

SOCIETY OF TRUST AND ESTATE PRACTITIONERS

IRELAND

GENERAL DISCUSSION ON PROBATE AND TRUST

COSTS

MERRION HOTEL

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DECLAN O'NEILL BCL. Dip.Arb,

LEGAL COST ACCOUNTANT

CYRIL O'NEILL

MARSHALSEA COURT

20/23 MERCHANTS QUAY

DUBLIN 8

STATUTORY PROVISIONS

- Section 27 Courts and Court Officers Act 1995.
Sub sections 1 and 2 ~ Taxing Masters' power to examine nature and extent of any work done by Solicitors, Barristers or expert witness, and assess and determine value of such work; may allow fees claimed in whole or in part.
- Order 99 rule 48 RSC 1986: provides that the costs and fees are as set out at appendix W, part 3 of the Rules.
- Appendix W provides for the charging of an instructions fee and the criteria to be taken into account as follows :~
 - (a) *The complexity, importance, difficulty, rarity or urgency of the questions raised;*
 - (b) *The value of the property passing or deemed to pass on the death;*
 - (c) *The amount of duty involved;*
 - (d) *The importance of the matter to the beneficiaries;*
 - (e) *The skill, labour and responsibility involved therein and any specialised knowledge given or applied on the part of the Solicitors;*
 - (f) *The number and importance of any documents perused;*
 - (g) *The place where and the circumstances in which the business or any part thereof is transacted; and*
 - (h) *The time reasonably expended thereon.*
- This instructions fee is only referable to work done up to the extraction of the Grant of Probate or Letters of Administration.
- All further work in reference to administration, winding up and distribution is catered for under the provisions of the Solicitors' Remuneration General Order, 1986. An instructions fee is provided for in that Order also.
- In practice one instructions fee is charged if a detailed Bill of Costs is referred to taxation.

- No provision is made for charging of scale fees or fees based on a percentage of the value of the estate. However, Solicitors are not precluded from charging fees in this manner.
- Percentage fees ranging between 1% and 2% of the gross assets are being charged.
- Taxing Master should not take percentages into account and must assess the costs based on the statutory criteria. Value is one aspect to be considered.
- The other criteria require that the Solicitor's file should reflect all work carried out. Accordingly **ATTENDANCES** are essential.

CHANGE ON THE HORIZON

- Working Group recommendations ~ The Haran Report : main features :~
 - (a) The setting up of a Regulatory Body tasked to set costs guidelines in respect of particular types of proceedings or steps within proceedings.
 - (b) The introduction of simplified and more transparent Bills of Costs.
 - (c) The introduction of a Costs Assessment Office.
 - (d) The introduction of an Appeals Adjudicator.
 - (e) The modification and strengthening of information on costs to be provided to clients, pursuant to s.68 of the Solicitors (Amendment) Act 1994.
- **The Legal Costs Implementation Advisory Group : The Miller Report**
- This provides for establishment of :~
 - A Legal Costs Regulatory Body to be established : three Commissioners and appropriate staff.
 - To draw up appropriate guidelines governing items of legal costs recoverable on a party and party basis.
 - Guidelines to be set, to facilitate prediction of fees.
 - Practice of charging global sums for instructions and brief fees to be abolished and substituted by charges set out on an hourly or daily rate.
 - Solicitors and Barristers to be obliged to use time recording.

- Enhanced s.68 letter required.
 - Legal costs agreement to be entered into with clients.
 - A Legal Costs Assessment Office to be established to take over functions of the existing taxation of costs system.
 - The Assessment Office to be separate and independent of the Legal Costs Regulatory Body.
 - Changes in legislation to be implemented as soon as possible.
 - Rules of Court should require the court to exercise greater discrimination when deciding liability for costs between the parties.
 - The monetary jurisdictions of the District and Circuit Court provided in the Courts and Court Officers Act 2002 to be implemented (except for personal injury cases).
 - The jurisdiction of the Small Claims Court to be increased.
 - Action to be taken to deal with delays in the Courts' process.
 - The current appendix W of Order 99 to be abolished.
 - Fees may be uplifted on basis of complexity etc.
 - An Adjudicator to be appointed whose decisions may be reviewed by the High Court.
- Very little work has been done in regard to these recommendations.
 - However, steps are now being taken and these matters will be addressed in the near future.
 - In the interim the old system of taxation applies.
 - However, the time involvement and the analysis and valuation of professional work based upon time is now to the fore.
 - Recent case law requires not only an analysis of the time element but that the Taxing Master provide a reasoned valuation in each case.
 - A recording of time not sufficient. The file must be correlated with the time records. Attendances are essential in regard to any time element.

- Time records which merely contain entries such as “considering documents” “perusing correspondence” “writing letters” etc., are not sufficient.
- A client must be in a position to gauge the extent of the work, the amount of time referable to each aspect and the appropriateness of the charge.
- The Taxing Master’s recent requirements : evidence as to :~
 - (i) What work was done by the Solicitor?
 - (ii) What level of fee earner was deployed to carry out the work?
 - (iii) Identify if a special skill was required.
 - (iv) Why was the skill necessary?
 - (v) Identify the amount of time reasonably devoted to the work :
 - (a) Was the time reasonably spent?
 - (b) Was it undertaken by the appropriate fee earner?
 - (c) Was the time proportionate to the issues?
 - (d) Could the service whether sub contracted or not, be obtained by a cheaper alternative bearing in mind that costs that are awarded in litigation are costs *de minimus*?
 - (e) Were all categories of time germane to the proceedings?
 - (vi) Identify if any special responsibility was involved and how it arose.
- These requirements derive from observations made by Mr Justice Herbert in *CD v Minister for Health and Children* and Mr Justice Ryan in *Cafolla v Kilkenny & Anor.*

GENERAL DISCUSSION