

**IN THE MISSOURI SUPREME COURT**

**STATE ex rel. J. MARTY ROBINSON,** )  
 )  
 Relator, )  
 vs. )  
 )  
 **THE HONORABLE** )  
 **RONALD E. TAYLOR,** ) **SC 88405**  
 and )  
 **THE HONORABLE** )  
 **RANDALL R. JACKSON,** )  
 )  
 Associate and Circuit Judges )  
 Buchanan County Circuit Court, )  
 Respondents. )

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**ON PRELIMINARY WRIT OF PROHIBITION FROM  
THE MISSOURI SUPREME COURT TO THE  
HONORABLE RONALD E. TAYLOR,  
Associate Circuit Judge, and  
THE HONORABLE RANDALL JACKSON,  
Circuit Judge,  
CIRCUIT COURT OF BUCHANAN COUNTY, MISSOURI**

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**RESPONDENTS' STATEMENT, BRIEF AND ARGUMENT**

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## **JURISDICTIONAL STATEMENT**

Respondents adopt the jurisdictional statement of Relator.

## STATEMENT OF FACTS

Heather Rich was originally charged by the Buchanan County Prosecuting Attorney with the Class C Felony of Endangering the Welfare of a Child on February 10, 2006 (E-4)<sup>1</sup>. Private Attorney Matthew O'Connor was retained by the defendant to represent her in this criminal case. Extensive discovery was conducted in the case prior to a trial scheduled on January 29, 2007 (E-4-19). On the day of trial a third Information was filed by the State amending the charge, but that amendment was not allowed by the court and the State entered a *Nolle Prosequi* (E-19). Mr. O'Connor represented Heather Rich in not only the criminal proceeding but also in a family court matter on an hourly basis (E-72). The criminal prosecution related to the death of a child born to Heather Rich (E-21). As of the date of trial, Ms. Rich owed Mr. O'Connor \$21,559.34 for work he had performed, but for which he had not been paid (E-65; E-148). Suit has now been filed by the O'Connor Law Firm, P.C. against Heather Rich for breach of contract in regard to the fees owed to Mr. O'Connor (E-37; See [www.courts.mo.gov/casenet](http://www.courts.mo.gov/casenet), Buchanan County case number 07BU-CV01001.)

On January 30, 2007 Heather Rich was charged by the Buchanan County Prosecuting Attorney with Endangering the Welfare of a Child. The allegations in the new charge differed from the original charge which, in Mr. O'Connor's opinion, made the charge much more difficult to defend (E-75). The original charge and subsequent amendments against Heather Rich focused on the alleged violation of a safety plan (E-20; E-23-A; E-24; E-25; E-26) while the new charge deals with failing to protect the child. The State discovered a defect in the charge prior to trial relating to the actual date

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<sup>1</sup>References in this Brief are similar to those references used in the Brief filed by Relator.

of the safety plan (E-26). The attempt to amend the charge to change the date of the safety plan was not allowed by the court, so the State entered a *Nolle Prosequi* and re-filed the charge on January 30, 2007 (E-19; E-75).

On February 1, 2007, Heather Rich applied for Public Defender representation (E-143). The Public Defender filed a notice that Ms. Rich was not eligible for Public Defender representation because she had hired private counsel (E-34). Matthew O'Connor had not entered his appearance in the new case against Heather Rich.

On February 2, 2007, Respondent, the Honorable Ronald E. Taylor, Associate Circuit Judge of the Buchanan County Fifth Judicial Circuit Court, appointed the Public Defender to represent Heather Rich over the objection of the Public Defender (E-35).

On February 9, 2007, the Public Defender filed a *Motion for Order Setting Aside Appointment of Public Defender and Requiring Paid Private Counsel to Resume Representation* (E-38).

On February 26, 2007, Judge Taylor conducted a hearing on the Public Defender's motion and overruled the motion.

Heather Rich is indigent (E-43; E-68-69). Additionally, she has never been required to post bond in the current case.

Roxanna Rich is the mother of Heather Rich, and she testified at the hearing on the motion filed by the Public Defender that she had assisted her daughter in hiring private counsel in the original proceeding by mortgaging her home and borrowing money to hire Mr. O'Connor (E-52-53). Ms. Rich testified that her daughter does not have the means to hire a private attorney and has no assets to hire an attorney (E-54). Heather Rich testified at the hearing and admitted that at the time of the original charge, she did not have the means to hire private counsel (E-58). Heather Rich testified that her mother hired Mr. O'Connor (E-58). At the time of the hearing, Heather Rich was

earning \$7.64 an hour working part-time as a nursing assistant in a nursing home (E-60). She has no other source of income and no property she could sell in order to hire an attorney (E-61). She also testified that her mother had paid a bondsman to get her released from jail after the initial filing of the charges (E-61). During the hearing, she admitted that she owed Mr. O'Connor money for the earlier representation (E-65). Ms. Rich also admitted during the hearing that she had not asked anyone from the Public Defender's Office to file the motion to require Mr. O'Connor to represent her in the current proceeding (E-67). At the time of the hearing, she admitted that she had no savings account and her checking account had a balance of \$1.00 (E-68).

Following the re-filing of the new charge against Ms. Rich, Mr. O'Connor contacted the Office of Chief Disciplinary Counsel and inquired as to whether or not he was obligated to represent Ms. Rich on the new charge (E-73). Mr. O'Connor was advised by the Office of Chief Disciplinary Counsel that he was not required to represent Ms. Rich on the new charge (E-23).

Relator makes the bold statement in the *Petition for Writ of Prohibition* that "it is against the logic of the circumstances, arbitrary and unreasonable to allow private counsel to strip the accused of extraordinary sums for her representation only to abandon the client by exploiting a procedural issue resulting in the dismissal and refile of the same charge under a new case number" (E-39). This incredible assertion by the Relator, who was not involved in the original prosecution of Ms. Rich, was recklessly made and baseless. The original prosecution of Ms. Rich was a complicated, time-consuming prosecution involving over ten medical experts, extensive discovery, voluminous medical records and multiple depositions (E-1-19). Furthermore, Mr. O'Connor did not "exploit a procedural issue resulting in the dismissal and refile of the same charge under a new case number." This writer was the prosecutor in the prosecution of Ms.

Rich. It was the attorney for the father of the deceased child (who was tried jointly with Ms. Rich) who objected to the late amendment of the felony information. Mr. O'Connor wanted to try the case (E-73-74). The statements made by the Relator against Mr. O'Connor are unprofessional and slanderous. Mr. O'Connor has a well-deserved reputation among state prosecutors for being an honest, dedicated, hard-working defense attorney.

It is clear that the new charge against Heather Rich is different from the charge alleged in the original prosecution (E-31; E-75).

The Honorable Ronald E. Taylor conducted the preliminary hearing in the new case against Ms. Rich and certified the case to the Circuit Court where it is now pending before the Honorable Randall Jackson, Buchanan County Circuit Judge (E-171).

Judge Randall Jackson has issued no orders that are the subject of the Writ.

On March 19, 2007, the Western District summarily denied the Relator's Petition for a Writ (E-170).

This Petition for a Writ follows.

**POINTS RELIED ON**

**I.**

**RELATOR IS NOT ENTITLED TO A PERMANENT WRIT OF PROHIBITION AND/OR MANDAMUS PROHIBITING RESPONDENT FROM APPOINTING THE PUBLIC DEFENDER FOR HEATHER RICH AND NOT REQUIRING MR. O’CONNOR TO CONTINUE REPRESENTATION, BECAUSE RESPONDENT DID NOT EXCEED HIS JURISDICTION, AUTHORITY AND POWER, NOR ABUSE HIS DISCRETION, IN THAT:**

- (1) SECTION 600.086.1 DOES AUTHORIZE APPOINTMENT OF THE PUBLIC DEFENDER WHERE DEFENDANT DOES NOT HAVE “THE MEANS AT [HER] DISPOSAL OR AVAILABLE TO [HER] TO OBTAIN COUNSEL,” AND MS. RICH DID NOT HAVE THE MEANS TO OBTAIN COUNSEL BECAUSE SHE DID NOT HAVE THE FINANCIAL MEANS TO RETAIN AN ATTORNEY FOR THE NEW CHARGES FILED. SHE HAD OBTAINED MR. O’CONNOR TO REPRESENT HER FOR PREVIOUS CHARGES OF CHILD ENDANGERMENT AND A FAMILY LAW CASE. SHE HAD OBTAINED MR. O’CONNOR BY FINANCIAL MEANS OF HER MOTHER AND NOT THAT OF HER OWN. UPON THE FILING OF THE NEW CHARGES, NEITHER MS. RICH NOR HER MOTHER HAD FINANCIAL RESOURCES TO PAY FOR THE RETENTION OF A PRIVATE ATTORNEY.**
- (2) IT IS NOT AGAINST LOGIC, NOR ARBITRARY AND UNREASONABLE TO NOT REQUIRE MR. O’CONNOR TO CONTINUE REPRESENTATION SINCE HE WAS HIRED TO**

REPRESENT MS. RICH THROUGH HER ORIGINAL CHARGES AND TRIAL IF ONE TOOK PLACE. HE FULFILLED HIS OBLIGATIONS BY PREPARING FOR TRIAL FOR AT LEAST A YEAR AND BY REPRESENTING MS. RICH UNTIL A NOLLE PROSEQUI WAS ENTERED ON THE CHARGE. WHEN CHARGES WERE RE-FILED, MR. O'CONNOR CONSULTED THE OFFICE OF CHIEF DISCIPLINARY COUNSEL AND THAT OFFICE AUTHORIZED HIM TO NOT RE-ENTER ON BEHALF OF MS. RICH. THE RESPONDENT HAD NO AUTHORITY TO APPOINT PRIVATE COUNSEL MATTHEW O'CONNOR TO REPRESENT HEATHER RICH IN THE NEW CHARGE FILED AGAINST HER BY THE STATE. HEATHER RICH IS INDIGENT.

(3) THERE IS NO EVIDENCE THAT IRREPARABLE HARM WILL RESULT TO THE PUBLIC DEFENDER BY REPRESENTING HEATHER RICH.

*Gould v. State Board of Registration for Healing Arts,*

841 S.W.2d 288, 290 (Mo. App. E.D. 1992)

*In Re: Stuart,* 646 N.W.2d 520 (Minn. 2002)

*Murphy v. Carron,* 536 S.W.2d 30 (Mo. Banc 1976)

*Ponce v. Ponce,* 102 S.W.3d 56, 62 (Mo. App. W.D. 2003)

## II.

**THE HONORABLE RONALD E. TAYLOR ACTED WITHIN HIS DISCRETION, AUTHORITY AND POWER IN APPOINTING THE PUBLIC DEFENDER TO REPRESENT HEATHER RICH BECAUSE:**

- (1) THE COURT HAD NO AUTHORITY TO ORDER MATTHEW O’CONNOR TO REFUND ATTORNEY FEES ALREADY EARNED.**
- (2) THERE IS NO EVIDENCE THAT HEATHER RICH EVEN ASSERTS ANY “CLAIM” AGAINST PRIVATE COUNSEL MATTHEW O’CONNOR FOR NOT CONTINUING THE REPRESENTATION OF HEATHER RICH.**

*Gould v. State Board of Registration for Healing Arts,*

841 S.W.2d 288, 290 (Mo. App. E.D. 1992)

*Granat v. Scott,* 766 S.W.2d 748, 749 (Mo. App. E.D. 1989)

*In re: Marriage of Redmond,* 131 P.3d 1167, 1170 (Colo. Ct. App. 2005)

*Murphy v. Carron,* 536 S.W.2d 30 (Mo. Banc 1976)

## ARGUMENT

### I.

**RELATOR IS NOT ENTITLED TO A PERMANENT WRIT OF PROHIBITION AND/OR MANDAMUS PROHIBITING RESPONDENT FROM APPOINTING THE PUBLIC DEFENDER FOR HEATHER RICH AND NOT REQUIRING MR. O’CONNOR TO CONTINUE REPRESENTATION, BECAUSE RESPONDENT DID NOT EXCEED HIS JURISDICTION, AUTHORITY AND POWER, NOR ABUSE HIS DISCRETION, IN THAT:**

- (1) SECTION 600.086.1 DOES AUTHORIZE APPOINTMENT OF THE PUBLIC DEFENDER WHERE DEFENDANT DOES NOT HAVE “THE MEANS AT [HER] DISPOSAL OR AVAILABLE TO [HER] TO OBTAIN COUNSEL,” AND RICH DID NOT HAVE THE MEANS TO OBTAIN COUNSEL BECAUSE SHE DID NOT HAVE THE FINANCIAL MEANS TO RETAIN AN ATTORNEY FOR THE NEW CHARGES FILED. SHE HAD OBTAINED MR. O’CONNOR TO REPRESENT HER FOR PREVIOUS CHARGES OF CHILD ENDANGERMENT AND A FAMILY LAW CASE. SHE HAD OBTAINED MR. O’CONNOR BY FINANCIAL MEANS OF HER MOTHER AND NOT THAT OF HER OWN. UPON THE FILING OF THE NEW CHARGES, NEITHER MS. RICH NOR HER MOTHER HAD FINANCIAL RESOURCES TO PAY FOR THE RETENTION OF A PRIVATE ATTORNEY.**
- (2) IT IS NOT AGAINST LOGIC, NOR ARBITRARY AND UNREASONABLE TO NOT REQUIRE MR. O’CONNOR TO CONTINUE REPRESENTATION SINCE HE WAS HIRED TO**

**REPRESENT MS. RICH THROUGH HER ORIGINAL CHARGES AND TRIAL IF ONE TOOK PLACE. HE FULFILLED HIS OBLIGATIONS BY PREPARING FOR TRIAL FOR AT LEAST A YEAR AND BY REPRESENTING MS. RICH UNTIL A NOLLE PROSEQUI WAS ENTERED ON THE CHARGE. WHEN CHARGES WERE RE-FILED, MR. O'CONNOR CONSULTED THE OFFICE OF CHIEF DISCIPLINARY COUNSEL AND THAT OFFICE AUTHORIZED HIM TO NOT RE-ENTER ON BEHALF OF MS. RICH. THE RESPONDENT HAD NO AUTHORITY TO APPOINT PRIVATE COUNSEL MATTHEW O'CONNOR TO REPRESENT HEATHER RICH IN THE NEW CHARGE FILED AGAINST HER BY THE STATE. HEATHER RICH IS INDIGENT.**

**(3) THERE IS NO EVIDENCE THAT IRREPARABLE HARM WILL RESULT TO THE PUBLIC DEFENDER BY REPRESENTING HEATHER RICH.**

#### STANDARD OF REVIEW

In reviewing the decision of the Public Defender, and, ultimately, the decision of the trial Judge regarding the appointment of the Public Defender, the Appellate Court is bound by the standard of review set forth in *Murphy v. Carron*, 536 S.W.2d 30 (Mo. Banc 1976). That is, the Judgment will be sustained unless there is no substantial evidence to support it, it is against the weight of the evidence, or the court erroneously declares or applies the law. *State v. Albright*, 843 S.W.2d 400, 402 (Mo. App. W.D. 1992).

Review for a Writ of Prohibition and Writ of Mandamus is abuse of discretion. *State ex rel. Johnston v. Luckenbill*, 975 S.W.2d 253 (Mo. App. W.D. 1998). Abuse of

discretion is found if a court's ruling is against the logic of the circumstances, or is arbitrary or unreasonable. *Ponce v. Ponce*, 102 S.W.3d 56, 62 (Mo. App. W.D. 2003).

A writ of prohibition may be appropriate where there has been an abuse of discretion that is so great as to constitute an act in excess of jurisdiction. There is a presumption that discretionary matters are correct. *State ex rel. Jackson County Prosecuting Attorney v. Moorhouse*, 20 S.W.3d 552 (Mo. App. W.D. 2002).

A writ of mandamus is "an extraordinary remedy effective to compel performance of a particular act by one who has an unequivocal duty to perform the act." *Gould v. State Board of Registration for Healing Arts*, 841 S.W.2d 288, 290 (Mo. App. E.D. 1992). A writ of mandamus should only be granted when a clear abuse of discretion has occurred.

Prohibition is available in three types of cases. Those are (1) when a judicial or quasi judicial body acts without subject matter or personal jurisdiction; (2) when a tribunal lacks the power to act as contemplated; and (3) when absolute irreparable harm may result absent justifiable relief or when an important question of law was decided erroneously and relief is not available on appeal and the aggrieved party may suffer considerable hardship and expense because of the erroneous decision. *State ex rel. Riverside Joint Venture v. Missouri Gaming Commission*, 969 S.W.2d 218, 221 (Mo. banc 1998).

The Respondent did not err in overruling the Motion of the Public Defender to require Attorney Matthew O'Connor to represent Heather Rich. The evidence is clear that Heather Rich was indigent not only at the time of the hearing but has always been indigent. Her mother mortgaged her home to provide funds to hire a private attorney during the first proceeding but had no means to provide counsel for the current proceeding.

The eligibility for representation by the Public Defender for a person charged with a crime is covered by § 600.086, RSMo., and the regulations adopted under that Section by the Public Defender, in particular, 18 CSR 10-3.010. Section 600.086, RSMo., reads as follows:

**“600.086. Eligibility for representation, rules to establish--indigency, how determined, procedure, appeal--false statements, penalty--investigation authorized**

“1. A person shall be considered eligible for representation under sections 600.011 to 600.048 and 600.086 to 600.096 when it appears from all the circumstances of the case including his ability to make bond, his income and the number of persons dependent on him for support that the person does not have the means at his disposal or available to him to obtain counsel in his behalf and is indigent as hereafter determined.

“2. Within the parameters set by subsection 1 of this section, the commission may establish and enforce such further rules for courts and defenders in determining indigency as may be necessary.

“3. The determination of indigency of any person seeking the services of the state Public Defender system shall be made by the defender or anyone serving under him at any stage of the proceedings. Upon motion by either party, the court in which the case is pending shall have authority to

determine whether the services of the Public Defender may be utilized by the defendant. Upon the courts finding that the defendant is not indigent, the Public Defender shall no longer represent the defendant. Any such person claiming indigency shall file with the court an affidavit which shall contain the factual information required by the commission under rules which may be established by the commission in determining indigency.

“4. Any person who intentionally falsifies such affidavit in order to obtain state Public Defender system services shall be guilty of a class A misdemeanor.

“5. The director or anyone serving under him may institute an investigation into the financial status of any person seeking the services of the state Public Defender system at such times as the circumstances shall warrant. In connection therewith he shall have the authority to require any person seeking the services of the state Public Defender system or the parents, guardians or other persons responsible for the support of a person seeking the services of the state Public Defender system who is a minor or those persons holding property in trust or otherwise for such person to execute and deliver such written authorization as may be necessary to provide the director or anyone serving under him with access to records of public or private sources, otherwise confidential, or any other information which may be

relevant to the making of a decision as to eligibility under this chapter. The director, chief deputy director, each Public Defender and each assistant and deputy Public Defender or designee are authorized to obtain information from any office of the state or any subdivision, or agency thereof or political subdivision on request and without payment of any fees. Any office of the state or any subdivision, or agency thereof or political subdivision from which the director, chief deputy director, Public Defender and each assistant and deputy Public Defender or designee requests information pursuant to this section shall supply such information, without payment of any fees.

“6. The burden shall lie on the accused or the defendant to convince the defender or the court of his eligibility to receive legal services, in any conference, hearing or question thereon.”

In making its determination of indigency, the Public Defender may consult guidelines. Mo. Code Reg. Tit. 18, § 10-3.010 (1992); *State ex rel. Shaw v. Provaznik*, 708 S.W.2d 337 (Mo. App. 1986); *Albright*, 843 S.W.2d at 402.

The regulations set forth when the Public Defender may consider the income and assets of a defendant’s parents. 18 CSR 10-3.010 reads as follows:

**“18 CSR 10-3.010 Guidelines for the Determination of Indigence.**

“(1) Eligibility for Representation.

“(A) A person shall be considered eligible for

representation when it appears from all the circumstances of the case including his/her ability to make bond, his/her income and the number of persons dependent on him/her for support that the person does not have the means at his/her disposal or available to him/her to obtain counsel in his/her behalf and is indigent as hereafter determined.

“(B) The determination of indigence of any person seeking the services of the State Public Defender System shall be made by the defender or anyone serving under him/her at any stage of the proceeding. Upon motion by either party, the court in which the case is pending shall have authority to determine whether the services of the Public Defender may be utilized by the defendant. Upon the court's finding that the defendant is not indigent, the Public Defender shall no longer represent the defendant.

“(2) Public Assistance, Unemployment Compensation and Income Maintenance Payments.

“(A) Unemployed defendants receiving public assistance are eligible for defense services provided by the Office of State Public Defender regardless of the amount of the benefits. If the defendant is receiving public assistance and has a part-time job, or other assets, the weekly amount of benefits and the additional source of income should be added together and compared to the maximum

Qualifying Income Scale to Determine Indigence.

“(B) If a defendant is receiving disability payments, pension, unemployment compensation or Social Security, this is considered income and the amount of the payment must be considered.

“(3) Maximum Qualifying Income Scale.

“(A) A defendant may be considered indigent if his/her gross pay and other sources of income do not exceed the federal poverty guideline as issued in the *Federal Register* by the U.S. Department of Health and Human Services.

“(B) When making the financial determination, the following factors should be taken into consideration:

“1. Debts and Expenses--Debts should be taken into consideration to the extent that they are reasonable and necessary. Debts are considered only if actual payments are being made;

“2. Spouse's Income--The spouse's financial status shall be considered unless the spouse is the alleged victim;

“3. *Parent's Income--The parent's income should be considered if they support the defendant and the defendant is under eighteen (18) years of age unless a parent is an alleged victim of the charged offense. Defendants eighteen (18) years or older shall be considered independent from family income unless they*

*are full-time students or are dependent upon their parents or when one or both parents post bond* (emphasis added); and

“4. Assets--If the person owns or is buying a home, the equity must be determined and considered on the question of indigence. Bank accounts, stocks, bonds, jewelry, equity in insurance and any other financial assets must be considered.

“(4) Discretionary Aspects of Determining Indigence.

“(A) The previously mentioned financial criteria are to be applied in all cases and considered with the probable expense and burden of defending the case. If a person is determined to be eligible for the services provided by the State Public Defender System and if, at the time such determination is made, s/he is able to provide a limited cash contribution toward the cost of representation without imposing a substantial hardship upon himself/herself or his/her dependents, such contribution shall be required as a condition of his/her representation by the State Public Defender System. If at any time, either during or after the disposition of his/her case, such defendant becomes financially able to meet all or some part of the cost of services rendered to him/her, he shall be required to reimburse the commission in such amounts as s/he can reasonably pay, either by a single

payment or by installments of reasonable amounts, in accordance with a schedule of charges for Public Defender services prepared by the commission; and  
“(B) An individual requesting Public Defender service shall complete and sign an Application for Public Defender Services.”

This case seems to be a straightforward application of § 600.080 and the regulations adopted under that section by the Public Defender, in particular, 18 CSR 10-3.010.

The two issues before the Court are:

- (1) Are the income and assets of the defendant’s mother part of the calculation; and
- (2) Is the defendant indigent?

In reference to question (1), it is clear from the evidence that the defendant’s mother’s assets should not be considered. The regulations provide that the parents’ income should be considered only if they provide support for the defendant and the defendant is under eighteen (18) years of age. 18 CSR 10-3.010(3)(B). Even if the income and assets of defendant’s mother were to be considered, the only evidence before the Court was that defendant’s mother was indigent at the time of the hearing.

Heather Rich is 23 years of age (E-32). She is employed part-time as a nursing assistant earning \$7.75 per hour, and works 30-32 hours a week (E-60). She has no other sources of income (E-60), a 1992 Cougar automobile that does not run (E-61), no real or personal property (E-68), no savings account (E-68), a checking account with a balance of \$1.00 (E-68), or assets such as boats or jewelry (E-68). The Court’s determination that Ms. Rich was indigent was thus supported by substantial evidence.

As currently interpreted by the courts, the constitutional right to appointed counsel is dependent on a finding that the defendant is indigent. *State ex rel. Tauzey v. Richter*, 762 S.W.2d 857 (Mo. App. E.D. 1989); *State v. Yardley*, 637 S.w.2d 293 (Mo. App. S.D. 1982).

In *State ex rel. Gordon v. Copeland*, 803 S.W.2d 153 (Mo. App. S.D. 1991), a case cited by the Relator, the trial court appointed the Public Defender to represent a *juvenile*. (Emphasis added.) The Court of Appeals ruled that the preliminary order in prohibition be quashed and ordered the Public Defender to represent the juvenile. The Court noted that they could not find any Missouri Statute, court rule or appellate decision holding that a juvenile court has authority to compel the parents of an indigent juvenile to hire an attorney for him in a proceeding where the juvenile may be deprived of his liberty. See *Copeland* 803 S.W.2d at page 160. The case cited by Relator has no bearing on the case at bar and is not on point.

Relator repeatedly cites events that occurred in the *prior* prosecution against Heather Rich. The first prosecution of Ms. Rich was dismissed. The pending case involves different allegations against Ms. Rich.

Heather Rich is indigent. She was indigent during the first prosecution and, but for her mother's willingness to provide financial assistance by obtaining a mortgage against her home, would have been represented by the Public Defender for that case. Mr. O'Connor is owed \$21,559.34 by Ms. Rich for representation in that case. That fact was confirmed by testimony from Mr. O'Connor, Heather Rich and her mother, and that amount is the subject of a breach of contract suit currently pending that was filed by Mr. O'Connor against Heather Rich (E-65; E-148; E-37).

Relator cites the case of *State ex rel. Charles E. Vatterott Commercial Properties v. Rush*, 572 S.W.2d 864 (Mo. App. St.L.D. 1978). The case cited is clearly not on point

for the proposition asserted. The *Rush* case involves a trial judge's decision in refusing to allow a party to amend his pleadings to assert the statute of limitations as a defense. The case certainly is not on point and has no relevance to the case at bar.

Relator also cites cases that relate to the issue of whether or not an attorney may withdraw from representation when fees are not paid. (See pages 36-40 of Relator's Brief.) In the case before the Court, Mr. O'Connor did not withdraw or even attempt to withdraw from representing Ms. Rich at any point. That case was dismissed by the State and a new charge was filed against Ms. Rich that involved different allegations. Mr. O'Connor had no obligation to represent Ms. Rich in the new case, and if the Court accepted the logic of the argument of Relator, Mr. O'Connor would be required to represent Ms. Rich forever no matter what charges are filed against her in the future. Furthermore, Heather Rich never requested that the Public Defender move for Mr. O'Connor to represent her. In *State v. Kennell*, 605 S.W.2d 819 (Mo. Ct. App. S.D. 1980), a case cited by Relator, a retained attorney sought to withdraw on the day of trial for non-payment of fees and the trial court denied the motion to withdraw. The Court of Appeals found no abuse of discretion in the denial of the motion. The case before the Court does not involve a motion to withdraw by counsel.

Relator also cites a comment to the *Missouri Rules of Professional Conduct* 4-1.16 (E-167), that "a lawyer should not accept representation of a matter unless it can be performed...to completion." Mr. O'Connor did just that. He was ready to defend Ms. Rich at trial even though she owed him \$21,559.34 prior to trial. The case was then dismissed. Mr. O'Connor's obligation ended at that time and he has no legal or ethical obligation to represent Ms. Rich in the new matter.

The Relator also cites the case of *State ex rel. Shaw v. Provaznik*, 708 S.W.2d 337 (Mo. App. 1986), but, again, the facts and holding of the case are not relevant to the

case at bar. In *Provaznik*, the Public Defender was appointed to represent the defendant in a civil contempt proceeding arising out of defendant's failure to pay child support. The Public Defender then sought leave to withdraw. The trial court denied the request and a writ of prohibition was filed. The Court found that there was no statutory authority for appointing counsel to a civil defendant and that the trial court exceeded its jurisdiction in appointing the Public Defender without affording the Public Defender opportunity to determine defendant's eligibility. The Relator has taken those findings out of context in his Brief and the case is not relevant to the simple facts of the case before the Court.

Because the facts of the case are simple and straightforward, the Relator argues that the actions of Matthew O'Connor in refusing to represent the defendant are *analogous* to a withdrawal by counsel. (Emphasis added.) However, they are not. Mr. O'Connor represented the defendant in the first proceeding, and, in accordance with his ethical responsibilities, was fully prepared to go to trial notwithstanding the fact that the defendant owed him \$21,559.64 at the time the State entered a *Nolle Prosequi* to the charge on January 29, 2007. When the new charge was filed, Mr. O'Connor had no ethical or legal obligation to represent Heather Rich. Under the theory and logic of Relator, Mr. O'Connor would be obligated to represent Heather Rich on any charge filed in the future by the State of Missouri.

**RESPONDENT DID NOT EXCEED HIS JURISDICTION,  
AUTHORITY AND POWER UNDER SECTION 600.086.1.**

**A.**

**HEATHER RICH IS INDIGENT AND THE COURT HAD  
THE AUTHORITY TO APPOINT THE PUBLIC DEFENDER  
TO REPRESENT HER IN THE NEW CASE.**

State ex rel. Gordon v. Copeland, 803 S.W.2d 153 (Mo. App. S.D. 1991) involves the indigency of a juvenile, which has no bearing on the case at bar. A juvenile is under the care of a parent or guardian and the parent or guardian is financially responsible for that juvenile. Heather Rich is not a juvenile, nor was she at the time of the occurrence relating to the charges. Ms. Rich was an adult at the time of the occurrence. Because her mother gave Ms. Rich the funds for retaining a private attorney in the initial criminal proceeding, this does not oblige Ms. Rich's mother to continue to do so. Even if it did so, funds have run out. Ms. Rich has no means to retain a private attorney for the new charge. Thus, Ms. Rich is indigent.

Relator is correct in arguing that a number of factors should be considered for eligibility for representation by a Public Defender. Section 600.086.1 allows for the appointment of a Public Defender "when it appears from all the circumstances of the case, including his ability to make bond, his income and the number of persons dependent on him for support, that the person does not have the means at his disposal or available to him to obtain counsel in his behalf and is indigent." Ms. Rich was unable to post bond after the new charge was filed. Ms. Rich had not obtained counsel for the new charge. She was unable to afford private counsel. In the previous charge, Ms. Rich was only able to retain an attorney because she was given the money for such purposes by her mother. This is not the case on the new charge. She clearly did not retain Mr. O'Connor, as he provided her with proper notice after the previous charges were dismissed that he would no longer represent her.

In State ex rel. Tauzey v. Richter, 762 S.W.2d 857, 858 (Mo. App. E.D. 1989), the Court held that the judge had no discretion to appoint representation where the defendant is found to be non-indigent in a civil case and the court issued a writ of prohibition. In the present criminal case, Judge Taylor found Ms. Rich to be indigent and then appointed

the Public Defender's Office to represent her. Had Ms. Rich been found non-indigent then she could have either hired another attorney or proceeded pro se. *Id.* However, since Ms. Rich did not "have the means at her disposal or available to her to obtain counsel in her behalf," the Court found her to be indigent. Here it is clear that Judge Taylor did not exceed his jurisdiction as did the judge in *Richter*, and the writ of prohibition should not be issued.

**B.**

**MR. O'CONNOR WAS NOT PREPARED TO  
GO TO TRIAL ON THE NEWLY FILED CHARGES.**

Mr. O'Connor's trial strategy involved attacking the charges very specifically. Although the new charge is based on the same operative facts as the previous charge, they differ in critical areas involving trial strategy. All work would have to be re-created to focus on the specifics of the new charge, a technique Mr. O'Connor obtained through his training as a Public Defender.

On the charge Mr. O'Connor prepared for trial, Mr. O'Connor based his trial strategy on the "safety plan." The re-filed charges changed the basis of the charge from "by violating the terms of the safety plan to which the parties had agreed to abide" to "by failing to protect the child and provide a safe environment after being advised that someone was abusing the child and after having observed signs of abuse, to-wit: multiple bruises in various locations on the body." This is no minor change as the Relator contends. This would completely abolish Mr. O'Connor's trial strategy and force him to re-do an entire year's worth of trial preparation, including depositions.

For the Relator to imply that Mr. O'Connor chose not to represent Ms. Rich further because "[he] is not as likely to obtain an acquittal" is unacceptable. Mr. O'Connor clearly informed Ms. Rich he would not represent her any further before the

new charges were even filed. To suggest otherwise is not only not supported by the record, but is also grossly false.

**C.**

**RESPONDENT DID NOT ABUSE HIS DISCRETION IN NOT REQUIRING MR. O’CONNOR TO CONTINUE TO REPRESENT MS. RICH.**

Not only did the Respondent not exceed his jurisdiction, authority and power under Section 600.086.1, the Respondent also did not abuse his discretion in not requiring Mr. O’Connor to continue to represent Ms. Rich.

Although the Respondent agrees that the courts are authorized to appoint private counsel to represent or to continue to represent indigent defendants in a criminal case, such action is not justified in this case. Power to act in such a manner does not require action in such a manner. Respondent’s ruling was not against the logic of the circumstances, nor arbitrary and unreasonable.

**D.**

**MR. O’CONNOR FULFILLED HIS OBLIGATION TO MS. RICH.**

The newly filed charge did arise out of the same incident or operative facts as the originally filed case and the statutory charge against Rich in the re-filed case remains the same. However, Mr. O’Connor was retained to represent Ms. Rich against a child endangerment charge. Mr. O’Connor fulfilled his obligations by representing Ms. Rich through the original charge until the original charge was disposed of by nolle prosequi. At the end of this process, Mr. O’Connor had fulfilled his obligation per the fee agreement. Although the new charge was filed based on the same operative facts, the charge is still new and still varies significantly from the original charge which would cause significant changes in trial strategy.

Mr. O'Connor's own retention agreement with Ms. Rich did contemplate that he would represent her through the conclusion of trial. However, as all attorneys and judges know, not every defendant will face a trial before the charges are disposed of in some manner. Here, Mr. O'Connor represented Ms. Rich until the charge was disposed of. His duty to represent her through such a process was complete when the original charge was disposed of by nolle prosequi.

Relator argues that Mr. O'Connor did not technically "withdraw" from the newly filed case. However, he never entered on the new case. Because Mr. O'Connor did not enter on the case, he was not required to "withdraw" from representation. Mr. O'Connor even confirmed this by consulting the Office of Chief Disciplinary Counsel in which they authorized him to not re-enter.

The Relator cites *United States v. Rodriguez-Baquero*, 660 F.Supp. 259 (D.Me. 1987), as a basis for the Respondent abusing his discretion in not requiring Mr. O'Connor to continue to represent Ms. Rich. In *Rodriguez-Baquero*, the attorney asked to withdraw between a withdrawal of a guilty plea and trial. The attorney here was well into the case and had not yet even reached the final disposition of the charges. Also, the attorney's affidavit in regard to the motion to withdraw was received by the court only twenty-two days away from the commencement of the trial. The court also found the attorney responsible for entering into a bad deal. Here, Mr. O'Connor saw Ms. Rich to the disposition of the original charge. The filing of the new charge would allow ample time for another attorney to prepare for trial, as the process had begun all over again. Mr. O'Connor did not enter into a bad deal with Ms. Rich. The client, Ms. Rich, had simply breached the contract entered into by both parties by her own doing. Had Mr. O'Connor failed to represent her on the previous charge or he had begun representation

on the new charge, the Court might be inclined to continue representation as the court in Rodriquez-Baquero.

United States v. Parker, 439 F.3d 81 (2d Circuit), *cert. denied* 127 S.Ct 456 (2006) is clearly off point to the issues at hand. Relator discusses the purpose and history of the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, including lucrative practices, such as private counsel undertaking representation of defendants until funds ran out and then seeking to withdraw or to be appointed and paid under the CJA. Such an insinuation that lucrative practices are occurring in the present case is completely unfounded.

However, assuming *argumento* that such material is poignant, the Relator's argument still fails. In Parker, the defendant had a salary before such charges of \$1,400.00 a week, a house valued at \$15,000.00, and an automobile valued at \$2,500.00. However, the defendant also had two dependent children costing \$800.00 per month according to a child support agreement and \$2,000.00 in credit card debt. The defendant cashed in a retirement fund worth \$33,000.00 and the defendant's salary was also reinstated. The Court noted that "non-payment of legal fees, without more, is not usually a sufficient basis to permit an attorney to withdraw from representation." Parker, 439 F.3d 81. Not only was the representation not ceased for non-payment of legal fees, but Mr. O'Connor represented Ms. Rich to the conclusion of the original charge, fulfilling his obligation to Ms. Rich. Mr. O'Connor had completed the end of the contract, while Ms. Rich failed to pay her legal fees. Not only did Ms. Rich fail to pay her legal fees, but she was unable to do so due to her indigence. Mr. O'Connor likely faced other valid reasons to cease representation which is permitted under the Missouri Rules of Professional Conduct 4-1.16.

**E.**

**THE PUBLIC DEFENDER'S OFFICE IS NOT BEING ABUSED  
AND THE ONLY BURDEN WOULD BE ON MR. O'CONNOR IF  
HE IS APPOINTED TO REPRESENT MS. RICH.**

While the Respondent agrees with the Minnesota Supreme Court in *In Re: Stuart*, 646 N.W.2d 520 (Minn. 2002), cited by Relator, that the Public Defender's resources must not be abused, the Public Defender's resources are not being abused in this situation. Mr. O'Connor no longer represents Ms. Rich and Ms. Rich is indigent. Ms. Rich is entitled to representation by the Public Defender.

Relator argues that Mr. O'Connor entered into a bad deal and the Public Defender's office should not bear the brunt of such a mistake. No bad deal was ever in existence. Client breached the contract which had been entered into by both parties. The \$20,000.00 contract entered into by both parties was for both a family law case and a criminal case. Mr. O'Connor was more than generous in agreeing to such a fee due to the complexity of both cases. Relator implies that the \$20,000.00 was paid in satisfaction of just the criminal case. However, this is grossly inaccurate and should be stricken.

The Relator is incorrect to say it would not be a financial burden to require Mr. O'Connor to represent Ms. Rich on the new charge. Mr. O'Connor would face a significant economic hardship if appointed to work for free. All work would have to be completely re-done in order to account for a new trial strategy.

Repeatedly, the Relator argues that Mr. O'Connor has been paid more than \$20,000.00 to represent Ms. Rich on the child endangerment case. It is misleading, and evidence supports the contrary. The \$20,000.00 was agreed upon for the representation

of Ms. Rich during a family law matter and the criminal case. This is clear from the fee agreement.

**F.**

**IRREPARABLE HARM WILL NOT  
RESULT IF A WRIT DOES NOT ISSUE**

The Relator is correct when stating that Mr. O'Connor was prepared for trial. However, the Relator fails to mention that Mr. O'Connor was prepared for trial based upon the original charge which is critical in this situation.

Although the Public Defender faces scarce resources, the right to representation by the indigent is granted by state law. The Public Defender has the duty to provide this service for Ms. Rich.

**CONCLUSION**

A writ of prohibition is not appropriate in the present case because the trial court had jurisdiction to appoint the Public Defender's Office to represent Ms. Rich. Whether to appoint private counsel or the Public Defender is within the trial court's discretion. *Kennell*, 605 S.W.2d 819 at 820. Abuse of discretion is found if a court's ruling is against the logic of the circumstances, or is arbitrary or unreasonable. *Ponce*, 102 S.W.3d at 62. The trial judge has the power to appoint the Public Defender and allow Mr. O'Connor to cease representation of Ms. Rich. The trial judge used his discretion based on the facts presented to him. Based on the record, it is clear that the Respondent did not abuse such discretion.

Although the trial court is obligated to follow the law, the law gives the trial court discretion. No abuse of discretion occurred in the present case, thus a writ of mandamus is inappropriate.

## ARGUMENT

### II.

**THE HONORABLE RONALD E. TAYLOR ACTED WITHIN HIS DISCRETION, AUTHORITY AND POWER IN APPOINTING THE PUBLIC DEFENDER TO REPRESENT HEATHER RICH BECAUSE:**

- (1) THE COURT HAD NO AUTHORITY TO ORDER MATTHEW O’CONNOR TO REFUND ATTORNEY FEES ALREADY EARNED.**
- (2) THERE IS NO EVIDENCE THAT HEATHER RICH EVEN ASSERTS ANY “CLAIM” AGAINST PRIVATE COUNSEL MATTHEW O’CONNOR FOR NOT CONTINUING THE REPRESENTATION OF HEATHER RICH.**

### STANDARD OF REVIEW

In reviewing the decision of the Public Defender, and, ultimately, the decision of the trial Judge regarding the appointment of the Public Defender, the Appellate Court is bound by the standard of review set forth in *Carron*, 536 S.W.2d 30. That is, the Judgment will be sustained unless there is no substantial evidence to support it, it is against the weight of the evidence, or the court erroneously declares or applies the law. *Albright*, 843 S.W.2d at 402.

Review for Writ of Prohibition and Writ of Mandamus is abuse of discretion. *Luckenbill*, 975 S.W.2d 253. Abuse of discretion is found if a court’s ruling is against the logic of the circumstances, or is arbitrary or unreasonable. *Ponce*, 102 S.W.3d at 62.

A writ of prohibition may be appropriate where there has been an abuse of discretion that is so great as to constitute an act in excess of jurisdiction. There is a presumption that discretionary matters are correct. *Moorhouse*, 20 S.W.3d 552.

A writ of mandamus is “an extraordinary remedy effective to compel performance of a particular act by one who has an unequivocal duty to perform the act.” *State Board of Registration for Healing Arts*, 841 S.W.2d at 290. A writ of mandamus should only be granted when a clear abuse of discretion has occurred.

Prohibition is available in three types of cases. Those are (1) when a judicial or quasi judicial body acts without subject matter or personal jurisdiction; (2) when a tribunal lacks the power to act as contemplated; and (3) when absolute irreparable harm may result absent justifiable relief or when an important question of law was decided erroneously and relief is not available on appeal and the aggrieved party may suffer considerable hardship and expense because of the erroneous decision. *Missouri Gaming Commission*, 969 S.W.2d at 221.

A trial court’s decision regarding attorney fees is also within its discretion. *Granat v. Scott*, 766 S.W.2d 748, 749 (Mo. App. E.D. 1989). Appellate review is for abuse of discretion. *Id.* Abuse of discretion is found if a court’s ruling is against the logic of the circumstances, or is arbitrary or unreasonable. *Ponce*, 102 S.W.3d at 62.

**O’CONNOR SHOULD NOT BE REQUIRED TO  
REFUND OR PAY HIS ATTORNEY FEES TO RICH  
TO ALLOW HER TO HIRE OTHER PRIVATE COUNSEL**

The majority of Relator’s argument pertains to cases involving the issue of whether or not an attorney may withdraw from representation. In this case, Mr. O’Connor did not withdraw or attempt to withdraw from representing Ms. Rich at any point.

The Missouri Supreme Court has explicitly recognized that the trial courts must bear in mind that counsel should not be placed in the position of suffering undue financial hardship through representation of the indigent and that private counsel are not

required to expend substantial personal funds in representing the indigent. In *State ex rel. Wolff v. the Honorable James Ruddy*, 617 S.W.2d 64, 67 (Mo. banc 1981), this Court noted that a trial judge should not appoint counsel to represent an indigent if the representation would work an undue hardship on an attorney. “We know of no requirement of either law or professional ethics which requires attorneys to advance personal funds in substantial amounts for the payment of either costs or expense of the preparation of a proper defense of the indigent accused.” *Id.*

Relator further asserts the position that Matthew O’Connor be ordered to “refund” the fees paid to him. Relator admits that the proposed remedy is “novel.”

It is incomprehensible to understand how the trial court acted outside its jurisdiction or abused its discretion in not devising a remedy that Relator admits is “novel.” Furthermore, there is no evidence before this Court that such a “novel” remedy was even considered or suggested by the Public Defender’s Office to the trial court at the time of that hearing.

This Court should not grant a permanent writ of prohibition and/or mandamus and prohibit Judge Taylor’s orders appointing the Public Defender and not requiring Mr. O’Connor to continue to represent Ms. Rich. This Court should also not make permanent its preliminary writ and find the Respondent abused his discretion in not requiring Mr. O’Connor to return or pay his attorney fees to Ms. Rich to allow her to hire another private attorney.

Point II of the Relator’s argument has no factual basis. The argument is not supported in the record and should be stricken. The Relator clearly ignores the reality on earnings per the fee agreement. It is clear from the fee agreement that the \$20,000.00 due to Mr. O’Connor was for representation of Ms. Rich in a family law matter and a criminal case.

If this Court were to call for repayment of the \$20,000.00 for failure to represent Ms. Rich on the new criminal charge, it would place a severe economic hardship on Mr. O'Connor. Such hardship to Mr. O'Connor should not occur without a full and fair hearing on the issues in which Mr. O'Connor is a party to the action. Mr. O'Connor has had no chance to be heard and thus the issue is not ripe for review. Such action would violate Mr. O'Connor's right to due process guaranteed by the 14<sup>th</sup> Amendment of the United States Constitution. Not only would taking this money violate due process, but such a large sum of money could also cause damage to Mr. O'Connor's private practice constituting a taking also.

Relator is correct in that a trial court "has the inherent power and responsibility to supervise and regulate the conduct of attorneys who appear and practice before it." See *Terre Du Lac Prop. Owner's Ass'n v. Shurm*, 661 S.W.2d 45, 47 (Mo. App. E.D. 1983). Relator cites *In re: Marriage of Redmond*, 131 P.3d 1167, 1170 (Colo. Ct. App. 2005), where the Court found that a trial court may order an attorney to refund his or her fees. However, the Court remanded the case because the trial court ordering the attorney to pay back his attorney fees did not have a hearing on any alleged violation. *Id.* at 1171. Mr. O'Connor has not been found to violate any rule of professional conduct and this is not the forum to determine if he has. Such a contention must be disputed in another forum.

Not only is such a situation a violation of Mr. O'Connor's rights, such a finding would condemn Mr. O'Connor for an act he is expressly permitted to do by the *Missouri Rules of Professional Conduct* 4-1.16. This rule governs "declining or terminating representation." Rule 4-1.16(b) allows a lawyer to withdraw from representing a client if "withdrawal can be accomplished without material adverse effect on the interests of the client." Mr. O'Connor gave notice to Ms. Rich after charges were disposed of that

he would no longer represent her. Since a new trial would have to be set, the trial preparation would have to be completely re-created for the new charge. Thus, Ms. Rich would face no adverse effect by having a new attorney.

This rule also allows withdrawal from representing a client if “the client fails substantially to fulfil an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled.” Here Ms. Rich breached the contract she entered into with Mr. O’Connor by failing to pay her fees. Comment 8 expressly states that “a lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees...” Here, Ms. Rich failed to pay her fees per the fee agreement and thus, Mr. O’Connor had every right to terminate representation.

This Rule also allows discretion for terminating representation of a client by stating, “other good cause for withdrawal exists.” Without violating attorney-client privilege, it may be assumed that Mr. O’Connor felt good cause existed for withdrawal.

Mr. O’Connor also complied with the Missouri Rules of Professional Conduct by providing Ms. Rich with reasonable notice. See Rule 4-1.16(d). The Rules also require that an attorney refund any advance payment of fee that has not been earned. *Missouri Rules of Professional Conduct* 4-1.16(d). The Relator argues that Mr. O’Connor is keeping such funds for unearned work. It is clear from the facts that Mr. O’Connor had no advance payment of fees that had not been earned. In fact, one reason for Mr. O’Connor’s termination of representation was Ms. Rich’s failure to pay fees. Mr. O’Connor faced tremendous hardship in representing Ms. Rich due to the complexity of the case, causing him to be unable to take other cases.

The Relator argues that Mr. O’Connor should have required a higher retainer and his failure to do so should not cause a burden on the Public Defender system. However,

had Mr. O'Connor charged a higher retainer, the Public Defender system would have born the burden from the beginning. Mr. O'Connor clearly took into account the ability of the client to pay by waiving expenses.

The Relator argues that "Mr. O'Connor's work has little or no value to Ms. Rich if Mr. O'Connor is not required to finish the re-filed case. Nor does Mr. O'Connor's work have substantial value to successor counsel." This is contradictory to the Relator's previous argument and is blatantly false and without support from the record. Obviously, the Public Defender would have access to Ms. Rich's file created by Mr. O'Connor. This would be a tremendous help in her defense and will be a guide for the Public Defender in the representation of Ms. Rich. Also, Mr. O'Connor's work was not confined to the criminal case. He also represented her on a family law case and this work is also of substantial value.

Again, this issue is not ripe for appeal. The Relator is ignoring rules of civil procedure. No hearing has been held on this matter in which Mr. O'Connor has been able to defend such slanderous allegations from someone who was not even involved in the previous case. Mr. O'Connor is a necessary party to this litigation as he would be greatly affected by the outcome of this case. Judge Taylor is correct in saying this issue would be better handled in a different forum if at all.

### **CONCLUSION**

Mr. O'Connor had a legal right to cease representation of Ms. Rich. The funds Mr. O'Connor received in relation to Ms. Rich were for two cases, a family law matter and a criminal case. Retrieving such fees from Mr. O'Connor violates his right to due process and would punish him for following the rules of professional conduct. If professional conduct is at issue, this is not the forum to determine the outcome of such allegations. The court did not abuse its discretion by refusing to force Mr. O'Connor to

return his attorney fees. The Court did not abuse its discretion in appointing the Public Defender to represent Ms. Rich. Therefore, the writ of prohibition must be denied.

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**ATTORNEYS FOR RESPONDENTS**

**IN THE MISSOURI SUPREME COURT**

<b>STATE ex rel. J. MARTY ROBINSON,</b>	)	
	)	
Relator,	)	
vs.	)	
	)	
<b>THE HONORABLE RONALD E. TAYLOR,</b>	)	SC 88405
and	)	
<b>THE HONORABLE RANDALL R. JACKSON,</b>	)	
	)	
Respondents.	)	

**CERTIFICATE OF COMPLIANCE AND SERVICE**

I, Ronald R. Holliday, hereby certify to the following:

The attached Brief complies with the limitations contained in Rule 84.06(b). The Brief was completed using Corel WordPerfect, in 13 point Times New Roman font, and includes the information required by Rule 55.03. According to the word count function of WordPerfect, excluding the cover page, the signature block, this Certificate of Compliance and Service, the Brief contains 9,305 words, which does not exceed the 31,000 words allowed for Respondent's Brief.

The floppy disks filed with this Brief contain a complete copy of this Brief. It has been scanned for viruses using the Symantec Antivirus Software. According to that program, the disks provided to the Court and opposing counsel are virus-free.

Two true and correct copies of the attached Brief and a floppy disk containing a copy of this Brief were mailed, postage prepaid this \_\_\_\_ day of July 2007 to J. Gregory Mernelstein, Appellate Division Director, Woodrail Centre, 1000 West Nifong, Building 7, Suite 100, Columbia, Missouri 65203; and one true and correct copy and a floppy disk containing a copy of this Brief was mailed, postage prepaid, this \_\_\_\_ day of July 2007 to the Honorable Ronald E. Taylor, Associate Circuit Judge, 411 Jules, St. Joseph,

Missouri 64501; to the Honorable Randall Jackson, Circuit Judge, 411 Jules, St. Joseph, Missouri 64501; to Mary Beattie, Circuit Clerk, Buchanan County, 411 Jules, Room 371, St. Joseph, Missouri 64501; and to Matthew O'Connor, The O'Connor Law Firm, 523 Grand, Suite 1 B, Kansas City, Missouri 64106.

Respectfully submitted,

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