

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

STATE EX REL MISSOURI PUBLIC DEFENDER COMMISSION,  
J. MARTY ROBINSON & KEVIN O'BRIEN,

Relators

v.

THE HONORABLE GENE HAMILTON, AND  
THE HONORABLE GARY OXENHANDLER.

Respondents

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DOCKET NUMBER WD70327 and WD70349

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

DATE: April 14, 2009

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**Appeal From:**

**ORIGINAL PROCEEDING FOR WRIT OF PROHIBITION**

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**Appellate Judges:**

Writ Division: James Edward Welsh, P.J., Victor C. Howard and Alok Ahuja, JJ.

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**Attorneys:**

John G. Mermelstein, Columbia, MO

Counsel for Relators

Antwaun L. Smith, Kansas City, MO

Co-Counsel for Relators

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**Attorneys:**

Stephanie M. Morrell, Columbia, MO

Counsel for Respondents

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE EX REL MISSOURI PUBLIC DEFENDER COMMISSION, J. MARTY ROBINSON & KEVIN O'BRIEN, Relators, v. THE HONORABLE GENE HAMILTON, AND THE HONORABLE GARY OXENHANDLER, Respondents**

**WD70327 and WD70349**

**Boone County**

Before Writ Division Judges: Welsh, P.J., Howard, and Ahuja, JJ.

The Missouri Public Defender Commission, Director of the Missouri Public Defender System J. Marty Robinson, and District Public Defender Kevin O'Brien (relators) petitioned this court for writs of prohibition, requesting that the Honorable Gary Oxenhandler be restrained from appointing a public defender to represent a defendant in a case before the Boone County Circuit Court and requesting that the Honorable Gene Hamilton be restrained from appointing a public defender, as a member of the local bar, to represent a defendant in a case before the Boone County Circuit Court. In both instances, the cases involved probation violations where the defendants had previously received a suspended execution of sentence and were in the Thirteenth Judicial Circuit where the Director of the Missouri Public Defender System had certified the District 13 Public Defender Office as being of limited availability pursuant to 18 CSR 10-4.010. This court consolidated the cases and issued preliminary orders in prohibition ordering Judges Oxenhandler and Hamilton to refrain from proceeding further in the two cases before them.

**PRELIMINARY ORDER IN PROHIBITION QUASHED AS TO THE CASE INVOLVING JUDGE OXENHANDLER. PRELIMINARY ORDER IN PROHIBITION MADE ABSOLUTE AS TO THE CASE INVOLVING JUDGE HAMILTON.**

**Writ Division holds:**

(1) Section 600.042.4, RSMo Cum. Supp. 2008, mandates the Director and the public defenders to provide representation for indigent defendants facing probation violations, and the Commission cannot promulgate a regulation that conflicts with that statutory mandate.

(2) The Director cannot thwart his directive from the legislature to represent those persons specifically named in the statute by having the Public Defender Commission simply promulgate a rule that gives the Director the authority to temporarily decline to do so. Thus, Judge Oxenhandler did not abuse his discretion or lack the power to appoint the public defender to represent a defendant who was charged with violation of her probation.

(3) Section 600.021.2, RSMo 2000, prohibits public defenders from practicing law except in their official capacity as public defenders. Judge Hamilton lacked the power and abused his discretion in appointing the District Public Defender in his private capacity to represent a defendant.

**Opinion by: James Edward Welsh, J.**

Date: April 14, 2009

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**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**