

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE SUPREME COURT

Appeal from Richland County

Honorable Mark H. Westbrook, Circuit Court Judge

RECEIVED

JUN 30 2017

ISRAEL WILDS,

S.C. SUPREME COURT
PETITIONER,

V.

THE STATE,

RESPONDENT.

APPELLATE CASE NO. 2014-001191

SOUTH CAROLINA COMMISSION ON INDIGENT
DEFENSE RESPONSE TO ARGUMENTS INITIALLY
RAISED IN COUNSEL'S REPLY

J. HUGH RYAN, III
Executive Director, SCCID

HERVERY YOUNG
General Counsel
S.C. Commission on Indigent Defense
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Columbia, SC 29211
(803) 734-1343

SCCID noted in its prior filing in this matter (Motion and Memorandum of South Carolina Commission on Indigent Defense Objecting to Expense Request Of Counsel) that Attorney Shurling had submitted a letter requesting payment of her attorney's fees and expenses while making no legal arguments to which SCCID could file a proper response. SCCID could only speculate as to arguments Attorney Shurling might raise. Now in a document captioned as a reply arguments are made that were not addressed in Counsel's initial letters. If SCCID is not allowed to respond, this would deny SCCID the opportunity to address arguments raised for the first time in a reply. Therefore, SCCID respectfully requests that the Court consider the Agency's response to arguments initially raised by Attorney Shurling in her reply, as stated below.

1. Attorney Shurling references S.C. Code Section § 17-3-80 implying this code section may establish a \$2000 expense cap. However, in her letter of April 13, 2017 Attorney Shurling herself acknowledges her in-house expenses are over **the \$500 cap**. The current funding for these types of cases is authorized in annual budget provisos, such as Proviso 47.5, which was in affect at the commencement of Attorney Shurling's representation in this case. This proviso established a \$500 cap on expenses as have subsequent provisos.
2. SCCID does not agree with the statutory interpretation advocated by Attorney Shurling. In construing statutes courts are not to consider a particular clause in isolation but in the context of the purpose of the whole statute. Mid-State Auto Auction v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996). Attorney Shurling is asking the Court to consider the clause in 17-3-50(C) that "payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred" in isolation. She is asking the Court to only consider this last phrase found in S.C. Code Ann. § 17-3-50(C). SCCID agrees only the last nine (9) words in Section C are in the past tense. However, the entire language in

Section B and majority of Section C supports prior approval (authorization). Section C refers to “payment in excess of the rates **is necessary** to provide compensation adequate to ensure the effective assistance of counsel”. SCCID would submit you ensure the effective assistance of counsel at the beginning of or during the case not at the conclusion of the case. If the caps are increased during the case, counsel is not left to speculate as to whether or not any expenses above the cap will be awarded for their preparation of the case. Privately retained counsel are often paid the majority of fees and expenses through an initial retainer to ensure compensation for their defense.

3. This very issue has been addressed in the past when issues and concerns arose concerning fees and expenses exceeding the statutory limits without being sufficiently scrutinized in advance. In a memorandum dated July 8, 2005, former Chief Justice Toal provided specific guidance regarding S.C. Code Section 17-3-50 (B) stating:

TO: All Circuit Court Judges

FROM: Chief Justice Jean Hoefler Toal

DATE: July 8, 2005

RE: Ordering Additional Fees for Investigative, Expert, or Other Services for Appointed Counsel.

Several concerns about circuit court judges authorizing fees exceeding the limit in S.C. Code Ann. § 17-3-50(B) (2003) for investigative, expert, and other services have recently come to my attention. Pursuant to S.C. Code Ann. § 17-3-50(C) (2003), payment of fees in excess of the statutory limit is allowed if the circuit court “certifies, in a written order with specific findings of fact, that . . . payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred.”

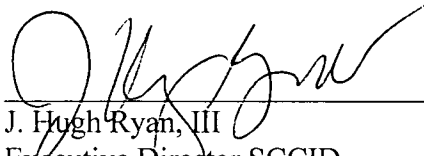
When requests for investigative, expert, or other services in excess of the statutory limits are received, circuit court judges should closely examine the need for the services, especially when approval for advance fees is requested. Judges may wish to ask the Office of Indigent Defense to participate in the hearing on the request for additional fees to contribute information concerning fees awarded in similar cases.

In determining whether additional fees are reasonable and necessary, judges should require the requesting party to show that there is a substantial factual basis for the contention the party seeks to prove by the use of the services and that the services are integral to the building of an effective defense . In addition, where the party seeks funding for services of a particular provider, the party should be required to show why the services must be provided by that particular provider.

Again the language of this memorandum clearly anticipates the issue of exceeding the \$500 cap will be addressed prior to the expenses being incurred. The memorandum stressed that judges closely examine the need for funds, suggested Indigent Defense participate in hearings, and that the services be integral to the building of an effective defense.

4. While Attorney Shurling argues “that the arguable requirement that Counsel obtain advance approval for retaining an investigator, or other expert, in a case makes more common sense than the suggestion that Counsel should get advance approval expenses which are inherent in a court-appointment; for example research tools, printing costs and postage in an appointment representing an incarcerated client on appeal,” these types of expenses can be significant such as in the present case where they exceed \$2000. The proviso, statutes and SCCID policy specifically reference “fees and expenses”. It is common practice, for example in capital cases, that counsel requests the court authorize a set amount of expenses for copies, postage etc. and counsel works against that approved amount. If counsel sees they may exceed that amount they then petition the Court to increase the cap and this ensures that both SCCID and the courts are able to raise any concerns and monitor expenses as a case progresses, not at the conclusion of the case when obligations have already been incurred. SCCID and the courts still review fees and expenses at the conclusion of the case, even if within the authorized caps, to ensure they are reasonable and validated by proper invoices, etc.

Respectfully submitted,



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APPELLANT,

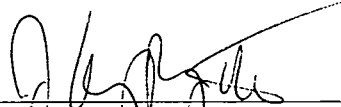
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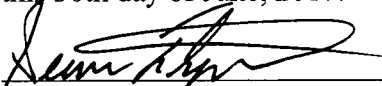
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the South Carolina Commission on Indigent Defense Response to Arguments Initially Raised in Counsel's Reply in the above referenced case has been served upon Tara D. Shurling, Esquire, at 3614 Landmark Drive, Suite A, Columbia, SC 29204, this 30th day of June, 2017.



J. Hugh Ryan, III
General Counsel SCCID

SUBSCRIBED AND SWORN TO before me
this 30th day of June, 2017.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.