

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Ex Parte: Tara Dawn Shurling, Attorney, Appellant,

In Re:  
State of South Carolina, Respondent,

v.

Bejay Harley, Defendant

Appellate Case No. 2013-001298

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Appeal from Richland County  
L. Casey Manning, Circuit Court Judge  
Court of General Sessions  
Trial Court Case No.: 2003-GS-40-6670

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JAN 24 2014

**SC Court of Appeals**

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REPLY TO RESPONDENT'S MOTION TO DISMISS

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The Appellant in the above captioned action would respectfully Reply to the Respondent's Motion to Dismiss as follows.

A. Rule 208(b)(4), SCACR: References to the Record:

When Counsel originally filed her appeal in this matter she believed that SCCID had already ordered a transcript from the hearing on Counsel's original funding requests held on May 23, 2011 before Judge Newman. Counsel ordered and obtained a transcript from the second hearing held before Judge Newman on December 28, 2011. Counsel subsequently determined that she had not been provided a copy of the May 23, 2011 transcript as she had mistakenly believed.<sup>1</sup> That record was ordered by Counsel on December 9, 2013 and has not yet been delivered by the Court Reporter. There are only two references to that record in Counsel's Initial Brief and they reference rulings made by

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<sup>1</sup> Counsel mistakenly believed a transcript from that proceeding had been provided as an attachment to a previous pleading filed with the lower court in this matter.

Judge Newman which are not contested by SCCID. *See*, Initial Brief of Appellant, pg. 5. The second reference to the May 23<sup>rd</sup> hearing is followed by a cite to ROA, Motions for Attorney Fees and Motions for Expenses. It should have read, ROA \_\_\_\_\_, Motions for Attorney Fees and Motions for Expenses and ROA \_\_\_\_\_, Transcript May 23, 2011 hearing. Counsel apologizes for this oversight. Counsel would assert that the rulings referenced by Counsel in this portion of her brief are well familiar to the Respondent. Counsel regrets that she is unable to give the precise page references to these rulings, and will supply same to the Respondent immediately upon her receipt of the transcript from the Court Reporter.

There are four references to the transcript of the December 28<sup>th</sup> hearing in the Initial Brief of Appellant. Respondent correctly notes that Counsel neglected to give specific page cites for those references. Those references are listed below with appropriate page and line references.

1. Initial Brief of Appellant, pg. 6, last sentence of paragraph one: ROA \_\_\_\_\_, Transcript of December 28, 2011 hearing, Cover.
2. Initial Brief of Appellant, pg. 7, first sentence of paragraph one: ROA \_\_\_\_\_, Transcript of December 28, 2011 hearing, pg. 35, l. 24- pg. 36, l. 7.
3. Initial Brief of Appellant, pg. 7, last sentence of paragraph one: ROA \_\_\_\_\_, Transcript of December 28, 2011 hearing, pg. 35, l. 23, pg. 36, ll. 8-13, pg. and pg. 41, ll. 8-13.
4. Initial Brief of Appellant, pg. 7, paragraph two: ROA \_\_\_\_\_, Transcript of December 28, 2011 hearing, pg. 51, l. 25- pg. 52, l. 6.

Respondent asserts that items 4-13 and 20 from the Appellant's Designation of the Matter are not "part of the record." Appellant would respectfully disagree. Following the December 28, 2011 hearing Judge Manning declined to hold a hearing in this matter. Judge Newman never issued an amended order, and this matter drug on for seventeen (17) months before it concluded in the circuit court. The documents listed by Appellant are all documents that were either submitted to the tribunal during this protracted billing dispute or originated with either Judge Manning, Judge Newman, or Respondent. Respondent was copied on each of these documents as they were

generated. Counsel has included these materials in her designation because they are necessary to a full and fair review of the process Appellant has had to go through in trying to get paid fairly in this court-appointed case. Appellant has included all documentation relevant to this appeal in her designation regardless of whether it was favorable to her position or not. Ironically, one document listed by Appellant, and objected to by Respondent, is a letter to Appellant from Judge Newman's law clerk dated February 12, 2013.<sup>2</sup> This letter cited to in the Initial Brief of Appellant on page 9, paragraph one, is referenced by Respondent in its motion and is cited as appearing at "Appendix pg. 71" on page 6 of the Respondent's Motion to Dismiss. Appellant submits that this Honorable Court needs to review all the communications that have transpired in this matter in order to accomplish the appellate review necessary in this case.

Respondent also objects to Appellant's request to incorporate the arguments and authorities articulated in her various submissions to Judge Manning and Judge Newman during this protracted dispute. Appellant made this request in order to minimize the length of her brief and to hopefully insure that this Honorable Court considered all the important questions involved in this case. Appellant submits that it is certainly within this Court's discretion to grant or deny that request. Appellant is comfortable with the fact that the Initial Brief of Appellant clearly sets forth the major questions raised by this appeal.

B. Rule 208(b)(1)(c), SCACR: Statement of the case:

To avoid precisely this problem, it is Appellant's custom to include in any Brief of Appellant a Statement of the Case which is essentially a procedural history of the matter. Counsel generally drafts a brief with a separate Statement of Facts which includes any material which is even arguably contested. For some reason, perhaps because the history of this case is so tortured, Counsel did not follow that practice in this appeal. Appellant apologizes for that oversight, and would propose that she be allowed to submit an Amended Initial Brief which contains a "cut and dried" procedural history of the case as the Statement of the Case, and that the portion of her brief currently captioned Statement

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<sup>2</sup> Item 12, Appellant's Designation of the Matter.

of the Case be re-titled Statement of Facts. Alternatively, Appellant would simply concede that the Statement of the Case as filed inadvertently included disputed matter and acknowledge that the Respondent in no way concedes the accuracy of its content.

C. Rule 208(b)(1)(d) SCACR: Argument:

While Appellant listed seven separate questions presented on appeal in the Initial Brief of Appellant, all seven questions are so essentially intertwined that it proved difficult, if not impossible, to separate their treatment into distinct arguments without being hopelessly redundant and confusing. For that reason, Appellant presented the important questions raised by this appeal in one argument which hopefully logically addressed the issues posed by this appeal in a manner that was clear and as short as possible. Upon reflection, perhaps that was not the best decision in terms of technical compliance with the Appellate Court Rules, but the choice was made in hopes of clarity and brevity. If this Honorable Court feels the important questions addressed in the Brief of Appellant are confusing in the format in which they are presented, Appellant humbly apologizes, and asks that she be granted leave to submit an Amended Brief breaking the argument portion of the brief into a number of separate arguments.

D. Rule 208(b)(1), SCACR:

As previously stated, Appellant only seeks a full and fair appellate review of the issues which developed during this lengthy fee dispute. That being said, Appellant concedes her request to incorporate all the arguments previously presented in this matter is outside the norm and will understand completely if this Court limits its review to the arguments and authorities presented in the Initial Brief of Appellant.

E. Rule 208(b)(1)(E), SCACR: Conclusion:

While admittedly longer than a typical conclusion, Appellant submits that the Conclusion contained in the Initial Brief of Appellant nevertheless clearly states the relief

sought by the Appellant. To the extent that the Conclusion, as submitted, includes argument and/or is less than clear, Appellant apologizes and requests leave to Amend her Initial Brief to re-caption the portion of her brief currently titled *Conclusion* as *Summation* and to include a new conclusion page more simply stating the relief sought. Said Conclusion would simply state:

Based upon the foregoing argument and authorities, Appellant asks that the Order of Judge Manning dated March 15, 2013, withdrawing his original orders approving Counsel's fees and expenses be vacated and that SCCID be directed to pay Appellant in accordance with Judge Manning's original orders.

The December 5, 2011 order authorizing payment of fees and the original order signed by Judge Manning approving Appellant's expenses were marked as State's Exhibits 2 and 5, during the December 28, 2011, hearing before Judge Newman. The record of that proceeding was designated at Item 3 of Appellant's Designation of the Matter. Appellant did not separately list these orders in her Designation, and would now ask to amend her Designation to separately list those orders as items 26 and 27 in her Designation of the Matter.

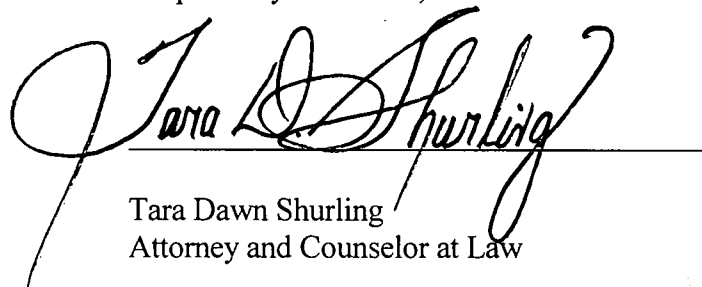
Appellant is a veteran appellate lawyer who has handled hundreds, if not thousands, of appeals before this Honorable Court and the Supreme Court. She would ask that this Court forgive her if her frustration with this billing dispute has caused her to represent herself in a manner that fails to reflect the high standards she always works hard to adhere to. That being said, she would urge this Court not grant the harsh relief requested by Respondent's motion. This case presents an opportunity for appellate review of issues that are important, not just to Appellant, but to the indigent defense system in this state and the lawyers who serve indigent clients in court-appointed cases.

#### CONCLUSION

For all the reasons addressed herein, Appellant asks that Respondent's Motion to Dismiss be denied. She requests leave to submit an Amended Initial Brief of Appellant if this Court deems an amendment necessary to the full and fair review of this case. Appellant would ask that any Amended Brief directed by the Court be scheduled for submission after Counsel's receipt of the transcript from the May 23, 2011 hearing from

the Court Reporter, and that Respondent's Brief be scheduled for filing after their receipt of that Amended Brief. In the event this Honorable Court denies the Respondent's Motion and finds an Amended Brief of Appellant is not necessary, Appellant would ask that she be allowed to amend her Designation of the Matter to include Judge Manning's order dated December 5, 2011 approving her fees in this case as well as his original undated order approving Counsel's expenses, and that Respondent's Brief be scheduled from the date of this Court's order.

Respectfully submitted,



Tara Dawn Shurling  
Attorney and Counselor at Law

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Columbia, SC 29204  
(803) 738-8622  
SC Bar No. 5099

ATTORNEY FOR APPELLANT.

This 21<sup>st</sup> day of January, 2014.

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Ex Parte: Tara Dawn Shurling, Attorney, Appellant,

In Re:

State of South Carolina, Respondent,

v.

Bejay Harley, Defendant

Appellate Case No. 2013-001298

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Appeal from Richland County  
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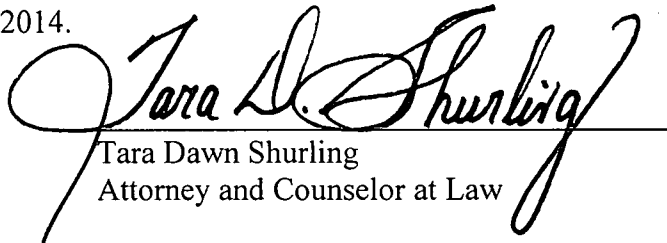
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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a copy of the Appellant's Reply to Motion to Dismiss in the above-entitled case have been served upon opposing counsel, J. Hugh Ryan, III, Deputy Director and General Counsel, SCCID, by depositing in the U.S. Mail, postage prepaid, this the 21<sup>st</sup> day of January, 2014.

  
Tara Dawn Shurling  
Attorney and Counselor at Law

SWORN TO BEFORE me this 21<sup>st</sup> day  
of January, 2014.

  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: 2/28/24

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JAN 24 2014  
SC Court of Appeals

LAW OFFICE OF



**TARA DAWN SHURLING, PA**

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January 21, 2014

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: Ex Parte: Tara Dawn Shurling, Attorney, Appellant.  
In Re: State of South Carolina v. Bejay Harley  
Appellate Case No. 2013-001298

Dear Ms. Kitchings:

Enclosed please find for filing the original and one (1) copy of the Reply to Motion to Dismiss in the above captioned matter. This Reply was due yesterday however, since Monday was a State holiday I am filing it today. I would appreciate your clocking and returning the extra copy in the enclosed self-addressed, stamped envelope. If you should have any questions or concerns please feel free to contact my office. With my best regards, I remain,

Sincerely yours,

A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is fluid and cursive.

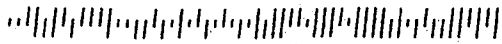
Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

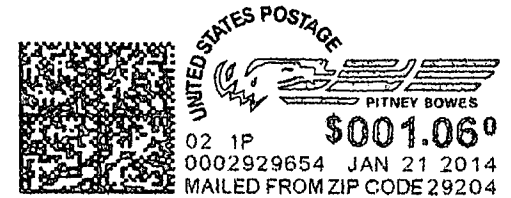
Enclosures

cc: Hugh Ryan, Deputy Director and General Counsel SCCID (w/enclosure)

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JAN 24 2014  
SC Court of Appeals



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Law Offices of  
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**TO:**

The Honorable Jenny A. Kitchings  
Clerk of Court, SC Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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JAN 24 2014

**SC Court of Appeals**