1965. No. 235 **[C]**

LEGAL AID AND ADVICE

Costs of Successful Unassisted Parties

REGULATIONS, DATED 11TH NOVEMBER, 1965, MADE BY THE MINISTRY OF HOME AFFAIRS UNDER SECTIONS 9(1) AND (2) AND 14(1) OF THE LEGAL AID AND ADVICE ACT (NORTHERN IRELAND) 1965 WITH THE CONCURRENCE OF THE LORD CHIEF JUSTICE IN SO FAR AS IS REQUIRED BY SECTION 9(3) OF THE SAID ACT AND WITH THE CONSENT OF THE SUPREME COURT RULES COMMITTEE IN SO FAR AS IS REQUIRED BY SECTION 14(5) OF THE SAID ACT.

The Ministry of Home Affairs, in exercise of the powers conferred by sections 9(1) and (2) and 14(1) of the Legal Aid and Advice Act (Northern Ireland) 1965(a), with the concurrence of the Lord Chief Justice in so far as is required by section 9(3) of the said Act and with the consent of the Supreme Court Rules Committee in so far as is required by section 14(5) of the said Act, and after consultation with the County Court Rules Committee and the Magistrates' Courts Rules Committee in so far as is required by the said section 14(5), hereby makes the following regulations:—

Citation, Interpretation and Commencement

1.—(1) These regulations may be cited as the Legal Aid (Costs of Successful Unassisted Parties) Regulations (Northern Ireland) 1965 and shall come into operation on the 15th day of November, 1965.

(2) In these regulations—

"the Act" means the Legal Aid and Advice Act (Northern Ireland) 1965;

"affidavit of costs and resources" means an affidavit sworn by an applicant in support of his application which includes the matters specified in the Schedule hereto;

"applicant" means a person applying for an order under section 8 of the Act;

"application" means an application for an order under section 8 of the Act;

"authorised summary proceedings" has the same meaning as in the General Regulations;

"clerk of the Crown and peace" means the clerk of the Crown and peace acting for the county court division in which the proceedings were brought;

"court" in relation to proceedings tried or heard at first instance by a registrar or other officer of the Supreme Court includes such registrar or other officer;

"court" in relation to proceedings tried or heard at first instance by a clerk of the Crown and peace or registrar of a county court includes such clerk or registrar;

"registrar" in relation to an application made in respect of proceedings in a county court means the registrar of that county court;

"the General Regulations" means the Legal Aid (General) Regulations (Northern Ireland) 1965(b);

(a) 1965. c. 8 (N.I.). (b) S.R. & O. (N.I.) 1965, No. 217.

"the secretary" means the secretary of the Legal Aid Committee established by a Scheme made by the Society under section 10 of the Act;
"the Society" means the Incorporated Law Society of Northern Ireland;
"taxing master" means the taxing master of the Supreme Court.

GENERAL PROVISIONS

Separate proceedings

2. Any proceedings in respect of which a separate civil aid certificate could properly be issued under the General Regulations to a person receiving legal aid shall be treated as separate proceedings for the purposes of section 8 of the Act.

Applicants in a fiduciary, representative or official capacity

3. Where an unassisted party is concerned in proceedings only in a fiduciary, representative or official capacity, then for the purposes of section 8(3)(*b*) of the Act the court shall not take into account his personal resources, but shall have regard to the value of the property, estate or fund out of which the unassisted party is entitled to be indemnified and may in its discretion also have regard to the resources of the persons, if any, who are beneficially interested in that property, estate or fund.

Time and form of application

4. An application may be made at any time and in any manner in which an application for an order for costs might be made in respect of the same proceedings if neither party were receiving legal aid.

Written representations by the Secretary

5.—(1) In any case where these regulations confer on the secretary a right to appear at any hearing or inquiry in connection with any application, he may, instead of so appearing, submit written representations concerning the application.

(2) Written representations submitted under paragraph (1) shall in so far as they consist of averments of fact be—

(*a*) supported by an affidavit sworn by the secretary; and

(*b*) sent to the proper officer of the court, and copies thereof sent to the applicant, not less than 7 days before the hearing or inquiry to which they relate.

PROCEEDINGS BEFORE A COURT OF SUMMARY JURISDICTION

Applications in respect of proceedings before a Court of Summary Jurisdiction

6.—(1) This regulation shall apply to any application made to a court of summary jurisdiction in respect of proceedings in that court.

(2) On an application being made, the court may in its discretion either—

(*a*) adjourn the hearing of the application; or

(*b*) dismiss or grant the application forthwith.

(3) Where the proceedings are finally decided within the meaning of section 9(4) of the Act and the court grants the application forthwith, unless the secretary appears or is represented at the hearing of the application and agrees to waive the requirement, the court shall direct that the order shall have effect upon the expiration of 10 days after service of notice thereof on

the secretary by the applicant unless within such period the secretary applies to the court to vary or discharge such order.

(4) Where the proceedings are not finally decided and the court grants the application forthwith, unless the secretary appears or is represented at the hearing of the application and agrees to waive the requirement, the court shall direct that a notice be served immediately by the applicant upon the secretary and the secretary may at any time before the order takes effect apply to the court to vary or revoke such order.

(5) If the court adjourns the hearing of the application, the applicant if the court so directs shall swear an affidavit of costs and resources, which he shall produce at the adjourned hearing.

(6) Not less than 10 days before the adjourned hearing, the applicant shall serve notice of the date and time thereof on the secretary, together with a copy of his affidavit of costs and resources.

(7) The applicant need not serve on the secretary any exhibit to or document supporting his affidavit of costs and resources, but the secretary may call on the applicant to produce any such exhibit or document for inspection.

(8) The applicant and the secretary may appear before the court at the adjourned hearing.

COUNTY COURT PROCEEDINGS

Treatment of applications

7.—(1) This regulation and regulations 8 to 10 shall apply to any application made to a county court Judge in respect of any proceedings in a county court or in a court of summary jurisdiction where an appeal is heard by the county court from an order made in authorised summary proceedings.

(2) On an application being made, the court may in its discretion—

(*a*) refer the application to the clerk of the Crown and peace or registrar for hearing and determination; or

(*b*) in special circumstances, refer the application to the clerk of the Crown and peace or registrar for inquiry and report; or

(*c*) adjourn and subsequently determine the application; or

(*d*) dismiss or grant the application forthwith.

(3) Where the proceedings are finally decided within the meaning of section 9(4) of the Act and the court grants the application forthwith, unless the secretary appears or is represented at the hearing of the application and agrees to waive the requirement, the court shall direct that the order shall have effect at the expiration of 10 days after service of notice thereof on the secretary by the applicant unless within such period the secretary applies to the court to vary or discharge such order.

(4) Where the proceedings are not finally decided and the court grants the application forthwith, unless the secretary appears or is represented at the hearing of the application and agrees to waive the requirement, the court shall direct that a notice thereof be served immediately by the applicant upon the secretary and the secretary may at any time before the order takes effect apply to the court to vary or revoke such order.

(5) Where an application is adjourned or referred to the clerk of the Crown and peace or registrar the applicant shall inform the secretary and shall subsequently give him notice of the date fixed for hearing or inquiry into the application or for considering the report of the clerk of the Crown and peace or registrar.

(6) The applicant and the secretary may appear before the court at the hearing of or inquiry into the application.

Appeals from decision of clerk of the Crown and peace

8.—(1) Where an application is referred to the clerk of the Crown and peace or registrar for hearing and determination, if the applicant or the secretary is dissatisfied with the determination of the clerk of the Crown and peace or registrar, he may appeal to the court within 14 days of the date of the determination.

(2) The party appealing shall at the same time give notice to the secretary or the applicant, as the case may be, setting forth the grounds of dissatisfaction.

Procedure for hearing, etc., of applications

9. The court and the clerk of the Crown and peace or registrar may adopt such procedure as may seem meet for hearing and inquiry into an application and may direct that the applicant submit an affidavit of costs and resources and upon determining an application may make an award in respect of the costs occasioned by the application, which shall be measured or taxed, as the court or the clerk of the Crown and peace or registrar may direct.

Powers of clerk of the Crown and peace or registrar

10. The clerk of the Crown and peace or registrar for the purpose of hearing or inquiry into any application referred to him shall have all the powers of the court, including power to receive evidence orally or on affidavit, and to compel the attendance of witnesses and the production of documents, save that he shall not exercise the power of the court to commit for contempt but shall refer any such case to the Judge.

SUPREME COURT PROCEEDINGS

Treatment of applications

11.—(1) This regulation and regulations 12 to 14 shall apply to any application made to a Judge of the High Court, Judge of Assize, Divisional Court or Court of Appeal in respect of proceedings before such Judge or Court or before a Court below.

(2) On an application being made, the court may in its discretion—

(*a*) refer the application to the Taxing Master for hearing and determination; or

(*b*) in special circumstances refer the application to the Taxing Master for inquiry and report; or

(*c*) adjourn and subsequently hear and determine the application; or

(*d*) dismiss or grant the application forthwith.

(3) Where the proceedings are finally decided within the meaning of section 9(4) of the Act and the court grants the application forthwith, unless the secretary appears or is represented at the hearing of the application and agrees to waive the requirement, the court shall direct that the order shall have effect upon the expiration of a period of 10 days after service of notice thereof by the applicant on the secretary unless within such period the secretary applies to the court to vary or discharge such order.

(4) Where the proceedings are not finally decided and the court grants the application forthwith, unless the secretary appears or is represented at the hearing of the application and agrees to waive the requirement, the court shall direct that a notice thereof be served immediately by the applicant on the secretary and the secretary may at any time before the order takes effect apply to the court to vary or revoke such order.

(5) Where an application is adjourned or referred to the Taxing Master, the applicant shall inform the secretary and shall subsequently give him notice of the date fixed for hearing or inquiry into the application or for considering the Taxing Master's report.

(6) The applicant and the secretary may appear before the court at the hearing of or inquiry into the application.

Appeals from decision of Taxing Master

12.—(1) Where an application is referred to the Taxing Master for hearing and determination, if the applicant or the secretary is dissatisfied with a decision of the Taxing Master, he may appeal to the High Court within 14 days of the date of the decision.

(2) The party appealing shall at the same time give notice to the secretary or the applicant, as the case may be, setting forth the grounds of dissatisfaction.

Procedure for hearing, etc., of applications

13. The court and the Taxing Master may adopt such procedure as may seem meet for hearing or inquiry into any application, and may direct that the applicant submit an affidavit of costs and resources, and upon determining an application may make an award in respect of the costs occasioned by the application, which shall be measured or taxed as the court or the Taxing Master may direct.

Powers of Taxing Master

14. The Taxing Master for the purpose of hearing or inquiry into any application referred to him shall have all the powers of the court, including power to receive evidence orally or on affidavit, and to compel the attendance of witnesses and the production of documents, save that he shall not exercise the power of the court to commit for contempt but shall refer any such case to a Judge.

Sealed with the Official Seal of the Ministry of Home Affairs for Northern Ireland this 10th day of November, 1965.

(L.S.)

J. G. Hill,
Assistant Secretary.

I hereby concur in the making of these regulations, in so far as they relate to officers of the Supreme Court, as required by section 9(3) of the Act.

MacDermott,
Lord Chief Justice of
Northern Ireland.

Dated this 11th day of November, 1965.

The Supreme Court Rules Committee has consented to the making of these regulations, in so far as they relate to the procedure of the Supreme Court as required by section 14(5) of the Act.

J. Ritchie,
Secretary,
Supreme Court Rules Committee.

Dated this 11th day of November, 1965.

SCHEDULE

Matters to be included in an Affidavit of Costs and Resources

1. An estimate of the applicant's costs as between party and party of the proceedings in respect of which his application is made, supported by—

(*a*) particulars of the estimated costs in the form of a summary bill of costs; and

(*b*) all necessary documentary evidence to substantiate each item therein.

2. A statement, supported by evidence, of the applicant's financial resources of every kind during the period beginning three years before his application is made, and of his estimated future financial resources and expectations.

3. A declaration that to the best of his knowledge and belief the applicant has not, and at any relevant time has not had and will not have any financial resources or expectations not specified in the statement described in paragraph 2 above.

4. A declaration that the applicant has not at any time deliberately foregone or deprived himself of any financial resources or expectations with a view to furthering his application.

5. A statement supported by evidence of the applicant's reasonable financial commitments during the period covered by his statement described in paragraph 2 above, including, if desired, his estimated solicitor and own client costs of the proceedings in respect of which his application is made.

6. If the applicant has, or at any relevant time has had, a spouse, his statements and declarations described in paragraphs 2 to 5 above shall also take account of and (to the best of his knowledge and belief) specify that spouse's financial resources, expectations and commitments, unless she had a contrary interest to the applicant in the proceedings in respect of which his application is made, or the applicant and his spouse are or at the relevant time were living separate and apart, or for some other reason it would be either inequitable or impracticable for the applicant to comply with the requirement of this paragraph.

7. Full particulars of any application for legal aid made by the applicant in connection with the proceedings in respect of which his application is made, including the date and reference number of any such application and the committee to which it was made.

EXPLANATORY NOTE

(This Note is not part of the regulations, but is intended to indicate their general purport.)

These regulations regulate the procedure to be followed when a successful unassisted opponent of a party receiving legal aid applies under the Legal Aid and Advice Act (Northern Ireland) 1965 for the payment of his costs out of the legal aid fund.

The regulations also define "Separate proceedings" for the purposes of the Act and provide for cases where the unassisted person was concerned in the proceedings in a fiduciary, representative or official capacity.