

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
TWENTY-SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI**

JOHN SOLOMON,

Plaintiff,

v.

ST. LOUIS CIRCUIT ATTORNEY.

Defendant.

Case No. 2022-CC00080

MEMORANDUM IN SUPPORT OF MOTION FOR CONTEMPT

FACTS

On July 5, 2019, Plaintiff John Solomon submitted to Defendant St. Louis Circuit Attorney a request for open public records seeking “all records of contacts between Circuit Attorney Kimberly Gardner and her staff with the following individuals and entities from Jan. 6, 2017 through July 3, 2019: Scott Faughn; Al Watkins; Jeffrey E. Smith; JES Holdings LLC; Jeff Smith; The Missouri Workforce Housing Association; George Soros; Michael Vachon; Soros Fund Management; The Safety and Justice PAC; Open Society Foundation; Scott Simpson; Katrina Sneed; Phil Sneed; State Rep. Stacy Newman; State Rep. Jay Barnes.” The scope of the inquiry included, but was not limited to, calendar entries, phone messages, texts, emails, encrypted app chats, letters, and long-distance toll records. The Circuit Attorney’s office refused to produce these records.

Solomon filed this lawsuit on January 10, 2020, asking this Court to require

the Circuit Attorney to produce the requested records as required by the Sunshine Law. Despite having been served with the summons and a copy of the Petition and all exhibits, the Circuit Attorney did not file a timely response to this lawsuit. Even after the Court ordered the Circuit Attorney to file an answer within thirty days of receiving Solomon's First Amended Petition, the Circuit Attorney still failed to file a timely response to the lawsuit. Consequently, this Court entered an Interlocutory Default Judgment ("the Judgment") against the Circuit Attorney on July 31, 2020.

The Judgment awarded Solomon costs and reasonable attorney fees associated with the lawsuit; it ordered Solomon within fourteen days to submit materials in support of the costs and attorney fees he was requesting and ordered the Circuit Attorney to file arguments in opposition "no later than seven days after" Solomon submitted those materials. Solomon filed materials in support of the requested costs and attorney fees on August 14, 2020. The Circuit Attorney never filed anything in opposition to these materials. The Judgment also ordered the Circuit Attorney "to search for and produce to Solomon... all records responsive to Solomon's July 5, 2019 Sunshine Law request, and to do so within thirty days of the entry of [the] Judgment." As of the date of this filing, September 1, 2020, the Circuit Attorney has neither produced any responsive records nor offered any explanation as to why it has not done so.

ARGUMENT

Courts have the inherent power to enforce their own judgments and should see to it that such judgments are enforced when they are called upon to do so. *Deane*

v. Missouri Employers Mut. Ins. Co., 437 S.W.3d 321, 326 (Mo. App. W.D. 2014). A trial court may enforce its judgments by contempt if the court has jurisdiction over the parties and subject matter, jurisdiction to render the particular judgment in the case before it, and the judgment requires some affirmative action other than the payment of money. *Smith v. Capital Region Medical Center*, 564 S.W.3d 800, 806 (Mo. App. W.D. 2018). “Civil contempt is intended to benefit a party for whom relief has been granted by coercing compliance with the relief granted.” *Deane*, 437 S.W.3d at 326. A fine for civil contempt is remedial and provides a coercive means of compelling compliance with a court order. *Id.* A court finding a party in civil contempt may impose a per diem fine until the contemnor complies with the court’s order. *State of N.D. ex rel. Young v. Clavin*, 715 S.W.2d 25, 26 (Mo. App. W.D. 1986). “A per diem fine is a proper method of coercing compliance with a court order regardless of whether it also serves a reimbursement or punishment function.” *Edmondson v. Edwards*, 280 S.W.3d 752, 759 (Mo. App. S.D. 2009).

The party alleging civil contempt establishes its *prima facie* case by proving (1) the contemnor’s obligation to pay a specific amount or perform an action as required by the decree; and (2) the contemnor’s failure to meet the obligation. *D.R.P. v. M.P.P.* 484 S.W.3d 822, 826 (Mo. App. W.D. 2016). If a *prima facie* case of civil contempt has been established, the contemnor bears the burden of proving their inability to make the required payments or perform the required action, and that its non-compliance “was not an act of contumacy.” *Tashma v. Nucrown, Inc.*, 23 S.W.3d 248, 252 (Mo. App. E.D. 2000). A court may find a party in civil contempt even if the

contemnor has not been shown to be willfully disobedient to the court's order. *Id.* at 252-53. Unless an alleged contemnor claims that they cannot make the payments or cannot perform an action required by the court order in question, the contempt "stands proven." *C.S.G. v. R.G.*, 559 S.W.3d 416, 421 (Mo. App. E.D. 2018).

In this matter the Court ordered the Circuit Attorney to produce to Solomon the records responsive to Solomon's July 5, 2019 Sunshine Law request. The Circuit Attorney has not complied with the Court's order. Consequently, Solomon has shown a *prima facie* case for civil contempt against the Circuit Attorney. If the Circuit Attorney cannot show an *inability* to comply with the Court's order, the contempt "stands proven."

The Circuit Attorney's ongoing, gross disobedience of this Court's orders warrants a finding of civil contempt against the Circuit Attorney and an assignment of a per diem fine sufficient to compel the Circuit Attorney's expedient compliance with the Judgment. Consequently, this Court should make a finding of civil contempt and should assess against the Circuit Attorney a per diem fine of \$100, retroactive to August 31, 2020—the date by which the Judgment required the Circuit Attorney to produce the records to Solomon —and continuing until the Circuit Attorney purges the contempt by complying with this Court's order to produce to Solomon all records responsive to Solomon's July 5, 2019 Sunshine Law request.

The Court should also award Solomon reasonable attorney fees associated with the preparation and pursuit of this Motion. The Court has the inherent power to award attorney fees as part of a finding of civil contempt. *Relaxation, Inc. v. RIS*,

Inc., 452 S.W.3d 743, 748 n6 (Mo. App. W.D. 2015). In addition, the Missouri Court of Appeals has held that insofar as § 610.027 authorizes or requires an award of attorney fees to a party that successfully proves a knowing and/or purposeful violation of the Sunshine Law, that section anticipates extending the fee award to actions necessary to enforce the judgment in that party's favor. *See Chasnoff v. Mokwa*, 466 S.W.3d 571, 584 (Mo. App. E.D. 2015). Here, the Circuit Attorney's failure to timely and fully comply with the Judgment has necessitated Plaintiff's Motion for Civil Contempt and, because the Judgment found that the Circuit Attorney's violations of the Sunshine Law were purposeful, § 610.027.4 obligates the Court to award the Plaintiff reasonable attorney fees incurred in enforcing the Judgment.

CONCLUSION

For the foregoing reasons, the Plaintiff asks the Court to enter an order (1) holding the Circuit Attorney in civil contempt for its disobedience of this Court's order to produce all records responsive to Solomon's July 5, 2019 Sunshine Law request; (2) assessing against the Circuit Attorney a per diem fine of \$100 retroactive to August 31, 2020, and continuing until the Circuit Attorney fully satisfies its obligation to produce to Solomon all records responsive to Solomon's July 5, 2019 Sunshine Law request; and (3) requiring the Circuit Attorney to pay Solomon's reasonable attorney fees accrued in preparing and pursuing this motion.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on September 1, 2020, I served a true and correct copy of the foregoing electronically via Missouri CaseNet e-filing system upon:

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