

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	2003-GS-40-6670
	)	
The State of South Carolina	)	
	)	
v.	)	
	)	ORDER
<u>Bejay Harley</u>	)	

This matter comes before the Court upon the objections raised by the South Carolina Commission on Indigent Defense (hereafter SCCID) in correspondence to the Court dated December 15, 2011 (Attachment A), May 25, 2012 (Attachment B) and as argued in the December 28, 2011 hearing (Transcript -Attachment C) (Tr. 8, ll. 6-16) before Judge Newman regarding attorney fees and expense issues in this matter. The attachments, transcript and court exhibits of the December 28, 2011 hearing are hereby made a part of the record and this Order as they specifically pertain to the facts that are in dispute. The Court has determined that additional hearings are not necessary and it has received proposed orders from both parties.

SCCID specifically objected to this Court's Order of December 5, 2011 (Attachment D) awarding attorney's fees in the amount of \$18,431.00, and the Order for Expenses issued by this Court for \$1,138.37 (Attachment E). SCCID filed these objections with the Court as provided for under the September 29, 2006 Order of Chief Justice Toal which established procedures for the processing of indigent payment vouchers.

Attorney Tara Shurling and SCCID first appeared before Judge Newman on May 23, 2011 for a hearing regarding attorney fee, expert and expense requests of Ms. Shurling in this matter. Ms. Shurling made certain requests for expenses, experts, and attorney's fees. At the hearing Judge Newman made some very specific rulings concerning the requests made by Ms.

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Shurling. Judge Newman denied her request for fees billed at the rate of \$100 in-court and \$80 out of court setting the rate at \$70 per hour. Judge Newman denied her request for a second attorney from her office and her requests for mileage within Richland County incurred handling matters in this case. He also denied her requests for 3 medical experts, instead authorizing fewer experts. (Tr. 11, l. 24 – p. 12, l. 7) On the issue of attorney fees, it was the position of SCCID that Judge Newman specifically ordered in the May hearing that Attorney Shurling could only bill up to \$10,000 without further approval of the Court. Judge Newman confirmed in the December 28, 2011 hearing this \$10,000 cap. (Tr. 34, ll. 20-22)

This resulting Order from the May 23, 2011 hearing with Judge Newman was signed by him December 1, 2011. (Attachment F). After receiving Judge Newman's Order and this Court's Order of December 5, 2011, SCCID filed a written objection on December 15, 2011 with this Court and Judge Newman. SCCID argued the Order of Judge Newman did not reflect Judge Newman's express ruling from the May 23, 2011 hearing. SCCID specifically objected that paragraph 4 of the Order was not the Court's ruling and that it was inconsistent with paragraph 3 of the Order which accurately reflected the Court's ruling. SCCID personnel also noted in their written objection, and as the transcript reflects, that SCCID had not received a copy of the proposed order from the May hearing before it was submitted to the Court several months later. (Tr. 5, ll. 17-19)

SCCID requested a hearing with Judge Newman to clarify the discrepancy from the ruling of the May 23, 2011 hearing and the December 1, 2011 Order as written. Judge Newman granted this request and the parties appeared before the Court on December 28, 2011. Judge Newman ruled at the December 28, 2011 hearing that the Order that was presented to him by

Attorney Shurling was not consistent with the ruling of the Court at the May 23, 2011 hearing.

Judge Newman specifically found:

[L]eaving the hearing, I issued an oral order placing a \$10,000 cap on the payment of fees without further approval of the Court. Now, fast forward to December when an order was submitted to me, I did not review notes from the May hearing. I looked at the order and assumed that the order was consistent with what was stated by the Court, but I see now upon it being pointed out by SCCID and the order itself that paragraphs three and four are inconsistent and inconsistent with what the Court ordered, and it's also inconsistent with any other order that I've signed the entire year because if an order is made by the Court without further approval, then that's the end of the order without any language allowing for a separate request to be made in excess of the order with the presiding judge as is reflected in paragraph four of this order. So I did not catch that language, and that was brought to my - timely brought to my attention by the department. So I am going to amend the order and delete paragraph four from this order. That would cause this order to be consistent with the proposed order that was submitted to me by Ms. Shurling as far as the amount being up to \$10,000 without further approval of the Court, provided the presiding judge finds the time records to be adequate to support the time and expenditures claimed. Then whatever disarray that may cause as to Judge Manning's order, then let that be. It will be addressed by Judge Manning. Mr. Shurling indicates that she would have appealed the order. I invite an appeal of this. (Tr. 34, l. 20 - p. 35, l. 23)

Judge Newman later continued:

And I appreciate the compliment about me being very careful in reviewing matters but I don't think I was careful enough in reviewing this, perhaps because it was submitted so much later, and I assumed that everything was consistent with specifically what was ordered. And I certainly understand Ms. Shurling was seeking to add the clarifications in order to pave the way for Judge Manning to sign the one that he did days later or -but it's inconsistent with what I ordered from the bench. So, therefore, I'm going to modify the order deleting paragraph four, and we'll see where it goes from there. (Tr. 36, l. 24 - p. 37, l. 7)

When this Court signed the December 5, 2011 Order of Attorney Shurling approving attorney fees in the amount of \$18,431.00, it was not aware of the prior circumstances as disclosed in the hearing of December 28, 2011. This Court signed the December 5, 2011 Order with the understanding that in accordance with paragraph 4 of Judge Newman's order that counsel could submit to the presiding judge a request for payment in excess of the fee cap set by his order. However after it was clarified and presented to this Court, this Court finds that Judge Newman had specifically ruled, consistent with paragraph three of his Order that:

*Attorney Shurling may bill SCCID for fees up to \$10,000 without further approval of the Court provided the presiding judge finds her time records to be adequate to support the time expenditures claimed (emphasis added)*

Judge Newman during the December 28, 2011 hearing further explained the procedure. Ms. Shurling could have followed, but did not, in seeking further approval to exceed the \$10,000 cap:

The Court: I sign orders on a weekly basis, daily basis here, and when the public defenders get the order, if they say, "Well, Judge, we need more money," they'll come back and say it. I approved an order, I believe, in the case I had last week approving \$10,000 for travel for expert witnesses. \$10,000.

Ms. Shurling: Then, Your Honor---

The Court: And the public defenders came back and said, "Well, Your Honor, we have these other character witnesses who we must have, and they're coming from far and near. We must have them. So please give us more approval." And I yielded, gave them more approval, under the reasonable professional assistance language that you quoted. So it's not at all unusual that once an order is approved setting a cap of a certain amount without further approval, further approval is often sought, but I have found in so many instances when I set a lower cap, somehow or another the expert's fees get - they get lower and other things tend to happen. (Tr. 39, ll. 1-19)

This Court is not aware of Attorney Shurling requesting a hearing or filing a request to have the cap set by Judge Newman increased prior to submitting the proposed order to me for \$18,431 in attorney fees. This Court cannot issue an order that changes or overrules the ruling of Judge Newman from the May 23, 2011 hearing. If this Court could just automatically exceed the cap set by Judge Newman then the hearing of May 23, 2011 was a useless exercise. Judge Newman in the December 2011 hearing stated:

I can't vacate Judge Manning's order nor can he issue an order that doesn't follow my order. So he can look at that. (Tr. 47, ll. 6-8)

Therefore from the record of this matter it is clear to this Court that Judge Newman does not think this Court's order of December 5, 2011 complies with his Order.

In order to comply with the prior ruling of Judge Newman this Court's Order of December 5, 2011 (Attachment D) is vacated and the total attorney fees awarded to Attorney Shurling shall be \$10,000. This amount was the cap set by Judge Newman. This Court also finds based on the record of this case and data submitted at the December 2011 hearing that \$10,000 is a reasonable fee for this type of case. State's Exhibit 7 (Attachment G) made a part of the record at the December 28, 2011 hearing shows the average fees for the murder/manslaughter category of cases is actually less than \$10,000. This case concluded with the Defendant entering a Alford<sup>1</sup> plea. Judge Newman in setting the \$10,000 cap seemed to take into account Attorney Shurling's prior representation of the defendant when he considered what might be a reasonable fee cap. As Judge Newman stated:

The Court: Well, I certainly recall the May 23<sup>rd</sup> hearing because I refused to sign some requested orders which led up to Ms. Shurling

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<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970)

request for a hearing, and we went into the hearing and it was discussed during the course of the hearing that Ms. Shurling had previously represented Mr. Harley on the P.C.R. matter. Is that right?

Ms. Shurling: Yes, sir, your Honor.

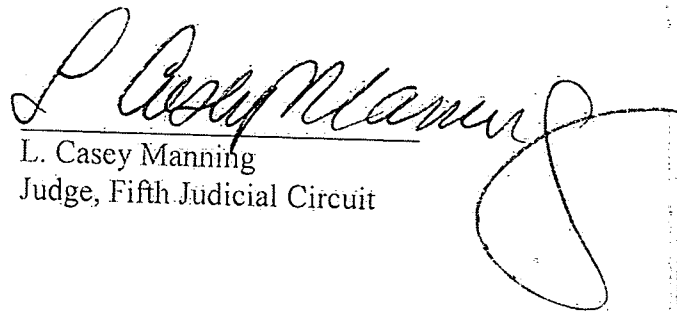
The Court: And, you know, there are—fees issues abound and the question was posed as to, well, if you represented him for two years or three years or whatever number of years on the P.C.R., then how much—how much new or why is—why are we starting it as if you—as if he's a stranger to you as a client? And all of that was addressed in court during the course of that hearing. But leaving the hearing, I issued an oral order placing a \$10,000 cap on the payment of fees without further approval of the Court. (Tr. 34, ll. 7 - 22)

SCCID also objected to the Order of this Court awarding Ms. Shurling expenses in the amount of \$1,138.37 (Tr. 8, l. 20 - l. 6, p. 10). Judge Newman issued an Order filed May 25, 2011 (Attachment H) authorizing certain expenses in this matter. However, in the order Judge Newman struck through what appeared to be the original requests of Ms. Shurling and in his handwriting wrote in specific amounts of expenses authorized by category. He authorized \$500 for lay witness fees and mileage reimbursement as well as expenses related to subpoena service. He further authorized an additional category of expenses not to exceed \$750. The Order further stated that total expenses shall not exceed \$1,250 without prior authorization from the Court. Judge Newman then specifically struck through language stating that counsel could exceed the limits for either category of expense. Ms. Shurling argues that because language remained in the Order that counsel was authorized to seek approval of any balance not covered by this order upon completion of the case (Tr. 45, ll. 12-21) that this Court had the authority to exceed the expense caps set by Judge Newman.

However, this Court finds this one sentence cannot be read in isolation. The Order of Judge Newman, when viewed in its entirety, set specific expense caps and specifically stated that

\$750 was the cap for general expenses. This Court cannot issue an Order that does not follow the Order of Judge Newman.

IT IS THEREFORE ORDERED that Attorney Shurling is authorized to receive \$10,000 in attorney's fees and a total of \$750 for expenses.

  
L. Casey Manning  
Judge, Fifth Judicial Circuit

March 15, 2013