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J T Sutherland Esq
Legal Aid Central Committee
PO Box 123
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Your reference DWA/LD(AG

Our reference JSD/AMcG

Date 11 June 1980

RECEIVED
12 JUN 1980

Dear Sir

A167/79 BROWN v BROWN

I enclose a copy of the note on the taxation which I promised your representative who appeared at the diet of taxation on 5 June 1980.

Yours faithfully

JOHN S DOIG
Sheriff Clerk

A167/79 Brown v Brown

DUMBARTON, 11 June 1980

I have taxed the foregoing Account of Expenses at the sum of THREE HUNDRED AND FIFTY POUNDS AND TWENTY TWO PENCE and I have taxed the foregoing Supplementary Account of Expenses at the sum of FORTY ONE POUNDS AND TEN PENCE.

JOHN S. AGG

Auditor of Court

NOTE

The reason for this taxation was that the solicitors concerned and the Legal Aid Central Committee could not agree on abatements which the latter had suggested to the solicitors account. The latter accordingly suggested that the account of expenses be remitted to me for taxation in terms of Rule 4(6) of the Act of Sederunt Legal Aid Rules 1958. The latter also wrote to the solicitors to say th the expense of enrolling a motion to the court to have the account remitted for taxation should be added to the account. Instead the solicitors have elected to lodge a Supplementary Account of Expenses.

The Account of Expenses itself states that it is an account of expenses incurred the Legal Aid Fund to Messrs Brunton Miller Alexander & Martin, Solicitors, Alexandria in relation to the certificates of [redacted] the pursuer in a action for custody and delivery of a child, the solicitors having acted for the said pursuer.

At the diet of taxation on 5 June 1980 three interesting points arose and I indicated that I would prepare this note in relation to these points.

At the diet of taxation Mr Cairns, Solicitor, appeared for his firm and a representative from Edinburgh appeared on behalf of the Legal Aid Central Commit

The first point of interest which arose during the taxation concerned the sums which the solicitor could claim during the period up to the end of March 1980. During that period legal advice and assistance was being given and legal aid had not been applied for. In these circumstances, I decided that the solicitor coul only claim for the period concerned the maximum sum of £25 which is permitted under Section 3(2) of the Legal Advice and Assistance Act 1972. The solicitor might have been able to claim more if he had obtained the prior authority of the local Legal Aid Committee to exceed that figure but he admitted that he had not so. My decision on this matter was challenged at the time by Mr Cairns who put it to me that the Legal Aid Central Committee regularly allowed solicitors more than the permitted £25 maximum if the client subsequently, as happened in this c obtained legal aid.

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The representative from the Legal Aid Central Committee conceded the point but admitted that when probable cause was shown sums in excess of £25 were allowed when legal aid was subsequently granted. Mention was made of the fact that this had even happened in cases where legal aid was not granted until 2 years after the client first consulted a solicitor.

I found this information frankly astonishing and sought some explanation for the Legal Aid Central Committee's attitude to this matter. Their representative mentioned a decision by the Auditor of the Court of Session which regulates the practice of the Central Committee in dealing with claims but he had no details of the decision concerned.

After studying the Legal Aid and Legal Advice and Assistance Acts, regulations and schemes I can find no justification for such a practice, and if it exists, the criticism must be made that it appears to be an abuse of public funds.

The second point which arose during the taxation which I was invited to consider was whether or not the solicitor was entitled to charge fees for drawing various court backings. I decided that he was not entitled to such fees. I have never heard of such a fee being allowed but in any event I consider that the task involved in typing a backing is so short, simple and straightforward that a drawing fee is not justified. The question of the cost of the backing material was raised but I consider this to be irrelevant, the cost of any materials being met by the solicitor for which he receives some recompense in the percentage charge which is allowed for posts and incidental outlays.

The third point which arose which I was asked to consider was whether or not the solicitor was entitled to charge fees for drawing each page of a closed record. It is perhaps relevant at this point to mention that the closed record in this instance included 2 pages of the interlocutors in the case which I would have disallowed in any event as unnecessary. There were 5 other pages, however, and I was asked to consider whether or not they should be disallowed, as the closed record was not original material and fees had already been allowed for the initial writ and for the adjustments. I decided that the closed record was not original material and accordingly decided that drawing fees could not be allowed. I felt some sympathy, however, for the solicitor in determining the fees which should be allowed for the closed record. In theory only copying fees can be allowed and I know that another sheriff court auditor has decided a case on that basis. I feel, however, that some fee should be allowed for the preparation and checking of the closed record over and above copying fees and I have decided to allow Mr Cairns a half an hour time occupied fee.

There is one other point of procedure which I would like to deal with. I see no need for a motion to the court to have an account of this nature taxed where the solicitor and the Legal Aid Central Committee are in dispute. The expense involved is not insignificant and in many instances could be greater than the sum in dispute. There is no requirement in the Act of Sederunt for such a motion.