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of the 45th Judicial Circuit of Missouri
Chris Kunza-Mennemeyer
Presiding Circuit Judge

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REPLY STATEMENT OF FACTS

The Lincoln County Commission (“the County Commission”) claims in its Statement of Additional Facts that there was a mediated settlement agreement between the 45th Judicial Circuit (“the 45th Circuit”) and the County Commission during the 2015 Judicial Finance Commission (“Finance Commission”) proceedings. This assertion is not true. No agreement was ever concluded because there was never a meeting of the minds on the proposed agreement’s terms.

In the 2015 Finance Commission proceedings, a *proposed* settlement agreement was drafted concerning several items in the 2015 Budget. The 45th Circuit's Presiding Judge was willing, in the spirit of compromise, to agree to several of the stated items in the 2015 Budget since the year was already one-quarter complete. [*L.F. Vol. V, pg 532*]. However, the Presiding Judge was unwilling to have these concessions continue in future years. So the Presiding Judge struck out the provisions in the proposed draft settlement agreement that said the agreement would apply through the 2018 Budget year. [*L.F. Vol. V, pg 532*]. The Presiding Judge’s exact words to the Mediator on that particular issue were that “I would never agree to that, because budgeting is year by year”. [*L.F. Vol. V, pg 534*]. At the same time, the Presiding Judge made three other changes in blue pen and initialed them. Thus, everyone knew that the Presiding Judge would not authorize an agreement that would last more than a year. [*L.F. Vol. V, pg 534*]. The Presiding Judge

also had her lawyer send an e-mail to the County telling them that the Presiding Judge would not agree to have the document apply beyond 2015. *[L.F. Vol. V, pg 534]*.

The Presiding Judge was told that all of her changes would either be accepted or rejected by the County Commission, and that the Presiding Judge should go ahead and sign the signature page as a show of good faith if the County agreed to her revisions. *[L.F. Vol. V, pg 532]*. When the County Commission agreed to all of her revisions, then, and only then, would there be an agreement. Based on this condition, the Presiding Judge reluctantly agreed to sign the signature page. *[L.F. Vol. V, pg 534]*. However, when the Presiding Judge got the final revised version of the “mediation document” back, the provision that the agreement would run through 2018 was still there. *[L.F. Vol. V, pg 533]*. Also, the three changes that the Presiding Judge had made in blue pen were not in the document. Rather, someone retyped the entire document without incorporating all of the Presiding Judges changes and simply the Presiding Judge’s signature page, and placed it at the back of the new document without her changes. *[L.F. Vol. V, pg 533]*. Thus, the document that was created was **not** the one that the Presiding Judge had agreed to, and was not the one the Presiding Judge had signed. *[L.F. Vol. V, pg 533]*. The Presiding Judge did not agree to that version of the purported agreement at any time. *[L.F. Vol. V, pg 533]*.

The Presiding Judge was extremely upset upon receiving that new document with her signature on it, and instructed the Court’s lawyer to immediately ask for a hearing on

the merits of the original Petition for Review. However, the Judicial Finance Commission never held a hearing on the original petition for Review. [*L.F. Vol. V, pg 533, 621*].

The County Commission filed a motion to enforce the purported 2015 settlement agreement, but the Finance Commission never ruled on it. [*L.F. Vol. V, pg 534*]. The County Commission never appealed the Finance Commission's failure to rule on that Motion. Because no evidentiary hearing was ever held over whether the disputed “mediation agreement” was a valid agreement, it is **not** enforceable.¹

The County Commission also referred to the trial court's reliance on this disputed settlement agreement in denying a permanent writ of mandamus in the Mandamus Case. [*See L.F. Vol. V, pg 576 for the denial of the allegations*]. However it must be noted that the trial court in the Mandamus Case never held a trial, or even any evidentiary hearing, on the case – although one had been requested. *See State of Missouri ex rel 45th Judicial Circuit*, 15L6-CC00150 (Motion for New Trial filed July 13, 2016). The Mandamus

¹ *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596 (Mo. 2007) (an evidentiary hearing must be held before a disputed settlement agreement can be enforced). Moreover, because the County Commission never filed a Petition for Review of the Finance Commission’s actions, and did not receive a ruling on the County Commission’s Petition for Review to the Finance Commission, the 45th Circuit Court’s original budget estimate was required to be adopted. *Missouri Sup. Ct. Op. Rule 12-23.09*.

Case trial court simply took the County Commission's allegations to be true even though they were disputed. It is fundamental that a trial court may not decide disputed issues of fact without receiving evidence on those issues. The trial court's reliance on the disputed settlement agreement was improper and is the main basis of the 45th Circuit's appeal in the Mandamus Case. Even so, the trial court in the Mandamus Case granted the 45th Circuit part of the relief it requested.

The County Commission also asserts that it has paid all of the attorneys' fees that were referenced in the 45th Circuit's affidavits that were filed with the Finance Commission. This is incorrect, and it fails to understand the real issue in this case. As noted above, the issue in this case is whether the 45th Judicial Circuit's \$35,000 attorneys' fees budget for the **entire** 2016 budget year was reasonable – not just the amount of fees the 45th Circuit incurred in the first three months when the affidavits were filed with the Finance Commission. Those affidavits were filed to show the nature and amounts of attorneys' fees that the 45th Circuit was incurring in the 2016 Budget year, and would continue to incur throughout 2016. [*L.F. Vol. III, pg 277*]. They were not the totality of the relief that the 45th Circuit was seeking. The 45th Circuit's hearing submission made it clear that additional fees would be incurred after the Finance Commission's hearing concluded, especially in the Mandamus Case. [*LF. Vol. III pg. 277, 299*]. Those subsequent fees remain unpaid. [*Reply Appx. A-10 through A-13*].

The County Commission also recites that it has always maintained that it would pay the 45th Circuit's attorneys' fees. This is incorrect. The County Commission has been openly hostile to paying the 45th Circuit's attorneys' fees. For example, during the 2015 Finance Commission proceedings, the County Commission repeatedly told the Presiding Judge that since there were no attorneys' fees in the Circuit Court's budget, the Circuit Court'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. Vol. III, pg. 323*]. The County Commission also stated 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' fees. [*L.F. Vol. III, pg. 323*]. To avoid being held hostage to the County Commission's attorneys' fees threats, the Presiding Judge made sure that the 45th Circuit's 2016 budget included a line item for attorneys' fees. But the County Commission made it clear that it objected to this line item because the County Commission did not want to give the 45th Circuit a "war chest" to hire an attorney to litigate against the County Commission. [*L.F. Vol. III pg. 330; Vol. IV pg. 475*]. Again, in reference to paying the Guardian ad Litem attorneys appointed by the Circuit Court, the County Commission's attorney stated: "Once the attorneys in Lincoln County figure out they are not getting paid, the Court will not have any attorneys." [*L.F. Vol. III pg. 324-325*].

The County Commission's actual conduct and history of non-payment in this case is further proof that it will not pay the 45th Circuit's attorneys' fees bills unless they are forced to do so. For example, on November 15, 2015, the Presiding Judge sent an invoice to the County Commission for a \$5,000 deposit for legal fees and expenses in the Mandamus Case between the 45th Circuit and the County Commission. The County Commission has never paid that invoice. *[Reply Appx. A-11]*.

Again, on June 9, 2016, the 45th Circuit's attorney sent a letter to the County Commission's attorney demanding payment for three separate amounts for work done on different cases at different times. *[Reply Appx. A-11, A-15 & A-14]*. The first amount was \$8,475.00 for the 45th Circuit's attorneys' fees incurred in the Mandamus Case. This amount was for the time period up to April 1, 2016. The Finance Commission ordered the County Commission to pay this amount in the Finance Commission's June 2, 2016 Decision *[L.F. Vol. V. pg.636.]*

The second amount in the letter was \$12,060 for the 45th Circuit's attorneys' fees incurred in this 2016 Finance Commission proceeding below. The time period covered by this amount was up to April 15, 2016. The Finance Commission's Decision also stated that Respondent Lincoln County would pay this amount. *[L.F. Vol. V. pg.635.]*

The third amount in the letter was \$10,290.00, which included the 45th Circuits' attorneys' fees incurred in the Mandamus Case. The time period that this amount covered was from April 1, 2016 through May 31, 2016 (after the 45th Circuit submitted its exhibits

to the Finance Commission). This amount also included the \$5,000 deposit requested in 2015 that the County Commission never paid.

The letter requested a written response to the demand for payment, but the 45th Circuit's attorney never received any. *[Reply Appx. A-12, A-15 & A-14]*.

The County Commission's first payment was not received until July 5, 2016 when the 45th Circuit's attorney received a \$12,060 check. *[Reply Appx. A-12]*. The \$12,060 payment was received only after this Petition for Review was filed. Although the check was written before this Petition for Review was filed, the 45th Circuit's attorney had told the County Commission's attorney before the check was written that the Petition for Review would be filed with the Supreme Court. *[Reply Appx. A-12]*. The second (and last) payment was for \$8,475.00 which was only just received on November 2, 2016. *[Reply Appx. A-12]*. This was four months after the Finance Commission ordered the County Commission to pay this amount. It was also after the 45th Circuit filed its opening Brief in this appeal in this case criticizing the County Commission for disregarding the Finance Commission's order to pay this amount.

Although the County Commission belatedly paid the first two amounts in the letter, it never paid the third amount (\$10,290.00) at all. *[Reply Appx. A-12]*.

These are not the only payments that the County Commission has failed to make. On October 20, 2016, the Presiding Judge submitted two invoices to the County Commission for payment. *[Reply Appx. A-1 & A-2]*. The first invoice was for

\$15,067.91 covering legal services and expenses in the Finance Commission case through September 30, 2016. This amount already gave full credit for the \$12,060.00 payment that was made by the County Commission on July 5, 2015. The second invoice sent to the County Commission was for \$18,291.39, covering legal services and expenses in the Mandamus Case through September 30, 2016. This amount did not include the \$5,000 deposit invoice that was never paid by the County Commission from November of 2015. *[Reply Appx. A-12 & A-13]*.

As of November 7, 2016, the 45th Circuit's attorney has **not** received payment for these two invoices – other than the \$8,475.00 check that the 45th Circuit's attorney just received on November 2, 2016. *[Reply Appx. A-13]*. Even after applying the recent \$8,475.00 payment referenced in the County's Motion to Dismiss, there is still at least \$24,884.30 in legal fees for the 45th Circuit that remain unpaid by the County Commission. *[Reply Appx. A-13]*.

ARGUMENT

I. THERE WAS NO SETTLEMENT AGREEMENT IN THE 2015 JUDICIAL FINANCE COMMISSION CASE

The 45th Circuit strongly disputes that there was ever a completed settlement agreement in the 2015 Finance Commission proceeding. There was never an evidentiary hearing conducted on the purported settlement agreement, either before the Finance Commission or in the Mandamus Case. Without such a hearing, there can be no determination that the disputed agreement exists or is enforceable. *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596 (Mo. 2007) (an evidentiary hearing must be held before a disputed settlement agreement can be enforced).

Moreover, the party moving for enforcement of the purported settlement has the burden to prove the existence of the settlement agreement by clear, convincing, and satisfactory evidence. *Grant v. Sears*, 379 S.W.3d 905, 914-15 (Mo. App. W.D. 2012) (trial court reversed for enforcing purported settlement agreement when the alleged acceptance contained additional terms). Therefore, it is not the 45th Circuit's burden to disprove this purported agreement. Rather, it is the County Commission's burden to bring this issue to an evidentiary hearing. It never did.

To show a legal, valid settlement agreement, one must prove the essential elements of a contract, including offer, acceptance, and mutuality of obligation. *Women's Care Specialists, LLC v. Troupin*, 408 S.W.3d 310, 315-16 (Mo. App. E.D. 2013). "The term

‘mutuality of agreement’ implies a mutuality of assent by the parties to the terms of the contract, i.e., a meeting of the minds.” *Id.* “An essential element to the formation of a valid contract is a “meeting of the minds of the contracting parties regarding the same thing, at the same time.” *Id.* (divorce stipulation for settlement was held to be unenforceable due to lack of mutuality of agreement even though it was signed). An offer must be accepted **as tendered** to result in a contract. *Grant*, 379 S.W.3d at 915, *citing Payne v. E & B Carpet Cleaning, Inc.*, 896 S.W.2d 650, 651 (Mo. App. E.D.1995). A purported settlement agreement is not valid “without a definite offer and a “mirror-image” acceptance.’ ” *Reppy v. Winters*, 351 S.W.3d 717, 721 (Mo. App. W.D. 2011) (citation omitted). “If the purported acceptance contains additional or different terms, it constitutes a counteroffer, which operates to reject the original offer. Thus, no contract is formed. “ *Nelson v. Baker*, 776 S.W.2d 52, 53–54 (Mo. App. E.D.1989); *Grant*, 379 S.W.3d at 915; *Reppy*, 351 S.W.3d at 721.

Here, it is clear that the 45th Circuit’s Presiding Judge made a counter-offer containing different terms by blue lining the proposed draft settlement agreement, and that her changes were not accepted. Thus, there was no “mirror-image” acceptance, no mutuality, no meeting of the minds, and therefore, no enforceable agreement. *Grant v. Sears*, 379 S.W.3d 905, 914-15 (Mo. App. W.D. 2012) (trial court reversed for enforcing purported settlement agreement when the alleged acceptance contained additional terms).

Accordingly, the purported settlement agreement from the 2015 Finance Commission proceeding is unenforceable and has no application to this dispute.

II. BECAUSE THE LINCOLN COUNTY COMMISSION HAS BEEN HOSTILE TOWARDS PAYING THE 45TH CIRCUIT'S ATTORNEYS' FEES, IT IS NECESSARY TO PLACE THOSE FEES IN THE COURT'S BUDGET SO THAT THE 45TH CIRCUIT CAN CONTROL THEIR EXPENDITURE TO ENSURE THAT ITS ATTORNEYS ARE PAID.

The County Commission also argues that it has always maintained that it would pay the 45th Circuit's attorneys' fees. This is not true. As detailed in the Reply Statement of Facts above, the County Commission has been openly hostile to paying the 45th Circuit's attorneys' fees. Even now, there are over \$24,884.30 in legal fees that were sent to the County Commission that remain unpaid. Indeed, even in its Brief in this appeal, the County Commission maintains that it does not have to pay the 45th Circuit's remaining attorneys' fees until the 45th Circuit litigates them separately. *Resp. Brief at 24.* This is hardly a manifestation of voluntary payment. Rather this is further proof that the County Commission has no intention of paying the 45th Circuit's bills *unless* the 45th Circuit initiates litigation to force the County Commission to do so. Indeed, without the Finance Commission's order below, the County Commission would never have made the two partial payments that it did make. Even after the Finance Commission's order, the

County Commission refused to make the \$8,475.00 payment until after this appeal and the parties' briefs were filed. The County Commission's own actions prove that the County Commission would never make such payments without being forced to do so in the judicial process.

This hostile attitude is the very reason why it is so important that the 45th Circuit's legal fees be placed within the Court's budget. Once those fees are placed in the Court's budget, the 45th Circuit has sole control over the expenditure of those funds. *Circuit Court of Jackson County v. Jackson County*, 776 S.W.2d 925, 927 (Mo. App. W.D. 1989).

III. THE LINCOLN COUNTY COMMISSION'S \$20,000 BUDGET LINE ITEM FOR LEGAL FEES AND OTHER CONTRACTED SERVICES FOR ALL OF LINCOLN COUNTY'S OPERATIONS IS INADEQUATE TO COVER THE 45TH CIRCUIT'S ATTORNEYS FEES.

The County Commission argues that it maintained a line item for contracted attorneys fees in the County Commission's own budget that would cover the full \$35,000 budget proposed by the 45th Circuit. This is also untrue. The budget line item attached to the County Commission's Motion to Dismiss shows that the County Commission's entire budget for "Legal and Contracted Services" totaled just \$20,000; which was far less than the 45th Circuit's \$35,000 estimate. *See* Budget Item #01-5.500.120; *[Reply Appx. A-17]*;

L.F. Vol. I pg. 81; County Commission Motion Ex. A (3rd page)].

Moreover, the County Commission's budget item for "Legal and Contracted Services" had to cover **all** of Lincoln County's operations, not just the 45th Circuit's attorneys's fees. This \$20,000 also includes other "contracted services" beyond just attorneys' fees for all of Lincoln County's operations. As such, this budget item could not possibly have been meant to cover the 45th Circuit's \$35,000 budget estimate for the Court's attorneys' fees.

But the most telling proof that the County Commission's "contracted legal fees" budget item was not intended to pay the Circuit Court's legal fees, comes from the County Commission itself. The County Commission is required to place any amounts that it disputes from the Circuit Court's budget into an escrow account. *RSMO. §50.640.2*. The County Commission did place the Circuit Court's \$35,000 attorneys' fees budget item into an escrow account when the County Commission filed its Petition for Review below. The County Commission has now revealed in its Brief that its recent \$8,475.00 payment did **not** come out of the County Commission's own budget. Rather, it came from the \$35,000 escrow of the 45th Circuit's original attorneys' fees budget! *See Resp. Brief pg. 7 fn. 1 (1st sentence); and pg. 11*. Thus, the County Commission actually paid these attorneys' fees from the 45th Circuit's budget item – **not** the County Commission's \$20,000 budget for the County Commission's contracted attorneys' fees.

The County Commission also argues that as long as it has funds in its own budget

for Circuit Court operations, it is unreasonable for the 45th Circuit to budget those items in the Court's own budget. According to the County Commission, it is just a matter of deciding whether to pay the bill out of the County Commission's right pocket, or its left pocket anyway. This could not be more wrong. The County Commission's argument completely ignores the fundamental principal that the Circuit Court is its own separate governmental entity that must stand apart from the 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 Circuit Courts are created with the power and authority to control their own operations. As this Court recently re-affirmed in dealing with Municipal Courts, the constitutional principles of separation of powers must be upheld to ensure “the integrity of the judiciary as a separate and independent branch of government.” *Cf. Mo. Sup. Ct. Rule 37.04, Appendix A, Minimum Operating Standard #7. (September 20, 2016)*. The Circuit Courts are not departments of the County Commission. Rather the County Commission is merely the collection and disbursement agent for the Circuit Court’s independent operations.

This fundamental principle “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). This principle matters deeply in this case because if the line items are placed in the Court's budget, the Court controls those funds. They become the Circuit Court's funds – not the County Commission’s funds. *Circuit Court of*

Jackson County v. Jackson County, 776 S.W.2d 925, 927 (Mo. App. W.D. 1989). Thus, the payments actually comes from the Court's pocket, not from the County Commission's pocket. If this were not so, and the money is placed in the County Commission's budget, then the County Commission controls those funds. This gives the County Commission the ability to withhold such funds from essential court operations, and thereby control those operations. Placing the Circuit Court at the mercy of the County Commission for the payment of the Circuit Court's bills, and thereby allowing the County Commission "to determine the extent to which the judicial department could perform its judicial functions", is a vice that was specifically identified and prohibited in *Circuit Court of Jackson County v. Jackson County*, 776 S.W.2d 925, 927 (Mo. App. W.D. 1989) (citing the Supreme Court's decision in *Weinstein*). And that is why placement of a line item for the Circuit Court's operations in the County Commission's budget is not adequate, and cannot serve as an "available source of funding" for the 45th Circuit's operations. To be "available" to the Circuit Court, it must be under the Circuit Court's control. Just as it would be improper for the 45th Circuit to control the County Commission's expenditures for the County Commission's attorneys, it is unreasonable for the County Commission to control the 45th Circuit's expenditures for the 45th Circuit's attorneys. This is the essential issue in this case: who has the authority to control the Circuit Court's operations – the Circuit Court or the County Commission. The statutes and the case law say it is the Circuit Court who must exercise that exclusive control.

The County Commission also argues that the Finance Commission is justified in finding that an item in the Circuit Court's budget is unreasonable, if the County Commission places that same item in the County Commission's own budget, citing *In Re 1983 Budget for Circuit Court of St. Louis County*, 665 S.W.2d 943, 944-45 (Mo. 1984). However, the *1983 Budget* case does **not** support this proposition. The *1983 Budget* case involved the cost of a liability insurance policy premium that was in the Circuit Court's budget. This item was **not** a duplicate of an item in the County's budget. Rather, the Supreme Court ruled that since the Circuit Court had direct access to separate liability coverage under the State's Tort Defense Fund, the Circuit Court had no need for a second insurance policy. *Id.* The Circuit Court's direct control in making claims to that fund, completely independent of the County's involvement (and countervailing control), is what distinguishes the *1983 Budget* case from the present case. Here, placement of an item for the Circuit Court's operations in the County Commission's budget places that item in the control of the County Commission. This allows the County Commission to withhold the expenditure entirely (as the Lincoln County Commission has done in this case). Because this is impermissible. *Circuit Court of Jackson County v. Jackson County*, 776 S.W.2d 925, 927 (Mo. App. W.D. 1989). Because the County did not control the alternative source of funding in the *1983 Budget* case, that ruling does not support the County Commission's argument here.

The County Commission also incorrectly argues that just because attorneys' fees

are a lawful expense of the Circuit Courts, those fees do not have to be placed in the Circuit Court's budget as opposed to the County Commission's own budget, citing *In Re 1984 Budget for the Circuit Court of St. Louis County*, 687 S.W.2d 896, 901 (Mo. 1985). However, the *1984 Budget* case is directly contrary to his assertion. In the *1984 Budget* case, this Court clearly noted that the Circuit Court had placed the attorneys' fees “in its budget” meaning the Circuit Court's budget. *Id.* The Finance Commission in that case had ruled that the County had to fund this item **in the Court's budget**. *Id.* at 899. This Court affirmed the Finance Commission in that case, stating that the County had to fund this item in the Circuit Court's budget. *Id.* at 900. Thus, if the item is for the operations of the Circuit Court, it must be placed in the Circuit Court's budget.

IV. IT IS REASONABLE FOR THE 45TH CIRCUIT TO BUDGET FOR PROSPECTIVE ATTORNEYS FEES JUST AS THE LINCOLN COUNTY COMMISSION DOES.

The County Commission argues that prospective attorneys' fees are too speculative to be budgeted. Yet the County Commission itself budgets for prospective attorneys' fees in its own budget. Indeed, the County Commission contends that it always intended to pay the 45th Circuit's legal fees from the County Commission's own *prospective* “Contracted Legal Fees” budget line item! If the County Commission may reasonably budget for prospective legal fees to pay the Circuit Court's attorneys, then it is equally reasonable for the 45th Circuit to do so. After all, prospective costs are the very nature of

budgets.

If the Finance Commission's decision that Circuit Courts cannot budget for prospective attorneys fees stands, then Circuit Courts will not be able to readily hire attorneys. If the Circuit Court is forced to budget only for past bills, then payment will be delayed for a year or more. No other budget item is treated this way; and most attorneys will not want to wait that long to get paid.

The 45th Circuit is not alone in budgeting for prospective attorneys' fees. Several other Circuit Courts also rely on their right to budget for prospective attorneys fees to conduct their operations. [*L.F. Vol. III pg. 329; see Ex. 1-7, L.F. Vol. III pg. 287-296*]. This Court should uphold their right to do so.

**V. THIS APPEAL IS NOT MOOT BECAUSE THE LINCOLN COUNTY
COMMISSION CONTINUES TO REFUSE TO PAY THE 45TH CIRCUIT'S
ATTORNEYS FEES.**

The County Commission argues in its Brief that this case is moot because it has paid all of the 45th Circuit Court's attorneys' fees. This argument was also raised in a Motion to Dismiss the Appeal as Moot. The 45th Circuit responded to that Motion and will not recite its response at length here. However in summary, this case is **not** moot because all of the 45th Circuit's attorneys fees for 2016 have **not** been paid. [*Reply Appx.. A-13*]. Indeed, more attorneys' fees now remain unpaid (over \$24,884.30), than have

actually been paid. [Reply Appx.. A-11 through A-13]. Furthermore, the 45th Circuit's legal matters in 2016 are not concluded. So there will be additional attorneys fees incurred by the 45th Circuit before the 2016 Budget year ends that will have to be paid from the 2016 budget. [Reply Appx.. A-13]. If the 45th Circuit's attorneys' fees budget item is reinstated by a judgment in this case, the 45th Circuit will have the resources and authority to pay its bills as they are incurred.

Thus, a judgment rendered in this case would have the practical effect of allowing the 45th Circuit to pay the \$24,884.30 in legal fees that currently remain unpaid by the County Commission, as well as paying any subsequent attorneys' fees that will be incurred through the end of the 2016 budget year. Thus, the issue of actual payment of the 45th Circuit's attorneys' fees remains in dispute and is **not** moot. *Precision Invest. v. Cornerstone Propane*, 220 S.W.3d 301, 304 (Mo. 2007).

A judgment rendered in this case would also have the practical effect of allowing the 45th Circuit to decide when, and how much, to pay its own attorneys from its own budget. This decision should not be left to the whim of the 45th Circuit's litigation opponent – the County Commission. Thus, this case is not moot.

A judgment rendered in this case would also have the practical effect of allowing the 45th Circuit to budget prospective attorneys' fees in 2016 and in later budget years so that it can retain – and pay –attorneys to represent it in legal matters when they arise. As such, this case is not moot.

Even if the questions presented in this case could be framed as moot, there is an important exception to the mootness rule that applies here. A court will hear an otherwise moot issue if it is “capable of repetition, and yet is likely to evade review.” *Id.*; *Central Missouri Plumbing Co. v. Plumbers Local Union 35*, 908 S.W.2d 366 (Mo. App. W.D. 1995), *citing* *Murphy v. Hunt*, 455 U.S. 478, 482, 102 S.Ct. 1181 1183, 71 L.Ed.2d 353 (1982). Because other Circuit Courts budget prospective attorneys’ fees each year, this issue is likely to recur. The Finance Commission process (which is half composed of judges and half composed of county commissioners) puts heavy reliance on its mediation role compared to its purely adjudicative function. Thus, petitions for review of Finance Commission decisions are few and far between. The last reported judicial review of a Finance Commission case was twelve years ago. Thus, this issue may evade review by this Court if it is not decided now. As such, this Court should exercise its jurisdiction to hear and resolve these important disputes for the benefit of all the State’s Circuit Courts.

CONCLUSION

At its root, this case is about control. The County Commission revealed its true position when it told the 45th Circuit's Presiding Judge that it did not want to give the 45th Circuit a "war chest" to use to litigate against the County Commission. In other words, the County Commission wants to control the Circuit Court by controlling the flow of money. This is improper and dangerous. The Circuit Court must control its operations, just as the County Commission must control their operations.

The 45th Circuit's budget estimate for its 2016 attorneys fees was reasonable and was quite conservative. The Finance Commission improperly limited the 45th Circuit's budget to those the fees that were incurred prior to the Finance Commission's hearing submission date. This failed to account for the fees that would continue to accrue during the entire budget year. The Circuit Court's budget was submitted to give the 45th Circuit the ability to pay its legal bills as they fall due **throughout the entire year** – not just for its past bills.

The Finance Commission's reliance on the County Commission's statement that it would pay the 45th Circuit's legal fees from the County Commission's own budget was misplaced. The County Commission did not make such payments voluntarily, and it continues to withhold payments. The County Commission even argues that the 45th Circuit must file separate lawsuits for each subsequent bill it incurs. Moreover, when the County Commission did make a payment, it pulled the funds from the escrow of the 45th

Circuit's original budget for attorneys' fees – not the County Commission's budget!

Thus, the County Commission's statement that it would pay the 45th Circuit's attorneys' fees from the County Commission's own budget is not truly an "available" source of payment to the 45th Circuit. To be truly "available", the source must be under the 45th Circuit's control. Placing those funds within the Circuit Court's budget is the proper, statutorily mandated, way to place them under the 45th Circuit's control.

In sum, the 45th Circuit respectfully requests that this Court reverse the Finance Commission and issue an order approving the 45th Circuit's budget estimate in full as originally submitted. The 45th Circuit also requests that this Court order the County Commission to pay the 45th Circuit's legal fees in this case from the County Commission's own budget. This request is not based on any rule of fee shifting. Rather it is a request for the County Commission to pay for the 45th Circuit's expenditures in the operation of the Court under RSMo. §476.270.

Respectfully submitted,

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RULE 84.06 CERTIFICATION

The undersigned certifies as follows:

1. This brief contains the information required by Rule 55.03.
2. This brief complies with the limitations contained in Rule 84.06(b).
3. This brief contains 5,398 words.
4. This brief contains 418 lines.
5. This brief was prepared in WordPerfect x5 format and published to .pdf searchable format.

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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 November 14, 2016 to all parties of record.

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Subscribed and sworn to before me this 14th day of November, 2016.

/s/Linda S. Clark
Notary Public

My Commission Expires: 4/5/2019