THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Edgefield County
Court of General Sessions

William P. Keesley, Cheif Administrative Judge

Appelate Case no #: 2014-001283;
lower case no # 2005-GS-19-00273-457

STATE OF SOUTH CAROLINA, Respondent

V

STEVEN LOUIS BARNES, Petitioner

PETITTION FOR EXTRAORDINARY WRIT OR IN THE ALTERNATIVE WRIT OF MANDAMUS

STEVEN LOUIS BARNES # 124743
Aiken County Detention Center
435 Wire Rd.
Aiken SC.

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Pursuant to Rule 245(B) of the South Carolina Appellate Court Rule, the petitioner, Steven Louis Barnes, applies for an extraordinary writ and/or in the alternative writ of mandamus directed at the following Government Officials: General Session Judge, William P. Keesley (hereafter General Session Judge) in ruling whether or not the petitioner could proceed in his 42 U.S.C § 1983 suit that's built into the petitioner appointment of counsel brief, and enjoin South Carolina Commission of Indigent Defense, General Counsel Hugh Ryan (hereafter General Counsel and/or Mr. Ryan) from going to the South Carolina Circuit Judges concerning appointment of two capital counsels from the capital trial Division for financial reasons contrary to SC Code 16-3-26. In support of this application the petitioner states the following facts.

Back Ground Facts:

The South Carolina Supreme Court granted the petitioner a new trial in his capital case. See State v Barnes 753 S.E 2d 545 (2014). Two trial attorneys, one, Mr. William Mcguire of the South Carolina Commission on Indigent Defense, chief attorney for the Capital trial Divison (hereafter state-wide public defender and/or Mr. Mcguire) and two, private attorney, Elizabeth Franklin-Best (here-

after Ms. Elizabeth) had sought General session Judge to appoint them to petitioner capital case. General session Judge scheduled the appointment of counsel hearing for April, 23, 14. One-hour before the appointment of counsel hearing, state-wide public defender advised the petitioner that his boss, General Counsel Ryan, was going to object to private attorney, Ms. Elizabeth, or any other private attorney, being appointed to represent the petitioner in his capital case for financial reasons. During the appointment of counsel hearing, General Counsel objected to private counsel being appointed in his capital case on the grounds that, one, since the South Carolina General Assembly made their office in 2008-2009, as a result to this, SC Code § 16-3-26 now allows two attorney appointed to this case; and two, in doing so, it will save the office of Indigent Defense plenty money in providing petitioner competent counsel in which he deserves.

FACTS

When state-wide public defender informed petitioner one hour before the appointment of counsel hearing that his boss, General Counsel Ryan, was going to object to private counsel being appointed to this case, he informed

state-wide public defender to object to his boss standing up against the petitioner interest in having private counsel appointed to this case. During the hearing, the state wide public defender in which was represent-ing the petitioner advocate did not object to Mr. Mcguire boss during the hearing when the petitioner told him to do so.

The General session Judge ordered the interested parties to file a brief to determine whether or not private counsel should be appointed to this case. All parties timely filed a brief. In petitioner brief regarding the appointment of counsel hearing, he placed in the state action argument of his brief a 42 U.S.C § 1983 suit that he asked the General session Judge to turn that section of the brief into. All the petitioner ask, among other thing, is for the General session Judge to rule on this issue.

GENERAL SESSION JUDGE HAS JURISDICTION IN 42 USC § 1983 SUITS

states and Federal courts has concurrent Jurisdiction over 42 USC § 1983 suits. What this mean is that the petitioner can file a § 1983 suit in either court in which the petitioner in his appointment of counsel brief had

converted the state action part of his brief into a §1983 suit in which then gives the General session Judge Jurisdiction of his §1983 claim's, see Felder v Casey 487 U.S 131 (1988) in determining whether or not the General Counsel actions is insinuating itself into the professional judgement of the state-wide public defender in petitioner case. General Counsel ruyon under the color of state law is using SC code §16-3-26 contrary to the liberty interest meaning in dictating, in disguise of financial concerns, petitioner rights under the statute in question: one public defender, and one private attorney in which the petitioner had met when he went to the appointment of counsel hearing.

For the above reasons, and the record fully reflect this that the General session Judge has jurisdiction on whether or not to dismiss the petitioner §1983 claim that the petitioner is trying to use two of his fundamental rights to petition the government for grievances and to access to the courts.

Due to this, the supreme court should remand the §1983 claims issue back to General session Judge because he had heard the arguments of all parties concerning state action in petitioner capital case.

DENIAL OF FAIR PROCESS BY AN IMPARTIAL DECISION MAKER

Facts

Petitioner crave reference to and incorporate the facts above in this section of his writ for relief. On May 22, 14 the solicitor filed a "memorandum of law following reversal of the Defendant's convictions and death sentence for violation of Defendant's Right to self representation and for appointment of attorney for retrial (hereafter brief) with the Edgefield County Clerk office. As stated above, petitioner, and, upon information and belief, the other parties involved in this case wasn't served the solicitor brief either. In exparte, the solicitor brief argued in front of the General session judge several grounds, in which the one which hold importance, that the General session judge Keesley lack jurisdiction to hear the appointment of counsel issue in this case because the chief supreme court judge Jean Toal had gave exclusive jurisdiction to General session judge R. Knox McMahon over the petitioner capital case. Ruling exparte off of the solicitor brief (because nobody was not served it), the General session judge Keesely agreed with the solicitor

brief, in the General session Judge June 3, 14 order that it lacked Jurisdiction to hear the appointment of Counsel issue and transferred this case to General session Judge McMahon. Within 10-days to file post Judgment motion to the Court, the Defendant sent a letter to the General session Judge requesting it to vacate and/or suspend it June 3, 14 order for lack of Jurisdiction because the Defendant was not served the solicitor brief. In the Defendant letter, he specifically stated that due process and south Carolina Court Rules requires this. on and about June 13, 14 the General session Judge had sent me a letter Informing me that it can not suspend or vacate it June, 3, order for lack of Jurisdiction.

SUPPORTING ARGUMENT FOR GRANTING EITHER AN EXTRAORDINARY WRIT AND/OR WRIT OF MANDAMUS

The united states Constitution of the 14th Amendment procedural due process clause guarantees the petitioner to many procedural safeguards for protecting his life and liberty during the criminal process. see e.g. Lankford v Idaho 500 U.S 110 (1991) (the Defendant was entitled to notice that the trial Judge was considering imposing a death sentence). one of the many procedural due process safeguards that petitioner is entitled to during

the criminal process is his right to a fair and impartial and disinterested tribunal. See Joint Anti-Fascist Committee v McGrath 341 U.S. 123 (1915) (Due process entitles a person to an impartial and disinterested tribunal in both civil and criminal cases) South Carolina laws and state statues authorizes trial Judge of any feature of authority, who trial cases and controversies, either criminal or civil, to not communicate in any fashion in pending or impending legal matters. (See Canon 3(A)(1) Rule 501, Code of Judicial Conduct Rule) The Judicial Canon in place, along with the due process clause to a fair tribunal, is to "guard against exparte indiscretion in which the Cannon strive to eliminate the appearance of impropriety. See Burgess v Stern 428 S.E 2d 880 (1993); and see Mathews v Eldridge 424 U.S 319 (1976) (the neutreality requirements help to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of facts or the law) see Joint Anti-Fascist Committee v McGrath supra (Due process preserves both the appearence and reality of fairness generating the feelings so important to popular government that justice has been done).

A simple order of remand back to the General session Judge to hear the petitioner 42 USC § 1983 cause of action Re-

garding whether or not it'll let the petitioner proceed in that action against the General Counsel interference with the petitioner Right to Attorney; Due process procedural safe-guards requires this, especially because the petitioner life, death penalty case, liberty, Right to two capital Attorneys, and property, Right to a cause of action in 42 USC § 1983 suit, interests are at stake.

For this reason, the General session Judge was excess of jurisdiction or by it delegating its fact finding impartiality to the solicitor brief in which shows that the petitioner was denied the right to an impartial Judge. This Court should vacate and suspend the General session Judge June, 3, order and/or such other and further relief this Court seem just and proper.

GENERAL SESSION JUDGE DENIAL OF PETITIONER PROPERTY INTEREST RIGHT TO A CAUSE OF ACTION

Petitioner crave reference to and incorporate the facts above in this section of his writ for relief.

The sole purpose of either an Extraordinary writ and/or writ of mandamus is to compel Government

officials, Judicial or executive branches, to fullfill an indisputable duty under state or Constitutional law. A state or federal cause of action is considered a property interest under due process clause. see Martinez v California 444 U.S 277 (1980) (A state tort claim is a species of property protected by the Due process clause). This is an indisputable Right, the petitioner claim of state action in his case, that he's trying to address to this Court, in which this Court has an indisputable duties to enforce it. There's no exception to this. This writ is the only relief under state law that petitioner has to enforce the General session Judge to use the state procedural mechanism in place, so it can hear the petitioner 42 USC § 1983 suit built into the petitioner brief.

For the above reasons, the General session Judge violated the petitioner procedural due process, and this case should be immediately remanded back to the General session Judge to address this issue.

SC. CODE §16-3-26 DOES NOT GIVE GENERAL COUNSEL POWER TO STAND-UP IN THE INITIAL APPOINTMENT OF COUNSEL HEARING REGARDING FUNDING IN CAPITAL CASES

As stated above, in which those facts the petitioner

crave reference to and incorporate those facts in this section of his writ for relief; the parties because of the General session Judge ordered them at the appointment of counsel hearing to file a brief, including General Counsel Ryan, petitioner timely filed his brief in the Edgefield court house. In it, General Counsel Ryan stated in part:

> "[I]t is clear that South Carolina Commission of Indigent Defense is an integral part of the Indigent defense system and it clearly has standing to participate in matters such as the present one before this Court. Attorneys fees incurred by private counsel will at some point be presented through vouchers to SCCID at which time SCCID could clearly file objections to any fee requests considered unreasonable. It is much more efficient for all parties involved that any potential issues be addressed when identified, such as the current case"

(see General Counsel brief on page 9 that's in the Record in which the petitioner can not attach to this writ)

ARGUMENT IN SUPPORT THAT GENERAL COUNSEL DOES NOT HAVE STANDING TO STAND-UP IN CAPITAL CASES CONCERNING FUNDING IN THOSE CASES

All the pertinents sections of SC Code 16-3-26 Reads in part:

"(B)(2) notwithstanding any other provision of law, the Court shall order payment of all fees and costs from funds available to the office of Indigent Defense for the defense of indigent. Any attorney appointed shall be compensated at a Rate not to exceed fifty dollars per hour for time expended in Court. Compensation shall not exceed twenty-five thousand dollars and shall be paid from funds available to the office of Indigent Defense for the defense of Indigent Represented by Court appointed, private Counsel.

"(C)(2) Court-appointed Counsel seeking payment for fees and expenses shall request these payments from the office of Indigent Defense within thirty days after the completion of the case...

"(D) payment in excess of the hourly rates and limit in subsection (B)(C) is authorized only if the Court certifies, in a written order with specific finding of fact, that

payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred. upon a finding that timely procurement of such services can not await prior authorization, the court may authorize the provision of and payment for such services nunc pro-tunc.

"(C) After completion of the trial, the court shall conduct a hearing to review and validate the fees, costs, and other expenditures on behalf of the defendant."

To confirm this even more clearer that SC code § 16-3-26 doesn't authorize the General counsel to stand-up in capital cases concerning funding in capital case are the exhibits in the General counsel briefs in which the petitioner crave reference to and incorporate as exhibits (1)-(2) in this section of this writ.

In Exhibit (1), there's a State Supreme Court of South Carolina order in which was written by the Honorable Jean Toal of this Court, in which is substantially the same to SC Code 16-3-26, that authorizes payment to appointed counsels in indigent cases. It states in paragra-

aph 4-5 which reads:

"If there is an objection by the Office of Indigent Defense to the reasonableness of the amount or the amount requested exceeds the hourly rates or statutory caps provided by SC Code Section 17-3-5 (A) and (B), then the Office of Indigent Defense shall pay such amount as may be authorized by the trial court. The Office of Indigent Defense shall notify the trial court and counsel of any objection and shall forward any necessary materials to the trial court in writing or electronically. The trial court may determine the matter with or without a hearing, as may be appropriate or upon the submission of written materials."

Id exhibit (2), a letter from Chief Justice Toal to the circuit judges in South Carolina states in part:

"When request 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"

Assuming Arguendo that every SC. Circuit Court Judges give authority to General Counsel to stand up in indigent Capital murder initial appointment of Counsel hearing, this live case or controversy, which is concrete and perticulized infects petitioner and every other Capital murder Defendant in which the solicitor pursues the death penalty; and whether or not the General session Judge Keesley doesn't have Jurisdiction to hear the petitioner appointment of Counsel issue, this case now being transferred to now Judge Diana Schafer Goodstein or any other Circuit Judge will be in excess of Jurisdiction in two ways: one, for allowing General Counsel, Contrary to SC Code 16-3-26, to stand up in Capital murder appointment of Counsel hearing; and two, whether or not the Judges follow the General Counsel in appointing two state-wide public defenders from the Capital trial Division to a Capital Defendant case, any Circuit Judges will be in excess of Jurisdiction in appointing Counsel contrary to SC Code § 16-3-26.

SC Code § 16-3-26 sections and exhibits quoted above show and prove the General Counsels has no standing in objecting to private Counsel being appointed to a Capital Defendant Case. In mandatory languages, SC Code 16-3-26 guarentees private Counsels in the amount of $ 25.000 dollars.

In order for the General Counsels to get involved in funding paying either private attorney or public defender is when they either object to the funding being paid or when they exceed the statutory cap of SC Code 16-3-26 or when a Report is Requested by a Circuit Judge or Chief Judge (Supreme Court) or administration Court office in Regards to asking "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" see exhibit (2)

WHEREFORE, the petitioner pray that this Court grant this motion and/or such other and further relief this Court seem just and proper.

Date: 7/2/14

Steven Louis Barnes
Steven Louis Barnes # 124743
Aiken County Detention Center
435 Wire Rd.
Aiken SC.

EXHIBIT

(1)

Court News

2006-09-29-01

The Supreme Court of South Carolina

ORDER

In 1993, the General Assembly created the Office of Indigent Defense under the jurisdiction of the Commission on Indigent Defense. By virtue of statutory amendment effective July 1, 2005, the Office of Indigent Defense was expanded and was additionally authorized to serve as the entity which "distributes all funds appropriated by the General Assembly for the defense of indigents, including funds allocated to counties' public defender offices pursuant to formula, funds for the defense of capital cases, funds for attorney fees and expenses in noncapital cases, and other funds appropriated for these purposes." S.C. Code Section 17-3-330(A)(1). Prior to this legislation being passed, S.C. Code Section 17-3-90 required that vouchers approved by the trial judge for attorney fees and costs be transmitted to the Judicial Department for payment to the appropriate party, while the new law requires the Office of Indigent Defense to effectuate payment. Both of these provisions remain in the Code and conflict with one another; accordingly, as to payment, the most recent statute shall control. *See Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000).

Moreover, the General Assembly, in S.C. Code Section 17-3-110, authorized the Supreme Court to establish such rules and procedures as may be necessary for proper administration of Chapter 3 of Title 17 pertaining to indigent defense. Accordingly, pursuant to S.C. Code Section 17-3-110, and Article V, Section 4 of the S.C. Constitution, the procedures outlined herein are adopted for the processing of indigent defense vouchers.

1. Upon appointment by the court in an indigent case or proceeding, counsel shall notify the Office of Indigent Defense within 15 days of said appointment by registering online at Indigent Defense's website at *www.sccid.sc.gov*. Counsel shall further submit such documentation as may be required by the Office of Indigent Defense.
2. Upon appointment and registration, counsel is hereby approved and entitled under S.C. Code Section 17-3-50 to the payment of reasonable fees and costs based on the hourly rate and caps provided therein.
3. Vouchers for payment shall be submitted online through the Indigent Defense website or may be mailed directly to the Office of Indigent Defense if electronic access is not available. Vouchers should not be mailed to the Clerk of Court for transmittal.
4. If there is no objection to the reasonableness of the request and the amount requested is within the hourly rates and statutory caps, then the Office of Indigent Defense is authorized to make payment of the requested amount without further action of the Court.

5. If there is an objection by the Office of Indigent Defense to the reasonableness of the amount or the amount requested exceeds the hourly rates or statutory caps provided by S.C. Code Sections 17-3-50 (A) and (B), then the Office of Indigent Defense shall pay such amount as may be authorized by the trial court. The Office of Indigent Defense shall notify the trial court and counsel of any objection and shall forward any necessary materials to the trial court in writing or electronically. The trial court may determine the matter with or without a hearing, as may be appropriate, or upon the submission of written materials.
6. The Office of Indigent Defense, along with S.C. Court Administration, subject to the approval of the Chief Justice or the Supreme Court, may establish such additional procedures for the electronic award of fees and costs to minimize delay and to facilitate the administration of the Indigent Defense Chapter of the Code; any procedure to provide for the use of electronic signatures for the issuance of payment and falling within the Uniform Electronic Transactions Act in Title 26, Chapter 6 of the S.C. Code shall also be coordinated with the S.C. State Budget and Control Board or Comptroller General when necessary or as may be required by law.
7. The Office of Indigent Defense shall notify counsel of any action taken on a voucher.
8. The Office of Indigent Defense shall provide such reports as may be requested by the Chief Justice or S.C. Court Administration.
9. Nothing herein shall preclude the trial court from taking immediate action on ex parte requests for fees and costs during the pendency of a case as may be authorized by statute or court rule.
10. These procedures shall become effective within 30 days of the approval of this order and shall remain in effect until altered or changed by subsequent order or legislation.

IT IS SO ORDERED.

FOR THE COURT:

s/Jean H. Toal ______ C.J.
Jean Hoefer Toal
Chief Justice

September 29, 2006
Columbia, South Carolina

EXHIBIT

(2)

Court News

TO: All Circuit Court Judges
FROM: Chief Justice Jean Hoefer 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.