

GUERNSEY STATUTORY INSTRUMENT
2012 NO. 66

The Court of Appeal (Civil Division) (Costs and Fees)
(Guernsey) Rules, 2012

Made

14th December, 2012

Coming into operation

1st January, 2013

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 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.

(5) Any Court fee is recoverable as a civil debt.

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 £234 per hour.

(3) The hourly rate specified in paragraph (2) shall, on the 1st January, 2014, 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 for the period ending 30th September in the preceding year.

(4) The provisions of this Rule are without prejudice to any powers of the Court to order the payment of costs or security therefore 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.

(3) For the avoidance of doubt, video conference costs are recoverable.

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).

**PART III
GENERAL PROVISIONS**

Interpretation.

10. (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, determinations of applications on the papers, appeals from taxation decisions 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, transcripts, 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;

"Schedule" means the Schedule to these Rules;

^b

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

"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 Greffier of the Court of Alderney, means the Greffier of the Court of Alderney;
- (c) in relation to the service of a document by the Prévôt of Sark, means the Prévôt.

"video conference costs" means the charges made in respect of the provision of video conferencing facilities by the Royal Court or other provider of facilities whether in the Royal Court building or elsewhere and whether within or outside the Island of Guernsey,

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

(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.

11. The Court of Appeal (Civil Division) (Costs and Fees) (Guernsey)

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

Rules, 2011^d are repealed.

Transitional provisions.

12. 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 13) -

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

and for the purposes of this Rule an appeal shall be considered to have commenced when a notice of appeal or application preliminary to an appeal is delivered to the Registrar.

Citation and commencement.

13. These Rules may be cited as the Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) Rules, 2012 and shall come into force on the 1st January, 2013.

Dated this 14th day of December, 2012.



R.J. Collas
Bailiff of Guernsey

^d Guernsey Statutory Instrument 2011 No.20

SCHEDULE

Rule 2

1. DESCRIPTION OF PROCEEDING OR MATTER	2. FEES PAYABLE TO COURT, REGISTRAR OR SERGEANT
1. Setting down appeal or filing of application for leave to appeal. Including an application for leave to appeal to the Judicial Committee of the Privy Council	Registrar: £270
2. Lodging of Appellant's Case or Respondent's Case.	Registrar: £ 215
3. Appointment of date of hearing of an appeal or of any application for leave to appeal	Court: £215
4. Preparatory reading by a judge and writing of judgment in respect of any proceedings. No fee shall be payable for the first hour of such reading time or the first hour of such writing time.	Court: The Court retains discretion to charge £150 per hour or part thereof (in excess of the first hour).
5. Preparatory arrangements relating to the attendance of judges for the hearing of the appeal or hearing of any application.	Court: In the event that the hearing or application does not take place for whatever reason, the Court retains discretion to charge for actual non recoverable travel and accommodation costs incurred and all incidental and ancillary costs relating thereto.
6. Hearing of applications to Court (where	Court: £800 per hour or part

three judges are sitting), including determination of an application on the papers.	thereof, provided however that a reduced fee of £400 shall be payable if a hearing takes less than 30 minutes in total
7. Hearing of applications to single judge or to presiding judge of court below, including determination of an application on the papers.	Court: £270 per hour or part thereof
8. Hearing of appeal.	Court: £800 per hour or part thereof
9. Drafting order of Court, of judge thereof or of presiding judge of court below upon an application.	Registrar: £55
10. Drafting order of Court upon an appeal to the Judicial Committee of the Privy Council	Registrar: £55
11. Certification of the Record prior to dispatch to the Registrar of the Judicial Committee of the Privy Council.	Registrar: £150
12. Personal service of notices or other documents.	Sergeant: £150 for expedited or special service at request of Advocate or in cases where acknowledgement of service required; £50 otherwise
13. Certificate of service.	Sergeant: £20
14. Preparation of official transcript.	Registrar: £10 per A4 side or part thereof
15. Copy of whole or any part of official transcript.	Registrar: £1.50 per A4 side or part thereof

<p>16. (a) Listening to original magnetically taped recording of proceedings (reel to reel or part thereof).</p> <p>(b) Listening to digital recording of proceedings.</p> <p>(c) Provision of CD recordings of hearings.</p>	<p>Registrar: £45 per hour or part thereof during which access to the recording is granted</p> <p>Registrar: £25 per hour or part thereof.</p> <p>Registrar £60</p>
<p>17. Taxation proceedings:</p> <p>(a). Filing of request for taxation or of request for further time for submission of request for taxation.</p> <p>(b). Determination of request to appoint judge/commissioner or grant further time</p> <p>(c). Filing of Points of Dispute by paying party.</p> <p>(d). Filing of Response by receiving party.</p> <p>(e). Fixing of date for taxation hearing.</p> <p>(f). Preparatory reading by a judge and writing of judgment in respect of any proceedings, provided that no fee shall be payable for the first hour of such reading time or the first hour of such writing time.</p> <p>(g). Taxation hearing.</p>	<p>Registrar: £60</p> <p>Court: £120</p> <p>Registrar: £120</p> <p>Registrar: £120</p> <p>Court: £120</p> <p>Court: £150 per hour or part thereof (in excess of the first hour)</p> <p>Court: £360 per hour or part thereof</p>

