

ADAIR COUNTY COMMISSION MINUTES
MONDAY, SEPTEMBER 15, 2014

Continued from page 452

40. That on or about February 6, 2014 the County Commission filed a Petition for the review of the 2014 budget. A copy of said Petition filed by Respondent is attached as Exhibit F and incorporated by references fully set forth herein. See also attached as Exhibits G the response that was filed in part on behalf of the Presiding Judge.

41. That the amount in the proposed budget of Relator as it pertains to the 2nd Judicial Circuit, including but not limited to the administrating and functioning of the Juvenile Office, was \$1,435,122.92, of which only a portion of the 23% of tax revenue would come from the general tax revenue of Adair County.

42. That as to any of the Respondents, their control over the funds referenced in Paragraph 34 is simply ministerial and there is no legal right for the County Commission nor the County Clerk or County Treasurer to determine how the funds are allocated and disbursed beyond the remedies set forth in Chapter 50 of the Missouri Revised Statutes.

43. That Article 2, Section 1 of the Missouri Constitution establishes three separate branches of government, to wit the executive, legislative and judicial of which neither is to assume power over the other unless provided by the Constitution.

44. That the authorities and responsibilities pertaining to Relator would be those vested to the judiciary, and those authorities and responsibilities pertaining to the Respondents would be with the executive and/or legislative.

45. That any attempt by the Respondents to appropriate the surplus funds referenced in Paragraph 34 would be a violation of statutory schemes including, but not limited to, Chapters 49, 50, 211 and 478 of the Missouri Revised Statutes, as well as a violation of Article 2, Section 1 of the Missouri Constitution and would be an attempt by a separate branch of government to exert unlawful authority over powers that have been granted by law to the judiciary.

46. That any attempt by Respondents to assume authority over the disbursement of funds beyond those in their statutory authority and contribution, would be a violation of statutory schemes including but not limited to Chapters 49, 50, 211 and 478 of the Missouri Revised Statutes, as well as a violation of Article 2, Section 1 of the Missouri

7

Constitution and would be an attempt by a separate branch of government to exert unlawful authority over powers that have been granted by law to the judiciary.

47. That the County Commission is organized pursuant to the Missouri Revised Statutes, but only has those powers which have been granted to it through the constitution and legislative enactments.

48. That the County Commission is attempting to, contrary to law, seize the Reserve Fund by "escrowing" such funds, ostensibly under the guise that they are included in the 2014 budget appeal to the Judicial Finance Commission, and has directed other Adair County officials to dishonor requests for payment from Fund #907 for the payment of the above referenced contracted legal services, the salary and benefits of Ms. Rouner, all of which expenses are necessary and desirable for the operation and fulfillment of the judicial functions of the 2nd Judicial Circuit.

49. That even though the Petition filed by the County Commission regarding Relator's 2014 budget was filed in February as noted above, payments for the attorneys' services continued through May of 2014, and Respondents have only recently refused to process those payments referenced in Paragraph 16. The payments are contractually owed to the attorneys for providing services that are necessary for the discharge of justice in the Juvenile Court, as well as to comply with a Missouri Supreme Court mandate.

50. That pursuant to Section 50.116 RSMo, the funds referenced in this Petition are to be disbursed based upon a warrant being issued for payment as set forth in Chapters 50 and 54 of the Missouri Revised Statutes.

51. That pursuant to Section 50.166 RSMo, Respondents Sandra Collop and Lori Smith in their official capacities have ministerial duties in the processing of said claims, and are subject to Writs pertaining to that legal and ministerial duty.

52. That Relator has no adequate remedy at law other than to petition this Court for a Writ of Mandamus and/or a Writ of Prohibition regarding the Respondents' refusal to honor payment requests/warrants as well as the County Commission's attempt to eliminate Ms. Rouner's position, and to take control of the funds in Fund #907, as will be set out more fully below in Counts I and II of this Petition.

8

COUNT I
WRIT OF MANDAMUS

COMES NOW Relator, by and through counsel, and pursuant to Section 530 of the Missouri Revised Statutes and Missouri Supreme Court Rule 94 to request a Writ of Mandamus against all named Respondents for the following reasons:

53. Relator realleges his allegations set forth in General Allegations of Fact in Paragraphs 1 through 52 as set forth above.

54. A Writ of Mandamus is a proper remedy when a public official and/or entity is refusing to fulfill their/its legal duties and obligations.

55. That Respondents are not fulfilling their legal obligations in that they are refusing to allow payments of contractually agreed upon and necessary expenses and salaries to attorneys Philip Dale Barrett, Wallace W. Trosen, Meredith Illa and C. David Rouner in the current total amount of \$31,750.00.

56. The inability to provide legal representation both to the Juvenile Office and/or those who cannot afford attorneys presents constitutional and due process issues and jeopardizes the functions of the Juvenile Court of the 2nd Judicial Circuit.

57. For the payment of the contractually agreed upon payments set forth in Paragraph 16, Respondents have no discretion regarding approving the disbursement of the funds requested. As noted above, the contracts are still in full force and effect, and for the time being the attorneys are still providing the services, and Respondents should be ordered to honor any future expenses and fees that are incurred by the attorneys under the existing contracts.

58. That the continued employment of Kristin Rouner as case manager for the Adair County Drug Court is essential in the operation of the Juvenile Court, and in the legal obligation to carry out the mandate for possible reunification as set forth above.

59. That all Respondents should be ordered to comply with the agreement with and appointment of Ms. Rouner referenced in Paragraph 19 to the extent that the position not

9

be eliminated and that all expenses and salaries that are contractually due should be honored through statutorily submitted requests and/or warrants for payment.

60. That all Relator is requesting is the Respondents perform their ministerial duties to process the requests for payment and warrants, and not interfere with the existing appointments and contracts in place as referenced above.

61. Appropriations from the general tax revenue of Adair County are not necessary nor would they be utilized for payment of the expenses/fees/salaries referenced above.

WHEREFORE, Relator prays of this Court a Writ of Mandamus ordering Respondents to comply with their legal duties to disburse the funds to pay the following expenses and salaries, to wit, attorney Philip Dale Barrett in the amount of \$5,150.00, attorney Wallace W. Trosen in the amount of \$5,000.00, attorney Meredith Morrow Illa in the amount of \$5,600.00 and attorney C. David Rouner in the amount of \$16,000.00, and to honor any further requests and/or warrants pertaining to their future salaries and incurred expenses while their contracts are in full force and effect, and further not to interfere with the agreement with Kristin Rouner and to honor any and all expenses and salary that are due to her under her appointment as reflected in Paragraph 19, for Relator's fees in pursuing this matter, and for such other relief as the Court deems just and proper.

COUNT II
WRIT OF PROHIBITION

COMES NOW Relator, by and through counsel, pursuant to Section 530 of the Missouri Revised Statutes and Missouri Supreme Court Rule 97 for his count of Writ of Prohibition against all Respondents states as follows:

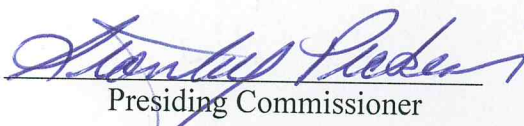
62. Relator realleges his allegations set forth in his General Allegations of Fact in Paragraphs 1 through 61 as set forth above.

10

Continued on page 454

ATTEST:


County Clerk


Presiding Commissioner