

AUDITOR OF THE COURT OF SESSION

PARLIAMENT HOUSE, EDINBURGH, EH1 1RQ

RUTLAND EXCHANGE No. 304

- 031 225 2595 Extn ~~306~~ 309

20th July 1989

The Scottish Legal Aid Board,
44 Drumsheugh Gardens,
EDINBURGH.
EH3 7SW

Dear Sirs,

LB

Mrs. [REDACTED] (sp.)
Legal Aid Ref. 37/69/407150/84

The Auditor refers to our recent meeting in the Napier Room when he was fully apprised of the circumstances which have now given rise to the issue between the Board and Messrs. Warner & Co. It is only proper that he should record his appreciation of the mature understanding brought to bear on the matter by the Board's representative.

The Auditor let it be known then that if the Board were to insist on its technical objection to the entries from 15th May 1985 onwards, he would be bound to find that the services afforded to [REDACTED] in her successful resistance to her husband's attempt by Minute to obtain the custody of the children did not fall within the application which she made for delivery of the children and were not properly to be regarded as a cognate natural extension from that application: and that they were not covered by the certificate issued to her. But the Auditor also made it clear that he regarded the actings of the solicitors as in all respects proper and necessary - indeed essential to meet the urgency of the situation with which [REDACTED] had to deal. The objection is accordingly maintainable only, in the Auditor's view, at an entirely artificial level of technicality: if it were to be taken, it would raise a substantial doubt about the Board's real view of the priorities it applies in performing its appointed function.

To assist in the Board's consideration of the matter at an authoritative level, the Account is returned.

Yours faithfully,

Norma Kerr

Acting Principal Clerk

RECEIVED
CIVIL
21 JUL 1989

Enc.

Warner & Co.

SOLICITORS NOTARIES ESTATE AGENTS

John Warner
John Aiken
John D. Macdonald
A. Michael Lewis
Sheila Gilmore
Jan Hill
Alistair J. Macdonald

COURT DEPARTMENT
29 St. Patrick Square
Edinburgh EH8 9EY
Rutland Exchange Box No. ED168
Legal Aid Code No. 11754
Fax No. 031 662 4117
Telephone 031-662 4193

Civil Accounts Department
Scottish Legal Aid Board
Box No. FD250
Rutland Exchange
EDINBURGH

Our ref: AJL/JW

Your ref:

FAO [REDACTED]

27th September 1989

[REDACTED]
0/84
DA/MF

RECEIVED
CIVIL ACCOUNTS
28 SEP 1989

We refer to the above and thank you for your letter of 17th August which appears to have crossed with ours to you of 8th August. In that letter we invited your comments on the Auditor's letter to you of 20th July and we think that the ball is really in your court to decide how to proceed.

While the Auditor was of the view that the work in question fell outwith the scope of the relevant Legal Aid Certificate, he was also very clearly of the view that there was a moral obligation on the Board to meet our fees under the Certificate in question, and we would ask you to give further consideration to this suggestion. We have to say that we consider it would be very harsh, given the Auditor's comments, if our claim were to be disallowed.

Yours faithfully,

[Handwritten signature]

[REDACTED]

PLEASE ATTACH THIS REFERENCE SLIP TO YOUR REPLY
37\69\150\84
DA/MF

C I V I L A C C O U N T S P A Y A B L E

Report on Taxation

Assisted Person: [REDACTED]
Reference Number: 37/69/407150/84
Solicitor: Warner & Co, Edinburgh
Nature of Proceedings: Delivery/Custody
Auditor: Evan Weir, Esq., Court of Session.
Taxation Date: 11th July, 1989
Total Claimed (excl VAT): £1,927.36
Sum Taxed at (excl VAT): N/A
Sum Assessed by the Board (excl VAT): £293.62

+ 14 50 Counsel's fee

A dispute arose in the above case regarding the scope of the Legal Aid Certificate issued to cover proceedings for delivery of children. The solicitor maintained that the Certificate should cover not simply the work relating to the client's motion for delivery, but also work relating to the Minute lodged by the Defender seeking custody of the children. The Civil Accounts Section consulted the Applications Department and both agreed that, technically speaking, the Certificate was functus after delivery was granted and, accordingly, the subsequent work relating to custody was disallowed. The solicitor wished to refer the matter to the Auditor of Court and a "taxation" took place on 11th July, 1989.

The Board was represented by [REDACTED] and [REDACTED] and the solicitor by a Law Accountant, [REDACTED], from Messrs Quinns. Following submissions by both parties, the Auditor let it be known that whilst he was bound to agree with the Board's view he felt that it could only be sustained at an artificial level of technicality. The Auditor put it to the Solicitor's representative that he could not remedy the problem at taxation and would therefore have to rely on the goodwill of the Board. The account was, accordingly, withdrawn and the Board's representative(s) agreed to refer the matter to an authoritative level for consideration. Reference is made to the letter received from the Auditor's office dated 20th July, 1989 and the solicitor's letter dated 27th September, 1989.

The Regulations or Financial Memorandum do not allow the excess on this account to be paid, however, given the insistence of the Auditor that the matter be referred to an authoritative level within the Board, it was felt that the Committee should be made aware of the unusual development in this case.