

IN THE SUPREME COURT OF MISSOURI

In re The 2016 BUDGET)
of the 45th JUDICIAL CIRCUIT COURT)
in LINCOLN COUNTY, Missouri,)

LINCOLN COUNTY, MISSOURI,)
BY AND THROUGH THE LINCOLN)
COUNTY COMMISSION,)

Respondent,)

Case No. SC95791

vs.)

CIRCUIT COURT OF THE 45th)
JUDICIAL CIRCUIT OF MISSOURI,)
CHRIS KUNZA-MENNEMEYER)
PRESIDING CIRCUIT JUDGE,)

Appellant.)

APPELLANT'S BRIEF

On Appeal from the Judicial Finance Commission

Robert J. Guinness #37618
GUINNESS & BUEHLER, LLC
50 Hill Pointe Ct., Suite 200
St. Charles, MO 63303
(636) 947-7711 phone
(636) 947-7787 fax
guinness@stclegal.com

Attorneys for Appellant
Circuit Court of the 45th
Judicial Circuit of Missouri
Chris Kunza-Mennemeyer
Presiding Circuit Judge

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JURISDICTION STATEMENT

This action involves the 45th Judicial Circuit Court's petition to the Missouri Supreme Court to review the June 2, 2016 written opinion of the Missouri Judicial Finance Commission ("the Finance Commission") concerning the Finance Commission's determination of the reasonableness of the 45th Judicial Circuit Court's 2016 budget submission to the Lincoln County Commission ("the County Commission"). The 45th Judicial Circuit Court's petition for review was filed within thirty days of the 45th Judicial Circuit Court's receipt of the Finance Commission's written opinion. Both RSMo. §477.600.7 and Mo. Sup. Ct. Op. Rule 12-23.01, provide that the 45th Judicial Circuit Court ("the 45th Circuit") may have the Supreme Court review the Finance Commission's written opinion by filing a petition for review in the Supreme Court within thirty days of the receipt of the Finance Commission's opinion. Hence, the Supreme Court has jurisdiction over the 45th Circuit's Petition for Review. "The supreme court shall consider the petition for review de novo." *RSMo. §477.600.7.*

STATEMENT OF FACTS

This case involves the reasonableness of the 45th Circuit's \$35,000 budget estimate to pay attorneys to represent the 45th Circuit in litigation, or other legal matters involving the 45th Circuit, during the 2016 budget year under RSMo. §50.640.2 and §477.600.

In the year leading up to the 45th Circuit's 2016 budget submission, the 45th Circuit was involved in two litigation matters with the County Commission. First, the County Commission had previously filed a petition for review of the 45th Circuit's 2015 Budget with the Finance Commission. *In Re the 2015 Budget of the 45th Judicial Circuit Court in Lincoln County, Missouri*, (15-0076); [L.F. 525 ¶4]. The Finance Commission never issued a determination of that petition. The County Commission claims that the 2015 Petition for Review was settled, but that is disputed by the 45th Circuit. [L.F. 20 ¶(e), 532-534]. The County Commission filed a motion to enforce the purported settlement, but it was never ruled upon. [L.F. 534]. No party appealed the Finance Commission's 2015 actions (or inaction).

Second, in 2015, the County Commission refused to pay the Court-appointed attorney for the Lincoln County Juvenile Court officer. [L.F. 323]. The 45th Circuit was forced to file a mandamus action against the County Commission to compel the payment from amounts within the 45th Circuit's 2015 budget. *Id.* That litigation is ongoing. *State of Mo. ex rel Chris Kunza Mennemeyer v. Lincoln County*, 15L6-CC00150 (Lincoln County Cir. Ct.). Indeed, the issue of the County Commission's payment of other

statutorily required Court-appointed counsel has continued into the 2016 budget year. For example, in 2015 and 2016, the County Commission refused to pay any Court-appointed Juvenile Court Guardians ad Litem (GALs) and Juvenile Court parent attorneys' fees unless those court appointed GALs and attorneys first signed a contract with the County Commission. [*L.F.* 324-325].

In late 2015, the 45th Circuit submitted its budget estimate for the 45th Circuit's 2016 operations in Lincoln County to the County Commission as required by RSMo. §50.540 and §50.640. [*L.F.* 17 ¶3]. Knowing that there were legal disputes to resolve with the County Commission, the 45th Circuit's 2016 Budget submission included a \$35,000 budget estimate to pay attorneys to represent the 45th Circuit in any litigation or other legal matters in which the 45th Circuit was involved during that budget year. [*L.F.* 322 ¶2]. In submitting this budget item, the 45th Circuit was mindful of the comments that the County Commission made during the 2015 Finance Commission proceedings. The County Commission repeatedly told 45th Circuit's Presiding Judge that because the 45th Circuit had no attorneys' fees line item in the 45th Circuit's budget to pay its attorney, the 45th Circuit's attorney was not going to be paid by the County Commission unless the Presiding Judge agreed to the County Commission's demands. [*L.F.* 323]. The County Commission also stated to the Presiding Judge on more than one occasion that if the 45th Circuit did not settle the 2015 Finance Commission proceeding in the County Commission's favor, the 45th Circuit would not have any way to pay its attorneys. [*L.F.*

323]. To avoid being held hostage to the County Commission's attorneys' fees leverage, the 45th Circuit made sure that its 2016 budget included an attorneys' fees line item. Indeed, the County Commission's innuendo threatening to deprive the 45th Circuit of its ability to independently defend itself in such disputes, is the primary reason why the 45th Circuit included these fees in its own budget for 2016. [L.F. 323]

After the 45th Circuit submitted its 2016 budget estimate to the Lincoln County Budget officer, a budget meeting was held by telephone conference call with several participants. They included the Lincoln County Presiding Commissioner Dan Colbert, Lincoln County's lawyer, Joel Eisenstein, the County Budget Officer Crystal Hall, the Juvenile Officer, the 45th Circuit's Presiding Judge Mennemeyer, and 45th Circuit's secretary. [L.F. 521]. This discussion lasted about an hour and 15 minutes. [L.F.521; Ex. 59, L.F. 550 (audio recording)]. During the 2016 Budget conference call, the Lincoln County Commission stated that all court-appointed attorneys for the year 2016 must sign a contract with the County Commission in the format dictated by the County Commission before payment would be made -- even if there was a Court Order for the payment. [L.F. 325]. The 45th Circuit's Presiding Judge told them there is no such requirement in the law for such contracts with court-appointed attorneys. [L.F. 325, 523]. The County Commission simply ignored the Presiding Judge's position by making a statement to the effect that: "once the attorneys in Lincoln County figure out they are not getting paid, the Court will not have any attorneys." [L.F. 324-325]. The Lincoln

County Commission has followed through on its threat and refused to pay for any Court appointed attorneys in 2016 until they signed the County Commission's contract, even though there are unexpended funds to pay those attorneys in the 45th Circuit's approved budget. *[See Ex. 28, L.F. 393]* .

During the 2016 budget conference call, the 45th Circuit's Presiding Judge fully explained the need and justification for the budgeted attorneys' fees, including the 45th Circuit's existing Writ of Mandamus case against the County Commission, as well as any other potential cases to defend the 45th Circuit's budget and to carry out the Court's functions. *[See Ex.59, L.F. 522-523]*.

When the 45th Circuit's Presiding Judge brought up the attorneys' fees issue at the 2016 budget conference call, the County Commission resolutely said "zero attorneys' fees" and never changed its position during the entire discussion. *[L.F. 329-330]*. The County Commission simply repeated that "We're not going to budget any amount of money at all for attorneys fees." *Id.* The Presiding Judge explained during the conference call that the attorneys' fees were for matters in which neither OSCA or the Attorney General would represent the Court. The Presiding Judge also specifically explained that the attorneys' fees budget was for the Writ of Mandamus case that was pending between the 45th Circuit and the County Commission, and in case there was another Finance Commission filing (as it appeared they were heading for at the time) as well any similar matters. *[L.F. 328-329; 522]*. The Presiding Judge told the County

Commission officials that the Presiding Judge had been in contact with OSCA and the Attorney General's office and that they specifically said they would not represent the Court in Budget disputes with the County Commission. [L.F. 329]. The Presiding Judge also told the County Commission officials that the Attorney General's office had suggested that the 45th Circuit include a line item for attorneys' fees in the Court's budget. [Id.] The Presiding Judge also explained to the County Commission officials that she had contacted several Presiding Judges who informed her that they too had budgeted attorneys' fees for the Court in their budgets. [Id.; See Ex. 1-7, L.F. 287-296]. But the County Commission made it clear that it did not want to allow the 45th Circuit to budget attorneys' fees because it did not want to enable the 45th Circuit to hire an attorney to litigate against the County Commission. [L.F. 330]. This is an extremely antagonistic and unjust position to take when the County Commission has money in its budget to litigate **against** the 45th Circuit. The County Commission's final comment on the subject of the 45th Circuit's attorneys' fees during the conference call was when a County Commissioner called out: "Zero attorneys' fees." [Id.]

It must be noted that the 45th Circuit is **not** the only government official that has been forced to sue the County Commission over the County Commission's budget actions. The Lincoln County Sheriff also had to sue the County Commission over the County's unilateral reduction of the Sheriff's budget after that budget had been approved. See *State ex rel Kriegbaum v County Commission, et al*, Cause No. 09L6-CC00062

(Lincoln County Circuit Court (assigned to Judge Mobley of the 10th Judicial Circuit); [See Ex. 60, L.F. 551-556]. The County Commission lost that case. [Id.] What makes the *Kriegbaum* case notable here is that the County Commission used the exact same contractual requirement claim that had been rejected in *Kriegbaum* to deny payments to the 45th Circuit's court-appointed attorneys. Even though the County Commission already lost on this point, it continued to improperly press this invalid claim with the 45th Circuit. Thus, the 45th Circuit knew that it would have to litigate this point with the County Commission in the coming year.

Although the 45th Circuit made several compromises during the budget conference, the parties could not resolve the attorneys' fees issue. The County Commission then filed a Petition for Review with the Finance Commission in which it objected to only two items in the 45th Circuit's 2016 budget submission:

- (1) the reasonableness of the 45th Circuit's \$35,000 budget estimate for fees for attorneys to represent the 45th Circuit; and
- (2) the 45th Circuit's inclusion of the costs for the Juvenile Court Guardians ad Litem and Juvenile Court parent attorneys in the 45th Circuit's budget.

[L.F. 4-10]. However, both the 45th Circuit and the County Commission had the same budget amount for the Guardian ad Litem fees and the Juvenile Court parent attorneys' fees. [L.F. 373]. The County Commission's position was that this item should be in the County Commission's budget rather than the 45th Circuit's budget. [L.F. 5 ¶ (e), 373]. If

the item is in the County Commission's budget, then the County Commission could control the payments from this fund. On the other hand, if it is in the 45th Circuit's budget, the 45th Circuit would have control over the payments.

The Finance Commission conducted a settlement conference between the parties on the County Commission's 2016 Petition for Review as was required by RSMo. §50.640 and Mo. Sup. Ct. Op. Rule 12-11.03. However, the settlement conference was unsuccessful. [*App. A1-A2; L.F. 632-633*].

By agreement of the parties, the Finance Commission received affidavits, documents, and briefs in lieu of an evidentiary hearing under Mo. Sup. Ct. Op. Rule 12-13.01. [*App. A3; L.F. 633*].

The Finance Commission's issued a ruling reducing the 2016 budget for the 45th Circuit's attorneys' fees from \$35,000.00 to \$8,475.00. [*L.F. 634-636*]. It did not address the issue of the Guardian ad Litem fees and Juvenile Court parent attorneys' fees. [*App. A3-A5; L.F. 632-636*].

Neither the County Commission or the 45th Circuit sought review of the Finance Commission's failure to rule on the Guardian ad Litem fees and Juvenile Court parent attorneys' fees issue. As such, the 45th Circuit's original budget estimate for the Guardian ad Litem fees and Juvenile Court parent attorneys' fees must govern. *Mo. Sup. Ct. Op. Rule 12-23.09*.

However, the 45th Circuit did file this Petition for Review concerning the attorneys' fees budget item alone. Thus, the only issue remaining in dispute is the reasonableness of the 45th Circuit's 2016 budget estimate for its own attorneys' fees.

POINTS RELIED ON

I. The Finance Commission erred in ruling that \$26,525.00 of the 45th Circuit's budget estimate for the 45th Circuit's attorneys' fees was unreasonable based on the County Commission's statement that the 45th Circuit's attorneys' fees for the budget review proceedings could be paid from the County Commission's own budget, rather than from the 45th Circuit's budget, because the Finance Commission's ruling was not based on the statutory factors of "reasonableness" required in RSMo. §50.640.2; in that the 45th Circuit established that its budget amount for attorneys' fees was reasonable using the required statutory factors as follows:

- a. The County Commission's budget was not an available source for payment since there was no mechanism that the 45th Circuit could rely upon to control or enforce such payments, the County Commission is antagonistic towards making such payments, and the County Commission actually refused to make such payments during the Finance Commission proceedings,
- b. Payment of the 45th Circuit's attorneys' fees for the Finance Commission proceeding is necessary for the 45th Circuit to carry out its functions in defending the Circuit's budget and bringing legitimate issues before the Finance Commission,

- c. The only evidence before the Finance Commission was that the \$35,000 amount requested by the 45th Circuit for its attorneys fees in 2016 was reasonable for the anticipated legal matter under the statutory factors of “reasonableness” required in RSMo. §50.640.2,
- d. The 45th Circuit’s expenditures were small in relation to Lincoln County’s overall expenditures and capital expenditures,
- e. There were no operating deficits,
- f. There were sufficient sources of revenue available for financing the 45th Circuit’s proposed expenditures in its budget, and
- g. To ensure payment of those fees they must be included in the 45th Circuit’s budget because the 45th Circuit alone controls the expenditure of the funds in its budget.

In Re 1984 Budget for the Circuit Court of St. Louis County, 687 S.W.2d 896, 901 (Mo. banc 1985);

Cooper County v. Eighteenth Judicial Circuit (Finance Commission 04-0066);

RSMo. §476.270

RSMo. §50.640.

II. The Finance Commission erred in ruling that only \$8,475.00 of the 45th Circuit's 2016 budget estimate for attorneys' fees were reasonable because under RSMo. §50.640.2; RSMo. §50.540; RSMo. §50.550; and RSMo. §477.600, the budget must encompass the costs that may be incurred for the entire ensuing year on all matters, in that:

- a. The \$8,475.00 amount was only incurred by the 45th Circuit in one case (the mandamus action) through April 1, 2016, and the 45th Circuit could, and did, continue to incur such attorneys fees thereafter in 2016;
- b. The attorneys' fees that the 45th Circuit incurred in the mandamus action both before and after April 1, 2016 were reasonable and were for the same purpose, yet the Finance Commission only allowed for such fees that were incurred prior to its hearing submission date, thereby ignoring the fees that the Court was to incur thereafter.
- c. The only evidence before the Finance Commission was that the \$35,000 amount requested by the 45th Circuit for its attorneys fees was reasonable for the anticipated legal matters under the statutory factors of "reasonableness" required in RSMo. §50.640.2,
- d. The County Commission failed to pay any of the 45th Circuit's 2016 attorneys' fees for the mandamus action from the 45th Circuit's budget,
- e. Payment of the 45th Circuit's attorneys' fees in the mandamus action is

necessary for the 45th Circuit to carry out its functions in enforcing the Circuit's budget, enabling it to obtain attorneys for court appointments required by law, enabling it to obtain attorneys to represent the 45th Circuit in essential litigation, and bringing legitimate issues before the court for resolution,

- f. The 45th Circuit's expenditures were small in relation to the County Commission's overall expenditures and capital expenditures,
- g. There were no operating deficits,
- h. There were sufficient sources of revenue available for financing the 45th Circuit's proposed expenditures in its budget, and
- i. To ensure payment of those fees they must be included in the 45th Circuit's budget because the 45th Circuit alone controls the expenditure of the funds in its budget.

RSMo. §50.640.1;

RSMo. §50.540.

RSMo. §50.550.1.

III. The Finance Commission erred in failing to issue a specific order requiring the County Commission to pay the 45th Circuit's attorneys' fees incurred throughout the budget review proceedings the County Commission is required to pay the costs incurred by the 45th Circuit in carrying out its operations pursuant to RSMo. § 476.270; in that the 45th Circuit established that its attorneys' fees in the budget review proceedings were reasonable and were necessary to carry out the 45th Circuit's operations in responding to the County Commission's Petition for Review and bringing legitimate issues before the Finance Commission since without an order directing such payment the 45th Circuit cannot be assured that the County Commission will pay such fees from the County Commission's own budget.

RSMo. §476.270;

Circuit Court of Jackson County v. Jackson County, 776 S.W.2d 925, 927 (Mo. App. W.D. 1989).

IV. The Finance Commission erred by denying the 45th Circuit's Motion to Dismiss Lincoln County's Petition for Review, because Mo. Sup. Ct. Op. Rule 12-11.09 provides that the Petition for Review may be dismissed if the 45th Circuit's judicial budget was less than the percentage increase of the County Commission's government budget; in that the 45th Circuit established that the percentage increase of the 45th Circuit's judicial budget submission was significantly less than the percentage increase of the County Commission's government budget.

Mo. Sup. Ct. Op. Rule 12-11.09.

ARGUMENT

I. THE FINANCE COMMISSION IMPROPERLY RELIED ON THE UNENFORCEABLE POSSIBILITY THAT THE COUNTY COMMISSION COULD PAY THE 45TH CIRCUIT'S ATTORNEYS' FEES FROM THE COUNTY COMMISSION'S BUDGET RATHER THAN RULING ON THE REASONABLENESS OF THE BUDGET ESTIMATE.

1. POINT RELIED UPON.

The Finance Commission erred in ruling that \$26,525.00 of the 45th Circuit's budget estimate for the 45th Circuit's attorneys' fees was unreasonable based on the County Commission's statement that the 45th Circuit's attorneys' fees for the budget review proceedings could be paid from the County Commission's own budget, rather than from the 45th Circuit's budget, because the Finance Commission's ruling was not based on the statutory factors of "reasonableness" required in RSMo. §50.640.2; in that the 45th Circuit established that its budget amount for attorneys' fees was reasonable using the required statutory factors as follows:

- a. The County Commission's budget was not an available source for payment since there was no mechanism that the 45th Circuit could rely upon to control or enforce such payments, the County Commission is antagonistic towards making such payments, and the County Commission actually refused to make such payments during the Finance Commission

- proceedings,
- b. Payment of the 45th Circuit's attorneys' fees for the Finance Commission proceeding is necessary for the 45th Circuit to carry out its functions in defending the Circuit's budget and bringing legitimate issues before the Finance Commission,
 - c. The only evidence before the Finance Commission was that the \$35,000 amount requested by the 45th Circuit for its attorneys fees in 2016 was reasonable for the anticipated legal matter under the statutory factors of "reasonableness" required in RSMo. §50.640.2,
 - d. The 45th Circuit's expenditures were small in relation to Lincoln County's overall expenditures and capital expenditures,
 - e. There were no operating deficits,
 - f. There were sufficient sources of revenue available for financing the 45th Circuit's proposed expenditures in its budget, and
 - g. To ensure payment of those fees they must be included in the 45th Circuit's budget because the 45th Circuit alone controls the expenditure of the funds in its budget.

2. STANDARD OF REVIEW

The standard of review for this point is de novo review. *RSMo. §477.600.7.*

**3. UNDERSTANDING LINCOLN COUNTY’S ROLE IN FINANCING
CIRCUIT COURT OPERATIONS IS CRUCIAL TO DECIDING THE
ISSUES IN THIS CASE.**

Before delving into the particulars of this case, it is important to understand the unique process by which the Missouri Circuit Courts pay their bills. Above all, it must be remembered that the Circuit Court is a constitutional entity that is separate and distinct from the Lincoln County Commission. *Smith v. 37th Judicial Circuit*, 847 S.W. 2d 755, 757 (Mo. banc 1993); *Circuit Court of Jackson County v. Jackson County*, 776 S.W.2d 925, 927 (Mo. App. W.D. 1989). The Presiding Judge of each Circuit Court is constitutionally responsible for the administration of that Circuit Court – not the County Commission. *State ex. rel. 22nd Judicial Circuit v. Jones*, 823 S.W.2.d 471, 475-76 (Mo. App. E.D. Mo. 1992).

By state statute, Lincoln County must pay for the operations of the Circuit Court. *RSMo. §476.270*. “[O]perations of the circuit court necessarily includes the whole process that causes the courts to function.” *State ex. rel. 22nd Judicial Circuit v. Jones*, 823 S.W.2.d 471, 477 (Mo. App. E.D. 1992). This includes payment of fees to attorneys to represent the Circuit Court. *In Re 1984 Budget for the Circuit Court of St. Louis County*, 687 S.W.2d 896, 901 (Mo. banc 1985); *Cooper County v. Eighteenth Judicial Circuit* (Finance Commission 04-0066); *City of St. Louis v. Twenty-Second Judicial Circuit* (Finance Commission 84-0007).

The process begins when the Circuit Court provides its budget estimate to the County. *RSMo §50.640.1; RSMo §50.550; and RSMo. §50.540.* The County cannot change the Circuit Court’s budget estimates without the consent of the Circuit Court. *RSMo. §50.640.1.* Rather, the statutes provide that the County “**shall** appropriate in the appropriation order the amounts estimated as originally submitted” by the Circuit Court. *Id. (emphasis added).* The only way the County can change the Circuit Court’s budget estimate is either by: (1) the Circuit Court’s consent, or (2) filing a petition for review with the Finance Commission because the amounts in the Circuit Court’s budget estimate are “unreasonable”. *RSMo §50.640.* If the County does not file a petition for review for a budget item, the County **must** appropriate the amounts submitted in the Circuit Court's budget estimate. *Id.* If a petition for review is filed, but the Finance Commission does not rule on an item raised in the County’s petition for review, and no appeal of that refusal is filed with the Missouri Supreme Court, then the Circuit Court’s original budget estimate must be adopted by the County. *Missouri Sup. Ct. Op. Rule 12-23.09.*

Once amounts are appropriated by the County into the Circuit Court’s budget by publishing the budget, the County loses control over those funds, and the Circuit Court has sole control over the expenditure of those appropriated funds. *Circuit Court of Jackson County v. Jackson County*, 776 S.W.2d 925, 927 (Mo. App. W.D. 1989). To pay a bill, the Presiding Judge simply submits the bill or issues an order to the County to pay the cost. As long as the Circuit Court’s request is for the operations of the Court,

and is within the overall budget appropriated by the County, the County is absolutely required to issue the payment – period. *Jackson County*, 776 S.W.2d at 927 - 928. Giving the Circuit Court sole control over the budgeted funds “has been a statutory mandate and a keystone of the circuit court administration since at least 1835” *Stewart v. St. Louis County*, 630 S.W.2d 127, 128 (Mo. App. E.D. 1981). As the Court of Appeal in *Jackson* emphasized, this rule is required because:

“Otherwise, the amount of money available to the Court would be at the mercy of the County, even after the appropriation was made.”

Jackson, 776 S.W.2d at 927.

And that is precisely the issue raised by this case: Who is entitled to control the Circuit Court's purse strings, and thereby control the administration of justice? The County Commission is under the misconception that the 45th Circuit is just another department of Lincoln County that is subject to Lincoln County Commission’s control. It is not. The 45th Circuit Court is a separate constitutional entity and co-equal branch of government controlled by the Presiding Judge and the superintending authority of this Court. *Smith v. 37th Judicial Circuit*, 847 S.W. 2d 755, 757 (Mo. banc 1993); *Circuit Court of Jackson County v. Jackson County*, 776 S.W.2d 925, 927 (Mo. App. W.D. 1989).

Just as the County Commission is allowed to budget for its own attorneys fees in litigation against the 45th Circuit, the 45th Circuit has a necessary, and reciprocal right to

budget for its attorneys fees in litigation against the County Commission. Only in this way can the 45th Circuit avoid the whims (or worse) of the County Commission over the payment of the 45th Circuit’s legal bills. Indeed, the Court of Appeals in *Jackson* stated that adopting the County Commission's argument would impermissibly allow the County Commission “to determine the extent to which the judicial department could perform its judicial functions. This is a result which [the Supreme Court] prohibits.” *Id.*, at 927.

4. AS A MATTER OF LAW A CIRCUIT COURT MAY INCLUDE ITS ATTORNEYS’ FEES IN ITS BUDGET ESTIMATE BECAUSE THOSE FEES ARE NECESSARY TO SUPPORT THE ADMINISTRATION OF THE COURT.

The 45th Circuit included \$35,000 in its 2016 budget estimate to pay for attorneys to represent the 45th Circuit in any disputes involving the County Commission – or others – that are **not** otherwise covered by insurance or the State Legal Defense Fund, (RSMo. §105.711). The Missouri Supreme Court has ruled that it is proper for Circuit Courts to hire attorneys to represent the Circuit Courts in disputes, and to allow the Circuit Courts to budget funds to pay for those attorneys. *In Re 1984 Budget for the Circuit Court of St. Louis County*, 687 S.W.2d 896, 901 (Mo. banc 1985). The Finance Commission itself has recognized this principal in other cases and has stated that: “Clearer guidance could not be given [by the Supreme Court] . . . [A]ttorney's fees are permissible expenses as a

matter of law” *Cooper County v. Eighteenth Judicial Circuit* (Finance Commission 04-0066) at pg 6; *City of St. Louis v. Twenty-Second Judicial Circuit* (Finance Commission 84-0007)

5. THE 45TH CIRCUIT’S BUDGET ESTIMATE FOR ITS ATTORNEYS’ FEES WAS REASONABLE USING THE STATUTORY FACTORS OF REASONABLENESS.

Since the 45th Circuit’s attorney’s fees are permissible budget expenses as a matter of law, the only issue left for the Finance Commission to determine was whether to budget estimate for those fees was “reasonable”. *Cooper County v. Eighteenth Judicial Circuit* (Finance Commission 04-0066) at pg 6. To do so, the Finance Commission was required to apply the factors of reasonableness set forth in RSMo. §50.640.2 and §477.600; and Mo. Sup. Ct. Op. Rule 12-13.17. Those factors are:

1. The amount of expenditures necessary to support the circuit court in relation to the expenditures necessary for the administration of all other county functions;
2. The actual or estimated operating deficit or surplus from prior years;
3. All interest and debt redemption charges;
4. All capital projects expenditures;

5. The total estimated available revenues from all sources available for financing the proposed expenditures.

In issuing its ruling in this case, the Finance Commission failed to apply these factors. This was error. When these factors are applied, as discussed below it is clear that the 45th Circuit's budget estimate for attorneys fees was reasonable.

1. **45th Circuit's Expenditures in Relation to Lincoln County's**

Expenditures. The 45th Circuit's entire 2016 Budget is \$914,393.51, while Lincoln County's 2016 Operating Fund Budget is \$20,681,945.68. [*L.F.* 271 -273, 230]. Thus the 45th Circuit's Budget is just 4.4% of Lincoln County's budget, which is very small. The \$35,000 amount in controversy is even a smaller percentage of Lincoln County's budget (less than two-tenths of one percent). In addition, the overall increase in the 45th Circuit's 2016 Budget was only 4.54% , which is much less than Lincoln County's overall 2016 Budget increase of 7.0% for all of Lincoln County's operating funds. [*Id.*, *L.F.* 225]. Thus, because the 45th Circuit consumes such a small percentage of Lincoln County's budget, this factor militates in favor of the reasonableness of the 45th Circuit's \$35,000 legal fees budget estimate.

2. **The Actual or Estimated Operating Deficit or Surplus from Prior**

Years. The County Commission stated that its financial health is sound. Indeed its surplus is nearly \$2,000,000. [*See Ex. 12* (quoting Presiding Commission Colbert's glowing report of the financial health of Lincoln County) *L.F.* 322-334 & *Ex. 44.*, *L.F.*

436-438]. Thus this factor also militates in favor of the reasonableness of the 45th Circuit's budget estimate.

3. **All Interest and Debt Redemption Charges.** Because the attorneys' fees item does not include any borrowing, this factor does not apply. However, the County Commission has reported that it has been able to pay off its capital bonds early. [See *Ex. 12 L.F. 322-334*]. Thus, if applicable, this factor would also favor finding that the 45th Circuit's budget request was reasonable.

4. **All Capital Projects Expenditures.** Because the attorneys' fees item does not relate to capital expenditures, this factor does not apply.

5. **Available Revenues from All Sources.** The only available source of revenues to fund the 45th Circuit's attorneys fees is County taxes appropriated to the 45th circuit's budget.

The Finance Commission's decision contends that the County Commission's own budget is also an "available source" for payment of the 45th Circuit's legal fees. [App. 4]. This conclusion was based on a statement by the County Commission's counsel in the hearing briefs that the County Commission "has a separate line item in its annual budget to pay such attorneys' fees." [Id.] However, this source is not truly "available" to the 45th Circuit if the 45th Circuit does not have the means to control, or enforce, payments from that source. Having a separate line item for attorneys' fees; and using that line item to actually pay out money, are quite different things! It is clear from the County

Commission's own statements to the 45th Circuit's Presiding Judge that the County Commission is antagonistic towards actually paying the 45th Circuit's legal bills. When the 45th Circuit's Presiding Judge brought up the attorneys' fees issue at the 2016 budget conference call, the County Commission resolutely said "zero attorneys' fees" and never changed its position during the entire discussion. The County Commission simply repeated that "We're not going to budget any amount of money at all for attorneys fees." [L.F. 329]. In addition, the County Commission never paid out any money for the 45th Circuit's attorneys fees until well after the Finance Commission's ruling – and still has not paid the \$8,475.00 ordered by the Finance Commission.

The Presiding Judge also explained during the conference call that the attorneys' fees were for matters in which neither OSCA or the Attorney General would represent the Court. The Presiding Judge also specifically explained that the attorneys' fees budget included amounts for the Writ of Mandamus case that was pending between the 45th Circuit and the County Commission, and in case there was another Finance Commission filing (as it appeared they were heading for at the time), as well any similar matters. The Presiding Judge also told the County Commission officials that the Presiding Judge had been in contact with OSCA and the Attorney General's office and that they specifically said they would not represent the Court in Budget disputes with the County Commission. [L.F. 329]. The Presiding Judge also told the County Commission officials that the Attorney General's office had suggested that the 45th Circuit include a line item for

attorneys' fees in the Court's budget. [L.F. 329]. The Presiding Judge also explained to the County Commission officials that she had contacted several Presiding Judges who informed her that they too had budgeted attorneys' fees for the Court in their budgets. [L.F. 329; see Ex. 1-7, L.F. 287-296]. **In response, the County Commission made it clear that it did not want to allow the 45th Circuit to budget attorneys' fees because it did not want to enable the 45th Circuit to hire an attorney to litigate against the County Commission.** [L.F. 330]. This is an extremely antagonistic and unjust position to take when the County Commission has money in its budget to litigate **against** the 45th Circuit. The County Commission's final comment on the subject of the 45th Circuit's attorneys' fees during the conference call was when a County Commissioner called out: "Zero attorneys' fees." Thus, the County Commission has shown an extreme antipathy toward paying the 45th Circuit's attorneys' fees. As such, the County Commission's own budget is not a source that is truly "available" to the 45th Circuit.

This behavior and attitude by the County Commission is what makes this case so important. If the County Commission controls the payments, it retains the ability to withhold those payments at any time. This allows the County Commission to prevent or shut down any legal action the 45th Circuit might need to take against Lincoln County. This is the very vice that this Court prohibited in *In Re 1984 Budget for the Circuit Court of St. Louis County*, 687 S.W.2d 896, 901 (Mo. banc 1985). Being beholden to your

litigation opponent's discretion for payment of your attorneys' fees is not a position that anyone should be place in.

To be included within the statutory factor of an "available revenue" for "financing the proposed expenditure," the source must be controllable by the Circuit Court. If not, then the source is purely specious and is not "available" to the Circuit Court when needed. The County Commission's indefinite, and unenforceable, statement that it has a source for payment of the 45th Circuit's attorneys' fees in its own budget is similarly specious without an enforceable mechanism to force the County Commission to actually pay out those funds – especially given the County Commission strident statements against paying such fees during the 2015 Finance Commission proceedings and the 2016 budget conference call with the 45th Circuit. Indeed, the County Commission has even refused to pay the \$8,475.00 that the Finance Commission ordered it to pay as part of the 45th Circuit's approved budget.

The County Commission also argued in its Petition for Review that the 45th Circuit has "no justification or reasonable need" for an attorneys' fees budget item because the County Commission "carries adequate insurance for all its' elected officials, under an Errors and Omissions Policy and through St. Charles Insurance Agency, and that all previous lawsuits brought against any Lincoln County elected official have been timely defended and at Lincoln County's expense." [*L.F. 5 ¶ (c)*]. This argument is contrary to the rulings the Finance Commission and the Supreme Court, and is contradicted by the

facts in this case. First, the County Commission's liability insurance does **not** cover the 45th Circuit in its disputes with the County Commission. [See Ex. 12, L.F. 322-334]. Second, the County Commission has not defended the 45th Circuit in this case, nor has it paid for the 45th Circuit's attorneys' fees in the Writ of Mandamus case. [L.F. 324, 522]. Indeed, the 45th Circuit has submitted its attorneys' fee bill to the County Commission and the County Commission has refused payment. [See Ex. 12, L.F. 322-334 & Ex. 29. L.F. 394-398].

In summary, the statutory factors the Finance Commission was required to rely upon indicates that the 45th Circuit's \$35,000 budget estimate for its attorneys fees was reasonable.

In addition to the statutory factors, the actual amount of the 45th Circuit's estimate is factually reasonable, and actually quite conservative, given the disputes with which 45th Circuit Court was, and is faced. In 2016, the 45th Circuit had two actual, and at least two additional potential, disputes that required legal representation.

First, the 45th Circuit Court is currently involved in litigation with the County Commission under the caption of *State of Mo. ex rel Chris Kunza Mennemeyer v. Lincoln County*, 15L6-CC00150 (Lincoln Cir. Ct.). In that case, the 45th Circuit was forced to file a Petition for a Writ of Mandamus against the County Commission when the County Commission refused to pay the 2015 bill for the Juvenile Office's court-appointed attorney – even though there were unexpended funds for such use in the 45th Circuit's

approved 2015 Budget. A Preliminary Writ of Mandamus was issued against the County Commission and the trial court ordered the County Commission to pay some, but not all, of the Juvenile Officers' attorneys fees. *[See Ex. 36, L.F. 415-416]*. Post-trial motions are pending in that case. The 45th Circuit already incurred \$8,475 in legal fees in the Writ of Mandamus case through April 21, 2015, without counting the additional proceedings that occurred, and will continue to incur thereafter. *[See Exs. 8, L.F. 297-299 and 9 L.F. 300-303]*

Second, the County Commission filed this Petition for Review against the 45th Circuit in 2016. The Court must defend its budget in this case. While the case was before the Finance Commission, the 45th Circuit had already incurred over \$12,000 in legal fees for work done through April 15, 2016. *[See Exs. 8, L.F. 297-299 and 10, L.F. 304-305]*. Additional fees in this matter have been and will continue to be incurred in 2016 before this case is finally resolved. For budget estimate purposes, the 45th Circuit took into account the fact that it incurred \$12,000 in attorneys fees in its 2015 Judicial Finance Commission case, even though a hearing was not held. *[See Ex. 12, L.F. 322-334]*.

Third, the County Commission told Judge Mennemeyer that all of her court appointed attorneys in 2016 must sign a contract with the County Commission (in the format dictated by the County Commission) before any payment would be made to them. Judge Mennemeyer told the County Commission that there is no such requirement in the

law for such contracts with court-appointed attorneys. [See *Ex. 12, L.F. 322-334 and Ex. 25, L.F. 373-379*]. The 45th Circuit's Presiding Judge viewed the County Commission's contract content as inappropriate, and unnecessary. [*L.F. 325, 529*]. Indeed, the County Commission's position is directly contrary to established case law, and the Presiding Judge told them so. See, e.g., *In Re 1984 Budget for the Circuit Court of St. Louis County*, 687 S.W.2d 896, 901 (Mo. banc 1985). It is the 45th Circuit's sole responsibility and authority to appoint these attorneys. Their engagement is through the Circuit Court – not with the County Commission. The County Commission should have known that its contract requirement was invalid because it lost this same issue when the Lincoln County Sheriff obtained a Writ of Mandamus against the County Commission in the *Kriegbaum* case. *State ex rel Kriegbaum v County Commission, et al*, Cause No. 09L6-CC00062 (Lincoln County Circuit Court (assigned to Judge Mobley of the 10th Judicial Circuit)). [*Ex. 60, L.F. 551-556*]. But despite this, the County Commission kept pressing its control over the process by stating to Judge Mennemeyer that: “Once the attorneys in Lincoln County figure out they are not getting paid, the Court will not have any attorneys.”

In other words, the County Commission was saying that it controlled the purse strings so the 45th Circuit would have to do things the way the County commission wanted or the 45th Circuit could not fulfill its obligations to have children and their parents represented by counsel in juvenile matters. This is simply untenable.

Another example of the County Commission trying to exert undo control over the appointment process through control of payments is shown in an e-mail received from the County Commission's attorney, Joel Eisenstein. [L.F. 527]. In that e-mail, Mr. Eisenstein, complained that one of the 45th Circuit's Judges had appointed a Guardian ad Litem ("GAL") that was different from the GAL that the County Commission had selected. He stated:

"We [the County Commission] have an issue with one of the Associates [Judges] appointing Guardian's and not the County Guardian. Who is paying those Guardians?"

[See Exhibit: 66 L.F. 606].

This shows how the County Commission improperly uses its control of the payment process to control the appointment process, which it has no power to do – other than by simply refusing to make payment. The County Commission has actually followed through on its threat to withhold payments to court-appointed attorneys in 2016 unless they sign the County Commission's contract. This improper and coercive tactic has worked on at least one attorney.

The County Commission's continuing improper insistence on controlling Court appointments by controlling the purse strings with unauthorized and improper contracts will require the Court to file yet another Petition for a Writ of Mandamus to enforce payments to every court appointed attorney who is owed money in 2016. This will cause

the Court to expend additional attorneys' fees to ensure the proper administration and operations of the Court.

Other legal issues do arise from time-to-time, and the 45th Circuit must provide for these contingencies. For example, the Lincoln County Sheriff sent a notice to the 45th Circuit that the "The Lincoln County Sheriff's Office will not attempt to serve or effect service on any Jury Duty Show Cause Orders until pre-payment is made in the amount of \$1,785". [See Exhibit 46, L.F. 499]. However, the Court is not required to pay for this service by the Sheriff. *RSMo* §488.435; *RSMo* §57.280 ("no such charge shall be collected in any proceeding when court costs are to be paid by the state, county or municipality."). On March 16, 2016, Judge Mennemeyer sent a letter to the Sheriff stating that the Sheriff must serve the Court's Show Cause Orders without pre-payment as required by Missouri Statutes. [See Ex. 11, L.F. 306-321]. If the Sheriff does not change his position, the 45th Circuit may have to take further action on this matter, including litigation. The 45th Circuit will need funds to pay its attorneys to do so.

In deciding on the reasonableness of the Court's budget amount, the cost of litigating the above disputes must be taken into account (currently totaling over \$25,000). In addition, this Court should consider that other Circuits have budgeted similar amounts for their own attorneys' fees – even though they are not engaged in active litigation. For example, the 31st Judicial Circuit budgets \$50,000 a year and the 30th Judicial Circuit has budgeted \$25,000 a year. [See Ex. 1, L.F. 287-288 and Ex. 2, L.F. 289-290]. Several

other Circuits also budget for their attorneys fees. *[See Exs. 3-7, L.F. 291 - 296]* It is also the opinion of the 45th Circuit's attorney that the \$35,000 budget estimate is a **minimal** amount to budget given the litigation stance that the County Commission has taken in this, and other, legal disputes that he has been involved in with the County Commission. *[See Ex. 8, L.F. 299]*. Furthermore, the 45th Circuit sought the advice of the Missouri Attorney General's office; and the Deputy Attorney General, Joseph Dandurand advised that the 45th Circuit should always budget attorneys fees in an amount that would be a reasonable given the nature of the disputes that the Court had with the County Commission. *[See Ex. 12, L.F. 322-334]*. Judge Mennemeyer, who as a matter of law, is an expert on attorneys fees, estimated that \$35,000 was an appropriate amount to budget for such fees. *[See Ex. 12, L.F. 322-334]*. Thus, the 45th Circuit's budget estimate was based on sound information and was not speculative. It must be noted that the County Commission did not offer any evidence, expert or otherwise, that the \$35,000 was excessive. The County Commission just does not want the 45th Circuit to have access to money to pay the 45th Circuit's lawyers.

**6. BUDGET ESTIMATES FOR LEGAL FEES ARE NOT UNREASONABLE
BECAUSE THEY ARE PROSPECTIVE OR NON-RECURRING.**

The Finance Commission also stated that the 45th Circuit's request for attorneys' fees to enforce the County Commission's obligation to serve juror summons was unreasonable because the amount was for "undetermined" and "prospective" attorneys' fees. [App. 4]. This statement is erroneous on several levels. First, the amount that the 45th Circuit estimated for these fees was not undetermined. It was \$35,000, which was inclusive of all legal fees for the ensuing year. Second, by definition a budget "estimate" for costs to be incurred in the "ensuing" or "next budget" year (as required by RSMo. §50.640, RSMo. §50.540, & RSMo. §50.550), must include prospective expenditures. A budget is to pay for future expenses, not previous ones. *Id.* Third, the 45th Circuit did not request the legal fees for this specific purpose because the Sheriff's position was not known until after the budget estimate was submitted. [L.F. 328]. Rather, the Sheriff dispute was cited to the Finance Commission as an example of why the budget for legal fees was needed in the first place, so that emergencies and contingencies like this one could be dealt with expeditiously. Using the Finance Commission's logic, when the 45th Circuit is faced with such an emergency, it has no recourse against a recalcitrant Sheriff, other than to wait until the next budget year. This is simply untenable. Equally untenable is the prospect that the 45th Circuit would be unable to obtain proper juror pools for a year or more because the Sheriff would not summon them. The delays and appeals that such a

situation would generate would further encumber the judicial system. Prudent budgeting demands that the 45th Circuit plan, and provide for, such contingencies that may effect the ability of the court to administer justice to its citizens. Perhaps the 45th Circuit could try to hire a lawyer without the prospect of payment for a year or more until the fees were actually incurred and submitted as part of the following year's budget. This has two significant short comings. First, a budget submission is supposed to be for expenses incurred in the “ensuing” or “next budget” year, not costs incurred in the previous year. But more importantly, it limits the 45th Circuit's choices of counsel to those who are willing to wait a year or more for payment with only the mere possibility that payment will be made if a future budget is approved.

The Finance Commission made similar errors in finding that the 45th Circuit's request for legal fees to compel the County Commission to pay court appointed guardian ad litem and attorneys for parents in juvenile court matters, was unreasonable. Once again the Finance Commission stated that such fees were unreasonable because they were for an unspecified amount for prospective attorneys' fees. [*App. A5*]. Once again, the amount was specified at \$35,000, inclusive of all legal matters. Once again, the prospective nature of these fees is the very nature of a budget “**estimate**” for the “**ensuing year.**” Once again, the Finance Commission's reasoning would force the 45th Circuit to delay action for over a year and limit its choice of attorneys to the detriment of the administration of justice. This is simply wrong.

The Finance Commission also concluded that these budgeted fees were unreasonable because they were not recurring, like salaries, rent, utilities or supplies. [App. A5, L.F. 636]. Quite frankly, the 45th Circuit would hope that the need for these would **not** be recurring. At least that is the 45th Circuit's goal. But for now, they are necessary. Indeed, the Finance Commission specifically recognized that they are necessary. [App. A4, L.F. 634]. The fact that they arise periodically only when such disputes arise, does not make them unreasonable. What is unreasonable is to strip the 45th Circuit of the ability to properly administer the operations of the Court. If the Finance Commission's reasoning is followed here, such legal fees could never be budgeted unless the same litigation occurred each year. This creates a *non sequitur* – for although the legal fees are necessary, the Finance Commission would hold that it is never reasonable to budget for them.

Finally, the Finance Commission's reasoning concerning “prospective” attorneys' fees does not relate to any of the statutory factors of reasonableness that the Finance Commission was required to apply under RSMo. 50.640.2. For this reason as well, the Finance Commission's ruling should be rejected.

For all these reasons, this Court should approve the 45th Circuit's full budget estimate for its attorneys' fees.

II. THE FINANCE COMMISSION IMPROPERLY JUDGED THE REASONABLENESS OF THE 45TH CIRCUIT'S ATTORNEYS FEES FOR THE ENTIRE 2016 BUDGET YEAR BASED ONLY ON COSTS INCURRED THROUGH A SMALL PART OF THE YEAR.

1. POINT RELIED UPON.

The Finance Commission erred in ruling that only \$8,475.00 of the 45th Circuit's 2016 budget estimate for attorneys' fees were reasonable because under RSMo. §50.640.2; RSMo. §50.540; RSMo. §50.550; and RSMo. §477.600, the budget must encompass the costs that may be incurred for the entire ensuing year on all matters, in that:

- a. The \$8,475.00 amount was only incurred by the 45th Circuit in one case (the mandamus action) through April 1, 2016, and the 45th Circuit could, and did, continue to incur such attorneys fees thereafter in 2016;
- b. The attorneys' fees that the 45th Circuit incurred in the mandamus action both before and after April 1, 2016 were reasonable and were for the same purpose, yet the Finance Commission only allowed for such fees that were incurred prior to its hearing submission date, thereby ignoring the fees that the Court was to incur thereafter.
- c. The only evidence before the Finance Commission was that the \$35,000 amount requested by the 45th Circuit for its attorneys fees was reasonable

for the anticipated legal matters under the statutory factors of
 “reasonableness” required in RSMo. §50.640.2,

- d. The County Commission failed to pay any of the 45th Circuit’s 2016 attorneys' fees for the mandamus action from the 45th Circuit’s budget,
- e. Payment of the 45th Circuit’s attorneys’ fees in the mandamus action is necessary for the 45th Circuit to carry out its functions in enforcing the Circuit’s budget, enabling it to obtain attorneys for court appointments required by law, enabling it to obtain attorneys to represent the 45th Circuit in essential litigation, and bringing legitimate issues before the court for resolution,
- f. The 45th Circuit’s expenditures were small in relation to the County Commission's overall expenditures and capital expenditures,
- g. There were no operating deficits,
- h. There were sufficient sources of revenue available for financing the 45th Circuit’s proposed expenditures in its budget, and
- i. To ensure payment of those fees they must be included in the 45th Circuit’s budget because the 45th Circuit alone controls the expenditure of the funds in its budget.

2. STANDARD OF REVIEW

The standard of review for this point is de novo review. *RSMo. §477.600.7.*

3. BY STATUTE, A BUDGET ESTIMATE MUST INCLUDE ALL FUTURE POTENTIAL COSTS THAT MAY BE INCURRED FOR THE ENTIRE ENSUING YEAR.

It is axiomatic that a budget “estimate” must be for the entire “ensuing” or “next budget” year. Indeed, that is precisely what the Budget Law requires. *RSMo. §50.640; RSMo. §50.550.1; and RSMo. §50.540.* Here, the Finance Commission evaluated the 45th Circuit’s budget submission based only on the amount of attorneys fees that the 45th Circuit had incurred in the separate mandamus action prior to the Finance Commission hearing submission date, which was \$8,475.00. The Finance Commission ignored the fact that the 45th Circuit would, and did, continue to incur such fees in the separate mandamus action beyond the Finance Commission's hearing date.

In essence, the Finance Commission's reasoning would require the 45th Circuit to submit a budget based only on actual bills for fees that were already incurred in the past, rather than submit budget “estimates” for the “**ensuing**” or “**next budget**” year as required by the statute. *RSMo. §50.640; RSMo. §50.550.1 and RSMo. §50.540.* By their very nature, the amounts submitted by the 45th Circuit are **estimates** of possible **future** expenditures that will have to be made in the next year. Indeed that is why the statute refers to them as budget “estimates”. *RSMo. §50.640.1.*

The only evidence submitted to the Finance Commission concerning the reasonableness of the amount of these fees was that \$35,000 was a proper amount for the matters that could reasonably be expected for the coming year. [*L.F. 323-327, 299*]. The

County Commission never submitted any information or evidence that this amount was too large or excessive. As such, the Finance Commission decision was ill founded and should be rejected. The 45th Circuit's budget estimate of \$35,000 was reasonable, and as subsequent events unfolded, proved to be quite accurate. It should be approved.

III. THE FINANCE COMMISSION SHOULD HAVE ORDERED THE COUNTY COMMISSION TO PAY THE 45TH CIRCUIT'S ATTORNEYS FEES INCURRED IN THE BUDGET REVIEW PROCESS.

1. POINT RELIED UPON.

The Finance Commission erred in failing to issue a specific order requiring the County Commission to pay the 45th Circuit's attorneys' fees incurred throughout the budget review proceedings the County Commission is required to pay the costs incurred by the 45th Circuit in carrying out its operations pursuant to RSMo. § 476.270; in that the 45th Circuit established that its attorneys' fees in the budget review proceedings were reasonable and were necessary to carry out the 45th Circuit's operations in responding to the County Commission's Petition for Review and bringing legitimate issues before the Finance Commission since without an order directing such payment the 45th Circuit cannot be assured that the County Commission will pay such fees from the County Commission's own budget.

2. STANDARD OF REVIEW

The standard of review for this point is de novo review. *RSMo. §477.600.7.*

3. WITHOUT AN ORDER REQUIRING THE COUNTY COMMISSION TO PAY THE 45TH CIRCUIT'S ATTORNEYS' FEES, THERE IS NO MECHANISM TO FORCE THE COUNTY COMMISSION TO MAKE THOSE PAYMENTS.

As discussed above, the County Commission has expressed a great deal of hostility toward the 45th Circuit in general, and the concept of paying the 45th Circuit's attorneys' fees in particular. If the Finance Commission is right that the County Commission's own budget is an available source for payment of the 45th Circuit's legal fees in this proceeding, then there needs to be some mechanism through which the 45th Circuit can actually enforce those payments. Otherwise, the 45th Circuit is subject to the caprice of the County Commission's control of the purse strings. This is something that this Court has forbidden in *Weinstein v. St. Louis County*, 451 S.W.2d 99, 102 (Mo. banc 1970). *See also Circuit Court of Jackson County v. Jackson County*, 776 S.W.2d 925, 927 (Mo. App. W.D. 1989). And given the County Commission's past vocalized antagonism toward paying the 45th Circuit's legal fees, the lack of an enforcement mechanism is a real practical concern.

If the County Commission's budget is to be an available source of payment, this Court should make it so by ordering the County Commission to pay the 45th Circuit's legal

bills as they fall due. As previously stated, the best and most appropriate way to enforce such payments is to include the amounts requested by the 45th Circuit in its own budget. But failing that, the Finance Commission should have specifically ordered the County Commission to pay those fees as the 45th Circuit submits its bills to the County Commission. Without such an order, the 45th Circuit cannot be guaranteed to receive the payment from this “available source.”

IV. THE COUNTY COMMISSION’S PETITION FOR REVIEW SHOULD HAVE BEEN DISMISSED BECAUSE THE 45th CIRCUIT’S BUDGET INCREASE WAS FAR LESS THAN THE COUNTY COMMISSION’S OVERALL BUDGET INCREASE.

1. POINT RELIED UPON.

The Finance Commission erred by denying the 45th Circuit's Motion to Dismiss Lincoln County's Petition for Review, because Mo. Sup. Ct. Op. Rule 12-11.09 provides that the Petition for Review may be dismissed if the 45th Circuit's judicial budget was less than the percentage increase of the County Commission's government budget; in that the 45th Circuit established that the percentage increase of the 45th Circuit's judicial budget submission was significantly less than the percentage increase of the County Commission's government budget.

2. STANDARD OF REVIEW

The standard of review for this point is de novo review. *RSMo. §477.600.7.*

**3. THIS COURT SHOULD DISMISS THE COUNTY COMMISSION'S
PETITION FOR REVIEW OF THE 45TH CIRCUIT'S BUDGET
SUBMISSION.**

A petition for review may be dismissed if the percentage increase of the Circuit Court's budget is equal to, or less than, the percentage increase of the County budget. *Mo. Sup. Ct. Op. R. 12-11.09.* “Such a . . . dismissal shall operate as a final decision and an order to the county governing body to adopt the circuit court budget as submitted.” *Id.* Here, the 45th Circuit's budget increase was far less than Lincoln County's budget increases. For that reason, the 45th Circuit filed a Motion to Dismiss the County Commission's Petition for Review. [*L.F. 224-273*]. The Finance Commission denied that Motion without explanation. [*L.F. 274-275*].

The Lincoln County's 2015 General Revenue appropriation amount was \$6,354,131.56; and the Lincoln County's 2016 General Revenue appropriation amount is \$6,871,812.86. [*See Exhibit 1, L.F. 227-233*]. This is a 7.5% increase. If one views the budgets for all of the Lincoln County's operating accounts, the 2015 Budget appropriation amount was \$19,241,779.97; and the 2016 Budget appropriation amount is \$20,681,945.68. [*See Exhibit 1, L.F. 227-233*]. This is a 7.0% increase.

The 45th Circuit's 2016 Budget (as finally submitted after negotiations) was \$914,393.51; while the 45th Circuit's 2015 Budget for the same items was \$874,716.50. [See Ex. 6, L.F. 271-273]. This is only a 4.54% increase in the Court Budget – which is far less than either the 7.5% increase in Lincoln County's General Revenue or the 7.0% increase in all of Lincoln County's operating funds. Accordingly, pursuant to Mo. Sup. Ct. Op. R. 12-11.09, this Court should dismiss the County Commission's Petition for Review in this case; and order the County Commission to adopt the 45th Circuit's budget estimate as submitted.

There is a good policy reason to dismiss the County Commission's petition for review. The amounts submitted by the 45th Circuit here are minimal – just \$35,000. Such a minimal amount should not occupy the resources of the Finance Commission, this Court, the 45th Circuit, or Lincoln County unless there is a significant principle that needs to be adjudicated. For the County Commission, no such principal is implicated if the 45th Circuit's attorneys' fees item is allowed to remain in the budget. Such fees are proper as a matter of law. *Cooper County v. Eighteenth Judicial Circuit* (Finance Commission 04-0066 at page 6). Expenditures for such fees is limited to the operation of the Circuit Court and are regulated by state statute and the state auditor. The County Commission's only avowed purpose in excluding legal fees from the 45th Circuit's budget is simply to deny the 45th Circuit the ability to litigate against the County Commission. This is not a proper purpose as a matter of law.

Of course, the County Commission's **rejection** of the 45th Circuit's budget estimate **does** involve significant policy and constitutional principles – including who will control the Circuit Court's ability to administer its operations through control of the purse strings.

Operating Rule 12-13.17 should be applied to dismiss a Petition for Review when the disputed amounts involved are small – especially when there is no significant principle to establish through the process of the review. The County Commission never articulated such a proper principle supporting its rejection of the 45th Circuit's legal fees budget. The County Commission never even adduced any evidence that the amount claimed was excessive. As such, this Court should exercise its de novo review authority to dismiss the County Commission's Petition for Review and allow the 45th Circuit's original budget estimate to stand.

CONCLUSION

As a matter of law, a Circuit Court's annual budget estimate can include the legal fees that it may incur during the ensuing year. Because that budget estimate must anticipate what may happen in the future, it is by definition uncertain. That does not make it speculative. The Circuit Court must use its best judgment based on the information at hand to estimate what it may reasonably expect in the coming year. The 45th Circuit did so in this case; based on information from its legal counsel, its own expertise, and past experience with legal disputes with the County Commission. The amount estimated by the 45th Circuit was small, but the statutory and constitutional principles it seeks to uphold are significant.

The 45th Circuit's budget estimate passes each of the statutory factors of reasonableness. Although the Finance Commission found that it was reasonable for the 45th Circuit to have a budget for legal fees to prosecute the mandamus action with Lincoln County over payment of the Juvenile Office attorney, the Finance Commission improperly limited the budget estimate based only on the fees incurred prior to the Finance Commission's hearing submission date. In doing so, the Finance Commission failed to account for the fees that would continue to accrue thereafter. The 45th Circuit's original budget estimate was reasonable because it covered the entire year's legal fees.

In assessing the reasonableness of the 45th Circuit's budget estimate, the Finance Commission also improperly relied on the County Commission's statement that the

County Commission could pay the 45th Circuit's legal fees from the County Commission's own budget without citing to, or creating, a mechanism that would allow the 45th Circuit to enforce it. That source of payment is not truly “available” to the 45th Circuit unless there is a mechanism in place that the 45th Circuit can use to enforce the payment. There are two such mechanisms. The first, and most preferable one, is to include the amounts in the 45th Circuit's own budget. This Court can accomplish this by ruling that the 45th Circuit's budget estimate is reasonable and ordering the County Commission to appropriate those funds. Once it is in the 45th Circuit's budget, payments are controlled by the 45th Circuit rather than the County Commissioner. Alternatively, the second mechanism that would make the County Commission's statement enforceable, is to order the County Commission to pay the 45th Circuit's legal fees from the County Commission's own budget as they accrue. The 45th Circuit respectfully requests that the Court adopt the first mechanism, but if this Court does not, then this Court should most certainly adopt the second.

In sum, the 45th Circuit respectfully requests that this Court issue an order approving the 45th Circuit's budget estimate and ordering the County Commission to pay the 45th Circuit's legal fees in this budget review process from the County Commission's own budget.

Respectfully submitted,

GUINNESS & BUEHLER, LLC

By /s/Robert J. Guinness

Robert J. Guinness #37618
50 Hill Point Ct., Suite 200
St. Charles, Missouri 63303
(636) 947-7711 (636) 947-7787 (fax)
guinness@stclegal.com

Attorney for Appellant
Circuit Court of the 45th
Judicial Circuit of Missouri
Chris Kunza-Mennemeyer
Presiding Circuit Judge

RULE 84.06 CERTIFICATION

The undersigned certifies as follows:

1. This brief contains the information required by Rule 55.03.
3. This brief complies with the limitations contained in Rule 84.06(b).
4. This brief contains 10,287 words.
5. This brief contains 877 lines.
6. This brief is in WordPerfect x5 format.

GUINNESS & BUEHLER, LLC

By /s/Robert J. Guinness

Robert J. Guinness #37618
50 Hill Pointe Ct., Suite 200
St. Charles, MO 63303
(636) 947-7711 phone (636) 947-7787 fax
guinness@stclegal.com

Attorneys for Appellant
Circuit Court of the 45th
Judicial Circuit of Missouri
Chris Kunza-Mennemeyer
Presiding Circuit Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was filed with the Court and served through the Court's electronic filing system on September 30, 2016 to all parties of record.

GUINNESS & BUEHLER, LLC

By/s/ Robert J. Guinness

Robert J. Guinness #37618
50 Hill Pointe Ct., Suite 200
St. Charles, MO 63303
(636) 947-7711 phone (636) 947-7787 fax
guinness@stclegal.com

Attorneys for Appellant
Circuit Court of the 45th
Judicial Circuit of Missouri
Chris Kunza-Mennemeyer
Presiding Circuit Judge

Subscribed and sworn to before me this 30th day of September, 2016.

/s/Linda S. Clark
Notary Public

My Commission Expires: 4/5/2019