

AFFIDAVIT OF STEPHEN B. SHANKMAN

Stephen B. Shankman, being of lawful age, states the following:

1. I am an adult resident citizen of Memphis, Shelby County, Tennessee.
2. I am currently employed, as a result of my appointment, as the Federal Public Defender for the Western District of Tennessee.
3. Prior to my appointment as the Federal Public Defender, I worked as a criminal defense attorney in private practice.
4. During my private practice, in February of 1985, I was contacted by the Bartlett City Judge, Freeman Marr, and asked to represent Marcia Gaile Owens upon her arrest for the purposes of her arraignment and preliminary hearing.
5. I met with Ms. Owens the following day and spoke with her for several hours before her arraignment. Ms. Owens was extraordinarily remorseful for hiring someone to kill her husband. But her most immediate and profound concern was the well-being of her children. Ms. Owens was clear – she wanted to plead guilty and avoid a trial because she didn't want to put her children and the rest of her family through any more pain.
6. Because of Ms. Owens's remorse and profound concern for her children, I spoke with the jailer at the Bartlett Jail and requested that Ms. Owens not be moved to the Shelby County Jail until after the news media left. I wanted to make sure that the news-media did not get any video footage of Ms. Owens so that her children did not have to see that footage on television for the rest of their lives. As a result of my request, Ms. Owens was moved to Shelby County very early in the morning several days after her preliminary hearing.
7. Ms. Owens was also immediately forthcoming with me regarding her motivations for hiring someone to kill her husband – her husband was abusive and cheated on her regularly.

Based on the information she provided, I immediately recognized that the defense in this case should be that Ms. Owens suffered from battered women's syndrome. Based on that, I believe this case should never have been a death penalty case.

8. I was unable to work out with Ms. Owens a payment for my services as her retained lawyer. As a result, I declined appointment in her case and the Shelby County Criminal Court appointed two lawyers to represent her.

9. Several years later, in 1991, I was approached by Ron Gilman (who is now a Judge on the Sixth Circuit Court of Appeals), who asked that I serve as co-counsel with him for Ms. Owens's post-conviction proceedings. I agreed to represent Ms. Owens again because I was so disappointed that Ms. Owens had not been allowed to plead guilty, that her attorneys had not raised a battered women's defense and that Ms. Owens had received the death penalty. I believed that it was imperative that a battered women's expert be hired to demonstrate that the abuse Ms. Owens had endured at the hands of her husband was highly mitigating and that this case was not a death penalty case.

10. Thus, the focus in Ms. Owens's post-conviction case was on winning the right to expert funds from the court so that we could hire an expert to investigate, evaluate, and present the evidence relating to battered women's syndrome. We had lined up Dr. Lenore Walker, a clinical and forensic psychologist, who at the time was the pre-eminent expert in the United States on battered women's syndrome. See Exhibit 1, Affidavit of Counsel, Stephen B. Shankman and Ronald L. Gilman. We litigated the right to expert funding for capital petitioners in post-conviction all the way to the Tennessee Supreme Court. On October 23, 1995, the Tennessee Supreme Court held that a capital petitioner did have the right to funding from the court in order to hire experts. See Owens v. State, 908 S.W.2d 923 (1995).

11. Shortly thereafter, Ron Gilman was named as a possible appointee for the Sixth Circuit Court of Appeals. As a result, Judge Gilman and I withdrew and did not proceed with the investigation or hiring Dr. Walker as we had planned. New counsel were appointed to represent Ms. Owens for the purposes of investigating and presenting her claims in post-conviction and for her post-conviction hearing. Neither Judge Gilman nor I played any role in any of the proceedings after we withdrew.

12. I still believe that Ms. Owens's case should never have been a death penalty case. She should have been permitted to plead guilty, just as she had wanted to from the day that I met her.

I declare, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Further affiant sayeth not.

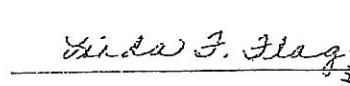

Stephen B. Shankman

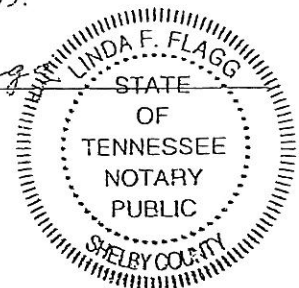
Dated this 6th day of July, 2009.

STATE OF TENNESSEE)

COUNTY OF SHELBY)

Sworn to and subscribed before me on this the 6 day of July, 2009.


NOTARY PUBLIC



My Commission Expires _____
July 13, 2010

ATTACHMENT 1

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
AT MEMPHIS

GAILE K. OWENS,

Petitioner,

v.

No. P-8806

STATE OF TENNESSEE,

Respondent.

FILED 9/23/91
MIRIWA J. JOHNSON, CLERK
BY *[Signature]* D.G.

EX PARTE MOTION OF PETITIONER TO MAINTAIN DOCUMENTS AND PLEADINGS
UNDER SEAL AND TO MAINTAIN RELATED PROCEEDINGS CONFIDENTIAL

Pursuant to T.C.A. §40-14-207(b), Rule 13(2)(B)(10) of the Rules of the Supreme Court of Tennessee, and the due process and equal protection guarantees of the United States and Tennessee Constitutions, Petitioner, Gaile K. Owens, moves this Court, ex parte, to hold this Motion, the Memorandum in support hereof, and the documents and pleadings listed below in confidence and under seal and to maintain any future proceedings or references to the contents of the pleadings and documents described above or listed hereafter in confidence and under seal. Petitioner submits that to allow Respondent access to the thought processes, consultants, or matters contained in this Motion or the other documents described herein would violate the express provisions of T.C.A. §40-14-207(b) and Supreme Court Rule 13(2)(B)(10); undermine the adversary process and the work-product doctrine, in violation of the due process guarantees of the United States and Tennessee Constitutions; and result in the unequal treatment of indigent petitioners, in violation of the equal protection guarantees of the United States and Tennessee Constitutions.

Specifically, in addition to this Motion and the supporting Memorandum in Support of Ex Parte Motion to Maintain Certain Documents and Pleadings Under Seal and to Maintain Related Proceedings Confidential, Petitioner requests that the following pleadings and documents be maintained under seal and in confidence:

1. Ex Parte Motion, Under Seal, for Authorization of and Payment for Support Services;

2. September 23, 1991 Affidavit of Counsel (attached to Item 1 listed above);

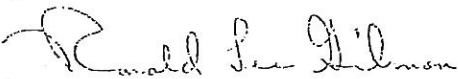
3. October 29, 1990 Affidavit of Lenore E. Walker (attached to item 1 listed above) [original filed in U.S. District Court for the Western District of Tennessee in Cause No. 88-2467];

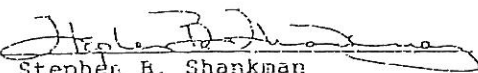
4. October 22, 1990 Affidavit of Scharlette Holdman (attached to item 1 listed above) [original filed in U.S. District Court for the Western District of Tennessee in Cause No. 88-2467];

5. September 13, 1991 Affidavit of Ronald Lax (attached to item 1 listed above); and

6. Memorandum in Support of Ex Parte Motion, Under Seal, for Authorization of and Payment for Support Services.

Respectfully submitted,



By: _____
Ronald L. Gilman, #8395
50 North Front Street,
Suite 1400
Memphis, Tennessee 38103
(901) 575-8200


By: _____
Stephen B. Shankman
200 Jefferson Avenue, #800
Memphis, Tennessee 38103
(901) 575-8700

CERTIFICATE REGARDING SERVICE

I hereby certify that, pursuant to the statutory and constitutional authority cited above, a copy of the foregoing Motion of Petitioner to Maintain Documents and Pleadings Under Seal and to Maintain Related Proceedings Confidential has not been forwarded to the Honorable John W. Pierotti, District Attorney General for the Thirtieth Judicial District, 201 Poplar Avenue, Suite 301, Memphis, Tennessee 38103.

This 23rd day of September, 1991.



Ronald L. Gilman