

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE ex rel. DIRECTOR OF REVENUE, STATE OF MISSOURI,,**

**Relator,**

**v.**

**THE HONORABLE GERALD D. McBETH, ASSIGNED JUDGE OF THE CIRCUIT  
COURT OF PLATTE, CO., MO, 6TH JUDICIAL CIRCUIT,**

**Respondent.**

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DOCKET NUMBER WD74514

**Date: May 9, 2012**

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Appeal from:  
Platte County Circuit Court  
The Honorable Gerald D.McBeth, Judge

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Appellate Judges:  
Writ Division: Lisa White Hardwick, C.J., P.J., James M.Smart and Alok Ahuja, JJ.

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Attorneys:  
James A. Chenault, III, Jefferson City, MO and Amy R. Ashelford, Platte City, MO, for  
appellant.  
James D. Boggs, W. Christian Boggs, Kansas City, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

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Platte County

On January 23, 2011, Boggs was arrested for driving while intoxicated. Boggs allegedly refused to submit to a chemical breath test, and his license was accordingly revoked under § 577.041.1, RSMo. Pursuant to § 577.041.4, Boggs petitioned for review of the revocation in the circuit court on February 4, 2011.

On May 6, 2011, the Prosecutor's Office filed an information in the circuit court charging Boggs with driving while intoxicated in violation of § 577.010. Assistant Prosecuting Attorney Amy R. Ashelford appeared on behalf of the Director in the civil case, and for the State in the criminal case.

On October 6, 2011, Ashelford served a notice to take Boggs' deposition in the license revocation case. Boggs advised the Prosecutor's Office that he would assert his privilege against self-incrimination under the Fifth Amendment to the United States Constitution in any deposition. According to Boggs' motion, the Prosecutor's Office then stated that if Boggs' invoked his Fifth Amendment privilege, the Director would seek sanctions in the license revocation case.

In response, Boggs moved on October 12, 2011, to disqualify the Prosecutor's Office from representing the Director in the license revocation case, arguing that the Prosecuting Attorney's Office's simultaneous representation of the Director and the State in the civil and criminal cases created an "inherent" conflict of interest. Boggs also argued that prosecutors were seeking to use the civil case to obtain discovery for use in the criminal prosecution, when that information would not be discoverable in the criminal case itself, and that prosecutors were seeking to obtain an unfair advantage in the civil case due to the pendency of the criminal prosecution.

The trial court entered an order on October 24, 2011, disqualifying the entire Platte County Prosecuting Attorney's Office from representing the Director in the license revocation

case. The Director petitioned this Court for a writ of prohibition. We granted a preliminary writ.

**PRELIMINARY WRIT OF PROHIBITION MADE ABSOLUTE.**

Writ Division holds:

The Prosecuting Attorney’s simultaneous representation of the Director in this license revocation case, and of the State in Boggs’ criminal prosecution, arises due to the interplay of two statutes. Under § 56.060.1, RSMo, county prosecutors are required to “commence and prosecute all civil and criminal actions in the prosecuting attorney’s county in which the county or state is concerned.” Under § 577.041.4, that “the prosecutor shall appear at the hearing on behalf of the director of revenue” in any proceeding seeking review of the revocation of a driver’s license for failure to submit to a chemical breath test.

Because proceedings for review of driver’s license revocations are frequently pending at the same time as related criminal prosecutions, Boggs’ “inherent conflict” argument would have the effect of prohibiting prosecutors from simultaneously fulfilling both roles, when each is mandated by statute. We reject the “inherent conflict” argument, since it would require us to effectively nullify either §§ 56.060.1 or 577.041.4, or both.

We acknowledge that Boggs raises legitimate concerns that prosecutors could use civil discovery devices to improperly learn information which could be used in the criminal case, and that the pendency of the criminal case could handicap his litigation of the license revocation case. Such concerns should be addressed through the trial court’s exercise of case management tools, such as the entry of appropriate protective orders, or stays of all or part of the civil litigation, rather than through the extreme measure of disqualifying an entire Prosecuting Attorney’s Office. The disqualification ruling is a drastic, and unwarranted, response to an otherwise manageable problem.

Before: Writ Division: Lisa White Hardwick, C.J., P.J., James M. Smart and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge

**May 9, 2012**

**THIS SUMMARY IS UNOFFICIAL AND  
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