

**IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI**

STATE OF MISSOURI, ex rel.)	
Attorney General Andrew Bailey,)	
et al.,)	
)	
Relators/Plaintiffs,)	
)	
v.)	Case No. 2316-CV33643
)	
JACKSON COUNTY, MISSOURI,)	
et al.,)	
)	
Respondents/Defendants.)	

**THE STATE OF MISSOURI’S MOTION AND SUGGESTIONS TO
DISQUALIFY THE JACKSON COUNTY COUNSELOR’S
OFFICE FOR A CLEAR CONFLICT OF INTEREST**

Relators/Plaintiffs, State of Missouri, et al. (the “State”), move under Missouri Rules of Professional Conduct, Rule 4-1.7, to disqualify the Jackson County Counselor’s Office from representing the Jackson County Legislature in this litigation.¹ In support of this motion, the State provides as follows:

INTRODUCTION

The Jackson County Legislature has formally and officially taken the position that the 2023 Jackson County property assessments should be set aside *en masse*. It has passed multiple resolutions to that end. This position by the Jackson County Legislature is in agreement with the relief requested

¹ To the extent the Jackson County Counselor’s Office takes the position that it represents the individual legislators (which it cannot), the State also moves to disqualify the Jackson County Counselor’s Office from any such supposed representation.

by the State of Missouri and the State Tax Commission in this action.

The practical goals of the Jackson County Legislature are in direct and clear conflict with the stated goals and positions of all the other County Defendants, including Jackson County, Missouri; County Executive Frank White; Director of Assessment Gail McCann Beatty; and the Jackson County Board of Equalization. The County Defendants' positions – other than the Jackson County Legislature – is to prevail in this lawsuit and keep the error-ridden, illegally-derived property valuations that are at issue in this lawsuit. The Jackson County Counselor's Office's continued representation of the Jackson County Legislature is an irreconcilable and nonconsentable conflict that must end now. In addition, this egregious conflict of interest is the basis for the Jackson County Counselor's previously filed motion for sanction and subsequent order, which should be stricken and vacated, respectively.

BACKGROUND

From June 26, 2023 through August 21, 2023, the Jackson County Legislature ("Legislature") introduced and approved five separate resolutions calling for substantial measures to correct problems with the Jackson County 2023 Assessment. *See* Exhibit A, Jackson County Legislature Resolution Nos. 21324, 21336, 21358, 21360, 21380. Through these resolutions, the Legislature recognized, among other things, the "substantial difficulties in the Jackson County 2023 reassessment process," "the volume of errors

associated with the Jackson County 2023 reassessment,” and that “thousands of taxpayers have reported difficulties with the appeal process.” *Id.* at Resolution Nos. 21360 and 21380.

The Legislature also spoke to the difficulties it had in attempting to work with other Jackson County entities in an effort to understand and resolve issues with the 2023 Assessment. The Legislature stated, “on dozens of occasions the Legislature has requested data regarding the assessment and process that the administration has been unable to provide on a timely basis.” *Id.* at Resolution Nos. 21380.

Due to these and other issues, the Legislature requested such measures as:

- “set[ting] aside current real property valuations;”
- requesting the County Executive initiate the process “for an unbiased third party review of all real property valuation of parcels;”
- withholding future financial disbursements from Tyler Technologies, Inc.;
- requesting the Board of Equalization correct the errors in the assessment process and issue an equalization order to set a flat assessment value increase;
- inviting the Missouri State Auditor “to conduct a full

comprehensive audit” of the 2023 Assessment.

Ex. A, Resolution Nos. 21324, 21336, 21358, 21360, 21380. The Legislature firmly backed these actions with three different legislators introducing the resolutions and two of the votes being unanimous, another vote being unanimous apart from one absentee, another vote receiving an abstention and an absentee, and only one resolution receiving only a single “nay” vote. *Id.*

The County Counselor’s Office opposed at least one of these resolutions even before this litigation commenced. As Legislator Sean Smith testified on June 28, 2024, concerning Resolution 21324, “I remember this resolution because our county counselor actually argued with me and said it would be illegal for us to pass this on the dais. And I asked him what would be illegal. This is a statement of our collective opinions.” Exhibit B, Case No. 2316-CV33643, “Portions of Transcript of Hearings” 62:9-13. The County Counselor later approved the resolutions “as to form.” *See, e.g.*, Ex. A, Resolution No. 21324 at 3.

At least two members of the Legislature have spent months publicly amplifying their views of the illegality of and issues with the 2023 Jackson County Assessment. Legislator Manuel Abarca IV has called for the Assessment to be “throw[n] out” when discussing the Legislature’s request for the State Auditor to audit the assessments in August 2023. Anie Ricono &

Cyndi Fahrlander, *Jackson County Legislature asks state auditor to review tax assessments*, KCTV 5 (August 21, 2023, 6:04 PM),

<https://www.kctv5.com/2023/08/21/jackson-county-legislature-asks-state-auditor-review-tax-assessments/>, at 0:21. When Mr. Abarca had the opportunity to review the State Auditor’s preliminary report, he called for a 15% limit to the assessments and for the County Assessor and Executive to be held accountable. Sam Hartle, *Jackson County Legislator Calls for ‘emergency meeting’ following assessment audit*, KSHB 41 (December 18, 2023, 2:49 PM), <https://www.kshb.com/news/local-news/property-tax/jackson-county-legislator-calls-for-emergency-meeting-following-assessment-audit>.

Legislator Sean Smith has called for a temporary restraining order and for judicial intervention to set assessment values back, in addition to asking a crowd if they wanted “to get rid of Frank White and end this mess.” October 26, 2023: KMBC 9 Video Report, Jackson Kurtz and Nick Sloan, *Attorney: Jackson County residents should wait until November 30th to pay property taxes*, KMBC 9 (October 26, 2023, 10:19 PM),

<https://www.kmbc.com/article/attorney-jackson-county-missouri-residents-should-wait-until-november-30th-to-pay-property-taxes/45659782>, at 0:34;

Nathan Brennan, *‘They need to get it together’: The county responds after dozens continually brave long lines to sort through taxes*, KCTV 5 (March 26, 2024, 2:49 PM), <https://www.kctv5.com/2024/03/26/they-need-get-it-together->

dozens-brave-freezing-temperatures-sort-through-taxes/, at 1:14. Both legislators, as recently as at least May 2024, continue to call the 2023 Assessment unlawful. Laura Moritz & Nick Sloan, *Jackson County legislators say laws were broken during 2023 property assessment process* (May 21, 2024, 6:44 PM), <https://www.kmbc.com/article/jackson-county-missouri-legislators-say-laws-were-broken-property-assessment-process/60852142>.

On June 28, 2024, Mr. Smith testified under oath, discussing at length the problems with the 2023 Assessment and stating that he believes the Assessment Department's position on the 2023 Assessment is in conflict with his views. Exhibit B, 84:2-4. Mr. Smith also testified that "based on the fact that they're mounting a defense instead of trying to solve the problem," "it doesn't appear that" the Assessment Department and other defendants "believe things went wrong[.]" which is in conflict with his views. *Id.* 84:8-13. Mr. Smith also affirmed he still considers it important to fix the problems with the 2023 Assessment. *Id.* 85:10-12.

Rather than incorporating any of the positions and interests of the Legislature and its members into their litigation decisions (which they likely cannot do, in any event), the Jackson County Counselor's Office has vociferously defended the legality of the 2023 Assessment and the actions of other defendants such as the County Executive, Director of Assessment, and the Board of Equalization.

LEGAL STANDARD

“Each client is entitled to the undiluted and undivided loyalty of his lawyer. It is not just a pious platitude to say that a lawyer cannot, and may not attempt to, represent clients whose interests are conflicting and adverse[.]” *Acorn Printing Co. v. Brown*, 385 S.W.2d 812, 817 (Mo. App. 1964). Except under certain conditions, therefore, “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.” 4-1.7. Conflict of Interest: Current Clients, MO R BAR Rule 4-1.7(a). Courts have the “inherent power to supervise and regulate the conduct of” attorneys, including in matters of conflict of interest. *State ex rel. Headrick v. Bailey*, 278 S.W.2d 737, 741 (Mo. 1955).

ARGUMENT

A. A Clear Conflict of Interest Prevents the Jackson County Counselor’s Office from Representing the Legislature.

“[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest.” Rule 4-17(a). A concurrent conflict of interest exists either “if: (1) the representation of one client is directly adverse to another client; or, (2) there is a significant risks that the representation of one or more clients will be materially limited to by the lawyer’s responsibilities to another client” *Id.*

The Jackson County Counselor’s Office has consistently pursued the

litigation goals of all of the County Defendants *except* those of the Legislature. From its responses to the petition as well as its arguments in court, the County Counselor’s Office has sought to have this suit dismissed and the property assessments made by the Director of Assessment upheld. But the Legislature has resolved that those assessments be put aside. In doing so, the County Counselor’s Office has behaved unethically and continued to represent clients with nonconsentable conflicts.

A lawyer is required to “abide by a client’s decisions regarding the objectives of representation. . . .” Rule 4-1.2 (a). “The client has ultimate authority to determine the purposes to be served by legal representation” Rule 4-1.2 [Comment 1]. Moreover, “the lawyer . . . should defer to the client regarding . . . concern for third persons who might be adversely affected.” The Legislature, both formally as a collective government body, and informally but publicly as individual legislators, has spoken unanimously and clearly that it wants the 2023 Jackson County Assessment to be set aside as a whole. It has expressed this concern in the form of resolutions and public statements and has done so clearly and consistently. *See, e.g.,* Exhibit A, Jackson County Legislature Resolutions; Moritz & Sloan, *supra* at 5. In doing so, it has expressed concern for tens of thousands of third parties: the property owners and taxpayers of Jackson County.

The Legislature’s litigation goals and concerns for third parties have

been wholly ignored by the Jackson County Counselor's Office in its defense of this case. Its representation of these conflicting clients puts it in a position such that the only other option it would have is to ignore the litigation goals of the other County Defendants because they are fundamentally at odds with those of the Legislature. Thus, even though both the Legislature and the other County entities are all defendants in this case, their interests are directly adverse. The Jackson County Counselor's Office's representation of the Legislature while representing these other defendants is, therefore, improper and a conflict of interest. *See, e.g., State ex rel. Horn v. Ray*, 325 S.W.3d 500, 509 (Mo. App. E.D. 2010) ("Representation of clients whose interests are directly adverse in the same litigation constitutes the most egregious conflict of interest.") (cleaned up).

Even if the Court does not view the Legislature's interests as directly adverse to the other County defendants, conflicts of interest between these parties are still significant enough to warrant disqualification of the Jackson County Counselor's Office. Even absent "direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests." Rule 4-1.7 [Comment 8]. Counsel "shall not represent a client" when such conflicts of interest are present. Rule 4-1.7(a)(2). Given the

Legislature's views on the illegality and failures of the 2023 Assessment, the Jackson County Counselor's Office cannot ethically or diligently represent both the Legislature and the other County Defendants. As Legislator Sean Smith's testimony makes clear, as well as his recent filings, the Jackson County Counselor's Office has failed to diligently and competently represent the Legislature and its members. *See* Exhibit B, 84:2-4, 8-3 - 85:10-12.

Moreover, before the Legislature even passed its resolutions on the 2023 Assessment, the Jackson County Counselor's Office already displayed its bias against the Legislature's position by attempting to discourage the Legislature from passing a resolution that called for setting aside the 2023 property valuations. Exhibit B, Case No. 2316-CV33643, "Portions of Transcript of Hearings" 62:9-13. *See also* Rule 4-17 [Comment 29] ("... because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained.").

The conflicts of interest at issue here are not curable through consent. *See Ray*, 325 S.W.3d at 507 ("Some conflicts, however, are nonconsentable, meaning that counsel cannot properly ask clients to consent to the conflict, nor can the lawyer provide representation based on client consent.").

"Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give

their informed consent to representation burdened by a conflict of interest.” Rule 4-17 [Comment 15]. Given that the interests and positions of the Legislature are diametrically opposed to those of the other County Defendants, consent by the Legislature to representation by the Jackson County Counselor’s Office (if such written consent was actually provided) could not and cannot serve to adequately protect the interests of the Legislature.

B. The Jackson County Counselor’s Office Could Not Reasonably Conclude It Could Competently and Diligently Represent the Legislature While Representing the Other County Defendants.

As Rule 4-1.7(b)(1) holds, an attorney is prohibited from representing a client “if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation.” *Id.* Even if the Jackson County Counselor’s Office believed they could provide the Legislature effective representation, this belief was unreasonable from the start and has continued to prove itself unreasonable throughout the course of this litigation. *See, e.g., Ray*, 325 S.W.3d at 507 (holding when a “counsel’s duty of loyalty to one client naturally compromises his duty of loyalty to the other,” and the attorney cannot “give his or her complete and undivided loyalty to the client,” the belief that the attorney could provide competent and diligent representation to each client is unreasonable).

Not only, as previously stated, has the Jackson County Counselor's Office pursued ultimate litigation goals directly adverse to the Legislature as a whole and its individual members, but the Jackson County Counselor's Office has also taken strategic litigation steps that have undermined their own purported clients. The Jackson County Counselor's Office has even sought to prevent an individual they believe to be their own client from providing testimony that was ultimately adverse to other defendants in this action. *See* Defs'. Mot. for Sanctions at 12 ("Plaintiffs should be precluded from calling at trial Sean Smith"). This also raises serious concerns whether the Legislature authorized the County Counselor's Office to file a motion for sanctions against the State and believes that the State engaged in any improper conduct. The Court's docket entry for that motion states that it is filed on behalf of all defendants including the Legislature; but there are serious concerns whether the Legislature agrees with or even authorized that motion based on the Legislature's resolutions that go to the merits of this case as well as Mr. Smith's recent motion to intervene and to set aside this Court's order on sanctions.

Nor is it even possible that the Jackson County Counselor's Office could have been unaware of the diametrically opposed views of the Legislature and its members. For starters, a representative of the Jackson County Counselor's Office approved each of the five relevant resolutions "as to form."

See, e.g., Ex. A, Resolution No. 21324 at 3. Beyond these resolutions, at least two members of the Legislature have been vocal for months about their views that the 2023 Assessment process was unlawfully conducted and needs to be fixed. Legislators Manuel Abarca IV and Sean Smith, after seeing the State Auditor’s report in December 2023, called for a 15% limit on assessment valuation increases. Hartle, *supra* at 4. Mr. Abarca even called for the County Assessor and County Executive to be held accountable. *Id.* Mr. Smith echoed this sentiment as recently as March 26, 2024, when he, while speaking to a crowd, asked if anybody wanted “to get rid of Frank White and end this mess.” Brennan, *supra* at 5. *See also* Moritz & Sloan, *supra* at 5 (Mr. Abarca and Mr. Smith continuing to hold that the Assessment was unlawful and placing the blame on the County Executive, Assessor, and the Board of Equalization).

In the case of Mr. Abarca, he has stated that his conflict with other County Defendants with respect to Assessment matters goes beyond just having diametrically opposed litigation positions. According to Mr. Abarca, his appeal with the Board of Equalization “never went through[,]” and he believes this, as well his assessed value increase, were a result of “retaliation.” *Id.* That retaliation could only have been by the other County Defendants represented by the Jackson County Counselor’s Office.

It would be entirely unreasonable for the Jackson County Counselor’s

Office to think they could competently and diligently represent these conflicting County entities. The manner in which the Jackson County Counselor's Office has approached its representation of these multiple defendants indicates it is aware of the existing conflicts and the problems these conflicts precipitate but that has not deterred it from violating its "equal duty of loyalty to each client." Rule 4-17 [Comment 31]. Rather than attempt to remedy these conflicts, it has unbelievably attempted to paper over the conflicts and blame the Attorney General's Office of improper conduct. For instance, in another filing, the Jackson County Counselor's Office starts with the simple proposition that "Plaintiffs have sued Defendants Jackson County, Missouri, the Jackson County Legislature, *through its members in their official capacities*[] When a party sues a public official in their official capacity, such actions are treated as suits against the governmental entity that employs them." *Id.* at 7. However, instead of concluding from this that the suit should be treated as one against the Legislature and the other applicable governmental entities, the Jackson County Counselor's Office leaps to the conclusion that "this action should be treated as a suit against Jackson County, Missouri." *Id.*

This sleight of hand positions the Jackson County Counselor's Office to contend that they are not representing the Legislature and its interests as an entity at all, but instead are representing "Jackson County" as a single

entity, with all the interests of the Legislature and other defendants collapsed into one. This is false and wrong. Thus, the Jackson County Counselor's Office frames its entire representation as one in which it can ignore the clear conflicting interests that persist among the defendants. So positioned, the Jackson County Counselors Office has conducted their representation by ignoring the interests and concerns of the Legislature in favor of other defendants.

The Jackson County Counselor's Office have, therefore, repeatedly and continuously violated Rule 4-17(a) by representing clients with blatant concurrent conflicting interests and by failing to provide each client with "loyal and diligent representation." Rule 4-17 [Comment 33]. Relatedly, the Jackson County Counselor's Office has violated Rule 4-1.2(a) by disregarding the Legislature's right to make decisions regarding the objectives of their representation.

For these reasons, the State respectfully requests that the Jackson County Counselor's Office be disqualified from representing the Jackson County Legislature in this action. In addition, the Jackson County Counselor's Office's motion for sanctions previously filed in this case and the resulting order should be stricken and vacated, respectively.

Respectfully submitted,

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ATTORNEYS FOR
RELATORS/PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of July, 2024, a true and correct copy of the foregoing was electronically filed using the Court's electronic filing system to be served on all parties of record.

/s/ Jeremiah J. Morgan
Attorney for Relators/Plaintiffs