

IN THE  
MISSOURI SUPREME COURT

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STATE ex rel. )  
J. MARTY ROBINSON, )  
 )  
 Relator, )  
 )  
 vs. ) No. SC88405  
 )  
 THE HON. RONALD E. TAYLOR & )  
 THE HON. RANDALL JACKSON )  
 Associate & 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  
FIFTH JUDICIAL CIRCUIT

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RELATOR'S REPLY BRIEF

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## JURISDICTIONAL STATEMENT

Relator adopts the Jurisdictional Statement from his opening brief.

## STATEMENT OF FACTS

Respondent's argumentative Statement of Facts claims Relator's pleadings are an "unprofessional and slanderous" attack on counsel O'Connor (Resp. Br. at 5). The Public Defender does not wish to "slander" O'Connor or attack O'Connor. This case should not be seen as that.

This case presents an important public policy question applicable to all private defense attorneys whoever they may be, i.e., when private attorneys are hired and paid some money for criminal representation, can they cease representation when further fees are not paid, and shift the burden and cost of the representation to the Public Defender and taxpayers? Relator believes the answer is "no," because the public policy of Missouri, as expressed in *Section 600.086.1*, does not authorize appointment of the Public Defender under such circumstances.

Counsel O'Connor is the former chief of the Buchanan County Public Defender's Office (E-81). Relator agrees with Respondent that O'Connor is "an honest, dedicated, hard-working defense attorney" (Resp. Br. at 5) – which is why this Court should have confidence that O'Connor will provide dedicated, professional representation to Rich if he is required to continue to represent her, as Relator believes this Court should require him to do. *See* Point I of Relator's briefs.

## ARGUMENT

### I.

**Relator is entitled to a permanent writ of prohibition and/or mandamus prohibiting Respondent from appointing the Public Defender for Rich and not requiring O'Connor to continue representation, because Respondent exceeded his jurisdiction, authority and power, and abused his discretion, in that:**

**(1) Section 600.086.1 does not authorize appointment of the Public Defender where a defendant has “the means at [her] disposal or available to [her] to obtain counsel,” and Rich had the means to obtain counsel because she actually obtained O'Connor to represent her in anticipated charges of child endangerment; and,**

**(2) it was against the logic of the circumstances, arbitrary and unreasonable to not require O'Connor to continue representation since he was not hired only in a particular case number or only if child endangerment were charged in a particular way, but was hired to represent Rich in child endangerment charges arising out of the incident and operative facts involving Caden Blanton in Nov.-Dec. 2005, which incident, operative facts and statutory charge are the same in the re-filed case; O'Connor's retention agreement contemplated that O'Connor would represent Rich through conclusion of trial; O'Connor could have protected himself from what he perceives as an inadequate fee by requiring a higher retainer before**

representation; OCDC opinions are advisory only; and O'Connor does not have a conflict of interest merely because he has tried to collect fees which Rich owes, since otherwise counsel could always withdraw for unpaid fees; and,

(3) irreparable harm will result to the Public Defender, its existing clients and taxpayers if a writ does not issue because the Public Defender will face further case overload, and taxpayers will bear the cost of the representation.

#### **Respondent Misconstrues The Standard Of Review**

Respondent states that the standard of review in this case is that set forth in *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976), apparently because Respondent implies that this Court must apply an abuse of discretion standard to all the issues in this case (Resp. Br. at 14). The *Murphy* standard applies to appellate review of court-tried civil cases. *Murphy v. Carron*, 536 S.W.2d at 31.

The instant case, however, is an original writ proceeding seeking an original writ from this Court. Thus, the standard of review is that set forth in *State ex rel. T.W. v. Ohmer*, 133 S.W.3d 41, 43 (Mo. banc 2004), that a writ of prohibition should issue “(1) to prevent the usurpation of judicial power when the trial court lacks jurisdiction; (2) to remedy an excess of jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not made available in response to the

trial court's order." Whether the trial court exceeded its jurisdiction or authority is a question of law which this Court reviews independently of the trial court. *See State ex rel. Teefey v. Bd. of Zoning Adjustment*, 24 S.W.3d 681, 684 (Mo. banc 2000); *State ex rel. Beaird v. Del Muro*, 98 S.W.3d 902, 906-07 (Mo. App., W.D. 2003).

The first question which this Court must resolve is whether Respondent Judge Taylor had the jurisdiction, authority and power to appoint the Public Defender under *Section 600.086.1* under the facts of this case. This is a question of law which this Court determines *de novo*. *See State ex rel. Tanzey v. Richter*, 762 S.W.2d 857, 858 (Mo. App., E.D. 1989); *State ex rel. Shaw v. Provaznik*, 708 S.W.2d 337, 339 (Mo. App., E.D. 1986). As contended in Relator's opening brief at pp. 26-36, Respondent lacked the jurisdiction, authority and power to appoint the Public Defender under *Section 600.086.1* since Rich had "the means at [her] disposal or available to [her] to obtain counsel," in that she actually obtained O'Connor. Assuming, *arguendo*, that the *Murphy* standard applies here, Respondent erroneously declared or applied the law in appointing the Public Defender, *Murphy v. Carron*, 843 S.W.2d at 32, because Rich had the means available to her to obtain O'Connor, and actually obtained him.

### **Respondent Misconstrues The Legal Issue In This Case**

Respondent states that the "two issues" before this Court are "(1) Are the income and assets of the defendant's mother part of the calculation; and (2) Is the defendant indigent?" (Resp. Br. at 23). In fact, *neither* issue is before this Court.

First, the Public Defender did not count – and is not counting in this writ action before this Court -- the income and assets of Rich’s mother in determining that Rich was not eligible for Public Defender services. The Public Defender’s Guidelines for the Determination of Indigence, **18 CSR 10-3.010(3)(B)3**, state that in determining indigency, a defendant’s parents’ income should be considered in some circumstances (Reply Br. Appendix at A-2), but the Public Defender has not sought to invoke that provision of the Guidelines in this case. That provision of the Guidelines is not relevant to the issue here.

Second, the Public Defender is not contesting that Rich herself is indigent. Rich is indigent (E-54, E-68-69). Respondent’s lengthy citation to **Sections 600.086.2 – 6** (Resp. Br. at 16-17) is misplaced and irrelevant, since those sections of the statute set forth the procedures for determining indigency. Those sections of the statute deal with the “second prong” of **Section 600.086.1**.

As stated in Relator’s opening brief, at pp. 27-28, **Section 600.086.1** sets forth two requirements for eligibility for Public Defender representation: (1) the defendant “does not have the means at his disposal or available to him to obtain counsel in his behalf,” **and** (2) the defendant is “indigent.” This case deals with the *first prong* of **Section 600.086.1**. Rich is not eligible for Public Defender representation because she had “the means at [her] disposal or available to [her] to obtain counsel,” since she actually retained O’Connor, *before she was even charged*, to represent her in defending against anticipated charges of child endangerment (E-144, E-149; A-8, A-12). The money to retain O’Connor came

from Rich's mother (E-53). The Public Defender would not have required Rich's mother to obtain counsel for Rich. When the mother retained O'Connor, however, Rich became ineligible for Public Defender representation under the first prong of *Section 600.086.1* regarding the charges of child endangerment. *See State ex rel. Gordon v. Copeland*, 803 S.W.2d 153, 159 (Mo. App., S.D. 1991)(defendant would be ineligible for Public Defender representation if parents obtain counsel for defendant). The legislature did not intend indigent defendants who – through whatever means – have the ability to obtain counsel and who, in fact, obtain counsel to be represented by a Public Defender. The purpose of *Section 600.086.1* is to provide Public Defender counsel only to those indigent defendants who cannot obtain counsel by any other means.

### **Respondent's Additional Arguments**

Respondent contends that the instant case involves “different allegations” against Rich, a “new charge” or “new case” (Resp. Br. at 25). As Respondent admits elsewhere in its brief, however, the re-filed case does “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” (Resp. Br. at 31). Rich retained O'Connor before she was even charged to represent her against anticipated charges of child endangerment (E-144, E-149; A-8, A-12). Rich did not retain O'Connor to represent her in any particular case number or to represent her against a child endangerment charge that would be charged in only one particular manner. Neither she nor O'Connor could have known the exact manner

in which Rich would ultimately be charged, but they could and did know the incident or operative facts concerning which Rich desired – and contracted for – representation.

Respondent emphasizes that O'Connor would have to employ a different “trial strategy” in the re-filed case (Resp. Br. at 29, 31). But O'Connor did not agree to represent Rich only if he could employ a single particular trial strategy. He could not have done so because he was hired before any charge was filed (E-144, E-149; A-8, A-12). Defense attorneys are frequently required to change “trial strategy” throughout the course of representation when, for example, the State may endorse a new witness. A change in “trial strategy” does not make the re-filed case a “new charge” or “new case,” and does not justify O'Connor ceasing representation, where the result is to thrust the burden and cost of the representation on the Public Defender and taxpayers.

Respondent suggests that Relator has claimed that O'Connor ceased representation because he was not as likely to obtain an acquittal (Resp. Br. at 30). Respondent has taken the statement in Relator's brief at pp. 33-34 out of context. O'Connor ceased representation because he was not paid further fees by Rich (E-73). O'Connor told Rich that he would continue to represent her if she executed a new fee agreement, but otherwise, he would not continue representation in the re-filed case (E-73). The portion of Relator's brief cited by Respondent was responding to O'Connor's testimony that the re-filed charge was a different case because it is a “much more difficult case in my opinion” since it more closely

tracks the MAI for child endangerment (E-75; Relator's Brief at pp. 33-34). Relator's point was that more closely tracking the jury instructions – which may make an acquittal less likely – does not make the re-filed charge a different matter for purposes of *Section 600.086.1*, where the operative facts remain the same and the statutory charge remains the same. Again, O'Connor was not retained to represent Rich only if child endangerment were alleged in one particular manner. Under the facts here, the re-filed case must be considered the same or a continuation of the originally-filed case for purposes of *Section 600.086.1*. It is absurd to believe that the legislature would have intended a defendant who paid substantial sums to a private attorney to represent her – thus having the means available to obtain counsel – to then become eligible for Public Defender services -- with the resulting burden and cost to the Public Defender and taxpayers -- merely because of the fortuitous event that a charge was nolle prossed due to a co-defendant's objection (E-73-74) and immediately re-filed under a different case number.

Respondent admits that "O'Connor's own retention agreement with Ms. Rich did contemplate that he would represent her through the conclusion of trial" (Resp. Br. at 31; E-144; A-8). Rich remains charged with child endangerment, and has not yet had a trial. O'Connor has not completed the representation for which he was retained.

Respondent asserts that under Relator's logic, "O'Connor would be required to represent Ms. Rich forever no matter what charges are filed against her

in the future” (Resp. Br. at 26-27). Relator is making no such contention. **Section 600.086.1** should not be – and need not be -- interpreted to reach an absurd result. ***Metro Auto Auction v. Director of Revenue***, 707 S.W.2d 397, 405 (Mo. banc 1986)(statutes should not be interpreted to reach absurd results). Relator believes O’Connor is only required to represent Rich against the anticipated incident of child endangerment for which he was retained and paid. If Rich were charged in the future with a different crime – such as burglary – based on a different incident or a different set of operative facts, O’Connor should not be required to represent Rich. That would be a truly new or different case or matter. But where the operative facts remain the same, the statutory charge remains the same, and the agreement entered into by O’Connor and Rich contemplated that O’Connor would represent Rich on child endangerment charges through a trial, then for purposes of **Section 600.086.1** the re-filed case must be considered the same or a continuation of the originally filed case. It elevates form – i.e., case numbers – over substance to hold otherwise, and ignores the clear intent of the legislature that Public Defender services be limited only to those indigent defendants who cannot obtain counsel by any other means.

Respondent contends that “Heather Rich never requested that the Public Defender move for Mr. O’Connor to represent her” (Resp. Br. at 26). That is true, but it is also irrelevant. The issue here is whether Rich is eligible for Public Defender representation under **Section 600.086.1**. She is not, because she had the means to obtain – and did obtain -- O’Connor to represent her against child

endangerment charges. Rich does not get to “choose” representation by the Public Defender when she simply is not eligible for it, and has O’Connor to represent her.<sup>1</sup>

Respondent next suggests that “Mr. O’Connor likely faced other valid reasons to cease representation [besides non-payment of fees] which is permitted under the Missouri Rules of Professional Conduct” (Resp. Br. at 33). There is nothing in the record showing that O’Connor ceased representation of Rich for any reason other than non-payment of fees. In fact, such a suggestion is refuted by the record. After the original charge was nolle prossed, O’Connor offered to continue to represent Rich if she would execute a new fee agreement (E-73). He refused to continue representation only because she did not do that (E-73).

Lastly, Respondent contends that Relator has misrepresented the record because Relator “implies that the \$20,000 was paid in satisfaction of just the criminal case” (Resp. Br. at 34). Relator’s brief at p. 8 disclosed that “O’Connor’s representation was to cover both a family court case involving Rich, and criminal charges that might arise.” The fact that O’Connor was retained and paid for two cases, however, does not diminish the legal effect of *Section 600.086.1*. Rich is not eligible for Public Defender representation under the first prong of *Section 600.086.1* because she had the means to obtain counsel since she actually obtained

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<sup>1</sup> Rich testified she did not have any complaints about O’Connor’s representation (E-67-68).

O'Connor to represent her against child endangerment charges. Moreover, it is clear from O'Connor's retention letter (E-149; A-12) and fee agreement (E-144; A-8) that O'Connor was retained primarily for the criminal case. The retention letter refers to an "offense charged," discusses a "pre-indictment flat fee in the amount of \$2,000," and states that Rich will be required to pay an additional \$6,000 retainer if criminal charges are filed, and to refresh that retainer when it dips below \$1,000 (E-149; A-12). The letter never discusses the family case (E-149-150; A-12-13). The fee agreement is entitled, "FEE AGREEMENT – CRIMINAL CASE" (E-144; A-8)(capitalization in original). While the record does not disclose the total amount O'Connor was paid for the family case versus the criminal case, the language of the retention letter and fee agreement indicates the primary focus of representation was on the criminal case. There is no dispute that O'Connor received a net attorney's fee of \$20,282.19 (E-53, E-72). Rich is ineligible for Public Defender representation under *Section 600.086.1* because she obtained O'Connor to represent her against the child endangerment charges.

This Court should make permanent a writ of prohibition and/or mandamus to prohibit the orders of February 2 and 26, 2007, appointing the Public Defender and not requiring O'Connor to continue the representation.

## **II.**

**Relator is entitled to a permanent writ prohibiting Respondent from appointing the Public Defender and not requiring O'Connor to continue representation without requiring O'Connor to refund or pay his \$20,282.19 attorney's fee to Rich or to the court to be held in escrow to hire another private counsel, because Respondent abused his discretion in not requiring O'Connor to refund the money and irreparable harm will result if a writ does not issue, in that:**

**(1) it was against the logic of the circumstances, arbitrary and unreasonable for O'Connor to be allowed to cease representation but keep his fee since O'Connor could have protected himself from what he perceives as an inadequate fee by requiring a higher retainer before O'Connor undertook representation;**

**(2) O'Connor should not be permitted to profit from his failure to obtain a higher retainer where the result is to shift the cost and burden of the representation to the Public Defender and Missouri taxpayers; and,**

**(3) the criminal case is the proper forum in which to resolve Rich's claims against O'Connor for not continuing the representation, because otherwise the Public Defender will face further case overload, which will harm existing clients, and Missouri taxpayers will bear the cost of the representation.**

Respondent contends that there “is no evidence before this Court that [Relator’s refund] remedy was even considered or suggested by the Public Defender’s Office to the trial court at the time of that hearing” (Resp. Br. at 40). At the February 26 hearing, the Public Defender requested that the court order O’Connor to continue representation in the re-filed case (E-79). Alternatively, however, the Public Defender requested that the court order the “*return [of] sufficient funds* or somehow provide for Heather Rich to have an attorney rather than imposing that burden on the tax payers of the State of Missouri and the public defender” (E-79)(emphasis added). Thus, the Public Defender did move for the refund remedy at the hearing as an alternative to requiring O’Connor to continue representation.

The Public Defender proposed the “refund remedy” in an attempt to provide the trial court – and this Court -- with options in fashioning an appropriate remedy to prevent harm to the Public Defender, its existing clients and taxpayers. The Public Defender’s interest in this litigation is that **Section 600.086.1** be enforced, so that the Public Defender is not appointed to represent Rich. Exactly who ultimately represents Rich is not the Public Defender’s direct concern, provided that the Public Defender is not appointed. That is why the Public Defender believes this Court should either require O’Connor to continue

representation, or order him to refund his attorney's fee to Rich to allow her to hire another private counsel.<sup>2</sup>

O'Connor's problem in not being paid his full fees was not caused by the Public Defender. The Public Defender, its existing clients and taxpayers should not bear the burden and cost of fixing it. The Public Defender was not established to be an insurance plan to bail out private counsel who are not paid their full fees. O'Connor chose to undertake representation of Rich for a small retainer, and hope for more money later. He should bear the risk of loss when the further fees were not paid, either by having to continue to represent Rich despite non-payment of fees, or by having to refund her money to allow her to hire another counsel who will complete the case.

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<sup>2</sup> The Public Defender also believes there is a third option: allow O'Connor himself to choose among these two alternatives. In other words, a court may order O'Connor to either continue to represent Rich despite non-payment of further fees, or order him to refund his attorney's fees to Rich to enable her to hire other counsel – *and leave the choice to O'Connor as to which he wishes to do.*

O'Connor may find it more beneficial to him to complete representation through trial, or he may find it more beneficial to refund Rich's money so that she can hire another attorney. In either event, however, the Public Defender and taxpayers would not be harmed.

Relator acknowledges that O'Connor should not be required to pay expenses in representing Rich. *See State ex rel. Public Defender Commission v. Williamson*, 971 S.W.2d 835, 838 n. 2 (Mo. App., W.D. 1998). In stating the amount that O'Connor should refund, Relator subtracted the \$4,382.10 O'Connor had used for expenses for Rich (E-72). O'Connor was paid \$24,664.29 (E-53), of which he used \$4,382.10 for expenses (E-72).<sup>3</sup> This left him with a net attorney's fee of \$20,282.19 (E-53, E-72), which is the amount Relator contends he should refund to Rich, if he is not required to continue to represent her.

Contrary to Respondent's suggestion that the Public Defender is trying to "condemn" O'Connor for seeking to decline or terminate representation for non-payment of fees (Resp. Br. at 41), the Public Defender is merely trying to enforce *Section 600.086.1*, and prevent harm to its existing clients and taxpayers. The public policy of Missouri, as expressed in *Section 600.086.1*, is that defendants are not eligible for Public Defender representation where they have the means available to obtain counsel, and actually obtain counsel to represent them.

Respondent contends that "had Mr. O'Connor charged a higher retainer, the Public Defender system would have born[e] the burden [of representation] from the beginning" (Resp. Br. at 43). This is not true. Had O'Connor required a higher retainer, it may very well be that Rich would not have been able to afford

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<sup>3</sup> Respondent's brief states that O'Connor waived expenses for Rich (Resp. Br. at 43). However, O'Connor testified he charged \$4,382.10 for expenses (E-72).

O'Connor – who billed Rich at the rate of \$200 per hour for the criminal case (E-64) -- but there were undoubtedly other attorneys who would have represented Rich through the conclusion of a trial for the more than \$20,000 which she had available, such as those attorneys who do contract work for the Public Defender System. O'Connor should be free to charge this hourly rate. But he should not be free to exhaust Rich's funds which could have been used to hire other counsel who would have been more "affordable" to her, and then foist the burden and cost of the representation on the Public Defender and taxpayers when Rich could no longer afford to pay him.

Respondent contends that "Ms. Rich failed to pay her fees per the fee agreement and thus, Mr. O'Connor had every right to terminate representation" (Resp. Br. at 42). If this were a case where O'Connor could terminate representation with no consequence to the Public Defender or taxpayers, Relator might agree with Respondent. But here there is a public consequence to O'Connor's failure to protect himself from non-payment of his total fee by requiring a higher retainer. Here, the Public Defender and taxpayers are being required to assume the burden and cost of representing Rich – while O'Connor keeps the profits for himself. Missouri has a fiscal and public policy interest in ensuring that this does not occur. **Section 600.086.1** prohibits this. *See also United States v. Rodriguez-Baquero*, 660 F. Supp. 259, 261 (D. Me. 1987) and *United States v. Parker*, 439 F.3d 81, 102 and 109 (2d Cir), *cert. denied*, 127 S.Ct. 456 (2006), discussed in Relator's opening brief at p. 53.

Respondent again suggests that O'Connor had good cause for withdrawal other than non-payment of attorney's fees (Resp. Br. at 42). There is nothing in the record showing that O'Connor ceased representation of Rich for any reason other than non-payment of fees. In fact, such a suggestion is refuted by the record. After the original charge was nolle prossed, O'Connor offered to continue to represent Rich if she would execute a new fee agreement (E-73). He refused to continue representation only because she did not do that (E-73).

Next, Respondent suggests that the Public Defender would not be burdened by representation of Rich because the Public Defender would have access to Rich's file created by O'Connor, which "would be a tremendous help in her defense and will be a guide for the Public Defender in the representation of Ms. Rich" (Resp. Br. at 43). If anything, this argument shows why *O'Connor* should be required to continue to represent Rich. He is the creator of the file, he is the attorney familiar with it, and his prior work should "guide" *him* through completion of the child endangerment charges for which he undertook representation through trial (E-144; A-8).

Next, Respondent contends that "this issue is not ripe for appeal" since "[n]o 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" (Resp. Br. at 43). However, Respondent conducted a hearing on February 26, 2007 (E-45-87). O'Connor was present, examined witnesses, presented exhibits, testified himself, and made argument on his behalf (E-45-87).

Lastly, Respondent contends that “Judge Taylor is correct in saying this issue would be better handled in a different forum if at all” (Resp. Br. at 43). The criminal case is the proper forum to resolve the issues in this case, so that the burden and cost of Rich’s representation will not be thrust on the Public Defender and taxpayers.

If this Court does not make permanent its preliminary writ and prohibit Respondent’s order appointing the Public Defender and not requiring O’Connor to continue to represent Rich as requested in Point I, then this Court should hold that Respondent abused his discretion in not requiring O’Connor to return or pay his attorney’s fees to Rich or the court to allow her to hire another private counsel.<sup>4</sup> In any event, this Court should make permanent its preliminary writ prohibiting Respondent from appointing the Public Defender.

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<sup>4</sup> As a third alternative remedy, this Court should order that counsel O’Connor be required to choose between continuing to represent Rich through trial, or refunding his attorney’s fee to enable her to hire another counsel. *See* footnote 2, *supra*.

## CONCLUSION

For the reasons stated in Point I of Relator's opening brief and this reply, Relator respectfully requests that this Court make permanent a preliminary writ of prohibition and/or mandamus to prohibit the orders of February 2 and 26, 2007, appointing the Public Defender and not requiring O'Connor to continue the representation.

Alternatively, for the reasons stated in Point II of Relator's opening brief and this reply, Relator respectfully requests that this Court make permanent its preliminary writ of prohibition on grounds that Respondent Judge Taylor abused his discretion in not requiring O'Connor to return or pay his attorney's fees of \$20,282.19 to Rich or the court to allow her to hire another private counsel.

In either event, this Court should make permanent a writ prohibiting Respondents from appointing the Public Defender.

Respectfully submitted,

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### **Certificate of Compliance and Service**

I, J. Gregory Mermelstein, hereby certify to the following:

The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word 2007, in 13 point Times New Roman font, and includes the information required by Rule 55.03. According to the word-count function of Microsoft Word, excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 4,705 words, which does not exceed the twenty-five percent of the 31,000 words allowed for a reply brief.

The floppy disks filed with this brief contains a complete copy of this brief. It has been scanned for viruses using the McAfee VirusScan Enterprise 7.1.0 program, which was updated in July, 2007. According to that program, the disks provided to this Court and to the Attorney General 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 25th day of July, 2007, to Ronald R. Holliday, Assistant Prosecuting Attorney, Buchanan County Courthouse, 411 Jules, St. Joseph, MO 64501, and one true and correct copy and a floppy disk containing a copy of this brief was mailed, postage prepaid this 25th day of July, 2007, to Hon. Ronald E. Taylor, Associate Circuit Judge, 411 Jules, St. Joseph, MO 64501; Hon. Randall Jackson, Circuit Judge, 411 Jules, St. Joseph, MO 64501; Mary Beattie, Circuit Clerk, Buchanan County Circuit Court, 411 Jules, Room 331, St. Joseph, MO. 64501; Matthew O'Connor, The O'Connor

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302 West Valley, St. Joseph, MO 64504.

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J. Gregory Mermelstein