IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI *ex relatione* JONATHAN STERNBERG, Relator,	)	Case No. SC_____
vs.	)	Missouri Court of Appeals, Western District
HONORABLE DAVID BYRN, *in his official capacity as* Administrative Circuit Judge, Circuit Court of Jackson County, Family Court Division, Respondent.	)	Case No. WD79541
	)	Circuit Court of Jackson County No. 1516-JU001276

PETITION FOR WRIT OF PROHIBITION
AND SUGGESTIONS IN SUPPORT THEREOF

Relator Jonathan Sternberg, Attorney, requests the Court under Mo. Const. art. V, § 4, Chapter 530, R.S.Mo., Rules 84.22, *et seq.*, and 97, to issue a writ of prohibition enjoining Respondent Judge Byrn from enforcing the orders in the underlying civil case appointing Relator without his consent to represent N.W. without pay and refusing to allow Relator to withdraw, in violation of Relator's natural right to the enjoyment of the gains of his own industry guaranteed in Mo. Const. art. I, § 2.

Relator additionally moves the Court under Rule 84.24(e) to dispense with the time limits of Rule 84.24(c)-(d) and immediately issue a preliminary writ or other order staying his appointment below. Immediate relief from the orders challenged in this petition, at least during these proceedings in prohibition, is necessary to avoid the irreparable harm of Relator being forced by the State to labor for free.

In support, Relator states:

Summary

The court in the underlying case unilaterally appointed Relator, a private attorney, to represent an indigent parent in a juvenile custody case, for which Relator will have no possibility of any compensation. Relator immediately moved to withdraw, explaining that he did not consent to the appointment, and thus under Mo. Const. art. I, § 2's guarantee "that all persons have a natural right to … the enjoyment of the gains of their own industry," the court had to allow him to withdraw. Respondent refused.

This was error, which this Court's writ of prohibition lies to remedy. As the Court explained in *State ex rel. Scott v. Roper*, 688 S.W.2d 757, 768-69 (Mo. banc 1985), issuing a writ of prohibition to enjoin a trial court from forcing an attorney without his consent to represent an indigent civil litigant without pay, Art. I, § 2 denies Missouri courts the power to compel private attorneys to represent parties in civil actions without compensation.

Thus, as Relator timely and properly informed the court below that he did not consent to the appointment, Respondent had no power to force him into it. To the extent § 211.211.4, R.S.Mo., or Rule 115.03 may appear to allow such a power, as applied to Relator they violate Art. I, § 2. *Moler v. Whisman*, 17 S.W. 985, 987-88 (Mo. banc 1912). Just as in *Scott*, this Court's writ of prohibition now lies to enjoin Respondent from forcing Relator, either inherently or applying a statute or rule, to labor for free at the State's behest.

Statement of Facts

Under § 211.211.4, R.S.Mo., an indigent custodian in any juvenile custody proceeding is entitled to have counsel appointed for him or her. *Infra*

at 14. Rule 115.03 echoes this. *Infra* at 14. In 113 of Missouri's 114 counties, plus the City of St. Louis, either attorneys from the Missouri State Public Defender office or legal aid organizations are given these appointments, or the appointments are made from a list of attorneys who expressly volunteer for them, whether paid or unpaid (Exhibits pp. 112-13).[1]

In the Circuit Court of Jackson County, however, a Local Rule, 21.6.1, provides that the appointment shall come "from a current alphabetical list of attorneys registered with the Missouri Supreme Court" who live or work in Jackson County (Ex. 70-72, 112-13). The court requires appointed counsel to serve for all stages of the proceedings, even including appeal (Ex. 70-72).

Although Local Rule 21.6.1 states that appointed "counsel may by written motion request the Court to assess a reasonable attorney's fee and any reasonable and necessary expenses as costs" (Ex. 72), except in termination of parental rights cases "in Jackson County this generally does not result in payment of fees to appointed attorneys ***because there is no source of funding for these payments***" (Ex. 74) (emphasis added).

As such, unless an attorney is allowed leave to withdraw – which Local Rule 21.6.1 expressly prohibits unless he is over 70 years of age, previously was appointed during the calendar year, has a conflict of interest, does not practice law because of illness, has an inactive license, or is a public employee – he *must* undertake the representation without pay or pay another lawyer to

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[1] Per Rule 94.03, the attached exhibits are consecutively paginated and an index is included. "Ex. X" refers to page X of the collective exhibits. Relator has redacted all sensitive identifying information from the exhibits.

do so (Ex. 70-72). An attorney is notified of an appointment under Local Rule 21.6.1 without warning via a surprise e-mail (Ex. 6, 111-12).

Relator Jonathan Sternberg is a private lawyer with a busy solo appellate practice in Downtown Kansas City, Jackson County (Ex. 109-10). Three times before the underlying case, the Jackson County Family Court has appointed him under Local Rule 21.6.1 to represent indigent parties in juvenile cases (Ex. 110-11). He found, however, that the representation took a great amount of time and energy, sometimes lasting years, disrupted his practice, was not geared to his skill set, and was a disservice both to the appointed client and to his existing clients (Ex. 110-12). He also "discovered that, although Jackson County Local Rule 21.6.1 ostensibly allowed for payment of [his] fees for the matter, … there was no available Jackson County apparatus to provide payment" (Ex. 111).

On February 24, 2016, Relator received an e-mail notice that he would be appointed to represent N.W., the natural father of L.C.W., the subject juvenile in *In re L.C.W.*, No. 1516-JU001276, a case in which the Jackson County Juvenile Officer alleges L.C.W. is without proper care, custody, or support, and seeks L.C.W.'s appropriate placement (Ex. 11-12, 111). The Juvenile Officer is not seeking to terminate N.W.'s parental rights (Ex. 11-12). Commissioner Nancy Alemifar is the commissioner assigned (Ex. 1, 7).

The following day, February 25, Relator received the actual order of his appointment that the Commissioner entered that day, contained in a 43-page e-mail transmission from the Jackson County Family Court (Ex. 6-48, 112). At the time, Relator was engaged in more than 25 other matters (Ex. 110).

Based on his previous appointments and the present state of his busy practice, Relator determined the appointment would be a detriment to his practice (Ex. 50, 111-12). While he had nothing but compassion for the parties, he was unwilling to consent to another surprise, unpaid representation, which he also felt would not fit his skills and would disserve both his existing clients and N.W. (Ex. 50, 111-12).

Accordingly, Relator immediately moved the Commissioner to set aside her February 25 order and allow him leave to withdraw from representing N.W. (Ex. 49). He explained that he did not consent to the appointment and, as Mo. Const. art. I, § 2, guaranteed his natural right to the enjoyment of the gains of his own industry, the court lacked power to force him to serve unwillingly in that civil action without compensation (Ex. 49-53). He explained that, to the extent § 211.211, R.S.Mo., or Rule 115.03 may appear to grant the court that power, as applied to him they violated Art. I, § 2, and were unconstitutional as applied (Ex. 53).

On March 3, 2016, the Commissioner entered an order denying Relator's motion (Ex. 56). Relator immediately sought rehearing before Respondent, the circuit judge administratively in charge of the Family Court Division (Ex. 57). On March 30, 2016, Respondent denied rehearing and ordered that Relator "shall remain in his Court-appointed capacity as attorney for Natural Father" (Ex. 66). Relator immediately sought a writ of prohibition in the Missouri Court of Appeals, Western District, which, after Respondent filed suggestions in opposition (Ex. 115), that court denied on April 4, 2016 (Ex. 121). This Petition follows.

Reasons Why the Writ Should Issue

I. Introduction

While private attorneys "have a special fiduciary duty with regard to their candor and integrity while serving as an advocate for their clients before a court of law," they are neither "officers of the court" nor "public officers." *Estate of Bell*, 292 S.W.3d 920, 926 (Mo. App. 2009) (quoting *State ex rel. Scott v. Roper*, 688 S.W.2d 757, 766-67 (Mo. banc 1985)). That misconception is an "anachronism from English legal history." *Scott*, 688 S.W.2d at 767. Instead, as to choosing whether and how to use their resources, private attorneys are no different than any other occupation: "a lawyer's services are as much his property as a grocer's stock, an electrician's tools, or an individual's home." *Id.* at 764.

Since 1875, the Constitution of Missouri expressly has guaranteed "that all persons have a natural right to … the enjoyment of the gains of their own industry." Art. I, § 2. This provision prohibits "workplace slavery," and Missouri courts will "invoke" it "to invalidate" any situation "when government force[s] individuals to work without pay." *Fisher v. State Hwy. Comm'n of Mo.*, 948 S.W.2d 607, 610 (Mo. banc 1997) (citing *Scott*, 688 S.W.2d at 768-69; *Moler v. Whisman*, 17 S.W. 985, 987-88 (Mo. banc 1912)).

"Since the colonial period, a lawyer's services have been recognized as a protectable property interest." *Scott*, 688 S.W.2d at 768. Thus, as "[o]ur state constitution expressly protects an individual's services by providing 'that all persons have a natural right to … the enjoyment of the gains of their

own industry," the State cannot be permitted "to deprive a citizen of this constitutional right as a condition to granting a license or privilege." *Id.*

Accordingly, under Art. I, § 2, "The courts of this state have no inherent power to appoint or compel attorneys to serve in civil actions without compensation." *Id.* at 769. Nor can the General Assembly validly enact a statute authorizing this. *Moler*, 147 S.W. at 987-88 (holding that applying statute to force certain barbers to work without pay violated Art. I, § 2).

For these reasons, in *Scott*, this Court issued a writ of prohibition enjoining a trial court from unilaterally appointing a private attorney to represent an indigent party in a civil case without that attorney's consent and without compensation. *Id.*

Nonetheless, in this case, despite being fully apprised of *Scott*, *Moler*, and Art. I, § 2, Respondent has taken the same, unconstitutional position as the trial court in *Scott*: attempting to compel Relator, a private attorney, to represent a party in a civil case without Relator's consent and without compensation. Under Art. I, § 2, Respondent lacks power to compel Relator to labor without pay. To the extent that § 211.211.4 or Rule 115.03 may be construed to supply Respondent with such a power, as applied to Relator they violate Art. I, § 2.

Just as in *Scott*, this Court should issue a writ of prohibition upholding Relator's natural right to the enjoyment of the gains of his own industry guaranteed in Art. I, § 2, by enjoining Respondent from enforcing the orders in the underlying case appointing Relator without his consent to represent N.W. without possibility of pay and refusing to allow Relator to withdraw.

II. Under Mo. Const. art. I, § 2, Respondent's attempt unilaterally to force Relator to represent a party in a civil case without compensation exceeds his power, and Respondent is without power to refuse Relator leave to withdraw.

Mo. Const. art. I, § 2, guarantees "that all persons have a natural right to … the enjoyment of the gains of their own industry." In *Scott*, this Court "resolved" "[t]he precise question of whether [a] court has the inherent power to appoint and compel counsel to serve without compensation in civil cases." 688 S.W.2d at 759-69. After examining the history and role of attorneys both in Missouri and elsewhere in the Anglo-American system, the Court expressly held that courts in Missouri today do not have such a power, as it is barred by this constitutional provision. *Id.*

The Court's reasoning in *Scott* for prohibiting courts from ordering the forced, uncompensated labor of attorneys in civil cases was straightforward:

> While we encourage members of the bar to explore all possible avenues for assuring equal access to justice, we do not believe that courts have the inherent power in civil cases to provide the alternative of compelling representation without compensation. … Our state constitution expressly protects an individual's services by providing "that all persons have a natural right to … the enjoyment of the gains of their own industry." Mo. Const. art. I § 2. We will not permit the State to deprive a citizen of this constitutional right as a condition to granting a license or privilege. …

> We deem it admirable for … individual attorneys … to volunteer pro bono legal representation and strongly urge the continuation of such commendable practices. … [C]ourts may appoint … in civil cases … attorneys who volunteer and agree to serve without compensation. ***The courts of this state have no inherent power to appoint or compel attorneys to serve in civil actions without compensation.*** Providing for such representation and the funding thereof is a matter for legislative action.

Id. at 768-69 (citations omitted) (emphasis added).

Similarly, the Court distinguished forced, unpaid representations from voluntarily "rendering public interest legal service," which Rule 4-6.1 states is a "responsibility" of all attorneys. *Id.* at 768. As Rule 4-6.1 notes, "A lawyer may discharge this responsibility by providing" free services not only "to persons of limited means," as in this case, but also "to charitable groups or organizations; [or] by service in activities for improving the law, the legal system, or the legal profession." (Relator prefers to meet this responsibility through the latter (Ex. 110).)

The Court held in *Scott* that the unilateral appointment of a private lawyer without his consent to represent a party in a civil case without compensation is the antithesis of "voluntary" – it is compelled, and does not fall under Rule 4-6.1:

> Compelled legal service is totally inconsistent with the giving of pro bono service as a matter of professional responsibility or

> professional pride. The latter two involve a matter of professional choice. It is the choice that makes the rendering of the service self-fulfilling, pleasant, interesting, and successful. Compelling the service deprives the professional of the element of professional choice. The quality of the uncompensated service can be expected to decrease in almost direct proportion to the loss of choice of the professional rendering the service.

Scott, 688 S.W.2d at 768.

For, a private "lawyer's services are as much his property as a grocer's stock, an electrician's tools, or an individual's home. The mere power of the state to license certain occupations does not justify a taking of property." *Id.* at 764. "[T]he time has come to abandon invoking the doctrine that lawyers are officers of the court – or, as some courts suggest, public officers – and lay to rest this anachronism from English legal history." *Id.* at 767.

The general facts and procedural posture of *Scott* are virtually identical to this case. An indigent party in a civil case asked the Circuit Court of Boone County for an attorney, and the court initially appointed a legal aid organization to represent him. *Id.* at 758. When the organization told the court that its charter prohibited it from taking that sort of case, the court appointed a local attorney at random to represent the party without pay. *Id.*

Counsel objected, sought the appointment vacated, and moved to withdraw. *Id.* When the court refused, counsel sought this Court's writ of prohibition, arguing that the forced free labor was a violation of his constitutional natural right to enjoy the gains of his own industry. *Id.* This

Court agreed and, for the above-quoted reasons, issued a permanent writ prohibiting the trial court from forcing counsel to represent the litigant in the civil case without compensation. *Id.* at 757.

The Court should do the same in this almost identical case. Here, N.W. requested the court under § 211.211.4 to appoint an attorney to represent him in his civil juvenile custody case before the Jackson County Family Court and showed he was indigent (Ex. 4). After agreeing N.W. was indigent, the Commissioner entered an order appointing Relator at random from a list of all attorneys living or working in Jackson County to represent him, and notified Relator of this out of the blue (Ex. 4, 7). Relator will have no possibility of any compensation in the appointed representation (Ex. 74, 112). Relator immediately objected, sought the order vacated, and moved to withdraw (Ex. 4, 49, 57). The Commissioner and, then, Respondent, refused (Ex. 56, 66). Relator now seeks this Court's writ.

As *Scott* makes plain, Respondent's attempt to compel Relator to represent N.W. without pay violates Art. I, § 2. Respondent has no power to force Relator, a private businessperson, to provide free labor at the State's behest. As this Court did in *Scott*, it should prohibit Respondent from exceeding his power and doing anything with respect to Relator except allowing Relator to withdraw.

Later Missouri decisions have reexamined and followed *Scott*. *See*:

- *State ex rel. Mo. Pub. Defender Comm'n v. Pratte*, 298 S.W.3d 870, 889 (Mo. banc 2009) (restating *Scott*'s holding that "Missouri courts have no power to compel attorneys to serve in civil actions without compensation");

- *Bell*, 292 S.W.3d at 926 (restating *Scott*'s holding rejecting the "officer of the court" anachronism);
- *State ex rel. Pub. Defender Comm'n v. Williamson*, 971 S.W.2d 835, 838 (Mo. App. 1998) (restating *Scott*'s holding "that courts have no inherent power to appoint attorneys to serve in civil actions");
- *Fisher*, 948 S.W.2d at 610 (holding up *Scott* as an example of Art. I, § 2 prohibiting "forc[ing] individuals to work without compensation");
- *In re Marriage of Burnside*, 777 S.W.3d 660, 664 (Mo. App. 1989) (following *Scott* in refusing indigent civil litigant's request to appoint attorney to represent him without pay); *Muza v. Mo. Dept. of Soc. Servs.*, 769 S.W.2d 168, 176 (Mo. App. 1989) (same); *Fitzpatrick v. Hoehn*, 746 S.W.2d 652, 654 (Mo. App. 1988) (same);
- *Am. Family Mut. Ins. Co. v. Mason*, 702 S.W.2d 848, 852 (Mo. App. 1985) (restating *Scott*'s holding "that a court has no inherent power to appoint attorneys … to serve in civil actions without compensation").

The Court should follow *Scott* once again. Respondent's actions directly contravene Art. I, § 2. The Court should prohibit Respondent from attempting to compel Relator, a private attorney, to labor in a civil case against his will and without pay.

Finally, lest there be any confusion, it is well-established that a proceeding to declare a juvenile a ward of the juvenile court and determine his custody and placement "***is a civil action***." *In re A.K.S.*, 602 S.W.2d 848, 850 (Mo. App. 1980) (emphasis added). It "partakes of the nature of an action in equity." *Id.*

This is true at the appellate level, too: "Juvenile proceedings and appellate review of such, partake the nature of civil proceedings and the scope of review is as in court-tried cases." *In re T.L.F.*, 184 S.W.3d 642, 644 (Mo. App. 2006) (citation omitted). And this is true of *all* juvenile proceedings, be they even juvenile delinquency cases, *In re D.M.*, 370 S.W.3d 917, 921 (Mo. App. 2012), or even termination of parental rights proceedings. *In re W.J.S.M.*, 231 S.W.3d 278, 282 (Mo. App. 2007).

While "parental rights are a fundamental liberty interest," *In re S.M.H.*, 160 S.W.3d 355, 362 (Mo. banc 2005), the underlying action is not a termination of parental rights case. Even it were, parents in such cases have no constitutional right to counsel. *Lassiter v. Dep't of Soc. Servs. of Durham Cnty.*, 452 U.S. 18, 31-32 (1981). And in this ordinary juvenile custody case, an indigent custodian certainly has no constitutional right to counsel. *State v. Churchill*, 454 S.W.3d 328, 334 (Mo. banc 2015).

Instead, N.W.'s right to counsel is purely a "statutory right," *id.* at 336, by virtue of § 211.211.4 and Rule 115.03. As the Constitution of Missouri is "the supreme law of Missouri," *State ex rel. Riverside Joint Venture v. Mo. Gaming Comm'n*, 969 S.W.2d 218, 221 (Mo. banc 1998), Relator's natural right not to be forced by the government to labor for free, constitutionally guaranteed in Art. I, § 2, outweighs that statutory right. Juvenile cases still are civil cases, just like any other. *Churchill*, 454 S.W.3d at 334.

As such, *Scott* applies precisely to this case. Prohibition lies to enjoin Respondent from compelling Relator to represent N.W. in the underlying civil case against his will and without pay.

III. To the extent Respondent may be applying § 211.211, R.S.Mo. or Rule 115.03 to force Relator unilaterally to labor without pay, that application violates Mo. Const. art. I, § 2, and is invalid.

Respondent might argue that his forcing Relator to labor without pay is lawful because § 211.211.4, R.S.Mo., and Rule 115.03 allow him to do so. If so, this would be without merit. Statutes and rules cannot supersede the Constitution, *supra* at 13, and § 211.211.4 and Rule 115.03 do not expressly call for forced attorney appointments without pay, which Art. I, § 2 prohibits.

Section 211.211.4 provides in relevant part that, in all juvenile court proceedings under Chapter 211,

> When a petition has been filed and the child's custodian appears before the court without counsel, the court shall appoint counsel for the custodian if it finds: (1) That the custodian is indigent; and (2) That the custodian desires the appointment of counsel; and (3) That a full and fair hearing requires appointment of counsel for the custodian.

Rule 115.03 exactly echoes this statute.

While both the statute and the rule generally provide for appointments of counsel in juvenile cases, neither specifies that the appointment must (or may) be without the attorney's consent and without pay. Indeed, in every other county in Missouri (and the City of St. Louis) *besides* Jackson County, either attorneys from the local Missouri State Public Defender office or legal aid organizations are the only ones appointed under the statute and rule, or

the appointments are made from a list of local attorneys who expressly volunteer for them, whether paid or unpaid (Ex. 112-13).

"[S]tatutes must be read … with the presumption that the General Assembly 'did not intend to violate the constitution.'" *State ex rel. Mo. Pub. Defender Comm'n v. Waters*, 370 S.W.3d 592, 602-03 (Mo. banc 2012) (citation omitted). This canon equally applies to this Court's rules. *In re Hess*, 406 S.W.3d 37, 43 (Mo. banc 2013).

Plainly, the mere act of a court seeking to appoint counsel itself in any sort of case is perfectly constitutional. *Scott*, 688 S.W.2d at 768-69. Without question, statutes and rules may call for such an appointment. If the appointee volunteers, consents, or is being appropriately paid, obviously there is nothing constitutionally wrong with this. *Id.*

But if a court applied the general appointment requirement in § 211.211.4 or Rule 115.03 to ***force*** private attorneys to labor at the State's behest ***for free***, *that* would be unconstitutional. As applied, that would violate the attorney's "natural right … to the enjoyment of the gains of [his] own industry" under Art. I, § 2. *Moler*, 147 S.W. at 987-88.

But that is exactly the circumstance here. Simply put, merely appointing counsel in juvenile cases is not unconstitutional, but appointing ***unwilling*** counsel ***by force*** and without pay ***is*** unconstitutional. *Scott*, 688 S.W.2d at 768-69. As a result, § 211.211.4 and Rule 115.03 do not provide Respondent with any cover. If Respondent is applying § 211.211.4 and Rule 115.03 to Relator so as to force Relator to provide free labor without his consent, that application is unconstitutional. *Id.*; *Moler*, 147 S.W. at 987-88.

IV. Prohibition lies to remedy the foregoing.

The writ of prohibition is a fundamental part of our common law that allows this Court to prevent the usurpation of judicial power and prevent an irreparable harm to a party. § 530.010, R.S.Mo; *State ex rel. Dir. of Revenue v. Gaertner*, 32 S.W.3d 564, 566 (Mo. banc 2000). It

> is appropriate in one of three circumstances: (1) to prevent the usurpation of judicial power when the trial court lacks jurisdiction; (2) to remedy an excess of jurisdiction or an 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 made available in response to the trial court's order.

State ex rel. Proctor v. Bryson, 100 S.W.3d 775, 776 (Mo. banc 2003).

In this case, and for the same reason as the writ of prohibition this Court issued in *Scott*, the writ lies because Respondent is exceeding his jurisdiction and lacks power to act as intended. While Respondent certainly has jurisdiction over the underlying civil case itself, Respondent's act of compelling Relator to represent a party in that civil case without pay violates Art. I, § 2, and thus exceeds his jurisdiction. *Scott*, 688 S.W.2d at 768-69.

Besides *Scott*, a writ of prohibition often has been the remedy for an unlawful attorney appointment when the respondent court has no authority to make the appointment. *See, e.g.*, *Pratte*, 298 S.W.3d at 886 (prohibiting trial court from appointing public defender in personal capacity to represent indigent criminal defendant); *State ex rel. Sterling v. Long*, 719 S.W.2d 455, 455 (Mo. banc 1986) (prohibiting trial court from appointing public defender

to represent indigent party in civil case); *State ex rel. Marshall v. Blaeuer*, 709 S.W.2d 111, 112-13 (Mo. banc 1986) (same).

At the same time, and as all these decisions also recognize, Relator has no adequate remedy by appeal. He is not a party to the underlying case. Even if, under objection, he undertook the representation to which Respondent unlawfully is compelling him, saw it through until an appealable judgment were entered, and then appealed, the law of Missouri would not provide ***him*** an ability to be a party on appeal.

Indeed, if it did, in that appeal he would have a conflict of interest with his client, N.W., as any substantive issues presented in N.W.'s appeal would diverge from Relator's interest in seeking his forced appointment reversed as error. As well, by that point, Relator would have expended ***years*** both representing N.W. *and* appealing his appointment, for which he never could recover any damages.

Thus, without a writ, Relator will suffer irreparable harm: damages which never could be redressed. As a matter of law, that always is an irreparable harm. *City of Kan. City v. N.Y.-Kan. Building Assocs.*, L.P., 96 S.W.3d 846, 855 (Mo. App. 2002). For this reason, Relator also requests the Court under Rule 84.24(e) to dispense with the time limits of Rule 84.24(c)-(d) and immediately issue a preliminary writ or "stop order" to stay his appointment below. Immediate relief from the orders challenged in this petition, at least during these proceedings in prohibition, is necessary and proper.

The writ of prohibition lies, and the Court should issue it.

Conclusion

Under Mo. Const. art. I, § 2, Respondent lacks power to compel Relator to represent N.W. in the underlying case without compensation, either inherently or applying § 211.211.4, R.S.Mo., or Rule 115.03.

This Court should issue its writ of prohibition enjoining Respondent: (1) from enforcing the Commissioner's order of February 25, 2016 appointing Relator to represent N.W., the Commissioner's order of March 3, 2016 refusing Relator leave to withdraw, and Respondent's order of March 30, 2016 refusing the same and directing Relator to represent N.W.; and (2) from doing anything with respect to Relator in the underlying case except setting aside those orders and allowing Relator leave to withdraw from representing N.W.

Respectfully Submitted,

Jonathan Sternberg, Attorney, P.C.

by /s/Jonathan Sternberg

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RELATOR

Certificate of Service

I certify that, on April 4, 2016, I filed a true and accurate Adobe PDF copy of this petition, its accompanying writ summary, the index of exhibits, and all exhibits via the Court's electronic filing system, and that I e-mailed a true and accurate copy of the same to the following:

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Counsel for Respondent
in the Court of Appeals

I further certify that, on April 4, 2016, I mailed a true and accurate copy of this petition, its accompanying writ summary, the index of exhibits, and all exhibits to the following:

D.R.W. {address withheld}

Natural Mother

N.W. {address withheld}

Natural Father

/s/Jonathan Sternberg
Attorney