

AUDITOR OF THE COURT OF SESSION

CIVIL

PARLIAMENT HOUSE, EDINBURGH EH1 1RQ

DOCUMENT EXCHANGE ED. 304

0131 240 6789

Fax 0131 220 0137

NOTE

re

COUNSEL'S FEE

in causa

CITY OF GLASGOW COUNCIL v [REDACTED]

EDINBURGH. 24th December 1998.

The Auditor has been asked to determine the fee payable to Mr. John Doohan, Advocate, for preparation for and attendance at the Appeal Hearing on 10th February 1998.

Having considered the papers submitted to him, and having heard the representations made by [REDACTED] on behalf of Mr. Doohan and the Scottish Legal Aid Board's comments thereon, the Auditor fixes the fee payable to Mr. Doohan for this work at the sum of ONE THOUSAND FIVE HUNDRED POUNDS (£1,500.00).



AUDITOR OF THE COURT OF SESSION

FACULTY SERVICES LIMITED
SEE NOTIFICATION (PROPOSED FEE)



PARLIAMENT HOUSE
EDINBURGH
EH1 1RF
 RUTLAND EXCHANGE No:
 Tel: 0131-226 5071
 Fax: 0131-225 3642

RUTLAND EXCHANGE BOX NO. ED 104
 PER MESSRS. DRUMMOND MILLER, W.S.,
 SOLICITORS,
 31/33 MORAY PLACE,
 EDINBURGH.

EH3 6BZ

DATE OF ISSUE 03 Mar 98
 F.S. REF. D500/MC980052/1
 SOLICITORS NAME MISS FIONA I. MOORE
 SOLICITORS REF. JMD/MHR/SW/G3092
 PRACTITIONERS LEGAL AID CODE 300B00

PLEASE QUOTE FACULTY SERVICES REF. ON ALL CORRESPONDENCE

FIRMS LEGAL AID CODE 0052 1
 CRIMINAL - LEGAL AID
 Civil
 L.A. CERT No. NOT KNOWN
 ISSUE DATE

BASE [REDACTED] - APPEAL
 CLIENT [REDACTED]
 CORRESPONDENT D411 DYKES GLASS & CO.
 ADVOCATE CODE D27 NAME MR JP DOOHAN

VAT REG. No. 553 3606 50

Item Date	Details	Item Amount
26 Jan 98	CONSULTATION, GLASGOW (1.5 HOURS)	350.00
06 Feb 98	CONSULTATION, GLASGOW (1 HOUR)	250.00
04 Feb 98	NOTE BY COUNSEL	100.00
0 Feb 98	-11/2/98: APPEAL HEARING, COURT OF SESSION (SET DOWN FOR 3 DAYS - TO INCLUDE PREPARATION)	3000.00
	*** LEGAL AID ***	3700.00
	TOTAL	4347.50
	TOTAL VAT AT 17.50	847.50
		£ 4347.50

responsibility to recover fees in legally aided cases lies with the Instructing Solicitor. Failure to pay the said fee(s) in the account to The Scottish Legal Aid Board will result in payment being due by the Instructing Solicitor.

date for the above. If date of payment is not the same as the date of issue, please advise. Where the above notification is challenged please refer to both copies. When making payment please return one copy. A receipt will be sent by return.

COURT OF SESSION, SCOTLAND

POINTS OF OBJECTION

by

THE SCOTTISH LEGAL AID BOARD

in respect of fees claimed by

Mr J. P. Doohan, Advocate

in the appeal

CITY OF GLASGOW COUNCIL

Appellants

against



Respondent

1. A dispute has arisen between the Board and counsel as to the amount of fees allowable to counsel, and accordingly the matter has been referred to the Auditor in terms of regulation 12(1) of the Civil Legal Aid (Scotland) (Fees) Regulations 1989.
2. The Board considers that the fee of £3,000 claimed by counsel in respect of the appeal hearing is excessive and unreasonable, and does not represent a reasonable fee as between a solicitor and client third party paying.
3. Counsel accepted instructions in a legally aided case, in which the fees of counsel are regulated by schedule 4 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989. In terms of paragraph 10(b)(i) of the said regulations, the daily rate for a reclaiming motion for junior counsel appearing alone is £256. That fee subsumes preparation. The prescribed fee is only 25.6% of the fee claimed by counsel in the present case. The fee of £3,000 represents a quite excessive and unreasonable uplift on the prescribed fee.
4. The Auditor is invited to consider the reasonableness of the fee claimed by counsel.

£256
PAY^{IN} JUD
PAY AT A/c 3RD PARTY (COUNCIL)
WHY READ ALL DOCS (PT of LAW)
WHY 3 DAYS - WHEN UNKNOWN (H.R.)
£300 REAS
P.W.

In Respect whereof



Solicitor

44 Drumsheugh Gardens

Solicitor for The Scottish Legal Aid Board

SCHEDULE OF INFORMATION

In Causa

██████████ - APPEAL

HISTORY is as follows:-

The Local Authority wanted to take parental rights from the mother and father in respect of their five children. The Sheriff refused to grant the Local Authority Motion.

The Local Authority appealed against the Decision of the Sheriff and appealed to the Inner House of the Court of Session. It was at this stage that Counsel was instructed.

January 1998 -

Discussing case on telephone with ██████████ - 20 minutes.

22 January 1998 -

On receipt of papers from Instructing Agents, reading same - engaged 1 hour.

26 January 1998 -

Consultation - Glasgow - left home at 11.20 am. Glasgow 12.48 pm. Consultation 2 pm to 3.30 pm. Train 4 pm. Edinburgh 4.48 pm. Home 5.45 pm.

For the purposes of the Consultation on 26 January, Counsel has spent the equivalent of one full day in preparing and attending at the Consultation for which a charge of £350 has been made.

Note:

At the Consultation, it became painfully obvious that the important element from the father's point of view was that the Appeal Court **must be told that at no time did the father ever sexually abuse his children**. It was the father who had raised the matter of sexual abuse at the Consultation on 26 January. ██████████ was very difficult to work with. It was only following detailed and lengthy consideration of the six transcripts of evidence undertaken on 2, 3 and 4 February in preparation for the Appeal that Counsel was very clearly of the view that to raise the matter of sexual abuse before the Appeal Court would be detrimental to the Appeal and it was essential for a further Consultation to take place. Counsel spent in excess of 1 hour preparing his Note to Agents of 4 February in regard to matters arising from sexual abuse. In addition, Counsel had also spent 12 hours working very carefully through the six books of transcripts noting various references and particular references to sexual abuse elements.

Following/

Following upon Counsel's submission of his Note, he discussed the matter fully with the Instructing Agents for 15 minutes regarding the necessity of holding a Consultation and on 6 February travelled to Glasgow on the afternoon, leaving at 2.15 pm and returning home for 6.30 pm for a Consultation in Glasgow. The Consultation itself lasted for one hour but, in effect, Counsel required to spend half-a-day in regard to consulting. Counsel made it abundantly clear to the client at Consultation that he was not prepared to address the Court on the aspect of sexual abuse unless the Court of Appeal asked about it when the client's position would be addressed. It was made clear to the client that Counsel would have to withdraw from acting if this was not acceptable. Once again, it is considered that the fee of £250 is eminently reasonable.

PREPARATION FOR APPEAL


As has been previously commented, Counsel had the six books of transcripts and considered these in preparation for the Appeal for 12 hours.

In addition, detailed consideration was given to precognitions from witnesses who gave evidence before the Sheriff. There were 18 precognitions in all. The Record was 46 pages and the Appendix to the Record 174 pages.

In preparation for the Appeal, Counsel undertook exhaustive preparations in looking up Authorities for presentation to the Appeal Court and a conservative estimate of at least one day was undertaken. In addition, Submissions were prepared for presentation.

The Appeal itself was set down three days and in actual fact lasted only one day. Counsel only required to speak for one hour but had prepared for a much longer Submission but by the time of his Submission, the wind was clearly blowing in the parents' favour with their Lordships providing a written Opinion dated 3 March finding in favour of the parents.

Insofar as preparation is concerned, it can quite easily be seen that 2.5 days was spent in this exercise and it is suggested that, in all probability, this amounted to three days in all. Counsel was instructed for the 3-day Appeal Hearing which lasted only one day. He was quite clearly entitled to instructions for the second day of the Appeal, if not the third, and his diary had been clear for these three days for this very important Appeal. I would have thought that £600 per day by way of preparation was not unreasonable and £850 per day for Day 1 and Day 2 of the Appeal would similarly not be excessive. That does not yet take into consideration any fee element for the third day but that can be left aside for the moment. If you were to look at these figures, then Counsel's fee for preparation and attending at the Appeal Hearing would amount to £3,500, whereas only £3,000 has been charged.



FILING FOR APPEAL
INVOLVED ONLY IN APPEAL.
LASTED 1 1/2 DAYS

CLUBS. ADJUSTED SOL'S FEES.

REG 10(1) - SCED 4 - £236 ^{PG.} SUBSOME PREPARATION.

REF. TO CONSULTATIONS INCL REF. TO 'PREPARATION'
ACCEPT 'COMPLEX APPEAL'

P.P. { REF TO AMO 1983 SET 30 @ P392 JUDICIAL CLERKS
GORRIE V CIBA GEIGY (UNID) 26/6/96 C. OSBORNE

NEED FOR SEPARATE PREPARATION.
[INFERENCE IS THAT FEE NORMALLY INCLUDES PREP]

PREP V APPEAL More known

DUNN V BROWN @ P10

EXPENSES 2.0 HOURS.
1.2 PREPARATION

@ £75 PH.

POINTS OF OBJECTION

by
THE SCOTTISH LEGAL AID BOARD

in respect of fees claimed by

Mr J. P. Doohan, Advocate

in the appeal

CITY OF GLASGOW COUNCIL

Appellants

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Respondent

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4. The Auditor is invited to consider the reasonableness of the fee claimed by counsel.

In Respect whereof

Solicitor
44 Drumsheugh Gardens
Solicitor for The Scottish Legal Aid Board

Our Ref: AMQ/VHD
Your Ref: JC/IS/AMCL

3 September 1998

The Scottish Legal Aid Board
DX ED250
EDINBURGH - 1(BX)



ALEX QUINN & PARTNERS
inc. MESSRS TRAYNOR & CO.
LAW ACCOUNTANTS

THE MATRIX
62 NEWHAVEN ROAD
EDINBURGH EH6 5QB
TEL: 0131-555 3552
FAX: 0131-555 3307
FAX: 0131-555 6122
R.E. DX ED50

Dear Sir



CI/7010269/97

I thank you for your letter of 31 August and note what you write. Counsel and I are firmly of the view that the fees charged are imminently reasonable. Accordingly, the matter has today been submitted for Taxation purposes. You will no doubt receive intimation of the Diet in early course.

Yours faithfully



PS

In regard to the second last paragraph of your letter, I would wish to make it clear that Counsel spoke for one hour in the afternoon of the first day. You suggest that Counsel was only in attendance for one hour and that is not the case.



ALSO AT: 1 BON-ACCORD CRESCENT ABERDEEN AB9 6DH TEL: 01224 580386 FAX: 01224 580 858 R.E. DX AB109
81 STIRLING STREET EDINBURGH EH3 6AS TEL: 0131 6755393 FAX: 0131 6756000 P.E. DX 570424
Email: alexquinn@compuserve.com

PARTNERS: ALEX M. QUINN, JAMES S. FLETT, DEIRINA MCGINN, PAULINE D. PIGG & ANNE C. QUINN
ASSOCIATE PARTNERS: TERRAINE G. GIBSON & MARK S. TRAYNOR CONSULTANTS: JAMES S. TRAYNOR & AILEEN M. TRAYNOR

220 4895

249

AMQ/VHD

JC/IS/AMCL

31 August 1998

[REDACTED]
Solicitors
DX ED50
EDINBURGH

Dear Sirs

[REDACTED] - CI/7010269/97

Thank you for your letter of 11 August 1998 which has been passed for my attention.

Consideration has been given to the information provided by counsel as well as agreements reached in similar cases previously. Unfortunately, however, I am still unable to agree the fee £3,000 for the hearing set down for three days is reasonable in the circumstances. I appreciate the detailed information provided but cannot agree that this easily justifies the fee of £3,000.00.

I note that detailed preparation was required and this has been correctly subsumed within the daily rate. I am sure you are aware that the appropriate scale rate is £256.00 for one day in attendance at court. Increasing the fee to £1,000 per day represents a not inconsiderable uplift of almost 300%. An uplift of over and above the scale rate has already been allowable for the attendance's at the consultation. I also note that although set down for 3 days the case settled after the first day, as such I remain unable to increase the Board's current offer for attendance at the appeal.

I note from the Fitchie, taxation which had a similar subject matter albeit in the Sheriff Court that the auditor allowed a fee of £675.00 per day in circumstances where counsel is allowed 90% of counsel's normal private rate. In these circumstances I feel the current offer made by the Board is fair and reasonable in the circumstances. I appreciate the preparation required by counsel and that he subsequently was not required to attend for more than one hour of the 3 days the appeal was set down for. Counsel's proposal to accept a £500.00 abatement is not acceptable and the offer remains at £2,200.00.

I hope this clarifies the position.

Yours faithfully

[REDACTED]

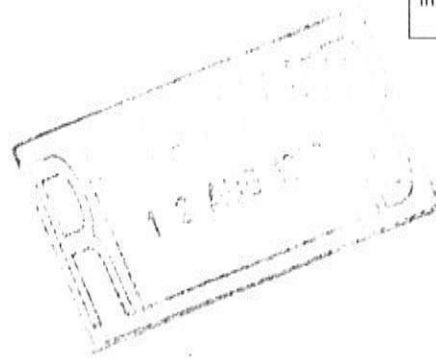
Our Ref: AMQ/VHD
Your Ref: CI701026997 JC/MANDY

11 August 1998

The Scottish Legal Aid Board
DX ED250
EDINBURGH - 1(BX)



THE MATRIX
62 NEWHAVEN ROAD
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TEL: 0131-555 3552
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R.F. DX ED50



Dear Sirs



APPEAL

I refer to our telephone conversation on Friday morning and I did try to telephone you on Monday but I understand you were sunbathing!

I have discussed the matter with Counsel and, as I anticipated, he is not prepared to accept your counter proposal in regard to preparation for and conduct of the Appeal Hearing. He is very firmly of the view that £3,000 is easily justifiable and has instructed me to proceed to Taxation if necessary. He has commented, however, that for the purposes of a quick payment, he is prepared to take an abatement of £500 to that particular fee but that would be as far as he was prepared to go.

I look forward to hearing from you in early course. A phone call would be quite sufficient.

Yours faithfully



Our Ref: AMQ/VHD
Your Ref: CI701026997 JC/MANDY

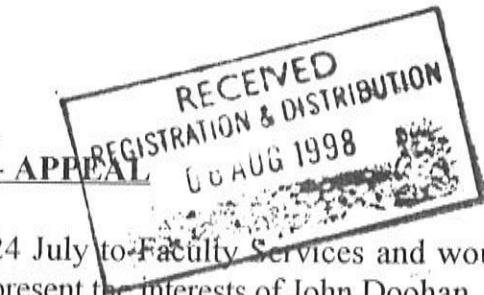
4 August 1998

The Scottish Legal Aid Board
DX ED250
EDINBURGH - 1(BX)



THE MATRIX
62 NEWHAVEN ROAD
EDINBURGH EH6 5QB
TEL: 0131-555 3552
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R.E. DX ED50

Dear Sirs



I refer to your letter of 24 July to Faculty Services and would report that I have now received instructions to represent the interests of John Doohan, Advocate, in regard to the offer which has been made to him which he finds unacceptable and while Taxation might be inevitable, I feel that the enclosed Schedule of Information in regard to the work undertaken by Counsel might assist you further in re-visiting Counsel's charges which, in hindsight, I would respectfully suggest for Consultation purposes are grossly undercharged.

I would be grateful to hear from you in early course with your reaction to the reasonableness of Counsel's charges.

Yours faithfully

Enc



ALSO AT: 4 BON-ACCORD CRESCENT ABERDEEN AB11 6DH TEL: 01224 580 885 FAX: 01224 580 858 R.E. DX AB109
101 STIRLING STREET AIRDRIE ML6 0AS TEL: 01236 755193 FAX: 01236 750002 R.E. DX 570434
Email: alexquinn@compuserve.com

PARTNERS: ALEX M. QUINN, JAMES S. BELL, PETRINA MCGINN, PAULINE D. RIGG & ANNE C. QUINN
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