

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable J. Michelle Childs, Circuit Court Judge

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Appellate Case No. 2014-001191

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ISRAEL WILDS,

Respondent.

STATE OF SOUTH CAROLINA,

Petitioner.

RECEIVED  
JUL 13 2017  
S.C. SUPREME COURT

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**REPLY TO RESPONSE FILED BY SOUTH CAROLINA COMMISSION ON  
INDIGENT DEFENSE DATED JUNE 30, 2017**

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**ATTORNEY FOR  
RESPONDENT/PETITIONER.**

In Reply to the Response filed by South Carolina Commission on Indigent Defense (SCCID) filed on June 30, 2017, Counsel would address the following points.

- In her letter to the Supreme Court requesting payment of her fees and expenses dated April 13, 2017, Counsel did make note of the fact that the expenses claimed exceeded the \$500.00 cap. In this informal letter, it was the intent of Counsel to reference the \$500.00 cap set forth in § 17-3-50 (B).
- In her Reply, Counsel noted that § 17-3-80 in fact appears to provide another source of funding for the reimbursement of “necessary expenses” incurred by, among others, private-appointed counsel. That section expressly states,

In addition to the appropriation as provided by law, there is appropriated for the fiscal year commencing July 1, 1969, the sum of fifty thousand dollars for the establishment of the defense fund which must be administered by the Office of Indigent Defense. *This fund must be used to reimburse private-appointed counsel, public defenders, and assistant public defenders for necessary expenses, not to exceed two thousand dollars for each case, actually incurred in the representation of persons pursuant to this chapter, so long as the expenses are approved by the trial judge.* No reimbursement may be made for travel expenses except extraordinary travel expenses approved by the trial judge. The total state funds provided by this section may not exceed fifty thousand dollars. (Emphasis added).

- Counsel did not specifically ask that she be reimbursed from any particular line item in the budget of SCCID.
- SCCID continues to argue that both §17-3-45, and the Budget Proviso relating thereto, 47.5, require advance approval. Counsel disagrees. Budget Proviso 47.5 in fact mirrors §17-3-45 (B) and (C) with regard to expenses. As Counsel has consistently pointed out, §17-3-45 (C) expressly authorizes the Court reviewing a request for payment of expenses in excess of the cap set forth in § 17-3-45(B) to authorize reimbursement upon a sufficient order approving payment in excess of the limit, “because the services *provided were* reasonably and necessarily *incurred.*” SCCID routinely argues that Counsel is relying upon a tiny portion of the relevant statutory language. The relevant point is that §17-3-45 (C) is the provision which addresses the necessary findings to be included in an order approving payment of expenses in excess of statutory caps. The express language

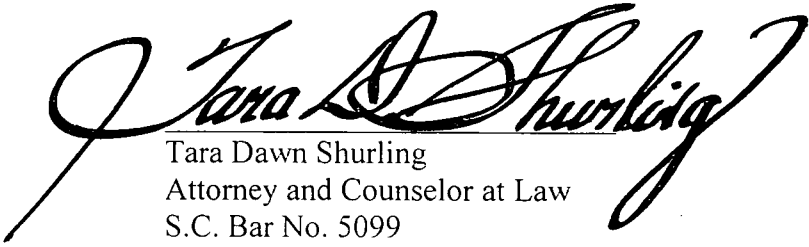
of that statutory provision addressing the necessary findings is drafted *in past tense*. Likewise, Budget Proviso 47.5 contains that same language requiring a finding that “the services *were* reasonably and necessarily *incurred* to provide adequate defense” SCCID Motion and Memorandum, submitted May 24, 2017, pgs 4-5. Thus, the relevant statutory provision, and Budget Proviso 47.5, are fairly interpreted to permit the reviewing court to approve fees and expenses, in excess of the caps provided by statute, *after* the expenses were incurred.

- SCCID now cites to the Court’s memorandum dated July 8, 2005, authored by former Chief Justice Toal, for their position that advance approval is necessary for “investigative, expert and other services.” This Order addresses the care with which circuit court judges should approach requests for funding for “investigative, expert and other services. It does not, contrary to the assertion of SCCID, address whether Counsel may seek and obtain approval for such services in excess of the cap provided in § 17-3-45 (B) at the conclusion of the case.
- Interestingly, §17-3-45 (B) does not address general expenses, but rather appears to address *only* the cost of the “services” of third parties to assist with the defense, such as investigators, experts and other service providers. It is § 17-3-80 which addresses “necessary expenses, not to exceed two thousand dollars for each case ...” Furthermore, SCCID has not provided any explanation for why her general expenses, other than printing costs addressed below, could not be paid from this fund.
- SCCID recognizes Budget Proviso 61.3 which addresses the Office of Appellate Defense continuing to provide printing and other support functions. SCCID Motion and Memorandum, submitted May 24, 2017. They assert however that, “SCCID is not aware of any such request in this case ...” Pg. 4, fn. 3. As noted in Counsel’s Reply, this Honorable Court’s Order appointing her in this appellate matter expressly stated “ [t]he Division of Appellate defense shall remain associated for the limited purpose of paying for any necessary transcript(s) and providing copies of the petition, appendix and briefs.” Thus, Counsel rightfully believed that issue was settled by this Court’s Order.
- Counsel’s entire request for her expenses incurred over seven (7) years of representation, total \$2, 293.80.

- Counsel's in-house copy expenses, at approved rate of .10 cents per page, totaled \$338.70.
- Copying done by outside printer, with approval by SCCID based upon prices Counsel was able to negotiate, totaled \$277.93.
- Thus, the total expenses claimed for printing and binding totaled \$666.63.

Counsel's expenses, not related to printing and binding therefore totaled \$1,627.17. Counsel submits that it is well within this Honorable Court's authority to approve all of those expenses pursuant to §17-3-45 (C). She further submits that her printing costs, and related expenses, were approved in the Order of this Honorable Court appointing her in this matter. She would argue that the remaining \$ 1,627.17 falls under the \$2,000.00 cap set forth in § 17-3-80. Finally, she submits that this Court has the authority to authorize her payment at an hourly rates in excess of \$40.00 per hour for out-of-court work and \$60.00 per hour for in-court time in this case pursuant to § 17-3-50 (C). Counsel had not requested such an increase in the rates at which she was to be paid in this case despite her long service in this matter, and the fact that this was a very complex appeal involving a murder conviction. In the event that this Court finds it impossible to authorize her reimbursement for all of her expenses in this case, however, she would alternatively seek an increase in her hourly rates for her out-of-court representation from \$40.00 to \$57.00 per hour for out-of-court time and from \$60.00 per hour for in-court representation to \$77.00 per hour for the *one hour* in-court time she has claimed for two oral arguments in this case. This increase would result in a total fee of \$8,324.90 which represents an increase in fees of \$2,476.90 which would fairly compensate Counsel for all her expenses in this case, including those incurred by Counsel in responding to the efforts of SCCID to prevent her being reimbursed for all the expenses she "reasonably and necessarily incurred" representing this court-appointed client for over seven (7) years.

Respectfully submitted,



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ATTORNEY FOR RESPONDENT/PETITIONER

This 10<sup>th</sup> day of July, 2017.

STATE OF SOUTH CAROLINA  
In The Supreme Court

Appeal from Richland County  
J. Michelle Childs, Circuit Court Judge  
Certiorari to the Court of Appeals

Appellate Case No. 2014-001191

ISRAEL WILDS,

RESPONDENT,

v.

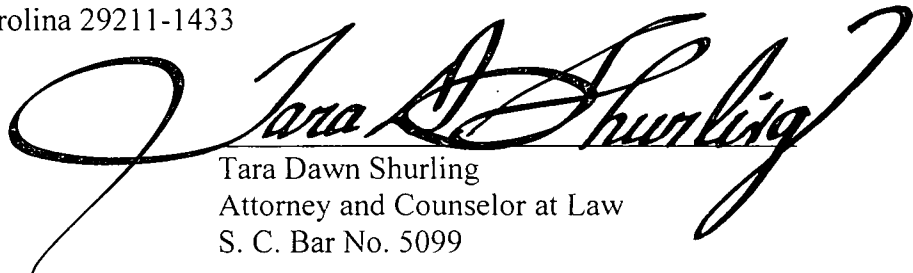
STATE OF SOUTH CAROLINA,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the Reply to the Response filed by SCCID dated June 30, 2017 in the above-entitled case has been served upon J. Hugh Ryan, III, Executive Director and General Counsel, by depositing in the U.S. mail with proper postage, this 10<sup>th</sup> day of July, 2017 to the address listed below:

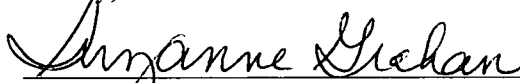
J. Hugh Ryan, III  
Executive Director and General Counsel  
South Carolina Commission on Indigent Defense  
P. O. Box 11433  
Columbia, South Carolina 29211-1433



Tara Dawn Shurling  
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S. C. Bar No. 5099

Attorney for Respondent

SWORN TO BEFORE me this 10<sup>th</sup> day  
of July, 2017.

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