

**Summary of SC8666, *State ex rel. Jeremiah W. Nixon, Attorney General, State of Missouri v. Lorne Bass and Hanrahan Trapp, P.C.***

Appeal from the Cole County circuit court, Judge Richard G. Callahan

**Attorneys:** The Hanrahan Trapp law firm was represented by William P. Nacy of the firm in Jefferson City, (573) 635-0282, and the state was represented by Christie Kincannon, Doug Noland and Paul Harper of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A trial court granted summary judgment to the state on its petition for money seized during a man's arrest as reimbursement for his subsequent incarceration. A law firm to which the man had authorized release of the money as a retainer for legal fees appeals. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case for further proceedings. A genuine issue of material fact exists as to whether the law firm owned all or part of the seized funds at the time the state filed its petition under the incarceration reimbursement act.

**Facts:** When Paul Bass was arrested and charged with drug possession in March 2006, the sheriff seized \$4,421 from his possession. Five days later, the state sought forfeiture of the money seized. Ten days after that, Bass signed an authorization to release the seized money to the law firm of Hanrahan Trapp "as the initial retainer for legal representation fees." In June 2006, Bass pleaded guilty and was sentenced to three years in prison, and the state dismissed its forfeiture petition and instead filed a petition under the incarceration reimbursement act seeking the \$4,421. The circuit court granted the state summary judgment in June 2007, and the law firm appeals.

**REVERSED AND REMANDED.**

**Court en banc holds:** The trial court improperly granted the state summary judgment because a genuine issue of material fact exists as to whether the law firm owned all or part of the seized funds at the time the state filed its petition under the incarceration reimbursement act. Sections 217.825 to 217.841, RSMo 2000, authorize the state to seek reimbursement from the assets of a current or former offender for the expense of housing the offender in a state correctional facility. The wording of the authorization clearly expresses Bass' intent to transfer rights to specifically identified funds, and this transfer plainly is supported by consideration. Bass was aware that Hanrahan Trapp would not perform legal services on his behalf without his execution of the authorization, and Hanrahan Trapp represented him thereafter. The authorization's reference to a legal fee "retainer" leaves open the question of whether part or all of the funds remained Bass' property or, instead, had been earned by Hanrahan Trapp at the time the state's incarceration reimbursement rights attached. Further, Bass' affidavit stated that he agreed to pay Hanrahan Trapp "legal fees of \$10,000" and that the assignment of the funds the sheriff was holding was intended to satisfy "the balance" of his legal fees.