

WED 23 FEB 83

AW v JW

Taxation on Joint Remit in case of

[REDACTED] - 37/18/026379/81

In this case the Pursuer, [REDACTED], obtained Legal Aid for Divorce/Unreasonable Behaviour/Custody/Aliment/Periodical Allowance/Capital Payment and the Defender [REDACTED] obtained a full Legal Aid Certificate to defend on quantum of Aliment/Periodical Allowance/Capital Payment and Claim for Access. The effecting date of the Defender's Legal Aid Certificate was 25th May 1981 and no Legal Advice & Assistance application was lodged.

The main dispute revolved around the charges incurred prior to the service of the Divorce Summons on the Defender. The work in question relates to negotiations with the otherside and we took the view that this work should be dis-allowed as same was not covered by an effective Legal Aid Certificate.

The Summons was not served until approximately 9 months after the commencement of this work and we submitted that only then did the Defender have something tangible to defend for which Legal Aid cover was sought and granted. If the earlier negotiations had been successful then presumably the Defender would not have found it necessary to apply for Legal Aid and that being the case how would the agent be paid - private paying? The Auditor was asked to bear in mind the claim for a defended Instruction Fee and its possible effect on the numerous detailed charges. The Auditor considered the matter and took the view that it would not be unreasonable to allow a fee of £25.00 for the work prior to service of the Summons, for "Focusing the Issue", which was relevant to the action raised. The balance of the fees prior to service of the Summons amounted to £35.75 and accordingly this figure was abated from the account. The Auditor decided that it would be simpler to abate this figure as a Block rather than abate the individual items. The allowance of some of this earlier work was a factor in his decision to reduce the Instruction Fee from £83.00 to £60.00. Prior to the date Defences were lodged the Auditor had allowed, the earlier work regarding clarifying the initial issue, five different precognitions and work regarding collecting information on their client's financial position for Legal Aid purposes. He therefore took the view that there was not much left in the file which related to the Instruction Fee and accordingly reduced the Block Fee.

Detailed charges were claimed for an attendance at which a statement was taken from the client dealing with adjustment. We submitted that this attendance was covered by the Block Record Fee. The Auditor considered the statement and expressed reservations about its usefulness for adjustment purposes. The representative for the other side wished to convert the detailed charges to a Block Precognition, however, the Auditor would not agree to this. The attendance charge was abated and detailed charges allowed for framing (recording) the information.

The Auditor expressed the view that precognitions relating to adjustment of the pleadings were not a good charge over and above the Record Fee which does not state "except Block Precognitions".

The only other point worthy of note related to a fee for a Defender's Minute of Amendment, inserted after the Incidental Procedure Fee. The Auditor considered the Minute and took the view that the amendment ought to have been carried out as adjustments. However, he did not restrict the fee on account of this matter as he had previously restricted the Record Fee. However, in order to justify the full Minute Fee he stated that the Agents should have got as far as printing an amended Record.

As the Agent had never proceeded as far as entolling to allow the Record to be amended he restricted the fee by one-third.