

THE LAW SOCIETY OF SCOTLAND

LEGAL AID CENTRAL COMMITTEE

MEMORANDUM

From ... [redacted] Civil Taxation Department.

To K. J. Marshall, Esq., Deputy Secretary.

Taxation in the case - [redacted] - 37/26/024694/79

SW

A Legal Aid Certificate was issued for a variation of divorce decree quoad, quantum of aliment on 28/5/79; the expiry date of the Certificate was 13/2/80, the Motion was enrolled 9/4/80 and heard 11/4/80, the account was abated at the expiry date of the Certificate but the agents argued that the charges should be allowed. Their views were that a Joint Minute had previously been lodged in the existing process for the divorce case and when the Auditor ruled that that did not apply in this case, they referred to Section 16(2)(b) that as no writ was required under the new procedure to vary aliment, the requirements of Section 16(2)(b) would be met by lodging the Legal Aid Certificate.

The Auditor upheld our view, and stated that when the new procedure came into operation 29/10/77 the rules in the Court of Session insisted that the Motion also required to give details of the financial matters; in effect the minute to vary aliment was being replaced by the Motion.

To the agents claim that the scheme ought to have been amended to take into account the change in the procedure, the Auditor was of the view that a change in procedure did not necessarily require a change in the rules, scheme or regulations etc. but perhaps a note ought to have been issued in the Law Society Journal, abating the Law Society's policy in these cases. *advising*

A Further/

Cont.

(2)

/A further point of interest is that the Auditor is of the view that a Joint Minute or a Notice of Appearance cannot be construed as representing the applicant's initial interest in the proceedings where it is competent to lodge defences.

There were no expenses in this case and the Auditor expressed the view that it was a failing of Agents not to seek expenses in variation actions. It is stated in the authorities (?) that the expenses in variation actions should not be on the consistorial husband/wife scale but on a party party scale. This implies, obviously, that expenses ought to be sought.

Notwithstanding that expenses are not on the consistorial scale, the action is still considered as a consistorial action and the undefended and thus consistorial block fee precognition still apply.

[redacted]