



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 19-C-9000

**ORDER REGARDING MOTION FOR FEES/COMPENSATION:
DEFENDANT MARK RADCLIFFE'S GUARDIAN *AD LITEM***

In response to the Court's prior Order¹ attorney Brent A. Clyburn filed and served a *Motion for Fees/Compensation: Defendant Mark Radcliffe's Guardian Ad Litem* (Transaction ID 71554380) on December 5, 2023, along with a copy of Plaintiffs' motion to appoint a guardian *ad litem*, and two orders entered in the Circuit Court of Marshall County, West Virginia, appointing Brent Clyburn as guardian *ad litem* on behalf of incarcerated Defendant, Mark Radcliffe, in certain civil actions.

Having reviewed the pending motion and supporting documents as well as the documents previously filed by Brent A. Clyburn on November 28, 2023, (Transaction ID 71514578)² the Court **GRANTS** the motion for attorney fees/compensation **IN PART** and **DENIES** the motion **IN PART** based on the following findings and conclusions:

1. On February 26, 2018, Plaintiffs filed a motion seeking appointment of a guardian *ad litem* for incarcerated Defendant, Mark Radcliffe, for the purpose of service of the Complaint filed in *Brooke County Commission, et al. v. Purdue Pharma L.P., et al.*, Marshall County Civil Action Nos. 17-C-248 through 17-C-255 ("the Brooke County Action").³

¹ *Order Regarding Correspondence from Brent A. Clyburn, Esq.* (Transaction ID 71514578) entered on November 30, 2023.

² On November 28, 2023, attorney Brent A. Clyburn filed the following: correspondence from Brent A. Clyburn, Esq. to the Honorable Alan D. Moats dated August 26, 2022; correspondence from Brent A. Clyburn, Esq. to the Honorable Derek C. Swope dated October 25, 2023; and Circuit Court Invoices for *Guardian Ad Litem* Appointed on Behalf of Incarcerated Adult, Mark Radcliffe, for Civil Action No. 21-C-9000 PHARM, and Civil Action Nos. 17-C-248 THRU 255, along with time sheets for March 7, 2018, through February 24, 2021, for Case No. 21-C-9000 PHARM.

³ *Motion to Appoint Guardian Ad Litem for Purposes of Service of Complaint Upon Incarcerated Defendant, Mark Radcliffe*, filed on February 26, 2018, in Marshall County Civil Action Nos. 17-C-248 through 17-C-255.

2. On March 7, 2018, Brent A. Clyburn was appointed to serve as guardian *ad litem* for Mark Radcliffe, at that time an incarcerated individual, in the Brooke County Action.
3. On October 29, 2018, Brent A. Clyburn was appointed to serve as guardian *ad litem* for Mark Radcliffe, at that time an incarcerated individual, in *Monongalia County Commission, et al. v. Purdue Pharma, L.P., et al.*, Marshall County Civil Action Nos. 18-C-222 and 18-C-233 through 18-C-236 (“the Monongalia County Action”).
4. By Administrative Order entered on June 7, 2019, the Supreme Court of Appeals of West Virginia referred the Brooke County Action, the Monongalia County Action and “all civil actions involving the same or similar common questions of law or fact” to the Mass Litigation Panel for further proceedings.
5. On June 14, 2019, the Court entered an Order designating these cases for electronic filing and service.⁴ The Court notified the parties that, “Registration and training for e-filing and service is **mandatory**. If a party is not registered with File & Serve*Xpress* by July 1, 2019, the party will not receive e-service of documents in the Opioid Litigation.”⁵ The Court ordered the Clerk of the Circuit Court of Marshall County to provide a copy of this Order “to all counsel of record, any *pro se* litigants, and to the Mass Litigation Manager.”⁶
6. On July 10, 2019, the Court scheduled a status conference on September 20, 2019, and ordered “[a]ll counsel of record and any *pro se* litigants are required to attend, unless excused by the Court upon written request, for good cause shown.”⁷ As with all of its orders entered after

⁴ *Order Assigning Judges, Transferring Civil Actions to the Circuit Court of Kanawha County, West Virginia, and Designating Litigation for Electronic Filing and Service*, entered on June 14, 2019.

⁵ *Id.*

⁶ *Id.*

⁷ *Order Scheduling Status Conference* (Transaction ID 63532456), entered on July 10, 2019.

electronic filing and service became effective on July 1, 2019, this order was electronically served on all counsel of record via File & ServeXpress.⁸

7. The Court amended its July 10, 2019, Order “to require that at least one counsel of record with authority to speak for and fully represent each party in the Opioid Litigation shall attend the status conference. . . .”⁹ Any *pro se* litigants were required to attend the status conference, “unless excused by the Court upon written request, for good cause shown.”¹⁰
8. On September 16, 2019, the Court entered an Order setting the agenda for the status conference and requiring that, “at least one counsel of record with authority to speak for and fully represent each party in the Opioid Litigation shall attend the status conference. Any *pro se* litigants are required to attend the status conference, unless excused by the Court upon written request, for good cause shown.”¹¹
9. During the status conference, the Court ordered Plaintiffs’ counsel to “confer with the *pro se* Defendants and counsel for the individual Defendants and to submit a proposal for the Court regarding bifurcation of these parties” by October 18, 2019.¹²
10. On October 18, 2019, Plaintiffs filed a motion to stay all proceedings as to a number of individual Defendants including Mark Radcliffe.¹³ Plaintiffs stated in their motion that they

⁸ *Id.*

⁹ *Amended Order Scheduling Status Conference* (Transaction ID 63628278), entered on July 25, 2019.

¹⁰ *Id.*

¹¹ *Order Setting Agenda for September 20, 2019 Status Conference* (Transaction ID 64205994), entered on September 16, 2019.

¹² *Order Regarding Rulings Issued During the September 19, 2019 Status Conference* (Transaction ID 64297517), entered on October 9, 2019.

¹³ *Motion for Stay of Proceedings as to Defendants Patty Carnes, Mark Ross, Mark Radcliffe, Goodwin Drug Company, and Carl Hooker* (Transaction ID 64331563), electronically filed and served on all counsel of record on October 18, 2019.

“have been unable to confer with Defendants Mark Radcliffe and Carl Hooker because these defendants are incarcerated and, therefore, Plaintiffs agree to also stay all proceedings in this case as to Defendants Mark Radcliffe and Carl Hooker so that the remaining claims can proceed more efficiently.”¹⁴

11. On October 23, 2019, the Court granted Plaintiffs’ motion and ordered a stay of all proceedings against Mark Radcliffe and certain other Defendants until further Order of the Court.¹⁵

12. Attorney Clyburn represents that, “Counsel’s time spent on these proceedings, serving as Mr. Radcliffe’s guardian *ad litem* through June 7, 2019, amounts to, approximately 79.3 hours.”¹⁶

13. Attorney Clyburn further represents that, “Counsel’s time spent on these proceedings, serving as Mr. Radcliffe’s guardian *ad litem*, in addition to the time spent on the matters while they were before the Circuit Court of Marshall County, through October 23, 2019, amounts to, approximately, 39.1 hours. Cumulatively, then, 118.4 hours up to this point, give or take.”¹⁷

14. Attorney Clyburn acknowledges the stay of proceedings against Mr. Radcliffe, on October 23, 2019, but contends he is entitled to an additional 147.1 hours in the matter for reviewing “correspondence, mainly via e-mail, from various participants in the litigation regarding strategies and the on-going status of the case” and “reviewing e-mails searching for reference to his ward, Mr. Radcliffe” for a total of 265.5 hours through February 25, 2021.¹⁸

¹⁴ *Id.* at paragraph 5.

¹⁵ *Order Granting Motion for Stay of Proceedings as to Defendants Patty Carnes, Mark Ross, Mark Radcliffe, Goodwin Drug Company, and Carl Hooker* (Transaction ID 64344260), entered on October 23, 2019.

¹⁶ *Motion* at paragraph 5.

¹⁷ *Id.* at paragraph 7.

¹⁸ *Id.* at paragraphs 8-10.

15. The Court finds that attorney Clyburn did not file a Notice of Appearance with the Court as guardian *ad litem* for incarcerated Defendant Mark Radcliffe; did not register with File & Serve*Xpress* until November 27, 2023; did not attend the September 19, 2019, status conference, as ordered by the Court; did not ask to be excused from attending the September 19, 2019, status conference; and did not request leave of the Court to withdraw as counsel and guardian *ad litem* for incarcerated Defendant Mark Radcliffe when he left private practice on March 1, 2023, to serve as an assistant prosecuting attorney in Marshall County, West Virginia.¹⁹
16. Accepting as true attorney Clyburn’s calculation of 118.4 hours “give or take” for services rendered from the time of his appointment as guardian *ad litem* for Mark Radcliffe on March 3, 2018, through the time all proceedings against Mark Radcliffe were stayed on October 23, 2019, the Court finds that attorney Clyburn is entitled to \$7,104.00 for services rendered as guardian *ad litem* for incarcerated Defendant Mark Radcliffe from March 3, 2018, through October 23, 2019.
17. The Court further finds that attorney Clyburn is not entitled to compensation for any services rendered after the Court’s October 23, 2019, Order staying all proceedings against Defendant Mark Radcliffe.
18. The Court **ORDERS** John Jenkins of Smith Cochran Hicks PLLC, the West Virginia First Qualified Settlement Fund Administrator, to pay the sum of \$7,104.00 to attorney Brent A. Clyburn from the West Virginia First Qualified Settlement Fund.

¹⁹ Attorney Clyburn represents in his motion that approximately three months after he left private practice Defendant Mark Radcliffe was released from his term of incarceration. Motion, paragraph 13.

A copy of this Order has this day been electronically filed and served on all counsel of record via File & Serve*Xpress*. Counsel to the Mass Litigation Panel is directed to provide a copy of this Order to the West Virginia First Qualified Settlement Fund Administrator.

It is so **ORDERED**.

ENTERED: December 8, 2023.

/s/ Alan D. Moats
Lead Presiding Judge
Opioid Litigation

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation