

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APR 27 2015

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Deborah Brooks Durden, Administrative Law Judge

Appellate Case No: 2014-001025

Jennifer K. Salter,

Appellant,

v.

South Carolina Department of Motor Vehicles  
and Conway Police Department, Of whom South  
Carolina Department of Motor Vehicles is the

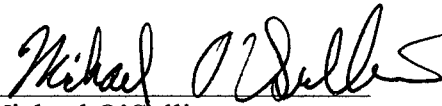
Respondent.

**RETURN TO MOTION FOR COSTS**

The Appellant, Jennifer K. Salter, by and through her undersigned counsel, responds to the Motion for Costs, filed by the Respondent, South Carolina Department of Motor Vehicles, and received on April 17, 2015. The Appellant objects to the request for costs and sets forth the reasons therefor in the attached Memorandum.

April 23, 2015

Other Counsel of Record:  
Frank L. Valenta  
S.C. Department of Motor Vehicles  
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**MEMORANDUM IN SUPPORT OF APPELLANT'S  
RETURN TO MOTION FOR COSTS**

I. INTRODUCTION

This was an appeal from the Administrative Law Court affirming the suspension of Appellant's driving privileges. The issue on appeal dealt with a new statute that had yet to be interpreted by our Appellate Courts and an issue that when decided under a previous statute resulted in a 3-2 Supreme Court decision. There was nothing frivolous or repetitive about this appeal.

Further, I agreed to handle this appeal *pro bono* because I believed the issue in question had been improperly interpreted under the written words of the statute. I was not paid at all for my services, and Appellant paid only the costs of printing, copying and mailing. Appellant would not have been able to pay an attorney to handle this appeal and

certainly cannot afford to pay the costs sought by Respondent. I was willing to seek *certiorari* on behalf of Appellant, but Appellant opted to put all this behind her and move on.

## II. STANDARD OF REVIEW

Rule 222 provides that when an appeal is affirmed, “costs shall be allowed only as ordered by the appellate court.” The Court has discretion whether to award fees and costs under this rule. Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013).

## III. ARGUMENT

Respondent’s Motion for Costs should be denied because there are no actual costs.

Respondent filed a motion for costs requesting \$1,000 in attorney’s fees. No itemization of the alleged attorney’s fees was submitted, nor was any retainer agreement. This is because no actual attorney’s fees were incurred. Respondent is a state agency and the appeal was handled by salaried staff in the course and furtherance of their duties and employment with the State. As set forth in Williamson v. Middleton, 383 S.C. 490, 681 S.E.2d 867 (2009), attorney’s fees have been denied where there is “no evidence of attorney’s fees actually incurred.”

Further, where a state agency is seeking attorney’s fees, the Court has expressed reluctance to award same. In a case involving the Department of Social Services, the Court refused to award attorney’s fees against the mother where the attorney for the Guardian *ad litem* was seeking reimbursement. As held in S.C. Dept. of Social Services


v. Mary C., 396 S.C. 15, 720 S.E.2d 502 (Ct. App. 2011), “(w)hile Mr. Clark was required to represent the GAL by virtue of his contract with the GAL Program, neither the GAL nor Mother were contractually obligated to Mr. Clark. Because Mr. Clark presented no evidence that he incurred any fees, we find it inappropriate to award fees against Mother.” (at 23).

Respondent was not required to retain or pay any outside counsel to handle this particular appeal, and even if it had, the case law noted above indicates that it would not be proper for a state agency to allocate those fees to an individual citizen who finds herself in litigation with said agency.

#### CONCLUSION

Respondent’s Motion for Costs in this *pro bono* appeal should be denied because the Respondent state agency incurred no actual legal fees in this matter.

Respectfully Submitted,

A handwritten signature in black ink that reads "Michael O'Sullivan". The signature is written in a cursive style and is positioned above a horizontal line.

Michael O’Sullivan

SC Bar No.: 73768  
Law Office of Michael O’Sullivan  
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(843) 957 – 9279

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PROOF OF SERVICE

I certify that I have served Appellant's Return to Motion and Memorandum in Support of Return to Motion for Costs on the South Carolina Department of Motor Vehicles by depositing a copy of it in the United States Mail, postage prepaid, on April 24, 2015, addressed to the attorney of record, Frank L. Valenta, Jr. at the below noted address.

Frank L. Valenta, Jr.  
Post Office Box 1498  
Blythewood, SC 29016

April 24, 2015



Michael J. O'Sullivan  
SC Bar No. 73768  
Post Office Box 1785  
Conway, SC 29528  
Attorney for the Appellant



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Law Office of Michael J. O'Sullivan SC Court of Appeals

April 23, 2015

Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
P.O. Box 11629  
1015 Sumter Street  
Columbia, SC 2921

Re: Jennifer K. Salter v. SCDMV  
Appellate Case No. 2014-001025

Dear Ms. Kitchings:

Please find enclosed an original and six (6) copies of the Appellant's Return to Respondent's Motion for Costs with supporting memorandum, and Proof of Service in the above matter. Should you require anything further, please do not hesitate to contact me.

With Kind Regards,

Michael J. O'Sullivan