

GREFFE
ROYAL COURT

24 DEC 2002

GUERNSEY STATUTORY INSTRUMENT GUERNSEY

2002 NO. 62

**The Court of Appeal (Civil Division) (Costs and Fees)
(Guernsey) Rules, 2002**

Made

18th December, 2002

Coming into operation

1st January, 2003

THE BAILIFF OF GUERNSEY, in exercise of the powers conferred upon him by sections 18(2) and 44 of the Court of Appeal (Guernsey) Law, 1961^a, hereby orders:-

PART I

COURT FEES & RECOVERABLE COSTS

Application of Rules.

1. The provisions of these Rules apply in relation to appeals to the Court of Appeal constituted under Part I of the Court of Appeal (Guernsey) Law, 1961 ("the Court").

Court fees.

2. (1) On an appeal there shall be payable and (subject to the following provisions of these Rules and to any direction of the Court as to the extent to which costs are to be paid) recoverable, in respect of a proceeding or matter described in column 1 of the Schedule, the fee specified in relation to that proceeding or matter in column 2 of the Schedule (a "Court fee").

^a Ordres en Conseil Vol. XVIII, p. 315.

(2) Column 2 of the Schedule specifies to whom Court fees are payable.

(3) A Court fee is, unless the Court orders payment by another person, payable by the party at whose instance the proceeding or matter was taken, done or carried out.

(4) The Court may, in respect of any proceedings relating to -

(a) the custody, maintenance or education of children; or

(b) access to children;

order that any Court fee shall (subject to such terms and conditions as may be specified in the order) be waived in whole or in part.

Advocates' fees.

3. (1) On an appeal, the maximum Advocates' fees recoverable shall be (subject to the following provisions of these Rules and to any direction of the Court as to the extent to which costs are to be paid) the costs of and incidental to the appeal which have been incurred by the party to whom costs are awarded and which are reasonable in amount and reasonably incurred.

(2) The maximum Advocates' fees recoverable shall (unless the Court orders otherwise) be limited to £167 per hour.

(3) The hourly rate specified in paragraph (2) shall, on the 1st January, 2004, and on the 1st January in each succeeding year, be subject to a percentage increase (rounded to the nearest pound) equivalent to the annual

percentage increase, if any, in the Guernsey Index of Retail Prices most recently published in a Billet d'État immediately prior to that date.

(4) The provisions of this Rule are without prejudice to any powers of the Court to order the payment of costs or security therefor on a full or partial indemnity basis.

(5) Any doubts which a person appointed under Rule 6 to conduct a taxation may have as to whether costs are reasonable in amount or reasonably incurred shall, except in relation to costs awarded on a full or partial indemnity basis, be resolved in favour of the paying party.

(6) In relation to costs awarded on a full or partial indemnity basis, all costs shall be allowed except insofar as they are unreasonable in amount or unreasonably incurred; and any doubts which a person appointed under Rule 6 to conduct a taxation may have as to whether such costs are reasonable in amount or reasonably incurred shall be resolved in favour of the receiving party.

Other fees and expenses.

4. (1) Where the cost of any item, fee or other matter not referred to in the Schedule is recoverable, the amount recoverable is the amount actually and reasonably paid in respect of that item, fee or matter.

(2) The amount recoverable in respect of a fee payable upon the swearing of a declaration is the amount of the fee.

PART II
TAXATION OF COSTS

Request for taxation.

5. (1) Where on an appeal the Court awards costs against any party, that party may, within a period of one month immediately following the date when he or his Advocate receives the opposing party's bill of costs, submit a written request to the Bailiff for the costs to be taxed.

(2) The Bailiff may allow further time for the submission of a request under paragraph (1) upon being satisfied that there are exceptional circumstances making it just to do so.

(3) Taxation under this Part of these Rules is inapplicable in respect of a party's own costs payable to his Advocate.

Appointment of person to conduct taxation.

6. (1) On receipt of a request under Rule 5(1), the Bailiff shall appoint -

- (a) himself;
- (b) any other person or persons whomsoever (hereinafter called "Commissioners"); or
- (c) both himself and one or more Commissioners;

to conduct either the entirety of the taxation or such part thereof as he may specify; and for the avoidance of doubt any of the following may (without prejudice to the generality of the foregoing) be appointed as Commissioner -

- (i) the judge who presided over the proceedings in the Royal Court in respect of which the appeal was instituted (the "presiding judge"); or
- (ii) a judge of the Court of Appeal.

(2) An appointment under paragraph (1) -

- (a) shall, subject to paragraph (3), be final;
- (b) may be made for all purposes of the taxation or for such limited purposes thereof as may be specified by the Bailiff; and
- (c) may be made subject to such terms and conditions as may be so specified.

(3) The Bailiff may at any time, if satisfied that it is just to do so, rescind or amend an appointment under paragraph (1) or make a new such appointment.

Conduct of taxation.

7. (1) The person conducting the taxation shall make such decision in respect of the taxation as he thinks just; and, in making his decision, he may, without limitation, take into account the seniority and experience of the Advocate whose costs are to be taxed.

(2) The person conducting the taxation may, in his absolute discretion, accept oral or written representations from any of the parties to the

appeal or from any of their Advocates.

(3) The party whose costs are to be taxed shall submit his bill of costs and all necessary papers and vouchers to the person conducting the taxation.

Appeal against taxation decision.

8. (1) The decision of the person conducting the taxation, which may confirm, reduce or disallow any of the costs in question, shall be subject to appeal, by any party aggrieved by the decision, as follows -

(a) where the decision is that of the presiding judge himself, the decision shall be deemed to be part of the Royal Court's award as to costs, and appealable as such;

(b) where the decision is that of a judge of the Court of Appeal, the decision shall be subject to appeal to the Court of Appeal;

(c) where the decision is not that of the presiding judge himself or a judge of the Court of Appeal, the decision shall be subject to appeal to the Ordinary Court constituted by the Bailiff sitting alone.

(2) An appeal under paragraph (1)(b) shall be instituted, within a period of one month immediately following the date of the decision, by way of summons served on the other party.

(3) The grounds of the appeal shall be that the decision was wrong in law.

(4) In all other respects the decision of the person conducting the taxation shall be final.

Amount recoverable.

9. The amount recoverable in respect of costs shall not exceed the amount stated in the decision of the person conducting the taxation (as varied, where applicable, on appeal).

Costs of person conducting taxation.

10. (1) The person conducting the taxation -

(a) may make an award as to his own costs, fees and expenses; and

(b) may order any party to give security for costs in such amount, on such terms and in such manner as he thinks just; and an order under this subparagraph for the giving of security for costs may provide that -

(i) the taxation proceedings shall be stayed until the security is given; and

(ii) if the security is not given within such time as may be specified in the order, the taxation proceedings may be dismissed by the person conducting the taxation.

(2) An award under paragraph (1)(a) -

- (a) shall be final;
- (b) shall be recoverable by the person conducting the taxation as a civil debt;
- (c) shall direct by which of the parties, or by which of the parties' Advocates, the award is to be borne; and
- (d) shall not exceed £167 per hour (subject to increase in the manner set out in Rule 3(3) above) unless the Ordinary Court, constituted by the Bailiff sitting alone, upon being satisfied that there are exceptional circumstances making it just to do so, orders otherwise.

(3) An application for an order under paragraph (2)(d) shall be made by the person conducting the taxation and shall be heard inter partes.

(4) An order under paragraph (2)(d) shall be final.

PART III GENERAL PROVISIONS

Interpretation.

11. (1) In these Rules, unless the context requires otherwise -

"Advocates' fees" means Advocates' fees and disbursements;

"appeal" means an appeal under Part II of the Law, and includes all proceedings in the Court, whether in open court or in

chambers, including ex parte proceedings, preliminary or incidental proceedings and other matters; and "**appellant**" shall be construed accordingly;

"**Commissioner**" means a person appointed under Rule 6(1)(b) to conduct a taxation;

"**costs**", in Part II of these Rules, includes -

- (a) recoverable Advocates' fees and other recoverable amounts;
- (b) costs on a full or partial indemnity basis;

"**Court**" means the Court of Appeal constituted under Part I of the Law;

"**Court fees**" means fees payable under Rule 2;

"**items**" means models, plans, photographs, documents and other things, in each case used for the purposes of an appeal;

"**Law**" means the Court of Appeal (Guernsey) Law, 1961;

"**official transcript**" has the same meaning as in Rule 7 of the Court of Appeal (Civil Division) (Guernsey) Rules, 1964^b;

"**presiding judge**" has the meaning given by Rule 6(1)(i);

"record" means the collection of documents required to be lodged with the Registrar under Rule 8(1) of the Court of Appeal (Civil Division) (Guernsey) Rules, 1964;

"recoverable", in relation to Court fees, Advocates' fees and other fees and amounts referred to in these Rules, means recoverable by a party to whom costs are awarded by the Court from the party against whom costs are awarded;

"Registrar" means the Registrar of the Court;

"Sergeant" -

- (a) in relation to the service of a document by Her Majesty's Sergeant, means Her Majesty's Sergeant;
- (b) in relation to the service of a document by the Clerk of the Court of Alderney, means the Clerk of the Court of Alderney;
- (c) in relation to the service of a document by the Prévôt of Sark, means the Prévôt.

(2) The Interpretation (Guernsey) Law, 1948^c shall apply to the interpretation of these Rules.

^b Orders of the Royal Court Vol. I, p. 234.

^c Ordres en Conseil Vol. XIII, p. 355.

(3) Any reference in these Rules to an enactment, statutory instrument or rule of court is, unless the context requires otherwise, a reference thereto as amended, re-enacted (with or without modification), extended or applied.

Repeal.

12. The Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) Rules, 1964^d, the Court of Appeal (Civil Division) (Costs and Fees) (Amendment) (Guernsey) Rules, 1989^e, the Court of Appeal (Civil Division) (Costs and Fees) (Amendment) Rules, 1991^f and the Court of Appeal (Civil Division) (Costs and Fees) (Amendment) (Guernsey) Rules, 1999^g are repealed.

Transitional provisions.

13. These Rules shall have effect in relation to Court fees, Advocates' fees and other recoverable costs incurred (whether before, on or after the date of commencement specified in Rule 14) -

- (a) in respect of any appeal set down, but not finally determined or disposed of, before that date; and
- (b) in respect of any appeal set down on or after that date.

and for the purposes of this Rule an appeal shall be considered to be set down when an application for setting down is made in accordance with Rule 4 of the Court of

^d Orders of the Royal Court Vol. I, p. 228.
^e Guernsey Statutory Instrument 1989 No. 4.
^f Guernsey Statutory Instrument 1991 No. 1.
^g Guernsey Statutory Instrument 1999 No. 26.

Appeal (Civil Division) (Guernsey) Rules, 1964^h.

Citation and commencement.

14. These Rules may be cited as the Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) Rules, 2002 and shall come into force on the 1st January, 2003.

Dated this 18th day of December, 2002.

A handwritten signature in black ink, appearing to read 'de V. G. Carey', written over a horizontal dotted line. The signature is stylized and cursive.

de V. G. Carey
Bailiff of Guernsey

^h Orders of the Royal Court Vol. I, p. 234.

SCHEDULE

Rule 2

1. DESCRIPTION OF PROCEEDING OR MATTER	2. FEES PAYABLE TO COURT, REGISTRAR OR SERGEANT
1. Setting down appeal.	Registrar: £50.00.
2. Appointment of date of hearing of appeal or any application.	Court: £50.00.
3. Hearing of applications to Court (where three judges are sitting).	Court: £250 per hour or part thereof.
4. Hearing of applications to single judge or to presiding judge of court below.	Court: £100 per hour or part thereof.
5. Hearing of appeal.	Court: £250 per hour or part thereof.
6. Drafting order of Court, of judge thereof or of presiding judge of court below upon an application.	Registrar: £30.
7. Drafting order of Court upon an appeal.	Registrar: £30.

8. Personal service of notices or other documents.	Sergeant: £30 for expedited or special service at request of Advocate or in cases where acknowledgement of service required; £18 otherwise.
9. Certificate of service.	Sergeant: £10.00.
10. Preparation of official transcript.	Registrar: £9 per A4 side or part thereof.
11. Copy of whole or any part of official transcript.	Registrar: £1.50 per A4 side or part thereof.
12. Listening to original tape recording of proceedings.	Registrar: £30 per hour or part of an hour during which access to the recording is granted.