

STEP IRELAND

Seminar on “Taxation of Costs for Trust and
Estate Practitioners”

Wednesday 13th April 2011

6:30pm Merrion Hotel

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Law Society of Ireland Council

Delegation to Committees

- Complaint and Client Relations Committee - 3 divisions ; Lay majority. Quorum 3
- Regulation of Practice Committee – 2 divisions; Lay members , Quorum 3
- Money Laundering Reporting Committee
- Professional Indemnity Insurance Committee
- Education Committee

Complaint and Client Relations Committee

Deals with

- Allegation of Misconduct – section 3 of the Solicitors (Amendment) Act (SAA) 1960 as amended by Section 24 of the SAA 1994 and Section 7 of the SAA 2002
- Inadequate Legal Services – Section 8 of the SAA 1994
- Excessive Fees – Section 9 of the SAA 1994
- Functions of Complaint and Client Relations Committee – endeavour to seek resolution of complaints but where resolution is not achieved may uphold complaint .

Complaint and Client Relations Committee

- Sanctions Include;-
 - Solicitor not entitled to costs
 - Solicitor must refund or waive some costs
 - Solicitor transfer documents
 - Solicitor rectify error
 - Solicitor mitigate complaint
 - Award compensation up to €3,000
 - Direct compliance with undertaking
 - A formal reprimand

Complaint and Client Relations Committee

- Committee satisfied misconduct but not sufficient seriousness to warrant an application to the Disciplinary Tribunal
- To make a contribution towards Law Society Costs (up to €3,000)

Complaint and Client Relations Committee

- Serious Complaint
 - Solicitor is referred to the Solicitors Disciplinary Tribunal
 - Registrar of solicitors refuse application for Practising Certificate
 - Application to the President of the High Court to suspend current Practising Certificate

Other matters Dealt with

- Attendance before Committee
- Committee has power to deal with multiple complaints (Section 2 SAA 2002)
- Appeal against Committee decision
 - Appeal to High Court within 21 days from date of notification of the Committee's direction or determination

Section 68 Solicitors (Amendment) Act 1994

Background to Act - PI Litigation

- Note there is no scale costs or Law Society Scale costs.
- Section 68 (2) – prohibition on percentage costs applies to contentious business only.
- Section 68 (1)
 - Actual charges
 - Estimate of charges (for actual charges cant be calculated)
 - Basis of charging where actual charges or estimate charges not possible

Goodbody v Colthurst and Another – Peart J. 3 November 2003

- Section 68 Primarily a matter impacting upon solicitors professional obligations.
- However quantum of fees may be materially and adversely affected by the lack of a section 68 letter.
- Section 68 is not a substitute for a Taxing Master.

John F. Condon v The Law Society of Ireland

Unreported

Citation (2010), 1EHC 52

Judge Kearns P

Date February 23rd 2010

- Solicitor Executor and Trustee of RJ Moorhead deceased
- Beneficiaries claimed to be “clients” under the 1994 Act
- Not accepted by applicant
- Committee made a finding as follows;
 - Inadequate professional services
 - Direct within 21 days hand over entire file to another solicitor
 - Levied contribution towards cost

John F. Condon v The Law Society of Ireland

- Practical Issues concerning Condon v The Law Society
 - Beneficiary is a client and can make a complaint to the Law Society
 - Where a solicitor is an executor or acting as an administrator those affected by the solicitors costs, for example, residuary beneficiaries need to be informed of the legal costs
 - What happens if residuary beneficiaries do not agree the costs with the solicitor/executor? – difficulty for solicitor/executor.

John F. Condon v The Law Society of Ireland

- Applicant claimed Complaint and Client Relations Committee had not jurisdiction to review the complaint
- Section 2 of the SAA 1994 “client “includes the personal representative of a client and any person on who’s behalf the person who gave instructions was acting in relation to any matter in which a solicitor or his firm had been instructed; and include the beneficiary to an estate under a will, intestacy or trust.
- Kearns P stated that the Act must be read as a whole.
- The sole purpose of work the applicant was doing was to benefit beneficiaries.
- Kearns P stated “it would be absurd to have a situation whereby the beneficiaries would be entitled to have the applicant removed as executor on application to the Court, but were powerless to advance a complaint to the solicitors professional body” .

John F. Condon v The Law Society of Ireland

- Mr. Condon alleged that the executor was the client i.e. himself which was not accepted by the Court.

Regulation of Practice Committee

- The Law Society Audit issues arising.
- Files do not have a section 68 (initial letter) or estate is not property administered solicitor may be required to appear before the Regulation Practice Committee
- MONEY LAUNDERING REPORTING COMMITTEE
 - Arises as a result of an investigation before the Regulation of Practice Committee or the Complaint and Client Relations Committee. Solicitor not called before Committee or even informed a report has been made.

Regulation of Practice Committee

- Solicitors Disciplinary Tribunal
 - Regulatory Committees generally do not make a finding of misconduct or prima facie case of misconduct (However, note reprimand by the Complaint and Clients Regulations Committee)
 - Threshold is quite low for Committee's to refer
 - Regulatory Committees refer cases to the Disciplinary Tribunal. Firstly to see if (1) there is a prima facie case of misconduct and (2) if there is then a full hearing.

Regulation of Practice Committee

High Court

- President of the High Court has ultimate jurisdiction over regulation of the solicitors. If the Regulation of Practice Committee has an urgent matter, for example, serious fraud, the Committee can make an application to the High Court to have the practice closed, accounts frozen and solicitor suspended.
- If the Solicitors Disciplinary Tribunal make a finding with a penalty of over €15,000 the case goes before the President of the High Court to agree/disagree with the finding.
- The Law Society can appeal a decision of the Solicitors Disciplinary Tribunal directly to the President of the High Court.

Contentious Probate Litigation

- Section 68 (1) applies i.e. Initial letter must be sent.
- Section 68 (2) as is contentious business there is a prohibition of percentage monies recovered. This does not apply to debt or liquidated demand.

Contentious Probate Litigation

- Section 68 - 3 to 9 apply
- COSTS IN ADMINISTRATION OF ESTATES
 - Party and party costs
 - Solicitor and client costs
 - Executor costs / trustee costs

Cases

- O'Connor v Markey and another (2006) 1EHC 219 206 Herbert J. and also at 2007 Irish Reports
- Vella v Morelli (1968) 1IR 11
- Elliott v Stamp (2008) 1ESC 10 Supreme Court
- Key v Key (2010) 1EHWC (408) (CH) 2010 WLR

Cases

- Practical matters concerning costs
 - What happens if the executor is a beneficiary and claims executors costs against the estate?
 - Know your costs at a hearing of action and particularly in mediation cases.
 - Be practical.

Thank you

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