

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, by and)
through LOUIS J. LEONATTI, and)
JOSEPH S. MAXWELL as Special)
Assistant Attorney Generals on)
Behalf of the Attorney General)
For the State of Missouri,)
)
Plaintiff,)
)
v.)
)
MATTHEW R. BLUNT, Governor)
for the State of Missouri,)
)
)
)
)
)
Defendants.)

Case No. 08AC-CC00370
Division II

**FINAL ORDER GRANTING PLAINTIFFS' MOTION TO APPROVE
SETTLEMENT AGREEMENT WITH THE OFFICE OF
GOVERNOR OF THE STATE OF MISSOURI AND MATTHEW R.
BLUNT, INDIVIDUALLY**

Now on this 5th day of January, 2009, the Court takes up the
Plaintiffs' Motion to Approve Settlement Agreement.

This litigation has its genesis in a petition filed by C.E. Fisher, a
special investigator hired by the Attorney General to investigate the
Defendants' management of government e-mails. While the Constitution
gives the Attorney General the responsibility of protecting state interests,
this Court ruled that the Attorney General could not delegate that
responsibility to a private investigator who was not an assistant attorney

general and dismissed the lawsuit. However, the Court stayed its Order of Dismissal for 30 days in order to allow the Attorney General to take one of three courses of action:

Course of Action One: the Attorney General could pursue the litigation himself or through his regularly appointed assistant attorneys general and maintain authority and control over the investigation and lawsuit;

Course of Action Two: the Attorney General could appoint an outside counsel as a special assistant attorney general to pursue the litigation. While the Attorney General could choose to give the person selected complete discretion over the investigation, special assistant attorneys general appointed by the Attorney General always serve at the pleasure of the Attorney General and the appointment may be rescinded at any time; thus the Attorney General still retains authority over the investigation and lawsuit; or

Course of Action Three: if the Attorney General concluded that the subject matter of the litigation created a conflict of interest for him under the Rules of Professional Conduct¹, he could request that this Court appoint a special assistant attorney general to pursue the

¹ Missouri Supreme Court Rule 4, Preamble: A Lawyer's Responsibilities [9].

litigation. Under this scenario, the Attorney General would not retain any authority or control over the investigation or lawsuit.

In response to the Court's Dismissal Order, the Attorney General chose the third option and Deputy Attorney General Karen Mitchell requested that the Court appoint a Special Assistant Attorney General to pursue the litigation. The invocation of a court appointed special assistant attorney general should be used sparingly and only when the Attorney General is convinced that fulfilling his constitutional responsibility will cause him to violate the Rules of Professional Conduct. Because of the unique nature of this case, including the fact that it involved a sitting governor as well as an attorney general seeking the office of governor, this Court found the request for a court-appointed assistant attorney general to be appropriate.

Thereafter, the Court appointed Louis J. Leonatti and Joseph E. Maxwell as Special Assistant Attorneys General with respect to the factual matters and legal issues raised in the Fisher Petition, and ordered Fisher and any investigators working under his direction to cooperate with the newly appointed Special Assistant Attorneys General.

On December 23, 2008, Plaintiffs filed a proposed settlement and noticed a hearing on the settlement for January 5, 2009. Because of some

confusion regarding the special investigators' authority and standing, the Court also issued a Show Cause Order to the Office of Attorney General to answer whether the Attorney General or anyone acting under his authority claimed any legal standing or had a legal position in the subject matter of this litigation or its settlement.

James R. Layton appeared on behalf of the Attorney General; also appearing were Court appointed Special Assistant Attorneys General, Louis J. Leonatti and Joseph Maxwell, and James Meadows and John Holstein on behalf of the Office of Governor and Matthew R. Blunt, individually.

The first matter taken up by the Court is the Show Cause Order issued to the Office of Attorney General. Mr. Layton reaffirmed that the Office of Attorney General has a conflict of interest in the subject matter of the litigation as defined by Supreme Court Rule 4.1-11, and that neither the Attorney General nor anyone acting under his appointed authority had any position with respect to the settlement or had any legal standing in the subject matter of the litigation. Based on this representation, the Court finds that neither the Office of Attorney General nor anyone acting under its appointed authority has any interest in the subject matter of the investigation other than the review and payment of appropriate legal fees and expenses.

The Court further finds that it has the power, authority, and jurisdiction to appoint Special Assistant Attorneys General, that the appointment and authority of Mr. Leonatti and Mr. Maxwell are confirmed, that they possess all powers of the Office of Attorney General with respect to the subject matter of the litigation, and that the State of Missouri shall be bound by the settlement that has been reached. The Court further finds that the special investigators originally appointed by the Office of Attorney General shall report to the Special Assistant Attorneys General with respect to the subject matter of the litigation, and that Mr. Leonatti and Mr. Maxwell shall determine the parameters and methods of completing the investigation ordered by the Office of Attorney General on Nov. 15, 2007.

After considering the presentations of the attorneys concerning the documents, evidence, theories of liability, and defenses available, the Court finds that it is in the best interest of all parties that the Settlement Agreement be approved and it is hereby approved. The parties are ordered to comply with the terms of the settlement agreement.

The Special Assistant Attorneys General shall direct Mr. Fisher and Mr. Wilhoit to complete their report in accordance with the terms of the settlement agreement. In responding to the report of the investigators, the

Office of Governor and Matthew R. Blunt shall comply with the terms of the settlement agreement.

Richard G. Callahan
Circuit Court Judge, Division II