mr Dalling gave advice and assistance to Ms Sleeman in pursuance of Part II of the Legal Aid (Scotland) Act 1986 – assistance by way of representation (ABWOR)

The Scottish Legal Aid Board Handbook, Part III, chapter 2 Advice and assistance application procedures sets out at paragraph 2.16 – **Examples of cases where it is not appropriate to make more than one grant of advice and assistance.** At subsection (e) it specifically states “where advice is given in connection with a number of breach proceedings, probation, community service orders, drug treatment and testing orders etc”.

Mr Dalling submitted one account of expenses to the Scottish Legal Aid Board, wherein as part of his claim he sought to claim three advocacy fees of £27.40 for each of the complaints before the court on 03 November 2010 and again three advocacy fees of 27.40 for each of the complaints before the court on 24 November 2010.

TI ISSUE.

The Scottish Legal Aid Board indicated to Mr Dalling that only one advocacy fee of £27.40 was chargeable for each court day and accordingly abated the account to reflect this.

This is the matter in dispute.

Mr Dalling stated that he accepts that only one grant of legal advice and assistance can be registered where multiple breaches are calling on the one day. He further stated that in the circumstances of this particular client, he made multiple charges for advocacy. One for each complaint that was before the court, as in his view each case was considered separately by the presiding Sheriff. In particular on 24 November 2010 the Sheriff heard three separate narratives from the Procurator Fiscal depute three separate pleas in mitigation from the defence solicitor and the Court imposed three distinct sentences.

indicated by way of background that the Legal Aid Regulations changed back in 2004. Prior to that separate applications would have been appropriate, but the current regulations and guidelines state that only a single grant of advice and assistance will be granted in these circumstances. He referred to the Legal Aid (Scotland) Act 1986 Part II Advice and Assistance; Advice and Assistance (Scotland) Regulations 1996; Advice and Assistance application procedures and Schedule 3, Part 1 of the relative table of fees allowable to Solicitors, in support of his argument. He further submitted that this was one calling of the breach of probation proceedings which was disposed of by the Sheriff at the same calling – and referred to the table of fees – schedule 3 at 1(b).

Conclusion


Having considered the arguments put forward, I do not disagree with Mr Dalling when he indicated that on 24 November 2010 each complaint before the court required to be considered separately. The advocacy time recorded in respect of each complaint on 03 November 2010 is one minute per complaint. The advocacy time recorded on 24 November 2010 in respect of each complaint is as follows: STI 2010001282, ten minutes (10.25 -10.35), STI2009001974, ten minutes (10.35 -10.45) and STI 2009001764, five minutes (10.45 – 10.50). Having regard to the wording within Schedule 3 – Table of Fees Allowable to Solicitors, Part 1 Table of Fees Allowable to Solicitors for Assistance By Way of Representation, it states at 1(b) 1

The Fee for – (i) any time up to the first half hour spent by a solicitor appearing in court or conducting another hearing.....£27.40.

(ii) each quarter hour (or part thereof) subsequent to the first half hour spent in court or conducting another hearing£13.70.

The table of fees refers to time spent in court, not time spent on each individual case. The total time spent on the three cases on each of the days falls within the fee allowed at 1(b) 1 (i) of the table of fees. Therefore, I am not persuaded by Mr Dalling's submission that it is appropriate for him to charge multiple charges for advocacy.

Accordingly I agree with [REDACTED] that only one advocacy fee is chargeable for each calling date.

A handwritten signature in black ink, appearing to read 'Maureen McLean', written in a cursive style.

Maureen McLean
Auditor of Court
Stirling
09 August 2011

**Stirling Sheriff Court and
Justice of the Peace Court**



SCOTTISH LEGAL AID BOARD
DX ED 555250
EDINBURGH – 30
[REDACTED]

Sheriff Court House
Viewfield Place
Stirling
FK8 1NH
DX: ST 15 / LP 6

27 September 2011

Our Ref:

Your Ref:

Dear Sirs,

**ADVICE & ASSISTANCE ACCOUNT 1311880810
HEARING ON NOTE OF OBJECTIONS TO AUDITOR'S REPORT**

I enclose herewith for your purposes a copy of Sheriff McGowan's judgement dated 26 September 2011.

Yours faithfully


Sheriff Clerk Deupte

RECEIVED
29 SEP 2011

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT STIRLING

Decision

By

Sheriff Kenneth J. McGowan

in respect of

Note of Objections

in causa

Procurator Fiscal

v

Pauline Sleeman

Stirling 26 September, 2011

Introduction

- [1] This matter concerns disputed abatements proposed by the Scottish Legal Aid Board ("the Board") to an account of expenses submitted to it by Mr Dalling, Solicitor in respect of certain work done by him under a grant of assistance by way of representation ("ABWOR") (reference number AA1311880810) to the Pauline Sleeman ("the offender").

Factual background

- [2] The offender appeared from custody on 3 November. She pled guilty to the offence libelled against her. The case was adjourned until 24 November for reports. On the same day, having been advised that the offender was then currently on probation, the presiding Sheriff called for the complaints in which she had been placed on probation to be brought to the court.
- [3] From these it was established that there were three complaints numbers STI 2009001764, STI 2009001974 and STI 2010001282 relating to offences on 4 August 2009, 17 December 2009 and 22nd August 2010 respectively which had led to the offender being placed on probation for a period of 12 months from 17 September 2010 ("the old cases"). The Court

1


found the accused in breach of the probation orders due to the commission of a further offence.

[4] On 24 November 2010, the Court revoked each of the probation orders and sentenced the accused for the old cases as follows:

- a. STI 2009001764 - admonished and dismissed;
- b. STI 2009001974 - three months imprisonment backdated to 3rd November 2010;
- c. and STI 2010001282 - three months imprisonment backdated to 3rd November 2010 ("the new disposals").

[5] Mr. Dalling submitted an account of expenses ("the account") to the the Board for work done. In the account, Mr. Dalling made a claim for an advocacy fee of £27.40 for each of the old cases (i.e. 3 x £27.40) when they were first considered by the Court on 3rd November; and a further claim for an advocacy fee of £27.40 for each of the old cases (i.e. 3 x £27.40) when they were again dealt with by the Court on 24th November.

[6] The Board having considered the account, advised Mr Dalling that only one advocacy fee was payable for each court day (3rd and 24th November) and the account was abated to that extent.

The statutory provisions

[7] The starting point is Part II of the Legal Aid (Scotland) Act 1986. In particular, Article 6 provides that:

(1) In this Act—

"advice and assistance" means any of the following—

(a) oral or written advice provided to a person by a solicitor (or, [where appropriate], by counsel)—

(i) on the application of Scots law to any particular circumstances which have arisen in relation to the person seeking the advice;

(ii) as to any steps which that person might appropriately take (whether by way of settling any claim, instituting, conducting or defending proceedings, making an agreement or other transaction, making a will or other instrument, obtaining further legal or other advice and assistance, or otherwise) having regard to the application of Scots law to those circumstances;

(b) assistance provided to a person by a solicitor (or, [where appropriate], by counsel) in taking any steps mentioned in

paragraph (a)(ii) above, by taking such steps on his behalf or by assisting him in so taking them; and
"assistance by way of representation" means advice and assistance provided to a person by taking on his behalf any step in instituting, conducting or defending any proceedings—
(a) before a court or tribunal; or
(b) in connection with a statutory inquiry, whether by representing him in those proceedings or by otherwise taking any step on his behalf (as distinct from assisting him in taking such a step on his own behalf)."

[8] The Advice and Assistance (Scotland) Regulations 1996 set out the scheme in more detail. In particular,

a. Regulation 8 provides:

"8.—(1) A solicitor shall give advice and assistance in pursuance of Part II of the Act only if he has satisfied himself that the client is eligible to receive advice and assistance under the provisions of the Act and of these Regulations.

(2) Where a solicitor approves an application for advice and assistance under Part II of the Act, for the purposes of the tables of fees in Schedule 3, the solicitor shall determine—

(a) that the subject matter to which the advice and assistance relates is a civil, criminal or children's matter; and

(b) that the advice and assistance relates to one or more distinct matters,

in accordance with any guidance issued from time to time by the Board."

and

b. Schedule 3 Part 1 sets out the fees payable to a solicitor for ABWOR for criminal matters. Item 1 therein provides that: "the fee for —(a) any time up to the first half hour spent by a solicitor appearing in court or conducting another hearing..." shall be £27.40

Submissions for Objector

[9] Mr. Dalling challenged the Auditor's decision in relation to the advocacy fee permitted in respect of the callings on 3rd and 24th November. The offender had been prosecuted on three separate complaints and been sentenced in relation to those three. A separate advocacy charge was appropriate in relation to each of the old matters separately.



[10] There was a single grant of Advice and Assistance but a split of the advocacy.

[11] The Table of Fees in the 1996 Regulations refers to time spent in court. The rates payable have not been increased for many years and are uneconomic. The fee rates should remunerate solicitors appropriately.

[12] The Board's concern appeared to be that Mr. Darling had been "on his feet" for less than 30 minutes in total but wanted to be paid for 1.5 hours. But the position here was that there were three hearings on each court day - the first three to deal with breaches and second three to deal with the three sentences.

[13] It was artificial to look at the situation in any other way. While the same point arose in relation to both 3rd and 24th November, the argument could be even more strongly made in relation to the latter date.

Submissions for the Board

[14] The Board supported the Auditor's determination.

[15] While the term "Legal Aid" was used broadly, it was important to bear in mind that, in relation to criminal cases, there were two different types. ABWOR was a type of Advice and Assistance. It had stemmed from the 1972 Act and was now regulated by Section 6 of the 1986 Act.

[16] Separately there was Legal Aid proper for summary criminal cases which had stemmed from the 1967 Act. The distinction between the two was maintained in the 1986 Act, the introductory remarks thereto stating that the purpose of the legislation was:

"An Act to establish the Scottish Legal Aid Board and the Scottish Legal Aid Fund; to make new provision in connection with the availability of criminal legal aid in Scotland; to repeal and re-enact with modifications certain enactments relating to legal aid and to advice and assistance in Scotland; and for connected purposes." (Emphasis added)

[17] There were two ways to look at the hearings on 3rd and 24th November. Either Mr. Dalling was entitled to be paid for his appearance in court; or alternatively he was entitled to be paid for each case.

[18] Until quite recently, the position was that if there was a separate grant of Legal Aid proper (i.e. a separate certificate for each) for each of the three cases, Mr. Dalling would be entitled to be paid separately for each appearance. (If he only had a Legal Aid Certificate for two out of the three cases, he would not get paid for third one.)

- [19] That had changed quite recently. There were now, for example, fixed payments for deferred sentences which means that solicitors were only paid *per* appearance.
- [20] The present case fell under the ABWOR regime. Again, the position previously was that each matter could have been made the subject of a separate Advice and Assistance application. Assuming such was granted, if there had been (for example) a guilty plea, a separate claim under the relevant part of the Table of Fees could have been made in respect of each certificate.
- [21] However, the position was changed by the Advice and Assistance (Scotland) (Amended) (No.3) Regulations 2004 (SSI 492) which had inserted a new Regulation 8 into the 1996 Regulations (see above).
- [22] The purpose of that amendment had been to limit solicitors to making only one charge in respect of multiple matters. It also meant that the Guidance issued by the Board had to be complied with.
- [23] It was notable that in the account of expenses presented to the Board that only one charge had been made in respect of work other than advocacy. That was correct when there was only one Advice and Assistance certificate.
- [24] There was an important difference between ABWOR and Legal Aid proper. Although Legal Aid is very much case based, ABWOR is not. This flowed from the definition in Regulation 6.
- [25] The position here was that under the grant of Advice and Assistance (including ABWOR), advice, assistance and representation was being given in respect of a "matter" which consisted of three cases.
- [26] The Board's only objection to the Auditor's reasoning was that the decision should be based not on the terms of the Table only but instead on the lack of separate certificates for each of the old cases. As there is only one certificate, the Table should be applied once only.

Response for Objector

- [27] The definition in Regulation 6 did not help the Board. It refers to particular circumstances. Even having determined that the account was submitted under a single application, there remained a question as to how to apply the Table of Fees.

Discussion

[28] I cannot be influenced by matters such as the alleged uneconomic nature of the fees payable. The sole question is whether the disputed charges for advocacy made are truly payable. That is a matter of interpretation and construction of the relevant legislation.

[29] I do not think that Section 6 of the 1995 Act advances matters one way or the other. It simply tells us what Advice and Assistance and ABWOR are – albeit that it is relevant to note the distinction between Advice and Assistance (including ABWOR) on the one hand and 'full' Legal Aid on the other.

[30] It is clear that Advice and Assistance is available in relation to one or more matters and that compliance with guidance issued by the Board is mandatory: 1996 Regulations, Article 8(2).

[31] The relevant guidance published by the Board provides:

"2.15 Multiple grants of advice and assistance

A client may consult you about several different matters, either at the time of the initial grant or subsequently. Should you deal with all these matters under one grant or should you make further grants? Regulation 8 (2)(b) requires you to decide whether the advice and assistance relates to one or more distinct matters in accordance with our guidance.

In terms of the definition of advice and assistance set out in the Act (see Part III paragraph 1.1), you should generally make one single grant of advice and assistance, if necessary seeking an appropriate increase in authorised expenditure. In paragraph 2.16, we list some examples of cases where it would not be appropriate to make more than one grant.

2.16 Examples of cases where it is not appropriate to make more than one grant of advice and assistance

You should give only a single grant of advice and assistance in any of the following situations...(e) where advice is given in connection with a number of breach proceedings, probation, community service orders, drug treatment and testing orders etc."

[32] The meaning and effect of that Guidance is clear: the norm will be that only one grant of Advice and Assistance will be appropriate, even if a client has multiple 'matters' on which he or she seeks advice, assistance or representation.

[33] The foregoing having been established, the question then is whether the Table of Fees permits the charging of multiple 'advocacy fees'. In my view it does not. First, the Table of Fees does not say anything about how many matters might be being dealt with. The focus is on 'time spent' and the fee is calculated by reference to such. Second, the purpose of Regulation 8 and the Guidance (compliance with which is compulsory) seems to me to be specifically aimed at preventing multiple claims where more than one matter is the subject of Advice and Assistance (c.f. the regime for civil cases – Regulation 8A). If multiple claims were still permitted, Regulation 8 and the Guidance would not need to say what it does.

[34] In my view, the decision reached by the Auditor was the correct one and the Note of Objections is refused.



Sheriff