



By email:

ldoherty@samsonlaw.ky

Ms. Shiona Allenger
Judicial Administration
61 Albert Panton Street
George Town
P.O. Box 495
Grand Cayman KY1-1106
CAYMAN ISLANDS

FAO: The Clerk of Court

Dear Ms. Allenger,

Application for re-taxation by a Judge of invoice no. 8491

Re: Mark Kennedy Bush (LACR409 & 418/2024)

I write to ask that the above referenced invoice be re-taxed by a judge in accordance with section 29 of the *Legal Aid Act, 2015*.

Case Background

This was a case of threats to cause serious harm (LACR418/2024) and assault causing actual bodily harm (LACR409/2024).

The Crown withdrew the charge of assault on 9 January 2025 and the threats to cause serious harm proceeded to trial in the Grand Court on the 28 January 2025.

The Defendant was on remand at the time of trial and having been found Guilty on 4 February 2025, remains on remand pending his sentence on 2 May 2025.

Legal Aid Background

The defendant was initially granted legal aid on matter LACR 409/2024 on 27 September 2024. The matter was “capped” at \$3,500.

On 15 October 2024 legal aid was granted on matter LACR 418/2024. The matter was “capped” at \$1,600.00 and was to be billed jointly with matter LACR409/2024.

On 19 November 2024 an extension of \$5000.00 was sought. At that stage, the trial was anticipated to last 3 days.

On 2 December 2024 the extension was granted bringing the total cap to \$10,100.00.

A total of three invoices were submitted in this matter:-

1. Invoice 8065, covering work done in the period of 24 September 2024 to 31 October 2024, totalling \$3,400.00 - PAID
2. Invoice 8290, covering work done in the period of 6 November 2024 to 3 December 2024, totally \$1,080,00 - PAID
3. Invoice 8491, covering work done in the period of 13 December 2024 to 4 February 2025, totally \$8360.00.

Invoice 8491 is the subject of this appeal given that the taxed amount was calculated at \$5,620.00 - \$2740.00 less than was invoiced. The Legal Aid Department's sole reason for the deduction being "*Cap balance. No request for further extension submitted.*"

On 18 February 2025 we wrote to Legal Aid regarding the taxation decision. We wrote:

"Unfortunately, I appear to have gone over the cap by \$2,740.

*On the basis that the matter has not yet concluded, I would hereby respectfully ask that consideration be given to providing a retrospective increase of **\$2,740.***

You will note from the activities log that the cap was exceeded during the last days of a trial, that was anticipated to last 3 days and lasted 5 days. In addition to this input was sought on directions and route to verdict that required consideration and drafting. This again was not anticipated when the last extension on 19 November 2024 was sought.

In addition to the retrospective increase of \$2,740, I would also kindly request an extension of \$1,750 to attend to sentence. This would include the following activities:-

- *Review SIR and VIR (2 hours)*
- *Draft sentencing submissions (2-3 hours)*
- *Prepare for sentencing hearing (1-2)*
- *Conference with client (1-2 hours)*
- *Attend sentencing hearing (2 hours)*

*This would bring the total cap to **\$14,590.**"*

Whilst fully appreciating that it is our fault for failing to notice that the work carried out in this case had exceeded the stated cap, as outlined in the email above, the cap was exceeded mid-trial, at a crucial time of the trial when a no case to answer submissions was being made and closing submissions, route to verdict and directions being drafted in short order.

On 24 March the request for a retroactive extension was refused on the basis “ *the amount of \$2,740.00 is not permissible as the bill of costs has already been taxed and any application for an extension over the budget such have been made before submitting the bill of costs.* ”

Approach to Re-Taxation

In accordance with section 29(7) of the Act, the Judge’s task in re-taxing an invoice is to be done ‘*without regard to the decision of the Clerk of Court*’ or Taxing Officer. Therefore, the assigned Judge is simply invited to apply the rules above to the invoice submitted and reach an independent conclusion.

As per Section 29(6), we are to specify ‘*those items of the bill about which the applicant is dissatisfied.*’ In this particular case, however, the Taxing Officer has not struck out any particular line item on the bill of costs. This forms part of our request for re-taxation, as it does not seem to have been conducted in the usual or expected manner. They have simply disallowed a sum of \$2,740.00 on the basis it exceeded the amount capped.

It is respectfully submitted, that all of the work claimed for on invoice 8491 was done in accordance with section 23(1) of the Act, that is to say it was:

- (a) *Authorised by the certificate;*
- (b) *Reasonably necessary;*
- (c) *Competently executed; and*
- (d) *Done in compliance with our duties under the Act and the regulations.*

When the above criteria has been met, it is respectfully submitted, *‘an assigned attorney-at-law in a standard legal aid case is entitled to remuneration at the rate of one hundred and sixty dollars per hour for work done on the instructions of an assisted person.’*¹

There is no added provision, either within the Act or the Regulations, permitting the Director to impose any further limitations on remuneration. Once the work is authorised, deemed necessary and competently executed, the assigned attorney is *‘entitled’* to be remunerated for it.

Submissions

In assessing this matter, the assigned Judge will look at the amount claimed and decide whether we were authorised (the original certificate granted was for *“preparation for and attendance at trial and/or sentence”*); the work was reasonably necessary; the work was competently done; and that we have complied with our obligations under the law.

The Judge is not asked to apply a “cap” which for reasonable and necessary reasons was exceeded mid-trial. The law, including the regulations, creates a comprehensive regime for the claiming for and taxation of attorney’s bills in both types of cases. Had it been the intention of the legislature to grant to the Director the power to impose legally binding caps in standard legal aid cases (regardless of the circumstances in which such a cap was exceeded) there would have been an opportunity to express such an intention in the legislation.

¹ Section 23 (1)

Conclusion

It is accepted that where a cap has been set, it is best practice for the attorney to notify the Legal Aid Department, in advance, if the cap requires to be increased. That best practice is one we always endeavor to adhere to and in the overwhelmingly number of case, do adhere to. However, cases do not always unfold as planned. The evidence, drafting of submissions, legal arguments, presentation of the case can grow unexpectedly and at times such work is required in a short turnaround. If the cap is exceeded in those circumstances, yet all other conditions and requirements of the legislation met, it is submitted that a retrospective increase should be permitted.

It is on this basis that we seek a re-taxation of this invoice, and we would be grateful if this matter could be listed before a Judge for determination at your earliest convenience.

Yours sincerely,

Lene Doherty

Samson Law

LEGAL AID RULES 1997

Criminal Legal Aid Certificate

Name Mark Kennedy Bush

Address 188 Watercourse Road, WB (currently in custody)

Attorney Ms. Lene Doherty, c/o Samson Law & Assocs., Attorneys-at-Law

Offences / Request C#1571/2024 Email from counsel dated 18th February 2025 and the 6th March 2025, requesting an extension in the legal aid cap and a retrospective grant.

Conditions Legal Aid Extension: Granted Further to reviewing the terms of the original legal aid certificate dated 24th September 2025, the extension granted 2nd December 2024 and bill of costs taxed on 17th February 2025, the further extension on fees is limited to \$1,800.00 only to complete sentencing. For the avoidance of any doubt, the request for a retroactive extension in the amount of \$2,740.00 is not permissible as the bill of costs has already been taxed and any application for an extension over the budget such have been made before submitting the bill of costs. Our position on any potential appeal or re-taxation is that the court lacks the jurisdiction to interfere with the budget established particularly post-taxation. Re-taxation can only occur within the confines of the budget stipulated on the certificate.

Effective Date 19th March 2025

I hereby certify that the above mentioned person is entitled to obtain legal advice and representation in respect of the scheduled offences specified above.

PP [Signature] Director of Legal Aid

[Signature] Date March 24, 2025

NB: Applicants are hereby advised of their rights under section 37 of the Legal Aid Law to apply to the Director for reconsideration of this decision and such application shall be within 20 working days after the date of this notice.

SAMSON LAW
ASSOCIATES

Legal Aid Invoice - Lene Doherty

Invoice number 8491

Date: 06/02/2025

Due On: 08/03/2025



Mark Kennedy Bush

03315-MarkBush

LACR409/2024 CH1677/2024 ABH LACR418/2024 CH1571/2024
Threatening to cause serious harm Cap of \$3500 + \$1,600.00 (\$5,100)
Increased by \$5000 Total \$10,100

Date	Description	Time	Rate	Total
13/12/2024	Written application and submissions to court to vary bail conditions	0.50	\$160.00	\$80.00
17/12/2024	Attend Client: Consultation to go through evidence in preparation for trial and take proof. Also take instructions on bail variation	1.50	\$160.00	\$240.00
17/12/2024	Start drafting proof of evidence	1.00	\$160.00	\$160.00
07/01/2025	review and edits of Crown's redaction to interview under caution	0.75	\$160.00	\$120.00
08/01/2025	Drafting agreed facts on evidence capable of agreement	1.50	\$160.00	\$240.00
09/01/2025	Prepare for court: Preparation for case management hearing. conference with Crown re required witnesses, scheduling and going through evidence to identify why outstanding issues	1.00	\$160.00	\$160.00
09/01/2025	Attend Court: CMH Hearing - discuss witness requirements, length of trial and order of evidence. Agreeing evidence. Addressing bail. Conference with client before and after court	1.00	\$160.00	\$160.00
15/01/2025	Attend Client: Tel conference to take instructions on breach, details of circumstances which led to breach and information from which the renewed bail application can be made.	0.50	\$160.00	\$80.00
15/01/2025	Prepare for court: Prepare for breach of bail hearing and renewed bail application	0.50	\$160.00	\$80.00
15/01/2025	Attend Court: Breach of bail/bail application hearing	0.50	\$160.00	\$80.00
16/01/2025	review of prosecution trial bundle	1.50	\$160.00	\$240.00
20/01/2025	Legal research, review of authorities, court compendium and archbold on voice identification and legal requirements for voice ID	2.00	\$160.00	\$320.00
20/01/2025	Drafting submissions for exclusion of voice ID/no case to answer submissions	2.00	\$160.00	\$320.00
20/01/2025	Trial preparation: Review of statements, identifying challenges in witness testimony and revising agreed facts	2.00	\$160.00	\$320.00
23/01/2025	Attend Court - Crown formally withdraws charge	0.50	\$160.00	\$80.00
23/01/2025	Attend Court: Grand Court final case management to address trial management issues and jury selection matters and to confirm trial readiness.	0.50	\$160.00	\$80.00

28/01/2025	Attend Court: Trial: Jury selection.	1.50	\$160.00	\$240.00
29/01/2025	Attend Court: Trial day 1 - half day legal arguments, disclosure application, submissions on amendment to indictment	4.00	\$160.00	\$640.00
29/01/2025	Perusal of additional crown disclosure (statements, notebooks, custody records) and review of amended indictment	2.00	\$160.00	\$320.00
29/01/2025	trial preparation - preparation of cross examination of additional crown witnesses and preparing examination in chief of defendant	3.00	\$160.00	\$480.00
30/01/2025	Drafting no case to answer submissions	2.50	\$160.00	\$400.00
30/01/2025	Trial day 2 - Crown case, no case submissions, defendant evidence	6.00	\$160.00	\$960.00
30/01/2025	Drafting closing submissions	4.00	\$160.00	\$640.00
31/01/2025	Attend Client: Conference to go over closing speech and confirm instructions	0.50	\$160.00	\$80.00
31/01/2025	Day 3 trial - closing and summing up	2.00	\$160.00	\$320.00
31/01/2025	Review and drafting of route to verdict	1.50	\$160.00	\$240.00
03/02/2025	Day 4 of trial - summing up and directions (half day)	4.00	\$160.00	\$640.00
03/02/2025	Review and edit of additional legal direction on lawful excuse	1.50	\$160.00	\$240.00
04/02/2025	Attend for day 5 of trial - further directions on reasonable excuse and verdict. fixing date of sentence and consulting with client to discuss verdict	2.50	\$160.00	\$400.00

Subtotal \$8,360.00

Total \$8,360.00

Costs taxed and allowed at \$ 5620.00

Dated this 17 day of FEB 2025

Detailed Statement of Account

[Signature]
Taxing Officer

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
8491	08/03/2025	\$8,360.00	\$0.00	\$8,360.00
Outstanding Balance				\$8,360.00
Total Amount Outstanding				\$8,360.00

This Bill of Costs is filled by Samson Law Associates. Samson Law Associates is a body corporate recognised under the Legal Practitioners (Incorporated Practice) Regulations, 2006 (as revised) and is regulated as a company in the Cayman Islands as Samson Law Ltd.

Please make all amounts payable to: Samson Law Ltd or pay Online at Butterfield Bank. Account number 1361644200026

Please pay within 30 days

Samson Law Associates

SAMSON LAW ASSOCIATES

TAXING OFFICER AMOUNT ALLOWED AND SIGNATURE



LEGAL AID - TAXATION CERTIFICATE

Legal Aid Client: Mark K. Bush
Legal Aid Number: LACR 409 & 418/2024
File Number: 1571 & 1677/2024
Attorney(s): **Lene Doherty**
c/o Samson Law, Attorneys-at-Law
Invoice Date/Number: 6th February 2025 / # 8491

I certify that the above-noted invoice was taxed and approved on 17 February 2025 in the amount of **CI\$** 5620.00.

A handwritten signature in blue ink, appearing to be 'Derek Jones'.

Derek Jones
Taxing Officer for the Clerk of the Court
17 February 2025