

No. 1050164 and 1050208

SUPREME COURT OF ALABAMA

DANIEL W. WRIGHT,

Appellant and Cross-Appellee

vs.

ROBERT L. CHILDREE, in his official capacity
as Comptroller of the State of Alabama

Appeal from Montgomery County Circuit Court

MOTION OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE
LAWYERS AND THE ALABAMA CRIMINAL DEFENSE LAWYERS
ASSOCIATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
AND BRIEF IN SUPPORT OF CROSS-APPELLEE

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**MOTION OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE
LAWYERS AND THE ALABAMA CRIMINAL DEFENSE LAWYERS
ASSOCIATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

In accordance with Ala. R. App. P. 29, the National Association of Criminal Defense Lawyers and the Alabama Criminal Defense Lawyers Association move the Court for leave to file an *amicus curiae* brief in support of Cross-Appellee Daniel Wright, limited to the issue of the trial court's action directing the Alabama Comptroller to resume statewide payments of office overhead expenses and to pay all withheld overhead payments to lawyers who represent clients determined to be indigent. A description of the interests of the *amicus curiae* follows.

The National Association of Criminal Defense Lawyers ("NACDL") is a non-profit corporation with a subscribed membership of more than 13,000 national members including private practitioners, public defenders, military defense counsel and law professors, and an additional 35,000 state, local and international affiliate members. The American Bar Association recognizes NACDL as one of its affiliate organizations and awards it full representation in its House of Delegates.

The NACDL was founded in 1958 to promote study and

research in the field of criminal law; to disseminate and advance knowledge of the law in the area of criminal practice; and to encourage the integrity, independence and expertise of defense lawyers in criminal cases. Among the NACDL's objectives are ensuring justice and due process for persons accused of crime, promoting the proper and fair administration of criminal justice and preserving, protecting and defending both the adversary system and the United States Constitution.

The NACDL's interest in this case is two-fold. First, NACDL participated as *amicus curiae* in *May v. State*, 672 So.2d 1307 (Ala. Crim. App. 1993), the decision which held that counsel's office overhead was a component of expenses incurred in representing accused indigents and believes in the soundness of that decision. Second, NACDL maintains, as does its state affiliate and fellow *amicus curiae*, that the unilateral cessation of the payment of office overhead expenses was not supported by law.

The Alabama Criminal Defense Lawyers Association ("ACDLA") is a non-profit organization of nearly 600 lawyers who actively engage in the representation of those accused of violating criminal laws. Since 1981 the ACDLA, an affiliate organization of the NACDL, has served an important role in

advocating for improvements in the criminal justice system in Alabama and has had members participate on a variety of committees, task forces and commissions which, over time, have been charged with the responsibility of examining various aspects of the criminal justice system. A large majority of the ACDLA's members represent indigent clients in criminal cases in the district, circuit and juvenile courts, as well as in appeals and in post conviction proceedings. The action of the Comptroller in suspending the payment of approved office overhead expenses for the representation of indigent defendants has directly impacted a large portion of ACDLA members who are private lawyers functioning as counsel for indigent counsel under direct court appointment. The ACDLA also participated as *amicus curiae* in *May v. State*.

The disposition of this appeal has substantial implications for NACDL members within Alabama and for the membership of ACDLA. The outcome will affect the criminal justice system in Alabama, a system in which NACDL and ACDLA members have a keen interest, and will have a direct impact upon the economic interests of many Alabama criminal defense lawyers.

As provided by Ala. R. App. P. 29, the NACDL and ACDLA

herewith conditionally file their brief as *amicus curiae*.

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CERTIFICATE OF SERVICE

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ORAL ARGUMENT REQUESTED

STATEMENT REGARDING ORAL ARGUMENT

_____*Amicus curiae*, the NACDL and the ACDLA, believe that the case presents an issue of overarching importance to the fair and effective administration of justice in Alabama. *Amicus curiae* believe that oral argument will crystalize the important issues at stake and allow for the thorough probing of the legal positions presented to the Court. Since *amicus curiae* believe that oral argument will martially aid the Court in its disposition of the present case, oral argument is requested.

TABLE OF CONTENTS

Statement Regarding Oral Argument	2
Table of Contents	3
Table of Authorities	4
Summary of the Argument	6
Argument	9
I. EITHER JUDICIAL ESTOPPEL OR COLLATERAL ESTOPPEL BARS ALABAMA'S COMPTROLLER FROM FAILING TO PAY APPROVED OFFICE OVERHEAD EXPENSES TO LAWYERS APPOINTED TO REPRESENT INDIGENT CLIENTS.	9
II. THE NEED FOR CERTAINTY AND CONSISTENCY IN THE LAW SHOULD PREVENT THE ATTORNEY GENERAL FROM ISSUING CONTRADICTORY ADVISORY OPINIONS THAT INTERPRET THE SAME STATUTE .	17
Conclusion	22
Certificate of Service	23

TABLE OF AUTHORITIES

CASES:

<i>Christensen v. Childree</i> , Case No. CV-2002-50, Circuit Court of Covington County, Alabama	11,12,13
<i>Constantine v. U. S. Fidelity & Guar. Co.</i> , 545 So. 2d 750 (Ala. 1989)	16
<i>Edwards v. Aetna Life Ins.</i> , 690 F. 2(d) 595, 599 (6 th Cir. 1982)	13
<i>Ex parte First Alabama Bank</i> , 883 So. 2d 1236, 1244-45 (Ala. 2003)	13
<i>Ex parte May</i> , 672 So. 2d 1310 (Ala. 1995)	9
<i>Ex parte Smith</i> , 698 So. 2d 219 (Ala. 1997)	9,10,19
<i>Ex parte State</i> , 672 So. 2d 1310 (Ala. 1995)	9
<i>May v. State</i> , 672 So. 2d 1307 (Ala. Crim. App. 1993) 4,5,9,19	
<i>New Hampshire v. Maine</i> , 532 U. S. 742 (2001)	13
<i>Unum Life Ins. Co. of America v. Wright</i> , 897 So. 2d 1059 (Ala. 2004)	13
<i>Wright v. Childree</i> , Circuit Court of Montgomery County, Alabama, Civil Action No. 05-1544, September 28, 2005 . .	14

STATUTES

Ala. Code § 15-12-21(d)	7,10,11,14,18,22
Ala. Code 36-15-1(1975)	21

OTHER

<i>Op. Atty. Gen. No. 2005-063</i> , 2005 WL 366930, at *1 (February 1, 2005)	18
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<i>Op. Atty. Gen. No. 2002-022, 2001 WL 1421621 (October 15, 2001)</i>	18
<i>Opinion of the Justices No. 265, 381 S. 2d 183, 185 (Ala. 1980)</i>	20
Act 2002-129	8, 20
Act 99-427	20

SUMMARY OF THE ARGUMENT

Either judicial estoppel or collateral estoppel prevents the Comptroller from failing to pay approved office overhead expenses. Although the Comptroller pursued a position in this litigation that was consistent with a position taken in 2002 litigation, the position taken in the earlier litigation was abandoned when he declined to appeal the adverse ruling in the Circuit Court of Covington County. The inconsistency is further illustrated by the Comptroller's agreement to continue to pay attorneys in Covington County for approved office overhead expenses in indigent defense cases, notwithstanding his refusal to pay attorneys for approved office overhead expenses in any other judicial circuit.

In taking the inconsistent positions, the Comptroller seeks to impose a deterrent that is unfair upon the cross-appellee since that position, if adopted, would prevent Mr. Wright (and other attorneys outside of Covington County) from being reimbursed for approved office overhead expenses. If the Court determines that judicial estoppel is inapplicable, collateral estoppel applies to bar the Comptroller from taking a position different from that established by the litigation in the Circuit Court of Covington County. Collateral estoppel

requires that the party claiming the benefit of a prior judgment be one who would have been adversely affected by a contrary decision in the earlier case and that the party against whom collateral estoppel is sought to be applied either was an actual party in the earlier case, was in privity with the party, or is a successor to the rights of a party in the earlier case. Both elements are shown in the instant case since Mr. Wright would have been prejudiced by an adverse ruling in the Circuit Court of Covington County and the party against whom collateral estoppel is sought to be applied, the Comptroller, was an actual party in the earlier litigation.

The Attorney General opinion which gave rise to this litigation interpreted the exact statute in a contrary manner to an Attorney General opinion issued in 2001. Both opinions construed Ala. Code § 15-12-21(d) (1975) and reached opposite conclusions concerning whether the phrase "expenses reasonably incurred" included approved office overhead expenses. The current Attorney General is disingenuous in relying upon minor, technical differences in the statute which was amended in 2000. There have been judicial interpretations of the statute that are at odds with the current interpretation by the Attorney General and the changed language upon which the

Attorney General relied did not address the core meaning of the statute.

Although the legislature cannot amend the statute by resolution, the resolution is helpful, particularly where there is not legislative history. The resolution passed in Act 2002-129 provides a valuable perspective for the Court to consider.

Consistency is a vital underpinning in the law. If Attorney General's opinions are subjected to the sifting sands of the moment, there can be no consistency. In addition, state officials who rely upon the Attorney General for guidance and the general public who rely upon state officials should be able to rely upon an opinion of the Attorney General without fear that an identical statute will be interpreted differently.

ARGUMENT

I. EITHER JUDICIAL ESTOPPEL OR COLLATERAL ESTOPPEL BARS ALABAMA'S COMPTROLLER FROM FAILING TO PAY APPROVED OFFICE OVERHEAD EXPENSES TO LAWYERS APPOINTED TO REPRESENT INDIGENT CLIENTS.__

The legal landscape of indigent defense substantially changed in 1993 with the decision in *May v. State*, 672 So. 2d 1307 (Ala. Crim. App. 1993). The *May* court analyzed then-existing Ala. Code § 15-12-21 (d) (1975), which, after setting hourly rates and maximum fees to be paid for indigent defense stated, "[C]ounsel shall also be entitled to be reimbursed for any expenses reasonably incurred in such defense to be approved in advance by the trial court." *May v. State*, 672 So. 2d at 1308. The Court of Criminal Appeals recognized the validity of overhead payments by holding "that office overhead expenses are by law encompassed in the term 'expenses reasonably incurred' as that term is used in §15-12-21(d)." *Id.* The Court of Criminal Appeals' decision in *May* was undisturbed when this Court quashed writs of certiorari in *Ex parte State*, 672 So. 2d 1310 (Ala. 1995) and *Ex parte May*, 672 So. 2d 1310 (Ala. 1995).

The Court explicitly approved of the Court of Criminal Appeals' rationale in *Ex parte Smith*, 698 So. 2d 219 (Ala. 1997). In that case this Court unmistakably stated, "we agree

with the Court of Criminal Appeals' holding in *May* that §15-12-21 authorizes payments to a court-appointed attorney for overhead expenses reasonably incurred in defense of an indigent defendant." *Ex parte Smith*, 698 So. 2d at 224. For years, there was no change in the payment scheme for private counsel who were court-appointed to represent indigent clients.

In 1999, Ala. Code § 15-12-21(d) was amended. In addition to increasing hourly rates and maximum fee payments, the sentence applicable to reimbursement for expenses was altered ever so slightly to read, "counsel shall also be entitled to be reimbursed for any expenses reasonably incurred in the defense of his or her client, to be approved in advanced by the trial court." The Alabama Comptroller recognized that the payment of office overhead expenses was unaffected by the Legislature's amendment of § 15-12-21(d) and issued a Memorandum to that effect on August 24, 1999, as well as a like Memorandum the following year.¹

In litigation spawned by an earlier, temporary cut-off in the payment of office overhead expenses, the Circuit Court of

¹ These memoranda are attached respectively as Exhibits B and C to the brief of *amicus curiae* Covington County Bar Association in this proceeding and, for the convenience of the Court, are attached hereto as Exhibits A and B.

Covington County entered summary judgment in an action for declaratory judgment in *Christensen v. Childree*, stating, "it is hereby ordered that partial summary judgment be entered for Plaintiff on his request for a declaratory judgment, said judgment being that the term 'expenses reasonably incurred' found in Code of Alabama, § 15-12-21(d) includes office overhead expenses. . . ." ² The Comptroller did not seek to appeal the order of the Circuit Court of Covington County in *Christensen*.

On February 1, 2005, the Alabama Attorney General issued Opinion 2005-063. That opinion radically altered the landscape for the compensation of those defending indigent defendants since this Attorney General's opinion reached a contrary conclusion to prior, related opinions of the Attorney General, as well established judicial precedent, that approved office overhead expenses were not included in the phrase "expenses reasonably incurred" in Ala. Code § 15-12-21(d). The Comptroller's reliance on this contradictory interpretation provoked new litigation in the Circuit Court of Covington County, a motion to hold the Comptroller in contempt

² Again, while the order in *Christensen v. Childree* was attached to the brief of *amicus curiae* Covington County Bar Association, it is attached hereto as Exhibit C for the Court's convenience.

for his failure to abide by the final judgment issued by that court concerning the payment of approved office overhead expenses.

Following the filing of the motion to hold the Comptroller in contempt in the Circuit Court of Covington County, the Comptroller responded and conceded the issue by stating, "[T]he Comptroller respectfully agrees that this Honorable Court's Order in this matter, dated May 30, 2002, declaring that 'office overhead expenses' are encompassed in the term 'expenses reasonably incurred' in § 15-12-21(d), for indigent defense fee declarations submitted by the Plaintiff is due to be honored by the Comptroller." *Christensen v. Childree*, Circuit Court of Covington County, Case No. CV-2002-50, Defendant Robert L. Childree's Supplemental Response to the Plaintiff's Motion to Hold Defendant in Contempt, at 1. In addition, the Comptroller, conceding that, in light of the 2002 judgment of the Circuit Court Of Covington County, the Comptroller agreed to "pay any pending or future properly documented claims for 'office overhead expenses' in indigent criminal matters arising in the 22nd Judicial Circuit." *Id.* at

2.³

Judicial estoppel is an established doctrine recognized in Alabama, the contours of which were defined in *Unum Life Ins. Co. of America v. Wright*, 897 So. 2d 1059 (Ala. 2004). In that case, this Court relied upon *New Hampshire v. Maine*, 532 U.S. 742 (2001), for its holding "that for judicial estoppel to apply (1) a party's later position must be 'clearly inconsistent' with its earlier position; (2) the party must have been successful in the prior proceeding so that judicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or second court was misled.'" (quoting *Edwards v. Aetna Life Ins.*, 690 F.2d 595, 599 (6th Cir. 1982); and (3) the party seeking to assert an inconsistent position must 'derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.' 532 U. S. at 750-51. No requirement of a showing of privity or reliance appears in the foregoing statement of factors to consider in determining the applicability of the doctrine of judicial estoppel.'" *Id.*,

³ The Comptroller's Supplemental Response to Plaintiff's Motion to Hold Defendant in Contempt filed in the Circuit Court of Covington County in *Christensen v. Childree*, Case No. CV-2002-50, is attached hereto as Exhibit D for the Court's convenience.

quoting *Ex parte First Alabama Bank*, 883 So. 2d 1236, 1244-45 (Ala. 2003). Judicial estoppel applies in the present case to bar the Alabama Comptroller from taking the position that seeks to excuse his failure to pay judicially approved office overhead expenses.

While the Comptroller has pursued a position in this litigation that is consistent with his position in the 2002 Covington County litigation - - that office overhead expenses are not payable as "expenses reasonably incurred" within the meaning of Ala. Code § 15-12-21(d), that position is "clearly inconsistent" with the Comptroller's demonstrated position in declining to appeal the original adverse decision of the Circuit Court of Covington County. The Comptroller's inconsistent position was again shown when he agreed to compensate Mr. Christensen and all other attorneys in Covington County for approved office overhead expenses, instead of taking the risk of being found in contempt for failure to abide by the prior judgment of that court. In addition, in the court below in the present case, "the Comptroller took little issue with plaintiff's view and expressed a simple desire for judicial guidance." *Wright v. Childree*, Circuit Court of Montgomery County, Alabama, Civil

Action No. 05-1544, September 28, 2005, at 3. In addition, the trial court noted the clear inconsistency in the Comptroller's position by observing that "most curiously, [the Comptroller] continues to this day to reimburse attorneys for overhead expenses in the Twenty-Second Judicial Circuit even though it stopped such reimbursements for all other Alabama attorneys in February 2005." *Id.* at 2. Clearly, the Comptroller abandoned his position that approved office overhead expenses were not payable under § 15-12-21(d) by not appealing the Covington County judgment and implicitly recognized that when he "took little issue" with the position advanced by Mr. Wright in the court below.

By arguing a contrary position to that which the Comptroller accepted as a result of the Covington County litigation, the Comptroller apparently attempted to create the perception that either the Circuit Court of Montgomery County would be misled (if it adopted his current position on office overhead expenses) or the Circuit Court of Covington County would be misled since the Comptroller declined to appeal that judgment and continues to reimburse Covington County lawyers for approved overhead expenses.

The Comptroller seeks, by his inconsistent positions, to

impose an unfair detriment on Mr. Wright (and by extension other attorneys in the state) since that position, if adopted, would deny Mr. Wright reimbursement for approved and incurred office overhead expenses, currently something only provided to attorneys practicing in Covington County. The Comptroller's action clearly meets the standard for the application of judicial estoppel as defined in *Unum Life Ins. Co. of America* and the judgment of the Circuit Court of Montgomery County should be affirmed on that basis. However, even if the Court finds that judicial estoppel is inapplicable, collateral estoppel barred the Comptroller from taking a position in the Circuit Court of Montgomery County and advancing that position here, that is inconsistent with the binding effect of the judgment in the litigation in which he was a party the Circuit Court of Covington. In order "to interpose a *valid* defense of collateral estoppel . . . two elements are required: 1) The party claiming the benefit of the prior judgement as an estoppel against the adversarial party is one who one would have been prejudiced by a contrary decision in the previous case; 2) the party against whom the estoppel by judgment is sought either was an actual party in the previous case or was privity with, or is a successor to the rights of, an actual

party in the previous case." *Constantine v. U. S. Fidelity & Guar. Co.*, 545 So. 2d 750, 755 - 56 (Ala. 1989).

There is no doubt that Mr. Wright would have experienced prejudice if the Circuit Court of Covington County had ruled against Mr. Christensen because such an adverse ruling would serve as precedent in the present case. In addition, the party against whom collateral estoppel, or estoppel by judgment, is sought to be applied here was the actual party in the prior case that was litigated in the Circuit Court of Covington County. Plainly, the Comptroller was a party in the Covington County litigation and is bound by that judgment. Therefore, both elements of collateral estoppel are present here. Accordingly, the Comptroller should be prohibited from taking a position contrary to the position which he accepted, or in which he acquiesced, first by his decision not to appeal the adverse ruling of the Circuit Court of Covington County and later by conceding the issue and seeking only "guidance" from the Circuit Court of Montgomery County.

II. THE NEED FOR CERTAINTY AND CONSISTENCY IN THE LAW SHOULD PREVENT THE ATTORNEY GENERAL FROM ISSUING CONTRADICTORY ADVISORY OPINIONS THAT INTERPRET THE SAME STATUTE.

In the present case, the Comptroller posed the following question to be answered by the Attorney General: "May an

attorney representing an indigent defendant claim both office overhead at a rate approved in advance by the trial court and expenses under the 'Uniform Guidelines for Attorney Fee Declarations?'" *Op. Atty. Gen. No. 2005-063*, 2005 WL 366930, at *1 (February 1, 2005). While the Comptroller did not directly pose the question about whether office overhead expenses are a component of "expenses reasonably incurred", as that phrase is used in § 15-12-21(d), the Attorney General nevertheless took the opportunity to declare that, in his view, office overhead expenses were no longer payable. This opinion was not issued in a vacuum by Attorney General King. Several years before, then-Attorney General William H. Pryor considered the precise statutory scheme, as well as the same relevant case law, and concluded that approved office overhead expenses were a part of "expenses reasonably incurred" and payable under § 15-12-21(d).

In *Op. Atty. Gen. No. 2002-022*, 2001 WL 1421621 (October 15, 2001), Attorney General Pryor affirmatively answered the following question posed by a trial court: "Is an attorney appointed to represent an indigent individual eligible to claim office overhead expenses when he does not maintain an office but practices out of his apartment?" In conducting the

analysis, the Attorney General construed Ala. Code § 15-12-21(d) (Supp. 2000), the statute amended by the Legislature in 2002 and which was the subject of Attorney General King's 2005 opinion. The language in the 2000 amendment substituted "in defense of his or her client" for the previous language contained in § 15-12-21(d), which read "in such defense." The statute upon which Attorney General Pryor's opinion was based is the precise statute upon which Attorney General King based the opinion which triggered the instant case. Despite the interpretation of the identical statute by the two Attorneys General, Attorney General King reached the opposite conclusion from that reached by Attorney General Pryor less than four years earlier.

In the 2005 opinion, Attorney General King placed substantial reliance for his conclusion that approved office overhead expenses were no longer payable as "expenses reasonably incurred" for indigent defense based on the change from "in such defense" to "in defense of his or her client" in the amended statute. In doing so, the Attorney General was plainly disingenuous since the relied-upon language did nothing to modify the substance of the statute which had been interpreted by the Court of Criminal Appeals in *May v. State*,

672 So. 2d 1307 (Ala. Crim. App. 1993) and approved by this court in *Ex parte Smith*, 698 So. 2d 219, 224 (Ala. 1997), where the court stated, "[W]e agree with the Court of Criminal Appeals' holding in *May* that § 15-12-21 authorizes payment to a court-appointed attorney for overhead expenses reasonably incurred in defense of an indigent defendant." Whether the overhead expenses are incurred "in such defense", or "in defense of his or her client", or "in defense of an indigent defendant", the impact is no different. Approved overhead expenses are a part of a lawyer's expenses when defending an individual who is indigent and unable to afford counsel of his or her choosing.

In 2002 Alabama's Legislature passed a resolution, contained in Act 2002-129, declaring that its intent in enacting Act 99-427 (the legislation amending § 15-12-21(d)) was not to eliminate approved office overhead expenses as a part of reimbursable expenses in indigent defense. While it is true that "a joint resolution cannot be used to amend an existing statute []", *Opinion of the Justices No. 265*, 381 So. 2d 183, 185 (Ala. 1980), the Legislature's action in passing Act 2002-129 was not to amend § 15-12-21(d). In a state where there is a dearth of legislative history accompanying

statutory enactments, a resolution such as Act 2002-129 serves the valuable purpose of providing the Legislature's perspective in the event that statutory construction is necessary in order to interpret a statute.⁴

There are sound policy reasons why the Attorney General should be prevented from issuing contradictory interpretations of the same statute. Consistency is an important function in law. If Attorney General's opinions are subject to the vagaries or political considerations of the moment, then there will be little that can be said for consistency. In addition, there needs to be predictability so that all who are subject to the effect of laws interpreted by the Attorney General understand their duties and responsibilities under it. This is particularly true when it comes to those persons occupying the positions capable of requesting opinions of the Attorney General. See *Ala. Code 36-15-1(1975)*. In conducting the business of state government, state officials must not be placed on a teeter-totter that will ascend or descend

⁴ Amici do not concede that statutory construction is necessary to determine that approved office overhead expenses are included in "expenses reasonably incurred in § 15-12-21(d). The statute is plain on its face and several judicial decisions have construed it in such manner. However, the Legislative's resolution is a valuable tool for the Court to consider.

depending upon the attitude, outlook, or political proclivities of a particular Attorney General, particularly when the public relies upon those officials for the effective conduct of state business.

Since Attorney General Pryor delivered an opinion which construed the identical statute which Attorney General King construed, the contradictory opinion of Attorney General King should be given no weight. The Court should rule in a manner consistent with established law that approved office overhead expenses are included in the phrase "expenses reasonably incurred", as it is used in Ala. Code § 15-12-21(d).

CONCLUSION

For all of the foregoing reasons, *amicus curiae* the NACDL and the ACDLA urge the Court to affirm the judgment of the court below.

Respectfully submitted, this the 1st day of March, 2006.

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EXHIBIT A

MEMORANDUM FROM THE COMPTROLLER
DATED AUGUST 24, 1999

OFFICE OF STATE COMPTROLLER

Robert L. Childree, State Comptroller

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AUG 24 1999

Subject: New Attorney Fee Declaration Forms for Indigent Defense Claims

On June 10, 1999, Act 99-427 increased attorney fees and placed limits on various types of cases. As a result, Attorney Fee Declaration claim forms were revised to coincide with the new law. In order to properly calculate payments under both the old and new laws, and to accurately enter all information into the indigent defense payment system on each case, it will be necessary to complete an Attorney Fee Declaration on the old form for work performed before June 10, 1999. For work performed on or after June 10, 1999, Form C-62A revised 6/25/99(Adult) or Form C-62B revised 6/25/99 (Juvenile) must be used.

When submitting a claim where the time span of work encompasses both laws it will be necessary to fill out two claim forms, both old and new. When billing for services where the case began under the old law and concluded under the new law, the new limits on case types apply to the total claim. Please clip both claims together along with all necessary supporting documentation for payment.

The question of overhead expenses has arisen often since the new law went into effect. The new law has no effect on the overhead decision (May v. State, September 3, 1993). Numerous fee declarations with overhead claims are being received without an overhead order. If overhead is claimed an order must be attached. Overhead must be pre-approved and is calculated as of the date the judge signed the order. Refer to Attorney General's Opinion 96-192.

Please use the following guides when preparing and submitting claims:

1. "Uniform Guidelines for Attorney Fee Declarations"
2. Code of Alabama, Chapter 12 "Defense of Indigents", Sections 15-12-21, 22 and 23
3. Attorney General's Opinion 96-192 concerning overhead expenses
4. Attorney Fee Declaration Form C-62A (Adult) or Form C-62B (Juvenile)

Please make every effort to submit mathematically correct claims with all necessary attachments, including a complete itemization of date and time charges, court orders, copies of invoices, etc. Incorrect claims are time consuming and, in turn, add to delays in all attorneys being paid timely.

Enclosed you will find new forms. If your circuit clerk stocks the forms please use them, otherwise you may use a good quality photocopy of the form. Forms can also be downloaded from the "Court Forms" section of AOC's Webpage, www.alacourt.org. Please complete each claim form completely and accurately in order to keep returns to a minimum.

For questions concerning claims you may contact Brenda Layton at phone (334) 242-7052 or fax at (334) 353-4407 or e-mail blayton@comptroller.state.al.us.

EXHIBIT B

MEMORANDUM FROM THE COMPTROLLER
DATED OCTOBER 4, 2000

OFFICE OF STATE COMPTROLLER

Robert L. Childree, State Comptroller
RSA Union Building, 100 North Union Street Suite 220, Montgomery, Alabama 36130-2602
Phone (334) 242-7050

572259965 00

MARK JOHN CHRISTENSEN

ATTORNEY AT LAW

P O BOX 507

To Attorney

ANDALUSIA

AL 36420

Date: October 1, 2000

Subject: New Attorney Fee Declaration Forms for Indigent Defense Claims

On June 10, 1999, Act 99-427 increased attorney fees and placed limits on various types of cases. As a result, Attorney Fee Declaration claim forms were revised to coincide with the new law. In order to properly calculate payments under both the old and new laws, please use the following forms.

- For work performed before June 10, 1999 – use Form C-62A or C-62B, Rev. 8/98.
- For work performed between June 10, 1999 and September 30, 2000 (including these dates) - use Forms C-62A or Form C-62B, both Rev. 7/2000, with this title in the heading.
- For work performed on or after October 1, 2000, use Forms C-62A or C-62B, Rev. 7/2000, with this title in the heading.

When submitting a claim where the time span of work encompasses both laws it will be necessary to fill out two or three claim forms, depending on dates work was performed. When billing for services where the case began under the old law and concluded under the new law, the new limits on case types apply to the total claim. Please clip the appropriate claim forms together along with all necessary supporting documentation for payment.

The question of overhead expenses has arisen often since the new law went into effect. The new law has no effect on the overhead decision (May v. State, September 3, 1993). Numerous fee declarations with overhead claims are being received without an overhead order. **If overhead is claimed an order must be attached.** Overhead must be pre-approved and is calculated as of the date the judge signed the order. Refer to Attorney General's Opinion 96-192.

Please use the following guides when preparing and submitting claims:

1. "Uniform Guidelines for Attorney Fee Declarations"
2. Code of Alabama, Chapter 12 "Defense of Indigents", Sections 15-12-21, 22 and 23
3. Attorney General's Opinion 96-192 concerning overhead expenses
4. Attorney Fee Declaration Form C-62A (Adult) or Form C-62B (Juvenile)

Please make every effort to submit mathematically correct claims with all necessary attachments, including a complete itemization of date and time charges, court orders, copies of invoices, etc. Incorrect claims are time consuming and, in turn, add to delays in all attorneys being paid timely.

Enclosed you will find new forms. If your circuit clerk stocks the forms please use them, otherwise you may use a good quality photocopy of the form. Forms can also be downloaded from the "Court Forms" section of AOC's Webpage, www.alacourt.org. Please complete each claim form completely and accurately in order to keep returns to a minimum.

For questions concerning claims you may contact Brenda Layton at phone (334) 242-7052 or fax at (334) 353-4407 or e-mail blayton@comptroller.state.al.us.

EXHIBIT C

ORDER IN *CHRISTENSEN V. CHILDREE*, CV-2002-50
COVINGTON COUNTY CIRCUIT COURT
FILED MAY 30, 2002

IN THE CIRCUIT COURT OF COVINGTON COUNTY, ALABAMA

MARK JOHN CHRISTENSEN

Plaintiff,

Case No. CV-2002-50

vs.

ROBERT L. CHILDREE, as
Comptroller of the State
of Alabama, and Does 1-5,

Defendants.

FILED IN OFFICE

MAY 30 2002

CLERK

ORDER

This matter having been set for hearing on the motions for summary judgment filed by the parties, and the Court being informed that the parties had agreed to submit on their respective motions, the Court proceeded to examine the evidence submitted by the parties. Having examined the evidence, the Court finds as follows:

1. Plaintiff is due to be granted a partial summary judgment on his request for a declaratory judgment on the issue of the interpretation of the phrase "expenses reasonably incurred" as used in Code of Alabama, § 15-12-21(d). The Court finds that Plaintiff is correct that "office overhead expenses are by law encompassed in the term 'expenses reasonably incurred' as that term is used in § 15-12-21(d)." May v. State, 672 So.2d 1307, 1308 (Ala. Crim. App. 1993). See also Ex parte

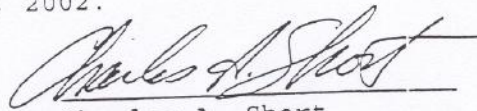
Smith, 698 So. 2d 219, 224 (Ala. 1997).

It is undisputed that Plaintiff has now received payment in full for the deficient amounts that were set forth in the complaint, and Defendant is due to be granted partial summary judgment on all issues in the complaint relating to the claims for money not paid.

Therefore, there being no genuine issue as to any material fact, and it appearing to the Court that partial summary judgment is due to be granted to each party, it is hereby ordered that partial summary judgment be entered for Plaintiff on his request for a declaratory judgment, said judgment being that the term "expenses reasonably incurred" found in Code of Alabama, § 15-12-21(d) includes office overhead expenses, and it is ordered that partial summary judgment be entered for Defendant on all issues dealing with claims for money.

The Court further finds that the entry of the partial summary judgments set forth above fully adjudicates all pending issues in this matter and orders that costs be taxed as incurred.

Done this 29th day of May, 2002.



Charles A. Short,
Circuit Judge

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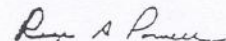

CLERK

EXHIBIT D

CHRISTENSEN V. CHILDREE, CASE NO. CV-2002-50
PLAINTIFF'S MOTION TO HOLD DEFENDANT IN CONTEMPT
CIRCUIT COURT OF COVINGTON COUNTY

IN THE CIRCUIT COURT OF COVINGTON COUNTY, ALABAMA

MARK JOHN CHRISTENSEN,

Plaintiff,

v.

ROBERT L. CHILDREE, as
Comptroller of the State of Alabama,
and Does 1-5,

Defendants

)

)

)

)

)

CASE NO. CV-2002-50

DEFENDANT ROBERT L. CHILDREE'S
SUPPLEMENTARY RESPONSE
TO THE PLAINTIFF'S AND INTERVENOR'S
MOTION TO HOLD DEFENDANT IN CONTEMPT

COME NOW the Defendant, Robert L. Childree, State Comptroller, hereinafter referred to as "Comptroller," by and through counsel, and responds as follows:

1. The Comptroller respectfully agrees that this Honorable Court's Order in this matter, dated May 30, 2002, declaring that "office overhead expenses" are encompassed in the term "expenses reasonably incurred" in § 15-12-21(d), for indigent defense fee declarations, is controlling in the 22nd Judicial Circuit.

2. This matter arose in 2002 because of a directive by the State of Alabama's Director of Finance to the Comptroller that he cease honoring demands by attorneys for indigent criminal defendants for payment of "office overhead expenses." At about the same time the Plaintiff filed this original action, the Director of Finance reversed his directive and the Comptroller resumed payment of "office overhead expenses." Lee Miller, Esquire, General Counsel for the Department of Finance, now retired, filed a Motion for Summary Judgment on behalf of the Comptroller, alleging mootness as well

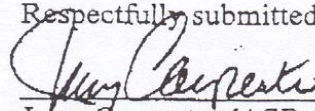
as improper venue. This Court entered its partial summary judgment order, which was not appealed.

3. Recently, the Attorney General, in his Opinion No. 2005-063, opined that "Act No. 99-427 amended § 15-12-21(d) of the Code of Alabama to eliminate overhead as an expense for which an appointed attorney can be reimbursed." Pursuant to this opinion, the Comptroller advised attorneys that his office would once again decline to pay "office overhead expenses."

4. Having been reminded of this Court's Order as a result of the Plaintiff's contempt motion, and having reviewed the Order with the Finance Department's General Counsel, the Comptroller has directed his staff to act in accordance with the Order and to process and pay any pending or future properly documented claims for "office overhead expenses" in indigent criminal matters arising in the 22nd Judicial Circuit.

WHEREFORE, the Comptroller respectfully requests that the Court find the Comptroller to be in compliance with the Court's Order, and to dismiss the Plaintiff's Motion To Hold Defendant In Contempt.

Respectfully submitted,



Jerry Carpenter (ASB-3376-R61J)

General Counsel

Assistant Attorney General

Alabama Department of Finance
Legal Division
Alabama State Capitol, Room E-308
Montgomery, AL 36130
334-242-7175
334-242-2008 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing by placing the same in the United States mail, postage prepaid, on the 3rd day of May, 2005, addressed as follows:

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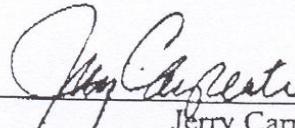
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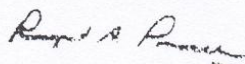
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Jerry Carpenter

FILED IN OFFICE
MAY 04 2005


Randy A. Rouse

