

NOTE BY THE AUDITOR

in connection with
the taxation of the Pursuer's Solicitors Account
against the Law Society of Scotland Legal Aid Fund.
in causa

MA v, CA

Pursuer.

against

Defender.

Edinburgh 5th August 1976

This account was referred to me for taxation in terms of a Decree appended to the Law Agents Account dated 9th July 1976. The account was to be taxed on the basis of Agent and Client, third party (Fund) paying.

There were objections taken to a number of items contained in the account, the majority of which were accepted by the solicitors, and the only real point which was at issue was the objection taken by the Law Society to the charges made by the solicitor for proceedings, taken by him of the Pursuer and two witnesses and the framing of the line of them, Prior to the lodging of the Legal Aid Application, was informed at the diet of taxation held on 29th July 1976 that no objection to the charges had been taken when the account had been submitted to the Law Society in the usual way of the solicitor. The fact explained that he had been taken by surprise. The objection was taken on 29th August 1976 and that both parties had sought further into the matter. It was agreed that taxation of the account should be held at the diet.

It was also noted that this was a case in which because of the urgency of the matter, the account had already been prepared and the solicitor had been compelled to lodge the account and obtain a decree of the court and then after arrangements for the account had been obtained from the supporting witnesses. It was noted that the proceedings had been prepared for the Legal Aid Application was lodged.

It was maintained on behalf of the Law Society that this was therefore a case in which Legal Aid had been sought after proceedings had been instituted and that therefore all work prior to the date of lodgement of the Legal Aid Application should be disallowed. The scope and general condition under which Legal Aid is granted are set out in the first four sections of the Legal Aid (Scotland) Act 1968. In supplement to the statutory provisions various Practice Notes have been provided. Contained in these Notes is a section headed "No payment without effective Legal Aid Certificate". It is there laid down that subject to certain exceptions "a solicitor can only be paid out of the Fund for work done on behalf of his client during the time when his client held an effective Legal Aid Certificate" but it is specifically stated that he will be paid, notwithstanding that at the time his client did not have an effective certificate for intra litem "Obtaining preconditions to establish a probabilis causa litigandi, provided they are used subsequently in the proceedings". It was not suggested in the present case that the preconditions produced in support of the Legal Aid Application were not subsequently used in the proceedings and the Applicant was granted Legal Aid on the basis that these preconditions must have been accepted as assisting in the establishment of probable cause.

No distinction is drawn in the Practice Note as to cases where the preconditions are obtained before or after the commencement of proceedings and it seems to me that these preconditions are amply covered by the exception mentioned above and accordingly I will allow the charge for the obtaining, framing and extending of these preconditions. I may say that I am reinforced in my view in so far as I understand from the editor of the Court of Session that it is his normal practice to allow such charges in similar cases.

to

JOHN KIDDERWELL & CO., S.S.C., 10 Alver Street,
BOSTON

In Causa

[REDACTED]

PLAINT

against

[REDACTED]

REF: 23A/1/534-74

Drawing Initial writ for custody and
interdict act; presenting same to court
obtaining first order

Attendance with Mrs. Azzopardi obtaining
a precognition for use in connection
with action of custody of children
Aug 1968

Preparing Precognition 3 sheets

Extending same and 1 copy 3 sheets

Attendance with [REDACTED] on his call
obtaining details for Precognition
Aug 1 hr

Preparing Precognition 2 sheets

Extending and 1 copy

Attendance with Mrs. Azzopardi
obtaining details for precognition
Aug 1 hour

Handwritten notes:
11/14/68
1974

Handwritten signature:
[Signature]

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6.0
7.0
8.0
9.0
10.0

19	Attendance on Mrs. Azzopardi on her call including marriage and Birth Certificate advising her regarding payment of alimony etc. Engaged 1 hour	1.00
	Pressing Memorandum for Legal Aid Application	1.00
	Extending same and 2 copies	0.50
	Pressing Application for Legal Aid	1.00
	extending same and 2 copies	0.50
	Lodging and intimating Legal Aid Application <i>did not effect</i>	0.80
20	Writing Messrs. Dove, Lockhart, McKay & Young Agents for Defender regarding Interim Alimony and access etc. - 2 pages	1.60
21	Writing [redacted] reporting and advising at length - 2 pages <i>1/11/75</i>	1.60
22	Writing Dove Lockhart McKay & Young regarding arrangements for access	0.80
	Writing [redacted] reporting and advising they wish persons other than Mr. & Mrs. Wilson to be present when action is taken; advising thereon 2 pages	1.60
24	Attendance at telephone with Messrs. Dove Lockhart McKay & Young discussing (long conversation - 15 minutes)	1.25
27	Writing [redacted] reporting that we have again been approached by her husband's Solicitors regarding access; advising that we consider a further meeting is necessary	0.80
29	Attendance on [redacted] on her call discussing access and noting her instructions. Engaged 1 hour	5.00
30	writing Messrs. Dove Lockhart McKay & Young reporting Mrs. Azzopardi's instructions for access 2 pages	1.60
Feb. 7	Writing Lothian & Borders Legal Aid Committee with new address for Mrs. [redacted]	0.20
12	Writing Dove, Lockhart McKay & Young noting that their client is now unemployed	0.20

Forward

Perusing and considering Legal Aid Certificate

Agency / Lodging same in Sheriff Court

March 4

Presenting motion to recall sist/order defences.

Extending same and two copies

Agency and Lodging

Writing Dove Lockhart, Mackay & Young intimating same

10 Writing Dove, Lockhart Mackay & Young acknowledging

Writing [redacted] reporting that her husband wishes to have the key of the house returned and this will not affect the ultimate tenancy of the house

50

11 Attendance at Sheriff Court moving motion to recall sist order defences

Procuring Interlocutor

80

Booking same

30

26 Attendance with [redacted] on her call noting that there may be a re-conciliation here advising her of her rights in the matter. Engaged 1 hour

April 1

Writing Dove, Lockhart, Mackay & Young acknowledging defences

Perusing and considering same - 5 sheets

15 Writing [redacted] for instructions regarding possible reconciliation

22 Attendance at Court in case calling adjustment roll; defences allowed and case continued until 6th May for adjustment

50

80

Procuring and Booking Interlocutor

May 6

Attendance at Court with Adjustment Roll requesting continuation until 20th May

Procuring and Booking Interlocutor

2-60

Forward

21
22
24
27
29
3
Feb.

... reconciliation has not been successful.

Framing adjustments for pursuer 2 sheets

Extending same and two copies

Borrowing and returning Certified copy Initial writ

Writing adjustments thereon two sheets

Writing Dove, Lockhart, Mackay & Young with copy adjustments and that as far as we are aware they action must proceed

May

8 Attendance with [redacted] on her call noting the up to date position noting in particular that there was a brief reconciliation which was unsuccessful; going over the defenders adjustments and noting replies thereto. Engaged 1 hour

Framing additional precognition 1 sheet

Extending same and 1 copy

Framing fresh adjustments for pursuer 2 pages

Extending same and two copies

Agency borrowing and returning certified copy writ

Writing adjustments thereon 2 sheets

14 Writing Dove, Lockhart, Mackay & Young intimating fresh adjustments and asking that previous adjustments be ignored in view of the change of circumstances

14 Writing Director of Housing, Edinburgh District Council regarding housing and informing her of the fact that she is now living in the family house 2 pages

Writing [redacted] confirming matters that you would now wish to seek increase in the award of aliment

Framing Minute of Amendment for pursuer bringing on new crave 1 sheet

Extending same and 3 copies

Framing motion for amendment and also for aliment

Extending same and 3 copies

Forward

		Writing Dove, Lockhart, Mackay & Young with copy Minute of Judgment and Motion	
	20	Attendance at Court when motion heard but refused; Case continued to 3rd June.	
80		Procuring and Booking Interlocutor	
	21	Fee for Motion for leave to appeal	
		Process Fee	
	27	Attendance at Court when leave to appeal granted	
80		Procuring and Booking Interlocutor	
June	23	Attendance at Court for adjustment Roll when amendment of pursuer's address allowed and cause continued till 17th June.	
80		Procuring and Booking Interlocutor	
80	17	Attendance at Court when Record Closed and a proof allowed on 14th November	3
80		Procuring and Booking Interlocutor	0
		Borrowing and returning process	0
		Extending Closed Record and 2 copies - 14 sheets	7
		Agency certifying same	0
		Lodging same	0
July	3	Writing Dove, Lockhart, Mackay & Young with copy Closed Record	0
		Attendance with [redacted] on her call noting that she now wished to raise an action for separation against her husband; obtaining additional precognition Engaged 1 hour	5
		Framing precognition 1 sheet	1
		Extending same and 1 copy	0
		Attendance with Miss [redacted] daughter of pursuer obtaining details for precognition by her. Engaged 1/2 hour	2
		Framing Precognition 1 sheet	1
		Extending same and 1 copy	0

6.70

Forward.

Extending; same and 3 copies - 4 sheets each

Agency obtaining Sheriff Clerk's Warrant thereon

Paid dues

2.00

Agency serving same

Making up process and lodging for calling

8 Attendance with [redacted] when she signed Legal Aid Papers. Engaged 1/2 hour

Framing Memorandum for Legal Aid

Extending same and 2 copies

Framing Application form for Legal Aid

Extending same and 2 copies

Intimating same to Defender's agents

Writing Secretary Lothian & Borders . Legal Aid Committee with papers; explaining that there is an action in Court and our intention would be to conjoin the actions 2 pages

July 11 Writing [redacted] reporting on up to date position that her motion for Interim Alimant will be heard on 15th July

Fee for Motion for Interim Alimant

Process CFee

80 15 Procuring and Booking interlocutor awarding alimant to pursuer

22 Writing Lothians & Borders Committee noting the matters under consideration that we are agreeable that our clients Certificate should be extended to cover the action of cruelty which will then be conjoined

Writing [redacted] reporting result of motion; informing her that she failed to keep her appointment to see us on 17th July for further instructions

24 Attendance at phone with Sheriff Clerk regarding marriage and Birth Certificate and we shall look into the matter.

Forward

7.10

200 100

Conditions for return of Marriage and Birth Certificates

5	Writing Secretary Loftian & Borders Committee holding the position	0.20
20	Writing Secretary Loftian & Borders Committee acknowledging return of Marriage and Birth Certificates and notifying that Committee have agreed to extend the Legal Aid Certificate, in connection with cruelty	0.80
	Returning Marriage and Birth Certificate to process	0.50
	Writing Messrs. Dove, Lockhart Mackay & Young reporting Legal Aid Position that we are enclosing motion to recall sist and suggesting a shorter period of adjustment so that both actions can be conjoined	0.80
	Pressing Motion to recall the sist	1.00
	Extending same and two copies	0.50
	Lodging same	0.50
	Intimating same to Defender's agents	0.20
Sept 3	Attendance at Court when motion granted; Defences are to be lodged and case continued until 16th September	3.00
8	Procuring and Booking Interlocutor	0.80
8	Borrowing Legal Aid Certificate	0.50
	Writing Secretary Loftian & Borders Committee therewith	0.20
16	Attendance at Court for adjustment roll. Case continued until 14th October	3.00
8	Procuring and Booking Interlocutor	0.80
17	Writing Dove Lockhart Mackay & Young acknowledging defences	0.20
	Perusing and considering same - 3 sheets	1.50
	Writing [redacted] reporting present position and reminding her that the proof will take place on both actions of 14th November thereon a further meeting will be required nearer the time and to telephone to arrange an appointment	0.80
26	Writing [redacted] reminding her that we want to see her and that she should get in touch with us	0.20

2.00 11.10

advertising and advertising verification
Initial writ

Writing adjustments thereon

Writing Messrs. Dove, Lockhart Mackay
& Young some length on the future
procedure in this case 2 pages

Framing Motion to conjoin the separation
and custody actions 1 sheet

Extending same and 3 copies

Lodging and intimating same

14 Attendance at Court when motion granted
and record closed; Proof appointed
for court on 14th November

Procuring and Booking Interlocutor

Borrowing and returning process in both
actions which are now being conjoined

Preparing fresh record on the conjoined
actions - extending same and 2 copies
25 sheets

Agency certifying same

16 Writing Dove Lockhart Mackay & Young
acknowledging

1* Attendance with you on your call giving
us up to date information on present
position to enable us to deal with
defences. Engaged 1 hour

28 Attendance at telephone with Dove
Lockhart Mackay & Young discussing future
procedure and confirming that we will
be letting them have a copy of the
Closed Record conjoining both actions

30 Writing Dove Lockhart Mackay & Young
enclosing copy of Closed Record

Writing Mr. [redacted], Dalkeith
advising that we act for [redacted]
and requesting recognition from her

Writing Mr. [redacted] similarly

60 Writing [redacted] reminding them
that proof will take place on 14th Nov.

Agency citing pursuer and 5 additional
witnesses

11.40

2.00

1.00

Forward

and details copy of the inventory of productions which we are logging

Framing Inventory of Productions

Extending same and 2 copies

Agency logging same

Making 2 copies of production 4 sheets

Preparing for Proof 3 hours

Writing [redacted] explaining information required from him and advising him to telephone

Attendance with [redacted] obtaining precognition; [redacted] also present and discussing case in general. Engaged 1 hour

Framing [redacted] Precognition 1 sheet

Extending same and 1 copy

Writing Secretary Lothian & Borders Legal Aid Committee for permission to obtain an interpreter for the proof in this case as [redacted] is not fluent in English and may have difficulty in following; 54

Telephone calls between 10th and 12th November attempting to trace suitable interpreter. Phone calls to High Commission in London who provided names; all names in London however; Attendance at Central Police Station High Street to attempt to obtain Local Interpreter finally tracing [redacted] who lives in Livingston; Altogether 8 telephone calls and one attendance say 2 hours

12 Writing [redacted], Livingston requesting her attendance as interpreter at Court

Writing Messrs. Dove Lockhart Mackay & Young informing them that we have arranged for Interpreter to be present and giving details of her address etc.

14 Attendance at Proof Engaged 6 hours

18 Writing Secretary returning form SLA 15 duly completed

Paid [redacted] his loss of wages

Agency settling

Writing [redacted] informing her of the fee we would be able to pay her and asking her to let us have a formal note

27

Writing Mrs. Maclean with cheque in
payment of 1.9.75

Paid Mrs. Maclean (1.9.75) 10.00

Written to Miss Foster (Sherwood Leathers)
directed to a statement of their account

Paid their fee 9.72

Paid [redacted] his charges 0.20

Paid [redacted] his fares 0.52

Paid [redacted] and
[redacted] 1.00

1976

6 Writing Dove Leckhart & Co., stating their
client has not paid arrears and also regarding
furniture

27 Attendance with [redacted] on her
call re: her position regarding defendant's
conduct towards her and regarding access and
furniture, advising. 1/2 hr

Mar 5 Writing Dove Leckhart & Co., asking them
finally to warn their client on these points

11-40
6-11
12-59
138
1389

Add 30% increase to fees from 1.9.75

Add Posts & Incidents 12.00

Add Outlays

The Auditor of the Sheriff Court is
respectfully requested to pay the
forfeiture amount to the Sheriff Court
third party fund paying bank.

9 July 1976

39.34	30
	3
	33
	47
	40
	20
	44
	13
	<u>430</u>
	9
	<u>439</u>
	5
	<u>444</u>

Auditor

Agent for

444