IN THE MISSOURI SUPREME COURT

Case No. SC99794

STATE OF MISSOURI *EX REL* BETTY GROOMS,

Petitioner/Relator,

v.

JUDGE STEVE A. PRIVETTE,

Respondent.

Petition for Writ of Prohibition from the
Circuit Court of Oregon County (Case No. 22AM-CC00024)
and
Missouri Court of Appeals, Southern District (Case No. SD37707)

BRIEF OF RESPONDENT IN RESPONSE TO BRIEF OF PETITIONER/RELATOR

Heath Hardman, MO Bar No. 70103
Assistant Prosecuting Attorney
Howell County, Missouri
326 Courthouse
West Plains, MO 65775
(417) 256-2317
Heath.Hardman@prosecutors.mo.gov
ATTORNEY FOR RESPONDENT

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STATEMENT OF FACTS

In early 2022, the Sheriffs of both Oregon County and Howell County[1]—both in the 37th Circuit—complained to Judge Steven Privette[2] that they were not being reimbursed for costs through Oregon County. (Respondent's Verified Return, Answer and Suggestions in Opposition, pp. 1, 3 [hereinafter "Return"].) As a result, the Counties / Sheriffs were not being reimbursed tens of thousands of dollars for board bills. (Return, p. 3.) One Oregon County defendant held in Howell County had costs to the Howell County Sheriff's Department exceeding $13,000.00. (*Id.*) The Howell County Sheriff informed Judge Privette that he has provided Relator with certifications of his boarding bills but, despite doing so, he had not received reimbursement. (*Id.*) Judge Privette also realized that he was receiving cost bills for certification in other counties in his circuit but was not receiving regular cost bills from Oregon County. (*Id.*) Sensing a problem, Judge Privette began by informally asking Relator Betty Grooms[3] to provide information about the matter. Relator refused to respond to this inquiry. (*Id.*)

Upon Relator's refusal to respond, and there appearing to be an issue regarding cost bills in one of the Counties of his circuit (Oregon County), Judge Privette issued an Order dated May 26, 2022, which directed Relator to prepare and file with the Court a complete listing, in spreadsheet format, of all criminal cases disposed of by the Oregon County

[1] Overflow prisoners from Oregon County are sometimes held in Howell and other Counties.
[2] Hon. Steven A. Privette is the Circuit Judge of the 37th Circuit, comprised of Howell, Oregon, and Shannon Counties. Carter County was previously within the Circuit.
[3] Relator Betty Grooms is the Clerk of the Circuit Court of Oregon County.

Circuit and Associate Circuit Courts from January 1, 2019, to the present. (*Id.*, Exhibit 8, p. 24 of 60[4].) The May 26, 2022, Order specified that for each disposed criminal case, the following information was to be provided: (a) the style and case number of each case, (b) the date the complete cost bill was prepared, (c) the date the complete cost bill was properly certified and filed with the Office of the State Court Administrator and any other appropriate state agency, and (d) the expected amount of state reimbursement. (Return, p. 3; Exhibit 8, p. 24.) Relator was ordered to provide the above-described listing within 45 days of the date of the Order. (Return, p. 3; Exhibit 8, p. 24.)

After the May 26, 2022, Order, Relator forwarded eight to nine hundred pages of material which consisted of every docket entry in every criminal case spanning the requested period. (Return, p. 4.) This material did not comply with the Court's Order and was not particularly useful in determining the status of cost bills in criminal cases. (*Id.*) On July 26, 2022, a second non-compliant response was received by the Court. (*Id.*) This second response, while in spreadsheet format, did not include all the information ordered by the Court in its May 26, 2022, Order. (*Id.*; Exhibit 8, pp. 27-30.)

As a result of the two non-compliant responses, Judge Privette issued a second order dated July 27, 2022. (Return, p. 4; Exhibit 8, pp. 25-26.) The July 27, 2022, Order directed Relator to appear before the Court on September 6, 2022, at 9:00 a.m. to show cause why she should not be held in contempt for failure to abide by the May 26, 2022, order and for

[4] Exhibits 1 through 10, comprised of 60 pages, have been filed with the Court. Respondent will mirror Relator's practice of citing to the Exhibit number and the specific page number within the 60-page total.

her failure to file proper and timely costs bills in criminal cases. (Return, p. 4; Exhibit 8, pp. 25-26.)

On August 5, 2022, Heath Hardman, an Assistant Prosecuting Attorney for Howell County,[5] was appointed to prosecute the pending contempt citation against Relator. (Return, pp. 4-5.)

On or about August 12, 2022, Relator provided a third non-compliant response to the Court. (Return, p. 6; Exhibit 8, pp. 32-58.) While not entirely compliant, the third response was much closer to a complete compliant response, as it was in spreadsheet format and appears to provide a complete list of the criminal cases with headers for the categories of information requested by Judge Privette. (Return, p. 7; Exhibit 8, pp. 32-58.) It appears that Relator would only need to fill in the remaining blanks in the spreadsheet to be compliant with the Orders, as it pertains to the requested list. (Return, p. 7; Exhibit 8, pp. 32-58.) Relator's third non-compliant response also indicates that only 14 costs bills were prepared out of the 986 criminal cases. (Return, p. 7; Exhibit 8, pp. 32-58.)

On August 29, 2022, Heath Hardman filed a Motion for Contempt. (Return, p. 7; Exhibit 8, pp. 19-23.)

On September 2, 2022, Relator's attorney filed a Motion for Continuance, Motion for Change of Judge, and Motion to Dismiss. (Return, p. 8; Exhibit 4, pp. 7-9; Exhibit 5, pp. 10-15; Exhibit 6, pp. 16-17.) Relator, in her Motion for Change of Judge, did not cite

[5] Howell County is the only county in the 37th Circuit with more than one prosecuting attorney. Heath Hardman began in February of 2022 as an Assistant Prosecuting Attorney. He is the junior prosecutor in the closest neighboring county. (Return, p. 5, n. 4.)

or seek a change of judge pursuant to Supreme Court Rules 32.07 or 51.05, or pursuant to RSMo. § 476.180. (Return, p. 8; Exhibit 5, p. 10-15.) Rather, Relator only made accusations of prejudice / bias in support of her motion for change of judge citing various provisions of section 2-2.11 of the Code of Judicial Conduct. (Return, p. 8; Exhibit 5, p. 10-15.)

On September 6, 2022, Relator's attorney did not appear or provide available dates for re-setting. (Return, p. 8; Exhibit 1, p. 1.) Judge Privette overruled the Motion for Change of Judge and Motion to Dismiss and continued the hearing on the Motion for Contempt to September 19, 2022, at 9:00 a.m. (Return, p. 8; Exhibit 1, p. 1.)

On September 7, 2022, Relator filed her various pleadings seeking writs of prohibition and mandamus in the Court of Appeals, Southern District. (Return, p. 8; *see also* Case No. SD37707.) The Court of Appeals initially issued a stop order but, after reviewing Judge Privette's Response and Suggestions in Opposition, the stop order was quashed and Relator's writ application was denied. (Return, p. 8; Exhibit 9, p. 59; Exhibit 10, p. 60; *see also* Case No. SD37707.)

On September 23, 2022, Relator filed her Verified Petition for Writs of Mandamus and Prohibition with the Supreme Court, which issued its preliminary writ of prohibition on November 1, 2022.

On September 27, 2022, Judge Privette *sua sponte* issued an Order taking the underlying Motion for Contempt off the docket for October 3, 2022, pending this Court's decision on Relator's latest writ application. (*See* Order dated Sept. 27, 2022, 22AM-CC00024.)

POINTS RELIED ON

I. RELATOR IS NOT ENTITLED TO AN ORDER PROHIBITING JUDGE PRIVETTE FROM ENFORCEING HIS ADMINISTRATIVE ORDERS THROUGH CONTEMPT PROCEEDINGS BECAUSE RELATOR FAILED TO SHOW THAT IT IS CLEARLY EVIDENT THAT JUDGE PRIVETTE EXCEEDED HIS JURISDICITON OR THAT OTHER REMEDIES ARE NOT ADEQUATE IN THAT JUDGE PRIVETTE HAD AUTHORITY AND JURISDICTION TO UTILIZE THE COURT'S INHERENT CONTEMPT POWERS TO ENFORCE LAWFUL ADMINISTRATIVE ORDERS DIRETING RELATOR TO PERFORM HER MANDATORY STATUTORY DUTY AND PROVIDE JUDGE PRIVETTE WITH INFORMATION CONCERNING THE STATUS OF THAT PERFORMANCE AND THERE ARE OTHER ADEQUATE REMEDIES AVAILABLE TO RELATOR

Allsberry v. Flynn, 628 S.W.3d 392 (Mo. banc 2021)

Osborne v. Purdome, 244 S.W.2d 1005 (Mo. banc 1952)

Smith v. Pace, 313 S.W.3d 124 (Mo. banc 2010)

State ex rel. Picerno v. Mauer, 920 S.W.2d 904 (Mo. App. W.D. 1996)

Mo. Const. Art. 5, § 15 (3)

RSMo. § 478.240

Sup. Ct. Rule 36.01

II. RELATOR IS NOT ENTITLED TO AN ORDER PROHIBITING JUDGE PRIVETTE FROM PRESIDING OVER THE UNDERLYING CONTEMPT PROCEEDING BECAUSE RELATOR HAS FAILED TO SHOW THAT IT IS CLEARLY EVIDENT THAT JUDGE PRIVETTE EXCEEDED HIS AUTHORITY OR JURISDICTION BY DENYING RELATOR'S MOTION FOR CHANGE OF JUDGE IN THAT JUDGE PRIVETTE ACTED WITHIN HIS JURISDICTION AND AUTHORITY BY UTILIZING THE COURT'S INHERENT CONTEMPT POWERS TO ENFORCE LAWFUL ADMINISTRATIVE ORDERS DIRECTING RELATOR TO PERFORM HER MANDATORY STATUTORY DUTY AND PROVIDE JUDGE PRIVETTE WITH INFORMATION CONCERNING THE STATUS OF THAT PERFORMANCE AND RELATOR IS NOT ENTITLED TO A CHANGE OF JUDGE IN A CONTEMPT PROCEEDING

Grissom v. Grissom, 886 S.W.2d 47 (Mo. App. W.D. 1994)

Reeves v. Moreland, 577 S.W.2d 125 (Mo. App. E.D. 1979)

State ex inf. Crow v. Shepherd, 76 S.W. 79 (Mo. banc 1903)

Williams v. Reed, 6 S.W.3d 916 (Mo. App. W.D. 1999)

Sup. Ct. Rule 36.01

ARGUMENT

INTRODUCTION

The matter is before the Supreme Court after a months-long process of unsuccessful attempts by Judge Steven Privette to nudge Relator Betty Grooms toward her mandatory statutory duties as Clerk. One such duty is Relator's duty to prepare and certify cost bills in criminal proceedings.

In early 2022, two different Sheriffs in the 37th Circuit complained that they were not being reimbursed for costs through Oregon County. Judge Privette also realized he was not regularly receiving cost bills for certification in Oregon County. Sensing a problem, Judge Privette began by informally asking Relator to provide information about the matter. Inexplicably, Relator would not do so. What followed was a series of Orders and non-compliance that bloomed into a contempt proceeding and, now, this thorny matter, which was initiated after an unsuccessful attempt before the Court of Appeals, Southern District, seeking substantially the same relief and making substantially the same arguments. (*See* SD37707.)

This is not about old elections, hearsay courthouse gossip, courtroom tensions, or political maneuvering. Where Relator appears unwilling to perform her duties as Clerk, she stands rigid with defiance toward a Judge who simply asks her to do two things: 1) her mandatory legal duty imposed by Missouri statute, and 2) provide information about the status of her duty.

STANDARD OF REVIEW

Both points of Relator's brief, and Judge Privette's response, concern the appropriateness of a writ of prohibition and are governed by the same standard of review:

"A writ of prohibition is appropriate: (1) to prevent the usurpation of judicial power when a lower court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted." *State ex rel Key Ins. Co. v. Roldan*, 587 S.W.3d 638, 641 (Mo. Banc 2019). "Prohibition goes directly to the question of jurisdiction of the lower court." *State ex rel. Deering Milliken, Inc. v. Meyer*, 449 S.W.2d 870, 873 (Mo. App. 1970). "Its purpose is to prevent an inferior court from assuming jurisdiction with which it is not legally vested, in cases where wrong, damage, and injustice are likely to follow from such action." *Id.* (internal quotation marks omitted).

Prohibition "does not lie as a rule for grievances which may be redressed in the ordinary course of judicial proceedings by other remedies provided by law." *Id.* "It is to be used with great caution and forbearance for the furtherance of justice and to secure order and regularity in judicial proceedings and should be used only in cases of extreme necessity." *Id.* "Nor will it ordinarily issue in a doubtful case." *Id.* (internal quotation marks omitted). "Prohibition is never properly granted except where usurpation of jurisdiction or an act in excess of same is clearly evident." *State ex rel. Allen v. Yeaman*, 440 S.W.2d 138, 145 (Mo. App. 1969).

"[T]he extraordinary writ of prohibition should not be used to allow an interlocutory appeal of alleged trial court error." *State ex rel. Clem Trans., Inc. v. Gaertner*, 688 S.W.2d 367, 368 (Mo. banc 1985). The writ of prohibition "may not be utilized to infringe upon or direct a trial court's discretion" and a "presumption of right action is afforded [a Judge], and relator has the burden of establishing that [the Judge] acted improperly." *State ex rel. Thomasville Wood Products, Inc. v. Buford*, 512 S.W.2d 220, 221 (Mo. App. 1974). It is not a proper function of a higher court "in considering a petition for writ of prohibition to second-guess the exercise of discretion by the trial court." *Foote v. Hart*, 728 S.W.2d 295, 298 (Mo. App. E.D. 1987). A higher court considering granting prohibition should indulge every presumption in favor of the validity of the trial court's actions. *State ex rel. Cummings v. Witthaus*, 219 S.W.2d 383, 386 (Mo. banc 1949); *State ex rel. Elam v. Henson*, 217 S.W. 17, 19 (Mo. banc 1919); *State ex rel. Martin v. Peters*, 649 S.W.2d 561, 563 (Mo. App. W.D. 1983).

RESPONSE TO APPELLANTS' POINT I ON APPEAL

I. RELATOR IS NOT ENTITLED TO AN ORDER PROHIBITING JUDGE PRIVETTE FROM ENFORCEING HIS ADMINISTRATIVE ORDERS THROUGH CONTEMPT PROCEEDINGS BECAUSE RELATOR FAILED TO SHOW THAT IT IS CLEARLY EVIDENT THAT JUDGE PRIVETTE EXCEEDED HIS JURISDICITON OR THAT OTHER REMEDIES ARE NOT ADEQUATE IN THAT JUDGE PRIVETTE HAD AUTHORITY AND JURISDICTION TO UTILIZE THE COURT'S INHERENT CONTEMPT POWERS TO ENFORCE LAWFUL ADMINISTRATIVE ORDERS DIRETING RELATOR TO PERFORM HER MANDATORY STATUTORY DUTY AND PROVIDE JUDGE PRIVETTE WITH INFORMATION CONCERNING THE STATUS OF THAT PERFORMANCE AND THERE ARE OTHER ADEQUATE REMEDIES AVAILABLE TO RELATOR

Relator, as far as she seeks relief by writ of prohibition, failed to establish that it is clearly evident that Judge Privette exceeded his jurisdiction or that other remedies are not adequate—especially when viewed in light of the presumptions in favor of a lower court's actions. Relator's own filings admit relief is available on direct appeal, but Relator decries it as an inconvenience. (*See* Relator's Verified Petition for Writs of Mandamus and Prohibition, p. 7.) This alone is sufficient to deny the writ. Additionally, Relator fails to show how the proposed show cause hearing, the denial of her request for a change of judge, or the enforcement of an otherwise lawful order would result in "absolute irreparable harm" to Relator. Here, Relator is the keeper of the keys to the proverbial jail, holding in herself the authority and ability to purge any threatened contempt prior to a hearing, but seemingly remaining too defiant to do so. Moreover, not only does Relator fail to establish that the Court lacked authority to act as it did, Relator fails to even suggest a single precedent in support of the relief requested, thereby failing the "clearly evident" test for this

extraordinary remedy. Therefore, Relator fails to meet the heavy burden imposed by the extraordinary writ and, as such, a writ of prohibition is not proper.

A. JUDGE PRIVETTE'S ADMINISTRATIVE ORDERS ARE LAWFUL AND ENFORCEABLE BY CONTEMPT PROCEEDINGS

Relator argues that Judge Privette's administrative orders are not enforceable through contempt proceedings and that Judge Privette lacked authority to appoint an Assistant Prosecuting Attorney of Howell County to prosecute the contempt action. Relator does not challenge Judge Privette's authority to issue the administrative orders. Rather, she challenges Judge Privette's ability to use the Court's inherent contempt powers to address her non-compliance. Relator does not provide any direct authority to support her suggestion that Judge Privette cannot enforce a lawful administrative order by contempt proceeding. Relator argues from purported silence but does so in the face of well-established legal principles that support both a Court's inherent contempt powers and administrative authority, giving rise to *lawful* administrative orders that are enforceable. Relator has insisted that Judge Privette should have initiated criminal prosecution through the Oregon County Prosecuting Attorney instead. For that reason, according to Relator, the appointment of a Howell County Assistant Prosecuting Attorney to prosecute a contempt action, rather than the Oregon County Prosecuting Attorney to prosecute a criminal action, was improper.

The Court's inherent power to punish for contempt is well established by the Missouri Constitution, statutes, and common-law. *See State ex rel. Gentry v. Becker*, 174 S.W.2d 181, 184 (Mo. 1943); *Smith v. Pace*, 313 S.W.3d 124, 129-130 (Mo. banc 2010);

Osborne v. Purdome, 244 S.W.2d 1005, 1012 (Mo. banc 1952). Although most contempt proceedings arise out of cases before a Court, this body of law makes no distinction between administrative or judicial orders, as Relator suggests. The contempt power lies to protect *lawful* orders. An order issued under a judge's administrative authority is lawful. *See* Mo. Const. Art. 5, § 15 (3); RSMo. § 478.240; *Allsberry v. Flynn*, 628 S.W.3d 392, 396 (Mo. banc 2021). Therefore, Relator's willful disobedience of a lawful order issued under Judge Privette's administrative authority can be punished in contempt.

"The most important and essential of the inherent powers of a court is the authority to protect itself against those who disregard its dignity and authority or disobey its orders by punishing for contempt." *Gentry* at 184. "All courts of record in this State have both inherent and statutory power to punish a criminal contempt, committed within or without their presence." *Osborne* at 1012; *see also Smith* at 129-130 and RSMo. § 476.110. The Missouri Supreme Court has "specifically held that the power is derived from the constitution. It is part of the inherent judicial power of the courts." *State ex rel. Pulitzer Pub. Co. v. Coleman*, 152 S.W.2d 640, 646 (Mo. banc 1941), citing *State ex inf. Crow v. Shepherd*, 76 S.W. 79, 99 (Mo. banc 1903). Without the contempt power "courts are no more than advisory bodies to be heeded or not at the whim of the individual." *State ex rel. Picerno v. Mauer*, 920 S.W.2d 904, 910 (Mo. App. W.D. 1996), citing *Teefey v. Teefey*, 533 S.W.2d 563, 566 (Mo. banc 1976). "A court has inherent power to punish contemptuous acts and to preserve and vindicate the law's power and dignity." *Picerno* at 910. "Disobedience of a valid judgment or court order which the court has jurisdiction to

enter is such an interference with the administration of justice as to constitute contempt." *Id.*

Missouri's criminal contempt statute (RSMo. § 476.110) provides for a finding of contempt, *inter alia*, where "a person disobeys an order of the court," however, the statute "does not limit the power of the courts to punish for contempt as at common law." *Smith* at 130; *see also Osborne* at 1012 ("It is settled law that every constitutional court of common-law jurisdiction has the inherent power to punish for contempt, and cannot be shorn of such power by statute."). The statute makes no distinction between so-called "judicial orders" and administrative orders. (*See* RSMo. § 476.110.) Rather, the statute states that "[e]very court of record shall have the power to punish as for criminal contempt persons guilty of . . . [w]illful disobedience of any . . . order lawfully issued or made by it [and] [r]esistance willfully offered by any person to the lawful order . . . of the court." RSMo. § 476.110; *see also Picerno* at 910. In short, if the order is lawful, the court has criminal contempt power to address disobedience or resistance. Judge Privette's administrative orders are lawful, therefore Relator's disobedience or resistance may be addressed through criminal contempt proceedings.

This Court has also stated that "[t]he courts' inherent power includes 'those incidental powers [that] are necessary and proper to [ensure] the performance' of the courts' judicial function under the constitution—'the trying and determining of cases in controversy.'" *Smith* at 130. Contrary to Relator's assertion, the *Smith* case does not stand for the proposition that "trying and determining of cases in controversy" is an all-inclusive list of the courts' proper functions under the constitution. After all, the Missouri

Constitution also provides that "[t]he presiding judge shall have general administrative authority over the court and its divisions." Mo. Const. Art. 5, § 15 (3). This is a proper function under our Constitution that has been upheld by another decision of this Court: *Allsberry v. Flynn*, 628 S.W.3d 392, 396 (Mo. banc 2021). That "general administrative authority" would appear to be one of the courts' proper functions under the Constitution which is enforceable through the courts' inherent contempt powers. RSMo. § 478.240 (2) also grants administrative authority to presiding judges by statute.

Even agencies—with no inherent contempt powers—have been given authority to enforce their administrative orders with contempt proceedings. *See* RSMo. § 536.095; *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 578 (Mo. banc 1994) ("The clear purpose of § 536.095 is to provide a method for an agency, having no inherent contempt powers, to preserve and vindicate its authority and dignity. Thus, § 536.095 gives respondent the power to order relator to show cause why he should not be held in contempt.").

"[T]here are two classes of contempt—civil and criminal, each class having two subcategories—direct and indirect." *Smith* at 130. "Criminal and civil contempt are distinguished by the content of the judgment." *Id.* "Criminal contempt is punitive in nature and acts to protect, preserve, and vindicate the authority and dignity of the judicial system and to deter future defiance." *Id.* "Civil contempt is intended to benefit a party for whom relief has been granted by coercing compliance with the relief granted." *Id.* The distinction between civil and criminal contempt can be illustrated by the nature of the infraction, the content of a judgment, and any order of commitment. *Estate of Johnson v. Kranitz*, 168 S.W.3d 84, 90-91 (Mo. App. W.D. 2005); *see also McMilian v. Rennau*, 619 S.W.2d 848,

851 (Mo. App. W.D. 1981) ("The distinction between civil and criminal contempt is reflected in the content of the judgment, whether the remedy is coercive or punitive.").

"A direct contempt occurs in the immediate presence of the court or so near as to interrupt its proceedings. The judge may punish a direct contempt summarily if the judge saw the conduct constituting contempt." *Id.*; *see also* Rule 36.01 (a). "However, an indirect, or 'constructive,' contempt arises from an act outside the court that tends to degrade or make impotent the authority of the court or to impede or embarrass the administration of justice." *Smith* at 130; *see also Picerno* at 910. "Acts of indirect contempt require that the defendant be given notice and a hearing as set out in Rule 36.01 (b)." *Smith* at 130-131. Supreme Court Rule 36.01 (b) provides for notice to be made, *inter alia*, by the prosecuting attorney *or* by "an attorney appointed by the court for that purpose."

Rule 36.01 (a) states that "[a] criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court." *See also Picerno* at 910. "A court can punish contempt summarily, without notice and a hearing, only if it is direct—that is, it occurs in the court's presence or so near as to interrupt its proceedings." *Picerno* at 910. "If the judge certifies that he or she saw the conduct constituting contempt, a direct contempt may be punished summarily." *Id.* at 910, citing *Chassaing* at 578 and Rule 36.01 (a).

The underlying matter is clearly an indirect criminal contempt proceeding under the Court's inherent authority to punish contempt. The purpose of the proceeding is to protect the authority of the court not to coerce compliance with a judgment for the benefit of a party who has been granted relief. The acts constituting contempt occurred outside the

immediate presence of the court. Relator argues that the underlying proceeding is a civil contempt action so that she can frame Judge Privette as a witness and party, and an interested one at that. The purpose of the contempt proceeding is not to benefit Judge Privette personally *as if he were a party*; the purpose is to "protect, preserve, and vindicate the authority and dignity of the judicial system" against acts that tend "to degrade or make impotent the authority of the court" and "to deter future defiance." *Smith* at 131.

Relator argues that because the underlying contempt motion does not use the word "criminal" to describe the contempt, it is therefore a civil contempt. While the motion caption does not include the word "criminal" it does not contain the word "civil" either. Relator's faulty logic can be applied in the other direction as such: because the motion does not use the word civil to describe the contempt, it is therefore criminal contempt. However, it is clear from the motion, circumstances, and language, that Relator's indirect criminal contempt is the issue. The Missouri Supreme Court, in *Osborne*, made it clear that technical accuracy is not necessary:

> "In many cases contempts are designated as 'criminal' where an attempt at classification may not have been in mind, but the court had in view, by the use of the word, merely an epithet which might fill a wholesome office as a deterrent . . .
> There is no fixed formula for contempt proceedings, and technical accuracy is not required . . .
> Contempt proceedings are sui generis, being neither civil actions nor prosecutions for offenses within the ordinary meaning of such terms, and technical accuracy in such proceedings is not required . . .
> The power to punish for contempt inheres in all courts. Such proceedings are sui generis, and are neither civil actions nor criminal prosecutions, as ordinarily understood . . .
> The principle prevails that the proceedings are criminal only in form since their object is to compel obedience to, and respect for, the court, and not to punish a public offense."

Osborne at 1012 (internal quotation marks and citations omitted).

Even if Relator's argument had merit, the Motion for Contempt could be corrected and "made criminal" by merely inserting the word "criminal" into the document. Such technicality is not required. *Id.*; *Curtis v. Tozer*, 374 S.W.2d 557, 569 (Mo. App. 1964) (stating, "the language used in the [contempt] application or petition can hardly be said to be determinative of the essential character of the proceeding"); *Mechanic v. Gruensfelder*, 461 S.W.2d 298, 309 (Mo. App. 1970) (stating, "[i]t is unnecessary that the notice meet the specificity and technical requirements of an information or indictment, so long as it sufficiently advises the alleged contemnor of the actions which it is claimed constitute contempt."). Relator has certainly been made aware of the actions which are claimed to constitute contempt. The criminal nature of the contempt is plainly evident.

Judge Privette's general administrative authority, although not challenged by Relator, is also settled law. Our State Constitution provides that "[t]he presiding judge shall have general administrative authority over the court and its divisions." Mo. Const. Art. 5, § 15 (3). RSMo. § 478.240 similarly vests presiding judges with this general administrative authority: "Subject to the authority of the supreme court and the chief justice under Article V of the Constitution, the presiding judge of the circuit shall have general administrative authority over all judicial personnel *and court officials in the circuit*." RSMo. § 478.240 (2) (emphasis added). "[T]he terms 'judicial personnel' and 'court official' plainly encompass all the people who are employed by the court or act in an official capacity for the court, *including the elected circuit clerk*." *Allsberry* at 396 (emphasis added). The

Supreme Court has described the presiding judge's authority under the above provisions as "administrative control" over "the business of the circuit judges" and "the entire court, including the divisions." *Gregory v. Corrigan*, 685 S.W.2d 840, 842 (Mo. banc 1985). This general administrative authority has also been described as the power "to administer and run the court or courts." *In re Rules of Cir. Ct. for 21st Jud. Cir.*, 702 S.W.2d 457, 458 (Mo. banc 1985).

Judge Privette was clearly within his general administrative authority. Judge Privette did no more than to order Relator to comply with her statutory duty and provide information directly related to both Relator and Judge Privette's statutory duties regarding cost bills. Under the Code of Judicial Conduct, Judge Privette has a duty to "require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code." Rule 2-2.12 (a). A judge's duty includes ensuring the efficient administration of justice. *See e.g.* Rule 2-2.12, and commentary. Relator has a statutory duty to prepare and file proper costs bills in both civil and criminal cases. *See e.g.* RSMo. §§ 514.260, 488.012 (1), 550.140, 550.260 (1), 550.180, 550.310; *Solberg v. Graven*, 174 S.W. 695, 700 (Mo. App. S.D. 2005) ("It is the circuit clerk's duty to tax statutory court costs."). Judge Privette also has a statutory duty to review and sign cost bills. S*ee e.g.* RSMo. §§ 550.130, 550.190. Both are part of the administering and running of the court, over which Judge Privette has general administrative authority.

Because Judge Privette's administrative orders are lawful, and the contempt power lies to protect *lawful* orders, Relator's willful disobedience of a lawful order issued under

Judge Privette's administrative authority can be punished in contempt. Judge Privette cannot exercise oversight over this portion of the court administration if Relator refuses to do her statutory duty by presenting cost bills for certification or provide information to Judge Privette related to the status of cost bills. Under the circumstances, Judge Privette's Orders are appropriate; Relator's non-compliance is not.

B. JUDGE PRIVETTE HAD AUTHORITY TO APPOINT HOWELL COUNTY ASSISTANT PROSECUTING ATTORNEY HEATH HARDMAN TO PROSECUTE THE CONTEMPT ACTION

Because the underlying proceeding is properly classified as a criminal contempt proceeding, Rule 36.01 (b) applies. That rule provides for notice to be made, inter alia, by the prosecuting attorney or by "*an attorney appointed by the court for that purpose*." Rule 36.01 (b) (emphasis added). Judge Privette selected the junior prosecutor from the closest neighboring county. In addition to Rule 36.01, that appointment is supported by substantial Missouri Supreme Court precedent.

The Supreme Court of Missouri has stated that "attorneys are officers of the court and take a solemn oath to uphold the administration of justice. We see no reason why the court should be denied the power to call upon its own officers to assist it. Otherwise, the judge himself would have to get out and make the investigation." *Osborne* at 160 (internal quotation marks and citations omitted). The *Osborne* Court went on to state that, in *State ex rel. Gentry v. Becker* (174 S.W.2d at 184) "we held that a court could make such an appointment, saying: 'The court has the inherent power to punish for contempt and if it has also the inherent power to appoint or request a lawyer, as an officer of the court, to represent it or the state in the prosecution of the contempt proceeding, that is all the power the court

reasonably needs for its own protection and for the due administration of justice.'" *Osborne* at 160.

It is true that RSMo. §§ 483.165, 483.170, and 483.175 provide a framework for appointing *either* the Attorney General or County Prosecuting Attorney to file a petition to determine whether Relator has committed acts constituting a misdemeanor while in office. However, those statutes do not indicate that this is the exclusive remedy. Nor do the statutes bar a contempt proceeding and for good reason. The legislature does not have the authority to remove such power from the Courts. *Osborne*, 244 S.W.2d at 1012 (holding, Courts "cannot be shorn of such power by statute."). The underlying matter is not a criminal proceeding where a crime is being alleged. Rather, it is a criminal contempt proceeding where Judge Privette has the option to appoint the Oregon County Prosecutor or "an *attorney appointed by the court for that purpose*." Sup. Ct. Rule 36.01 (b); *see also Osborne* at 160 (Mo. banc 1952); *Gentry* at 184.

Given that the underlying conduct constitutes an indirect criminal contempt, Judge Privette had authority and jurisdiction to appoint an attorney for the purpose of prosecuting the underlying contempt citation. Judge Privette should not "have to get out and make the investigation" when he has "the inherent power to appoint or request a lawyer" for "prosecution of the contempt proceeding" for the Court's "own protection and for the due administration of justice." *Osborne* at 160; *see also* Rule 36.01 (b). The appointment of an Assistant Prosecuting Attorney from a neighboring County was within Judge Privette's authority.

RESPONSE TO APPELLANTS' POINT II ON APPEAL

II. RELATOR IS NOT ENTITLED TO AN ORDER PROHIBITING JUDGE PRIVETTE FROM PRESIDING OVER THE UNDERLYING CONTEMPT PROCEEDING BECAUSE RELATOR HAS FAILED TO SHOW THAT IT IS CLEARLY EVIDENT THAT JUDGE PRIVETTE EXCEEDED HIS AUTHORITY OR JURISDICTION BY DENYING RELATOR'S MOTION FOR CHANGE OF JUDGE IN THAT JUDGE PRIVETTE ACTED WITHIN HIS JURISDICTION AND AUTHORITY BY UTILIZING THE COURT'S INHERENT CONTEMPT POWERS TO ENFORCE LAWFUL ADMINISTRATIVE ORDERS DIRECTING RELATOR TO PERFORM HER MANDATORY STATUTORY DUTY AND PROVIDE JUDGE PRIVETTE WITH INFORMATION CONCERNING THE STATUS OF THAT PERFORMANCE AND RELATOR IS NOT ENTITLED TO A CHANGE OF JUDGE IN A CONTEMPT PROCEEDING

Relator filed a Motion for Change of Judge relying on accusations of prejudice/bias and citing various provisions of the Code of Judicial Conduct. It is noteworthy that Relator, in her Motion for Change of Judge, did not cite or seek a change of judge pursuant to Supreme Court Rules 32.07 or 51.05[6], or pursuant to RSMo. § 476.180. Relator now seeks to bootstrap her position with these rules and statute after-the-fact in her second writ application. In essence, Relator is complaining, in part, that Judge Privette did not grant relief which was never requested.

"Absent a specific rule or statute, litigants in a contempt proceeding have no right to disqualify a judge." *Reeves v. Moreland,* 577 S.W.2d 125, 130 (Mo. App. E.D. 1979);

[6] "A 'contempt motion is not a "civil action," as that term is used in Rule 51.05.'" *State ex rel. Gonzalez v. Johnson*, 622 S.W.3d 215, 217 (Mo. App. S.D. 2021), quoting *Minor v. Minor*, 901 S.W.2d 163, 167 (Mo. App. E.D. 1995).

Houston v. Hennessey, 534 S.W.2d 52, 55 (Mo. App. 1975). The Court, in *Houston*, elaborated as follows:

> "Constitutional courts of common-law jurisdiction have inherent power to punish for contempt. The proceeding is sui generis. One court may not try a contempt against another court. Although contempts are labeled civil and criminal they are not civil actions nor prosecutions for offenses in the ordinary meaning of those terms. It has been said that no change of venue will lie. *Osborne v. Purdome*, 244 S.W.2d 1005 (Mo. banc 1951). A reading of the authorities indicates that in contempt proceedings, the term 'change of venue' has not been used in the technical sense but also includes the term 'disqualification of the judge'. It is apparent that neither Rule 51.05 which provides for change of judge in civil cases, nor 30.12 providing for change of judge in criminal cases, is applicable here. Rule 35.01 which governs proceedings in criminal contempt provides for disqualification of judges only in those instances where the contempt involves disrespect to or criticism of a judge. In such instances the judge may not preside except with the consent of the defendant. . . The right to a change of venue, including objections to the judge, is a statutory privilege . . .' *Erhart v. Todd*, 325 S.W.2d 750, 752(1) (Mo.1959). Absent a specific rule or statute, litigants in a contempt proceeding have no right to disqualify a judge."

Houston, 534 S.W.2d at 55. As in Houston, this proceeding does not involve disrespect to or criticism of Judge Privette. Rather, it is founded on Relators refusal to obey an admittedly lawful administrative order.

Relator frames Judge Privette as the chief witness, complaining party, and Judge, to support a claim that he is "interested" in the proceeding, citing RSMo. § 476.180. This issue, citing RSMo. § 476.180, was never raised before the trial court and never decided by the trial court. In any event, that statute is inapplicable, as Judge Privette is not interested within the meaning of the statute. Judge Privette does not have any financial interest, for example. *Cf. Odom v. Langston*, 205 S.W.2d 518, 520 (Mo. 1947). Rather, Judge Privette's interest is the general interest of any court to protect "itself against those who disregard its

dignity and authority or disobey its orders by punishing for contempt," which is the "most important and essential of the inherent powers of a court." *Gentry* at 184.

If RSMo. § 476.180 were given the construction Relator strains for, no court could enforce its own orders by contempt. Under Relator's construction of the statute, no Judge could ever preside over direct contempt occurring in the Judge's presence, for example, because that Judge would be the "chief witness, complaining party, and Judge" that Relator complains of. Likewise, no Judge could ever preside over any person that refuses to follow an order of the Court. This is directly contrary to Rule 36.01 and the cases that support summary contempt proceedings. *See e.g. Picerno* at 910; *Chassaing* at 578. Rule 36.01 (a) states that "[a] criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court." *See also Picerno* at 910. In such as case, the Judge is the "chief witness, complaining party, and Judge," as Relator laments. Under Relator's strained construction, however, another judge would be required to preside over the contempt proceeding. *But see Houston* at 55 ("One court may not try a contempt against another court."). Relator's position is contrary to an entire body of case law that holds the opposite.

For nearly 120 years, this Court has been aware of the strategy Relator appears to be using—seeking a change of judge in a contempt proceeding to evade accountability. In *State ex inf. Crow v. Shepherd*, this Court stated the following:

> "If each court did not possess the power to punish contempts committed against itself, the jury, and its officers, summarily, it would be easy for a contemner to escape punishment entirely. For if the matter was sent to another court, or left to be tried by a jury, the contemner could so insult and abuse such other court or the jury as to render it impossible for them, also, to

> try him, also, and, by thus renewing his offense to every court he was called before, make it impossible to punish him at all. It is manifest that, if the jury is insulted and treated with contempt, the court must protect them, for they can render no judgment and are powerless to protect themselves. It would be paradoxical to say the court alone can punish a contempt of the jury, but had no power to protect itself from contempt. Without further exemplification, therefore, the law must be regarded as settled that this court has the inherent power and jurisdiction to punish contempts summarily."

State ex inf. Crow v. Shepherd, 76 S.W. 79, 86 (Mo. 1903), overruled on other grounds by *Ex parte Creasy*, 148 S.W. 914 (Mo. 1912).

"Rule 2-2.11(A) provides, 'A judge shall recuse himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned,' including situations when the judge 'has a personal bias or prejudice concerning a party . . . or knowledge of facts that are in dispute in the proceeding that would preclude the judge from being fair and impartial.'" *McFadden v. State*, 553 S.W.3d 289, 302 (Mo. banc 2018).

"In reviewing the trial court's denial of a motion for change of judge, the appellate court presumes that a trial judge will not preside over a proceeding in which the judge cannot be impartial." *Williams v. Reed*, 6 S.W.3d 916, 920 (Mo. App. W.D. 1999); *see also State v. Hunter*, 840 S.W.2d 850, 866 (Mo. banc 1992) and *State v. Jones*, 979 S.W.2d 171, 178 (Mo. banc 1998). "To constitute a disqualifying bias, the bias must come from an extrajudicial source that results in the judge forming an opinion *on the merits* based on something other than what the judge has learned from participation in the case. *Williams* at 921 (emphasis added and internal quotation marks omitted). "The judge's bias or prejudice must be personal, rather than judicial, and must be to such an extent so as to evince a fixed prejudgment and to preclude a fair weighing of the evidence." *Id.* at 921

(internal quotation marks omitted); *see also State ex rel. Wesolich v. Goeke*, 794 S.W.2d 692, 697–98 (Mo. App. E.D. 1990). "In cases requiring recusal, the common thread is either a fact from which prejudgment of some evidentiary issue in the case by the judge may be inferred or facts indicating the judge considered some evidence properly in the case for an illegitimate purpose." *Smulls v. State*, 10 S.W.3d 497, 499 (Mo. banc 2000) (internal citations and quotations omitted); *see also McFadden v. State*, 553 S.W.3d 289, 302 (Mo. banc 2018). "A judge's mere possession of views regarding the conduct of a party or the party's counsel does not constitute disqualifying prejudice." *Williams* at 922–923. Furthermore, "[a] judge's comments alone, 'even those that are critical or even hostile to a party, do not support a claim of bias and partiality.'" *Id.*, quoting *Haynes v. State*, 937 S.W.2d 199, 204 (Mo. banc 1996).

"Given the definition of a disqualifying bias and prejudice, a particular judge is in the best position to determine if recusal is necessary." *State v. Nunley*, 923 S.W.2d 911, 917 (Mo. banc 1996). "[J]udges are to be accorded the same presumption granted all public officers that they will faithfully carry out the duties of their offices." *Houston* at 55; *Reeves* at 131; *State ex rel. Heimburger v. Wells*, 109 S.W. 758, 761 (Mo. 1908). "It is presumed that a judge acts with honesty and integrity and will not preside over a hearing in which the judge cannot be impartial." *Anderson v. State*, 402 S.W.3d 86, 92 (Mo. banc 2013); *see also Smulls v. State*, 10 S.W.3d 497, 499 (Mo. banc 2000). While the presumption of impartiality can be overcome, there "must be a factual context that gives meaning to the kind of bias that requires disqualification of a judge." *Smulls* at 499; *see also Haynes v. State*, 937 S.W.2d 199, 203 (Mo. banc 1996).

In *Grissom v. Grissom* (886 S.W.2d 47 [Mo. App. W.D. 1994]), the trial judge was accused of bias. The plaintiff / mother published an advertisement that was critical of the trial judge. *Id.* at 56 n 9. The trial judge expressed displeasure with the advertisement. *Id.* at 56. The trial judge also made evidentiary rulings and orders that were contrary to the plaintiff / mother's position. *Id.* at 56. Furthermore, the judge received *ex parte* communications from a social worker about the legal status of the custody order at the time. *Id.* at 56-57. The *Grissom* Court concluded "that the trial judge in this case was not required to recuse himself for bias and prejudice." *Id.* at 56. The Court explained that it was "not troubled that a trial judge would express displeasure with public criticism by a party in a case. A trial judge is free to express his personal opinion about a party's conduct to the attorneys involved." *Id.* at 56. The Court also noted that "[r]ulings against a party will not serve as grounds for recusal." *Id.* at 56. Finally, the judge's *ex parte* conversation with the social worker "did not evidence prejudgment." *Id.* at 56. Rather, the trial judge's comments to the social worker appeared to be "his legal opinion based upon the extensive history of the case and his knowledge of the law" and was "a correct statement of the status of the case" at the time of the conversation. *Id.* at 56-57.

Relator makes three main accusations to support her claim of bias. Relator claims that Judge Privette is biased due to alleged interactions between Relator and Alice Bell, Judge Privette's wife. (Exhibit 5 at 11-12.) Relator claims that Judge Privette is attempting to remove Relator from office so that Alice Bell can be appointed as clerk. (Exhibit 5 at 11-12.) Alice Bell (a deputy clerk at the time) did run for Oregon County Court clerk during the November 2018 election. (Return at 9.) During that election, Relator was elected. (*Id.*)

The election occurred long before Judge Privette and Mrs. Bell were married or even dating. (*Id.*) After the election, life went on and Mrs. Bell continued her work as a deputy clerk. (*Id.*) Relator's claims that Mrs. Bell resented Relator are undercut by the fact that Relator also admits that Mrs. Bell continued to work as a deputy clerk under Relator until February of 2022—a period of just over three years after the November 2018 election. (*Id.*; Exhibit 5 at 11.) Mrs. Bell and Judge Privette were married in November of 2021—*three years after the election*. (Return at 9.) Mrs. Bell resigned her position as deputy clerk in February of 2022 to pursue training as a court reporter. (*Id.* at 9-10.) Employment as a court reporter is simply a better economic and career opportunity for Mrs. Bell than that of deputy clerk. (*Id.* at 10.) Mrs. Bell is not seeking appointment as Clerk in place of Relator. (*Id.*) That is pure unfounded speculation. Relator appears to be trying her best to impugn Judge Privette's motives to focus this court on speculative improper motives rather than the obvious proper motive—Relator's refusal to do her duty. It's a scatter-shot *ad hominem*.

Relator next claims that Mrs. Bell, after marrying Judge Privette, told a deputy clerk (who is not named and has not provided any affidavit), "Now the kid gloves are coming off." (Exhibit 5 at 11.) If this statement was in fact made, the context is unclear as to what it refers to. No effort was made by Relator to explain how this may be related to Judge Privette or even known of by Judge Privette. Relator does not even claim that statement was made to her, nor does she claim it was directed at Relator's refusal to perform her statutorily mandated duties. It is the rankest form of multiple-level hearsay and devoid of context. In any event, Judge Privette has no personal knowledge of any such statement, doubts its veracity, and was not aware that Relator even made such an accusation until her

various motions were filed—months after the Orders were issued. (Return at 10.) Therefore, this could not have been a basis for retaliation, as the nefarious "kid gloves" comment was unknown to Judge Privette prior to the Orders. (*Id.*) It appears that Relator is strategically raising these accusations in her various motions to create a specter of bias months after the Orders in this matter to evade accountability and distract from the relevant issues. Relator wishes to make Judge Privette's Orders about hidden motives and persecution, rather than simply urging Relator to do what she is required by law to do. Her pleadings are devoid of any suggestion that she has complied with the Orders or undertaken efforts to substantially perform her duty as it pertains to cost bills.

Relator's final exaggerated and inaccurate claim to bolster her bias claims concerns her removal from a courtroom for disrupting proceedings. (Exhibit 5 at 12.) When Relator took office in January of 2019, she informed Judge Privette that she would handle criminal matters only and her then-sole deputy (Alice Bell) would handle all other matters (civil, domestic, etc.). (Return at 11.) This was the procedure until approximately February of 2022. (*Id.*) Relator does not perform clerical duties such as making docket entries, and a court reporter was available for any record needed. (*Id.*) Based on that, Judge Privette ordered Relator to leave the courtroom because she was being disruptive. (*Id.*) Due to the nature of the civil proceedings at that time, no clerk was needed—neither Mrs. Bell nor Relator. (*Id.*) Judge Privette did not "explode" and only mentioned having the Sheriff remove Relator after she refused to leave the courtroom and cease disrupting the proceeding. (*Id.*) Relator thereafter left with no further issue. (*Id.*) It was a single isolated event that Relator did not repeat during her four years as an elected clerk. (*Id.*) Judge

Privette was certainly within his authority to ask Relator to leave the courtroom for being disruptive. *See* Rule 36.01 (b); Mo. Const. Art. 5, § 15 (3); RSMo. § 478.240 (2); *Allsberry v. Flynn*, 628 S.W.3d 392 (Mo. banc 2021); *Gregory v. Corrigan*, 685 S.W.2d 840 (Mo. banc 1985); *In re Rules of Cir. Ct. for 21st Jud. Cir.*, 702 S.W.2d 457 (Mo. banc 1985).

Relator cites no rule or statute that grants her the right to seek a disqualification of Judge Privette in this contempt proceeding. *See Houston*, 534 S.W.2d at 55. Relator provides no information from extra-judicial sources that impacts how Judge Privette may weigh the evidence or view the merits of the proceedings.[7] Instead, Relator tries to create a self-serving smokescreen of bias, prejudice, and speculation about what Judge Privette *might* do in the future—despite months of judicial restraint and slowly escalating acts. What started as an informal inquiry in May of 2022, escalated to a written order, followed by a written show cause order, a public contempt proceeding, an unsuccessful writ application before the Court of Appeals, Southern District, and, now, the instant matter. It was only after months of Relator's refusal to provide information about the cost bills in criminal cases that Judge Privette was left with little choice but to initiate a contempt action or criminal charges. In keeping with his pattern of judicial restraint and slow escalation, when necessary, Judge Privette chose a contempt proceeding over criminal prosecution, which criminal proceeding may or may not later prove to be appropriate and/or necessary. There is no reason why Judge Privette should not be accorded the presumption that he will

[7] To date, Relator has not "shown cause" why she should not be held in contempt so no reasons have been presented as to why she may not have complied with the Orders. One cannot rule out a good reason entirely, but Relator's successive writ applications have short-circuited the mechanism to find out why Relator has not yet complied.

faithfully carry out the duties of his office with continued judicial self-restraint, nor has Relator even attempted to establish that he would not, relying solely on an unsupported accusation.

If this Court allows Relator to prevail, it will encourage clerks and other officials to openly disobey administrative court orders and undermine the ability of presiding judges to preside over the proper administration of their Judicial Circuits. After all, in the event a contempt action is filed, it could just be dismissed, or a contemnor can simply allege bias and try their luck before a different judge. *Cf. State ex inf. Crow v. Shepherd*, 76 S.W. 79, 86 (Mo. 1903). It would render our Courts "no more than advisory bodies to be heeded or not at the whim of the individual." *Picerno* at 910, citing *Teefey* at 566.

CONCLUSION

Judge Privette's Orders regarding the status of cost bills in Oregon County criminal cases were prompted by the complaints of two different Sheriffs, his awareness that he was not receiving cost bills for approval, and Relators inexplicable refusal to provide the requested information or certify cost bills—not for the purpose of retaliation over an election that occurred nearly some four years earlier or Relator's court-room disruption during a single isolated event. Judge Privette is merely trying to ascertain the status of cost bills and ensure the court system in his circuit is functioning appropriately and in compliance with Missouri law, a separate duty imposed upon him as presiding Circuit Judge being impeded by Relator's misfeasance. One aspect of this functioning is the process of submitting cost bills in criminal cases for reimbursement—a process that involves Judge Privette in his statutory duty to review and sign cost bills (*see e.g.* RSMo.

§§ 550.130, 550.190) prepared by Relator in her statutory duty (*see e.g.* RSMo. §§ 550.140, 550.260 [1].)

Respondent respectfully suggests that the writ of prohibition requested by Relator is improper. Relator's defiance toward the unchallenged lawful authority of Respondent to enter an administrative order directed to Relator and closely related to her official duties is the exact conduct contemplated by the Court's inherent authority to punish contempt.

FOR THE FOREGOING REASONS, Respondent prays that the Court issue an Order as follows:

A. Quashing, denying, and dismissing Relator's Verified Petition for Writs of Mandamus and Prohibition;

B. Quashing and vacating the Courts preliminary Writ of Prohibition;

C. Ordering Relator to pay reasonable attorney's fees and costs incurred; and

D. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ *Heath Hardman*
Heath Hardman, MO Bar No. 70103
Assistant Prosecuting Attorney
Howell County, Missouri
326 Courthouse
West Plains, MO 65775
(417) 256-2317
Heath.Hardman@prosecutors.mo.gov
ATTORNEY FOR RESPONDENT

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief complies with Supreme Court Rule 84.06, contains 9,754 words (according to the word count function of Microsoft Word) exclusive of cover, certificate of service, this certificate, and signature block.

The undersigned further certifies that the electronic filing of this brief was scanned for viruses and is virus-free.

Respectfully submitted,

/s/ *Heath Hardman*
Heath Hardman, MO Bar No. 70103
Assistant Prosecuting Attorney
Howell County, Missouri
326 Courthouse
West Plains, MO 65775
(417) 256-2317
Heath.Hardman@prosecutors.mo.gov
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of January, 2023, a copy of the foregoing Brief and Respondents' Appendix was served by electronic filing, and by electronic mail, in both Word and Adobe PDF format, to the following:

David M. Duree
David M. Duree & Associates, P.C.
312 South Lincoln Avenue
O'Fallon, Illinois 62269
law@dmduree.net
Attorney for Petition/Relator

Respectfully submitted,

/s/ *Heath Hardman*
Heath Hardman, MO Bar No. 70103
Assistant Prosecuting Attorney
Howell County, Missouri
326 Courthouse
West Plains, MO 65775
(417) 256-2317
Heath.Hardman@prosecutors.mo.gov
ATTORNEY FOR RESPONDENT