

**IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

DEBORAH SEYLLER, not individually but in her
capacity as Kane County Clerk of the Circuit Court,

Plaintiff,

v.

COUNTY OF KANE, KANE COUNTY BOARD,
et al.,

Defendants.

COUNTY OF KANE,

Counterplaintiff,

v.

DEBORAH SEYLLER, both individually and in her
capacity as Kane County Clerk of the Circuit Court,

Counterdefendant.

Case No.: 10 MR 443

Judge

**VERIFIED ANSWER, COUNTERCLAIM AND AFFIRMATIVE DEFENSES TO
VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF**

Defendants the County of Kane and Karen McConnaughay in her capacity as Kane County Board Chairman (collectively, "Defendants"), by and through Claudette P. Miller and Ungaretti & Harris, LLP as Special State's Attorneys, for their Verified Answer, Counterclaim and Affirmative Defenses to the Verified Complaint for Declaratory Judgment and Other Relief, state as follows:

Allegations Common to All Counts:

1. The Plaintiff, Deborah Seyller, is the elected Kane County Clerk of the Circuit Court ("the Circuit Clerk"), responsible for the faithful performance of the obligations of the Circuit Clerk's Office as specified under Illinois statutes and case law, including those

duties and obligations specified under the Clerks of Courts Act, 705 ILCS 105/0.01, *et. seq.*, those duties as required by order of the Chief Judge of the Sixteenth Judicial Circuit, or of other Judges of the Sixteenth Circuit from time to time, and those additional duties as specified and required under Illinois law, applicable federal and state regulations, and the Illinois Supreme Court Rules.

Answer: Admitted.

2. The County of Kane is an Illinois County ("the County"), responsible for the performance of those obligations specified under Illinois law applicable to counties.

Answer: Admitted that the County is responsible for the performance of those obligations specified under Illinois law applicable to non-home rule counties with populations below 500,000.

3. The Kane County Board is the body politic ("the County Board"), comprised of elected officials, which Board is the governing body for the County of Kane.

Answer: Admitted.

4. Karen McConnaughay, Deborah Allan, Cristina Castro, Donnell Collins, Mark Davoust, John P. Fahy, Ron Ford, Drew Frasz, John J. Hoscheit, Catherine S. Hurlbut, Gerald A. Jones, Michael Kenyon, Robert A. Kudlicki, Bonnie Lee Kunkel, Jennifer Laesch, Sylvia Leonberger, Philip Lewis, Hollie Lindgren, John B. Mayer, Robert J. McConnaughay, Jeanette Mihalec, James C. Mitchell, Jr., Jackie Tredup, Thomas Van Cleave, Jesse Vazquez, Barbara Wojnicki and William A. Wyatt, are the elected members of the County Board, and are residents of Kane County.

Answer: Admitted.

5. The Circuit Clerk maintains a number of employees and offices, through which she fulfills' her statutory duties and obligations.

Answer: Admitted that the Circuit Clerk maintains a number of employees and offices, but denied that she has fulfilled her statutory duties and obligations.

6. Under Illinois law, governmental entities and elected officials such as the Circuit Clerk and the County are charged with certain required or mandated tasks and, in addition to mandated tasks, governmental entities and elected officials also have the power or authority to perform certain functions or tasks which are discretionary (*i.e.*, tasks that are *authorized* but are not *required* to be performed under Illinois law).

Answer: Paragraph 6 is a legal conclusion, to which no answer is required.

7. Mandated tasks, by definition, are mandatory and required (i) by virtue of either Orders of Court specifying that a specific obligation be performed, or (ii) by virtue of statutes specifying that certain duties "shall" be performed (or using other, similar mandatory language).

Answer: Paragraph 7 is a legal conclusion, to which no answer is required.

8. At the present time, the County, at the direction of the County Board, is performing and providing for the provision of both mandated *and discretionary* tasks and services.

Answer: Admitted.

9. At the present time, the Circuit Clerk is performing only mandated tasks and services, and such services are being provided only at the minimum reasonable and necessary level to meet mandates.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

10. Pursuant to §5/5-1106 of the Counties Code and pursuant to 705 ILCS 105/27.3, the County and County Board are required to provide for the "reasonable and necessary expenses" for the use of the Circuit Clerk.

Answer: Admitted.

11. Also pursuant to those statutes, the County and the County Board are obligated:

To provide proper rooms and offices, and for the repair thereof, for the accommodation of the circuit court of the county and for the

clerks of such court, and to provide suitable furnishings for such rooms and offices, and to furnish fire proof safes, and the repair thereof, for the offices of the clerks of the circuit court of the county. The court rooms and furnishings thereof shall meet with reasonable minimum standards prescribed by the Supreme Court of Illinois. Such standards shall be substantially the same as those generally accepted in court rooms as to general furnishings, arrangement of bench, tables and chairs, cleanliness, convenience to litigants, decorations, lighting and other such matters relating to the physical appearance of the room. 60 ILCS 5/5-1106.
and

To provide the compensation of Clerks of the Circuit Court and the amount necessary for clerk hire, stationary, fuel and other expenses. 705 ILCS 105/27.3.

Answer: Admitted.

12. The Circuit Clerk has no independent authority to levy or assess property taxes, and the funding for the operations of the Circuit Clerk's office is provided by the County and County Board, pursuant to the above described statutory obligations to fund the Circuit Clerk.

Answer: Admitted.

13. Accordingly, the Circuit Clerk is placed in a position where her duties are dictated by state statute and Court order, and where her funding is controlled by the County; she has neither control over the list of obligations that she is required to satisfy nor over the funding necessary to do the same.

Answer: Admitted.

14. The County and County Board are required, under Illinois law, to provide for the "reasonable and necessary" expenses of the Circuit Clerk, which, at a minimum, are the expenses required to perform her mandated obligations at a reasonable and necessary level. Mandated services (including statutory or court ordered mandates) are therefore required to be funded by the County before providing funding for discretionary County services, departments, offices or functions.

Answer: Admitted that the County and County Board are required, under Illinois law, to provide for the "reasonable and necessary" expenses of the Circuit Clerk, but denied as to all remaining allegations.

15. With respect to the operation of the Circuit Clerk's office, under Illinois law, the County and County Board are prohibited from interfering with the internal control of the Circuit Clerk's office. The County and County Board are restricted to providing lump sum appropriations for use by the Circuit Clerk.

Answer: Admitted.

16. The operations of the Circuit Clerk are funded by a number of mechanisms, including the use of 'special' or restricted funds authorized by statute, and also including funding from the 'general fund' or the general taxing authority of the County.

Answer: Admitted.

17. Notwithstanding the foregoing, however, the Circuit Clerk is not permitted to retain most amounts collected from litigants, but rather is required to turn over the majority of revenue generated by her office to the County.

Answer: Paragraph 17 is a legal conclusion to which no answer is required.

18. To the extent that the Circuit Clerk may fund certain specified operations through use of special funds as described above, the Circuit Clerk has done so and the Circuit Clerk is not permitted to shift additional non-qualifying services from being funded by the general fund to being funded by special purpose funds.

Answer: Denied.

19. In cooperation with the County, although not required by law, the Circuit Clerk has submitted detailed, line-item budgets to the County Board for its review; these budgets form the basis of the County's funding of the Circuit Clerk's office.

Answer: Admitted that the Circuit Clerk for the FY2010 initially submitted a line item budget to the County Board for its review; further answering, Defendants state that the Circuit Clerk failed to submit any line item detail

after the County Board or its committees proposed a reduction to the Circuit Clerk's original submittal. Defendants deny each and every remaining allegation in Paragraph 19, including the legal conclusions contained therein.

20. The present dispute relates only to that portion of the Circuit Clerk's approved budget that is funded by the general fund portion of the County's budget and tax levies.

Answer: Denied.

21. Because of the restrictions applicable to special funds available to the Circuit Clerk, the vast majority of the general fund portion of the Circuit Clerk's budget is utilized to fund personnel (i.e. used to pay the salary and benefits of deputies Circuit Clerks employed to process Court Orders, work Courtrooms, or perform other required but non-special fund operations).

Answer: Denied.

22. In compliance with County requests, the Circuit Clerk submitted a proposed budget for the 2009-10 fiscal year ("FY 10"), which budget contemplated total funding of \$4,782,665.00 for Circuit Clerk expenses funded by the general fund.

Answer: Admitted that the Circuit Clerk submitted a proposed budget for the 2009-10 fiscal year which contemplated total funding of \$4,782, 665 for Circuit Clerk expenses funded by the general fund, but denied that the Circuit Clerk complied with County requests in doing so.

23. This initially requested amount was the minimum amount that the Circuit Clerk had then determined was necessary to provide for the payment of those expenses that are required to enable her office to perform all of the mandates of her office at the minimum reasonable and necessary level; i.e. the minimum level at which the mandates are still being satisfied.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

24. The Circuit Clerk has eliminated all discretionary operations and expenses that were funded through the general fund, and all current operations funded through the general fund are limited to those required by law (*i.e.* mandated).

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

25. At the time of making the initial budget request for FY 10, the Circuit Clerk based her request upon the staffing necessary and reasonable to permit her office to fulfill mandated obligations at the service level that was existing during the previous fiscal year.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

26. Thereafter, the Circuit Clerk reviewed and revised these calculations to provide only for the amount of funding necessary to permit her office to operate and fulfill its mandates at the minimum reasonable and necessary level required to fulfill her mandates, and that is the level of operations at which she currently functions.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

27. As the state officer responsible for fulfillment of the mandates, the Circuit Clerk has proposed budgets based on her detailed, careful analysis and assessment of the mandates, workload and staffing needs related thereto.

Answer: Denied.

28. The benefits, wages and salaries paid by the Circuit Clerk for non-supervisory staff are set pursuant to a collective bargaining agreement which was negotiated by a representative provided by the County and was approved with the knowledge of County

officials. The Circuit Clerk accordingly lacks the ability to reduce the salaries and related expenses for her staff without violating the terms of the current collective bargaining agreement.

Answer: Paragraph 28 states a legal conclusion to which no answer is required.

29. The Circuit Clerk has complied with all of the County's requests relating to the budget process, including providing the County with detailed analysis of her mandates and staffing, repeated submission of detailed budgets showing line item expenditures for all aspects of the operation of her office, and the presentation of her budget at numerous County and County committee meetings, notwithstanding the County's lack of a coherent method of evaluating and prioritizing mandated and discretionary expenditures.

Answer: Denied.

30. The Circuit Clerk's budget request of \$4,782,665.00 in general fund revenue to operate her office in FY 10 was based on current operations of the Circuit Clerk's office and the County's approval, by ordinance of a budget of only \$4,147,968.00 in general fund revenue to operate her office is inadequate to meet the reasonable and necessary minimum level of mandated services.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof, except that Defendants deny that the budget approved was limited to general revenue funds and in fact additional funds in excess of \$1 million dollars over FY09 expenditures were budgeted.

31. The County approved budget represented a reduction of \$116,549.00 from the approved budget for the previous 2009 fiscal year, and a reduction of \$474,483.10 from the preceding 2008 fiscal year.

Answer: Denied, as the budget provided by the County included the use of several additional funds which support the Circuit Clerk's operations.

32. These reductions were made by the County notwithstanding the County's knowledge that the Circuit Clerk was contractually obligated to provide compensation increases for her staff under the current collective bargaining agreement.

Answer: Denied.

33. Notwithstanding the County's obligations, the approved FY 10 County general fund budget that underfunds the Circuit Clerk's mandates *continues to fund discretionary County activities*.

Answer: Denied.

34. The County's recommendation to the Circuit Clerk, in light of their approved FY 10 budget, has been that the Circuit Clerk should reduce her staffing levels and should not employ as many Circuit Clerks as she presently employs.

Answer: Denied.

35. The County's approval of the FY 10 general fund budget was arbitrary, capricious, and unlawful because it was not based upon the County's obligation to fund the mandated services of the Circuit Clerk's office prior to providing for discretionary funding, as required by law.

Answer: Denied.

36. The County's approval of the FY 10 general fund budget represents an improper effort by the County to control the staffing, personnel and operations of the Circuit Clerk's office, notwithstanding the fact that the Circuit Clerk's office is a state office that is independent, internally controlled, and is not subject to the personnel directives of the County.

Answer: Denied.

37. The County's funding and expenditures on discretionary services, when coupled with the County's refusal to fund the mandated services of the Circuit Clerk's office at a reasonable and necessary level, constitutes an abuse of discretion by the County.

Answer: Denied.

38. In the alternative to the preceding paragraphs, under circumstances where the County is still *funding any discretionary*

expense, the County lacks the discretion to reject (or to fail to approve) a general fund budget for the Circuit Clerk's office that funds the Circuit Clerk's operations at the minimum reasonable level necessary to fulfill the Circuit Clerk's mandates.

Answer: Paragraph 38 states a legal conclusion to which no answer is required and states speculation to which no answer is required.

39. The Circuit Clerk, in her attempts to satisfy the unreasonable and unlawful requirements of the County so as to avoid the present litigation, has been able to operate her office in such a fashion so as to permit it to be operated with a general fund budget for FY 10 of \$4,702,968.00.

Answer: Denied.

40. The County has delayed its budget amendment review process so as to force this issue to be pushed to the end of the present fiscal year, in such a fashion as to threaten the continuing operation of the Circuit Clerk's office.

Answer: Denied.

41. The County has failed and refused to approve either the Circuit Clerk's initial FY 10 general fund budget request of \$4,782,665.00 or her presently' requested amended FY 10 general fund budget request of \$4,702,968.00.

Answer: Admitted.

42. Instead of evaluating the services provided and making reductions in discretionary services, the County Board has elected to underfund the mandated services it is obligated to fund, such as those provided by the Circuit Clerk's office.

Answer: Denied.

43. The action of the County, in intentionally underfunding the mandated services of the Circuit Clerk's office (while continuing to fund discretionary County services) has placed the Circuit Clerk in a position where she is forced to choose between reducing her expenditures over the entire fiscal year (and thus not performing mandates at the minimum reasonable and necessary level for an extended period of time), or performing her mandates at the minimum reasonable and necessary level for less than an entire

fiscal year when her budget is depleted.

Answer: Denied.

44. As a matter of law, absent circumstances where the County has demonstrated that it has eliminated all discretionary expenditures and still lacks revenue to fund all mandated services, the County is required to fund mandated expenditures and the Circuit Clerk would not be excused from failing to perform her mandates.

Answer: Paragraph 44 is a legal conclusion to which no answer is required.

45. The Circuit Clerk, after diligent review of the obligations of her office imposed both by statute and by Court Order or Rule, in good faith believes that it is not possible to reduce her budget by any additional amount, in order to meet the demands of the County Board, without jeopardizing the reasonable and necessary provision of mandated services demanded from her office. Any further reduction would result in either (a) some mandated services not being performed, (b) some mandated services being performed with such delay as to adversely affect the public welfare, or (c) adversely affecting some mandated services performed by other governmental entities who rely on the provision of mandated services the Circuit Clerk.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

46. While mandated services can be provided within a range of reasonableness, the Circuit Clerk is currently performing those services at the minimum reasonable and necessary level required to meet mandates, and protect the public health, safety, and welfare. If the Circuit Clerk adhered to the presently County-approved FY 10 general fund budget, those mandated services will not be performed at a minimum reasonable, and necessary level.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

47. The \$4,702,968 amended FY 10 general fund budget request from the Circuit Clerk ("the Amended Budget") represents the minimum level of funding necessary to permit the Circuit Clerk to fund her mandated, urgent, critical and vital needs in a minimally reasonable fashion; further reductions in funding create an emergency immediately threatening the performance of the Circuit Clerk's mandated functions.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

48. The County Board has not attempted to provide for elimination of discretionary County services in the FY 10 budget, but rather has enacted a budget that imposes restrictions on mandated services while still funding discretionary services, and such action is therefore arbitrary and capricious.

Answer: Denied.

49. Notwithstanding their opportunities to do so, the County Board did not give priority to mandatory services over discretionary services and did not engage adequate analysis to determine which areas of the County's FY 10 general fund budget could be subject to cuts without preventing the reasonable and necessary provision of mandated services.

Answer: Denied.

50. Notwithstanding the Circuit Clerk's responsibility for internal control of the operations of her office, the County Board has persisted in attempting to unlawfully interfere with the internal operations of the Circuit Clerk's office.

Answer: Denied.

51. Notwithstanding the fact that certain other County offices are not subject to internal control, but rather are created at the discretion of the County Board and are subject to its direction and control, the County Board has failed and refused to make reductions in discretionary expenditures so as to permit the County Board to fulfill its mandate to fund the reasonable and necessary expenditures of the Circuit Clerk.

Answer: Denied.

52. If the County Board does not approve the Amended Budget, the Circuit Clerk will not have adequate funding for proper rooms and offices, suitable furnishings, and the other items for which she is entitled to funding.

Answer: Denied.

53. If the Circuit Clerk lacks funding for the reasonable and necessary expenses as contemplated above, the County Board will be violating its statutory mandate to fund and provide for such items.

Answer: Denied.

54. While all current services of the Circuit Clerk's office will be adversely affected by the County's refusal to approve the Amended Budget, the processing of Court Orders affected include, but are not limited to:

- a. Orders relating to child support payments;
- b. Orders and records pertaining to criminal arrest and the retention of alleged or convicted felons;
- c. Arrest warrants orders authorizing the arrest and detention of accused criminals, or orders quashing warrants that were improperly issued;
- d. Search warrant orders issued to permit the search of a person, premises or vehicle to permit evidence of crimes to be procured before its destruction;
- e. Orders identifying individuals as registered sex offenders, so that said individuals may be placed on appropriate watch lists, and may be disqualified from holding certain jobs (e.g. under Illinois law, registered sex offenders are prohibited from holding employment in a school setting);
- f. Orders committing convicted felons of terms of incarceration;
- g. Orders directing the release of individuals who have been acquitted of a crime;
- h. Orders upholding, defining or protecting the Constitutional or statutory rights of individuals;
- i. Orders restraining the unlawful exercise of power by units of government;
- j. Orders authorizing the appropriate exercise of power by units of local government, where necessary to protect the public health, safety, welfare and morals; and,
- k. Other similar orders.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

(Count I: Declaratory Judgment (Funding of Expenses))

55. The Circuit Clerk restates and realleges paragraphs 1-54 of her Complaint as Paragraph 55 of Count I of her Complaint.

Answer: For their Answer to Paragraph 55, Defendants restate and reallege their Answers to Paragraphs 1 through 54, above.

56. There is an actual controversy by and between the Circuit Clerk and the Defendants regarding the construction of the statutes defining the obligation of the Defendants to provide for the funding of the Circuit Clerk's office.

Answer: Denied because the action as pled does not present an actual controversy.

57. The Amended Budget represents the minimum level of funding possible for the present fiscal year, to provide for the payment of reasonable and necessary expenses incurred by the Circuit Clerk in the performance of her official mandated duties.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

58. Under Illinois law, the party charged with fulfilling a mandate (in this case, the Circuit Clerk) is the party responsible for determining the level of funding necessary to fulfill that mandate and the appropriate uses and disbursements of said funding.

Answer: Paragraph 58 states a legal conclusion to which no answer is required.

59. The County Board is statutorily obligated to cut funding for discretionary services prior to reducing funding for the Circuit Clerk's mandated services below the "reasonable and necessary" level and below the serviceable level.

Answer: Denied.

60. In the event that the County Board cuts all discretionary services and still lacks funding necessary to provide for the payment of reasonable and necessary expenses associated with mandatory services, the County Board would be obligated to assess the level of priority associated with various mandated services and provide funding according to priority.

Answer: Paragraph 60 states a legal conclusion to which no answer is required and also states speculation to which no answer is required.

61. The functions of the Circuit Clerk's office are of the utmost priority to protect the public health, safety, welfare and morals and to enable other County, State and Local units of government to perform their mandated services and protect the public health, safety, welfare and morals.

Answer: Denied.

62. The functions of the Circuit Clerk's office are cumulatively and individually the result of statutory mandates or direct Court Orders for the Circuit Clerk to perform certain functions. In other words, the Circuit Clerk has a general mandate to record Court Orders, and when a Judge issues a specific Order in Court, the Circuit Clerk is under an individual duty to adhere to the terms of that Order by taking the action specified therein (e.g. issuing a warrant forthwith), or to perform the statutorily mandated function.

Answer: Paragraph 62 is a legal conclusion to which no answer is required.

63. The County Board's actions of cutting mandatory expenditures while continuing to fund discretionary expenditures is arbitrary as it is done without regard to the mandated obligations of some State officers such as the Circuit Clerk.

Answer: Denied.

64. A declaration of the rights of the County Board and the Circuit Clerk, with regard to the County Board's obligation to fund the reasonable and necessary expenditures of the Circuit Clerk, is necessary and would resolve all or some part of the present controversy.

Answer: Denied.

65. The County is presently attempting to enforce an unlawful general fund budget for FY 10; the controversy over this budget is a present and justiciable controversy.

Answer: Denied.

(Count II: Mandamus)

66. The Circuit Clerk restates and realleges paragraphs 1-65 of her Complaint as Paragraph 66 of Count II of her Complaint.

Answer: For their Answer to Paragraph 66, Defendants restate and reallege their Answers to Paragraphs 1 through 65, above.

67. The elected officials of the County Board are subject to a statutory mandate to fund the reasonable and necessary expenses of the Circuit Clerk.

Answer: Admitted.

68. There is no exercise of discretion on the part of the County Board and the officials comprising the same, with regard to the performance of their official duty to so fund the Circuit Clerk's reasonable and necessary expenses.

Answer: Admitted.

69. The Circuit Clerk's Amended Budget constitutes the minimum level of funding at which the Circuit Clerk can provide the reasonable and necessary mandated services of her office.

Answer: Denied.

70. At such times as the County continues to have funding available for discretionary services, the County Board is subject to a non-discretionary, statutory duty to reduce such discretionary expenditures in favor of mandatory expenditures.

Answer: Paragraph 70 is a legal conclusion to which no answer is required.

71. The County Board, by continuing to fund discretionary services and by attempting to reduce the funding to the Circuit Clerk to a level inadequate to sustain her provision of reasonable and necessary services, is violating its statutory duty.

Answer: Denied.

72. As a matter of public right, the Circuit Clerk is entitled to the County Board's performance of its statutory, non-discretionary duties unless there is some reason by which the County Board is excused from performance.

Answer: Paragraph 72 is a legal conclusion to which no answer is required.

73. As the County Board continues to fund discretionary services and continues to forward proposed budgets showing that the County has funding available to do so, there is no excuse for the County Board not to perform its obligations.

Answer: Denied that the County Board has not performed its obligations and denied as to all remaining allegations of Paragraph 73.

74. The Circuit Clerk has a clear, statutory right to be funded at a necessary and reasonable level.

Answer: Admitted.

75. The County Board and the County have a clear, express, statutory obligation to provide said funding.

Answer: Admitted.

76. The County Board has express, statutory authorization to comply with a writ directing the funding of the Circuit Clerk at a reasonable and necessary level.

Answer: Admitted.

77. The present controversy relates to an issue of essential importance to the administration of justice; namely, the operation of the Circuit Clerk's office, which office is required for the proper functioning of the entire Court system and which office is responsible for the retention and distribution of Court records.

Answer: Denied because the action as pled does not present an actual controversy.

78. In the alternative, even in cases where some discretion exists and the normal criteria for issuance of a Writ of Mandamus do not appear, the issuance of a Writ of Mandamus is nevertheless appropriate where that extraordinary remedy is required to protect and preserve the administration of justice.

Answer: Paragraph 78 is a legal conclusion, to which no answer is required.

(Count III: Declaratory Judgment (Internal Control))

79. The Circuit Clerk restates and realleges paragraphs 1-78 of her Complaint as Paragraph 79 of Count III of her Complaint.

Answer: For their Answer to Paragraph 79, Defendants restate and reallege their Answers to Paragraphs 1 through 78, above.

80. Under Illinois law, the Circuit Clerk is a publicly elected official and the Circuit Clerk's office is considered to be an 'internal control' office, separate and distinct from the County Board and is not subject to the direct supervision or direction of the County Board.

Answer: Admitted.

81. The County Board's authority is limited to the appropriation of aggregate or lump sum dollar amounts for the necessary personnel, equipment, materials and services required by the Circuit Clerk.

Answer: Denied that the County Board's authority is limited to what is alleged in Paragraph 81 but admitted that the County Board has authority to appropriate aggregate or lump sum dollar amounts for the necessary personnel, equipment, materials or services necessary for the Circuit Clerk.

82. The County Board's requirement of the submission of line-item budgets, the County Board's attempts to alter such budgets or demand alteration thereof, and the attempts to control or regulate the number of personnel employed by the Circuit Clerk are all deviations by the County Board from its statutory authority that imposes additional requirements upon the Circuit Clerk and interferes with the performance by the Circuit Clerk of her statutorily mandated duties as an internally-controlled, publicly-elected official.

Answer: Denied that the County Board has taken any action to interfere with the Circuit Clerk's internal control and therefore denied as to all remaining allegations.

83. The County Board's conditioning of funding of the Circuit Clerk's office upon its demands that the Circuit Clerk submit to its line item review and approval of the Circuit Clerk's budget is unlawful.

Answer: Denied.

84. The County Board's actions as alleged herein are an unlawful form of control of the Circuit Clerk's office and in violation of the provisions of the Counties Code.

Answer: Denied.

85. Both the Counties Code and the Circuit Clerks of Court Act contemplate that the internal control of the Circuit Clerk's office rests with the Circuit Clerk, and the Circuit Clerk is not obligated to prepare or submit line item budgets for review by the County Board or any subsidiary thereof, nor is the Circuit Clerk obligated to submit to the County's direction regarding the staffing of her office.

Answer: Paragraph 85 is a legal conclusion, to which no answer is required.

86. The County Board is obligated to fund the reasonable and necessary expenses of the Circuit Clerk without regard to the Circuit Clerk's preparation or submission of line item budgets to the County.

Answer: Admitted.

87. There is an actual controversy between the County Board and the Circuit Clerk regarding the construction of the Counties Code and the Clerks of Court Act, as to whether the County Board may lawfully require the submission and review of line item budgets by the Circuit Clerk.

Answer: Denied.

88. The controversy is at issue in the present dispute over the FY 10 budget revisions and is a present controversy, capable of complete or partial resolution by a declaration of the rights and obligations of the parties.

Answer: Denied because the action as pled does not present an actual controversy.

(Count IV: Request for Relief under Circuit Clerks of Court Act/Equitable Relief)

89. The Circuit Clerk restates and realleges paragraphs 1-88 of her Complaint as Paragraph 89 of Count IV of her Complaint.

Answer: For their Answer to Paragraph 89, Defendants restate and reallege their Answers to Paragraphs 1 through 88, above.

90. In addition to the statutory obligations of the Circuit Clerk, the Circuit Clerk is subject to review and control by the Judges of the Sixteenth Judicial Circuit, pursuant to the provisions of any Court Order, and pursuant to the express provisions of the Clerks of Court Act.

Answer: Admitted.

91. If the County Board fails to approve the Amended Budget; the Circuit Clerk will run out of funding to operate her office prior to the end of FY 10.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

92. If the Circuit Clerk runs out of funding, the Circuit Clerk will be unable to operate her office, and unable to provide clerks to staff courtrooms or otherwise process Court Orders.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof, except Defendants admit that if the Circuit Clerk prematurely spends all the funds in her budget she will run out of funds..

93. Pursuant to 705 ILCS 105/6, the Circuit Clerk is obligated to keep her offices open on any day or at any time when Ordered by the Court, on such terms as the Court shall specify.

Answer: Admitted.

94. Kane County is a county of less than 500,000 inhabitants.

Answer: Admitted.

95. If the Circuit Clerk's office stops functioning, no orders, judgments, records relating to dissolution or validity of marriage, or payments to the Department of Public Health will be processed.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof, except that Defendants admit that if the Circuit Clerk stops function the operation of the courts would be impaired.

96. *Pursuant to 705 ILLS 105/15, relating to the entry of orders or judgments, the forwarding of payments to the Department of Public Health, and, the entry of records relating to judgments of dissolution or invalidity of marriage, a majority of judges of the Court may determine and fix the number of clerks necessary to perform these services, and may order such clerks to be employed and compensated.*

Answer: Admitted.

97. This Court is endowed with broad discretion to fashion such remedies or grant such relief as equity may require.

Answer: Denied that the cause stated here invokes the equitable powers of the Court or the right to relief.

(Count V: Preliminary Injunction / Permanent Injunction)

98. The Circuit Clerk restated and realleges paragraphs 1-97 of her Complaint as Paragraph 98 of Count V of her Complaint.

Answer: For their Answer to Paragraph 98, Defendants restate and reallege their Answers to Paragraphs 1 through 97, above.

99. The Circuit Clerk has a clearly ascertainable, statutory right to be funded by the County Board at a level necessary to provide for the reasonable expenses incurred by the Circuit Clerk, and those expenses incurred in performing and fulfilling her statutory and Court-Ordered mandates.

Answer: Admitted.

100. The status quo in the present case is that the Circuit Clerk has been operating her office and minimally complying with statutory mandates, based upon the funding contemplated by the Amended Budget.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

101. In the event that the County Board attempts to force the Circuit Clerk to operate with reduced funding, the Circuit Clerk will be irreparably harmed as the Circuit Clerk will be unable to fulfill her statutory mandates, which are non-delegable, and will also be in violation of the Orders of this Court.

Answer: Denied.

102. The Circuit Clerk lacks an adequate remedy at law to respond to such funding reduction, given that the deviation from the required budget is for FY 10, which is the present fiscal year, and the actions of the County Board deprive the Circuit Clerk of the opportunity to seek judicial review of the County Board's unlawful reductions, and deprive the Circuit Clerk of the opportunity to plan for or otherwise accommodate proposed future reductions. Further, there is no remedy at law which could compensate the Circuit Clerk for the incalculable damages associated with violation of her statutory mandates or the violation of the Orders of this Court.

Answer: Denied.

103. In addition, the Circuit Clerk lacks an adequate remedy at law, as no remedy other than the continuation of services at the level contemplated by the Amended Budget would be as clear, complete, practical or efficient as the remedy that an injunction directing continued funding for FY 10 consistent with the Amended Budget would provide.

Answer: Denied.

104. Further, if the Circuit Clerk's office ceases to function, the operations of this Court (which would be the source of any remedy at law available to the Circuit Clerk) will be significantly impaired or will cease to operate, which also leaves the Circuit Clerk (and every other litigant) without an adequate remedy at law.

Answer: Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and neither admit nor deny same but demand strict proof thereof.

105. The actions of the County Board in attempting further reductions of the Circuit Clerk's budget are unlawful in that they violate the County Board's duty to fund the reasonable and necessary expenses of the Circuit Clerk.

Answer: Denied.

106. The express language of the Counties Code mandating that the County Board fund the reasonable and necessary expenditures of the Circuit Clerk's office, taken with the Circuit Clerk's assertion (as the party responsible for fulfilling her statutory mandates) that the County Board's proposed further reductions would fail to provide for such expenditures and taken with the County's inclusion of discretionary expenditures within its FY 10 budget, demonstrate that the Circuit Clerk has shown a reasonable likelihood of success on the merits, at trial.

Answer: Denied.

107. In addition, if the County Board forces the Circuit Clerk to operate with funding less than that contemplated by the Amended Budget, the operations of the Circuit Clerk's office will be completely halted before the end of this fiscal year, destroying the Circuit Clerk's adherence to her statutory mandates and irreconcilably altering the status quo, thus creating a situation where the Circuit Clerk is not obligated to plead or prove the likelihood of success on the merits.

Answer: Denied.

108. The relative hardships as between the Circuit Clerk and the County Board favor the issuance of an injunction; requiring the County Board to provide only a small percentage of its overall budget to the Circuit Clerk represents a minimal hardship for the County. On the other hand, depriving the Circuit Clerk of that same sum of money, which represents a substantial portion of her total budget, would result in the Circuit Clerk's office ceasing to function.

Answer: Denied.

109. In effect, if the County Board is permitted to proceed with its proposed budget cut, in the absence of injunctive relief, the Circuit Clerk will be forced to decide between either being in a state of partial violation of her duties for an extended period of time (by cutting staff and expenditures), or being in a state of complete violation of her duties for a brief period of time (by closing her office before the end of FY 10). The County Board faces no similar peril, and continues to fund discretionary services. The equities of this situation demand injunctive relief.

Answer: Denied.

COUNTERCLAIM

Counterplaintiff/Defendant the County of Kane ("Defendant"), by and through Claudette P. Miller and Ungaretti & Harris, LLP as Special State's Attorneys, for its Verified Counterclaim to the Verified Complaint for Declaratory Judgment and Other Relief, states and counterclaims against Plaintiff/Counterdefendant Deborah Seyller, both individually and in her capacity as Kane County Clerk of the Circuit Court, as follows:

INTRODUCTION

1. This case, under the facts pled in the Verified Complaint for Declaratory Judgment and Other Relief ("Complaint"), involves the intentional, unlawful expenditure of public funds by the Circuit Clerk. In her Complaint, the Circuit Clerk avers that she was aware that she had been given a budget by the County Board to expend public funds in the discharge of her office, but chose not to accept or be bound by the established budget set for her office, and then intentionally overspent and obligated the County beyond her budget.

2. As set forth below, the Circuit Clerk has ignored and violated Illinois' Constitution and laws by knowingly and intentionally spending and/or obligating the County in amounts in excess of the budget provided to her by the County Board for FYE 11/3010.

3. This action seeks declaratory and injunctive relief to stop the Circuit Clerk's ongoing violations of Illinois' Constitution and laws. Counterplaintiff seeks a declaration that the Circuit Clerk's spending in excess of her budget violates Illinois' Constitution and statutes and seek entry of an

order enjoining the Circuit Clerk from continuing to exceed her budget. Counterplaintiff also seeks restitution and damages.

4. Alternatively, the Circuit Clerk has failed to use funds budgeted to her and by her Complaint has manufactured a claim of insufficient budget, claiming the budget given her by the County Board will be exceeded by her projected expenditures, when in fact, if properly used, it will not.

5. Alternatively, the Circuit Clerk by her own admission has an administrative remedy and can ask a panel of this Court to determine her budget needs pertaining to personnel and she should be enjoined from exceeding her budget until she has exhausted that administrative remedy.

ALLEGATIONS COMMON TO ALL COUNTS

PARTIES

6. Counterplaintiff the County of Kane (the "County" or "Counterplaintiff") is an Illinois County with a population of less than 500,000. The County is a non-home rule unit of local government. See Article VII, Section 1 of the Illinois Constitution.

7. The Kane County Board ("the County Board") is comprised of elected officials and is the body politic that is the governing body of Kane County. The Board's authority and duties are set forth in and governed by the Illinois Constitution and the laws of Illinois. See Article VII, Section 3 of the Illinois Constitution and 55 ILCS 5/5-1005.

8. Karen McConnaughay is the Chairman of the County Board.

9. Deborah Allan, Cristina Castro, Donnell Collins, Mark Davoust,

John P. Fahy, Ron Ford, Drew Frasz, John J. Hoscheit, Catherine S. Hurlbut, Gerald A. Jones, Michael Kenyon, Robert A. Kudlicki, Bonnie Lee Kunkel, Jennifer Laesch, Sylvia Leonberger, Philip Lewis, Hollie Lindgren, John B. Mayer, Robert J. McConnaughay, Jeanette Mihalec, James C. Mitchell, Jr., Jackie Tredup, Thomas Van Cleave, Jesse Vazquez, Barbara Wojnicki and William A. Wyatt, are the elected members of the County Board, and are residents of Kane County.

10. Counterdefendant Deborah Seyller, is the elected Kane County Clerk of the Circuit Court ("the Circuit Clerk"). The Circuit Clerk is a constitutional officer in the State of Illinois. See Article VI, Section 18 of the Illinois Constitution. The Circuit Clerk is not a County official or agent but rather is a non-judicial member of the judicial branch of State government. See, e.g., *Newman, Raiz and Shelmadine, LLC v. Brown*, 394 Ill. App. 3d 602, 605-606, 915 N.E.2d 782, 785 (1st Dist. 2009); *County of Kane v. Carlson*, 116 Ill. 2d 186, 200, 507 N.E.2d 482, 486 (1987). The Circuit Clerk's authority and duties are set forth in and governed by the Illinois Constitution, Illinois statutes and case law, including those duties and obligations specified under the Clerks of Courts Act, 705 ILCS 105/0.01, *et. seq.*, those duties as required by order of the Chief Judge of the Sixteenth Judicial Circuit, or of other Judges of the Sixteenth Circuit from time to time, and those additional duties as specified and required under Illinois law, applicable federal and state regulations, and the Illinois Supreme Court Rules. The Circuit Clerk is subject to review and control by the Judges of the Sixteenth Judicial Circuit, pursuant

to the provisions of any Court Order, and pursuant to the express provisions of the Clerks of Court Act, including the provisions set forth below.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter pursuant to Article VI, §9 of the Illinois Constitution. This Court has personal jurisdiction over the Circuit Clerk pursuant to the Code of Civil Procedure, 735 ILCS 2-209(a)(1) and (2), (b)(2), and (c). This Court also has jurisdiction over the actual controversy between the parties pursuant to Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701.

12. Venue is proper under Sections 2-101 and 2-103 of the Code of Civil Procedure, 735 ILCS 5/2-101 and 2-103, because the acts from which this cause of action arose, or a substantial part thereof, took place in the County of Kane and because the Circuit Clerk has offices located in the County of Kane, State of Illinois.

ILLINOIS LAW ON COUNTY BOARDS AND CIRCUIT CLERKS

13. Article VIII, §1(b) of the Illinois Constitution states that expenditures of public funds may be made only pursuant to law, providing:

The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law.

14. The Constitution defines local government to include Kane County.
See Article VII, §1.

15. The General Assembly has authorized county boards to determine the amount of county funds which may be appropriated and expended. 55

ILCS 5/6-1005; Illinois Attorney General Opinion 96-021 (May 10, 1996) (copy attached as Exhibit A). County funds must be appropriated before they can be expended. Illinois Attorney General Opinion 87-005 (June 15, 1987) *citing Midland Lumber Co. v. Dallas City*, 276 Ill. 172, 175 (1917) (copy attached as Exhibit B).

16. Under the provisions of the Counties Code, 55 ILCS 5/1-1001, *et seq.*, a county board is authorized to exercise extensive powers relating to the county's fiscal, financial and budgetary management. Section 5-1016 of the Counties Code, 55 ILCS 5/5-1016, authorizes county boards to "manage the county funds and county business, except as otherwise specifically provided." Section 5-1005 of the Counties Code, 55 ILCS 5/5-1005, authorizes each county "to install an adequate system of accounts and financial records in the offices and divisions of the county, suitable to the needs of the office and in accordance with generally accepted principles of accounting for governmental bodies ..." Sections 6-1001 and 6-1002 of the Counties Code, 55 ILCS 5/6-1001 and 1002, set forth various duties of county boards with respect to annual budgeting.

17. The constitutional responsibility for funding a circuit clerk's office delegated to the counties has been embodied in statute by the General Assembly. The county boards provide the necessary rooms and office furniture for the clerks, and the cost is paid from the county treasuries. 705 ILCS 105/20. The county boards provide the clerks' compensation, and the "amount necessary for clerk hire, stationery, fuel and other expenses. 705

ILCS 105/27.3. The county boards bear the expense of establishing and maintaining automated record keeping systems and document storage systems in the clerks' offices. 705 ILCS 105/27.3a. Moreover, the circuit clerks' offices are subject to annual audits by the county boards. 705 ILCS 105/27.8.

18. Section 6-1005 of the Counties Code, 55 ILCS 5/6-1005, forbids any person from making contracts or obligations for the County in excess of the budget appropriation provided, stating, in relevant part, that:

Contract or obligation in excess of appropriation. Except as herein provided, neither the county board nor any one on its behalf shall have power, either directly or indirectly, to make any contract or do any act which adds to the county expenditures or liabilities in any year anything above the amount provided for in the annual budget for that fiscal year ... Nothing herein shall be construed to deprive the board of the power to provide for and cause to be paid from the county funds any charge upon said county imposed by law independently of any action of such board. Except as herein provided, no contract shall be entered into and no obligation or expense shall be incurred by or on behalf of a county unless an appropriation therefore has been previously made.

19. Circuit clerks' primary duties are to preserve and store the court's files, papers and reports of proceedings and to record declarations and judgments in all cases, and they are expressly authorized to develop and use automated electronic recordkeeping and electronic document storage systems to do so. See 705 ILCS 105/13 – 17, 27.3a and 27.3c.

20. Each county board budgets funds for their circuit clerk's annual budget from the General Revenue Fund, and each county is permitted to provide further budgeted funds to the circuit clerk from the Court Automation Fund and the Court Document Storage Fund, which are funded by specific

additional filing fees. By statute, the Court Automation Fund and Court Document Storage Fund are directed to be used to increase the efficiency of the Circuit Clerk's office in performing its duties of making dockets and preserving court-filed papers, records and judgments through the use of electronic automation and electronic document storage. See 705 ILCS 105/27.3a and 3c.

21. Section 15 of the Clerks of Courts Act, 705 ILCS 105/15, provides:

Any clerk who fails to enter of record any order or judgment of his or her court within 45 days after the same is made or rendered, or any clerk having the duty to forward to the Department of Public Health the record of any judgment of dissolution of marriage or declaration of invalidity of marriage, who willfully fails to do so within 45 days after the close of the month in which the same is made or rendered, shall be guilty of a petty offense and shall be fined by the court not exceeding \$100, and for any subsequent offense he or she may be fined in a like amount or proceeded against as for a Class A misdemeanor in office and removed from office. In any county of less than 500,000 inhabitants, when it appears to be the majority persons employed in the office of the clerk of the court to properly make the entries in accordance with this Section, the majority of judges of such court shall thereupon determine and fix the number of deputies they find necessary to so properly maintain the records, and their reasonable compensation shall be paid out the earnings of the office.

22. Section 22 of the Clerks of Courts Act, 705 ILCS 105/22, further provides that:

The judges of the several courts shall, as often as once in each year, make an examination of the offices of the clerks of their respective courts, and may give such directions and make such orders in regard to the keeping of the same, and the records and papers thereof, not contrary to law, as they shall deem best.

BUDGET EVENTS

23. The County by the County Board establishes the Circuit Clerk budget each year by budgeting and appropriating amounts for expenditures from the County General Revenue Fund ("GRF"), the Court Automation Fund, the Court Document Storage Fund, the Child Support Fund and the Circuit Court Operative and Administrative Fund, all to be used by the Circuit Clerk to discharge the obligations of her office in handling, docketing and storing the court files. The GRF fund expenditures are funded and paid out of county general revenue, each of the other funds are funded by and paid from each fund's specific revenue sources, such as additional filing fees charged to litigants.

24. The Circuit Clerk claims in her Complaint that the County Board improperly set her budget and reduced the GRF budget request of the Clerk for FYE 11/30/10. The setting of the budget, however, was a deliberative process by the County Board in which they considered relevant facts presented, as well as recent past events and budgets, and set the Circuit Clerk's budget properly and after proper deliberations.

25. **FY2009.** Mid-year in 2009, the County Board recognized economic concerns and issues facing the County and determined that the budget for all county departments and officials needed to be reduced. Accordingly, midway through FYE 11/30/09, the Board had acted to reduce all of these budgets, including the Circuit Clerk's budget.

26. After initially and very publicly complaining that she could not possibly do so, and threatening legal action, the Circuit Clerk ultimately completed FYE 11/30/09 within the Board's amended budget.

27. **FY2010**. In the Summer of 2009, the Circuit Clerk submitted her budget request for FYE 11/30/10.

28. The Circuit Clerk's budget for FYE 11/30/10 was set in November, 2009 pursuant to a deliberative process through meetings of the County Board, the County Board members taking into consideration facts then presented by the Circuit Clerk and an examination of the then end of FYE 11/30/09 total expenditures, staffing and office expenses incurred by the Circuit Clerk.

29. Pursuant to the Counties Code, on November 10, 2009, the County Board appropriated and established a budget for the Circuit Clerk for the fiscal year running from December 1, 2009 through and ending November 30, 2010 (hereinafter, "FYE 11/30/10"). The budget sets forth a total amount for all funds budgeted to the Circuit Clerk, as well as an appropriated budget amount from each fund. (A copy of a detail of the FYE 11/30/10 final budget as set by the County Board for the Circuit Clerk is the adopted budget column on the 12/31/09 Budget Performance Report attached as Exhibit C).

30. The County Board after its deliberative hearing determined and set the Circuit Clerk's budget, published same and delivered a copy to the Circuit Clerk prior to the start of the FYE 11/30/10 fiscal year. The Circuit Clerk has acknowledged receipt and knowledge of the FYE 11/30/10 budget from the start of the fiscal year.

31. The County Board did budget for the FYE 11/30/10 Circuit Clerk's budget amounts from the Court Automation Fund, Court Document Storage Fund, Child Support Fund and Clerk Administrative Services Fund in a total amount that was higher than expended by the Clerk in FYE 11/30/09. Specifically, the County Board authorized an overall budget amount for the Circuit Clerk which was more than \$1 million greater than the Circuit Clerk's actual expenditures of all her budgeted funds in FYE 11/30/09. The County Board had, in setting the Circuit Clerk's budget, used the actual expenditures of the Clerk's office for FYE 11/30/09, which were \$6,706,402 for all funds, to set the budget for FYE 11/30/10 at \$7,791,376 for all funds. A comparison of the Circuit Clerk's actual FYE 11/30/09 expenditures to the Circuit Clerk's FYE 11/30/10 budget in total and by fund is set forth on the schedule attached as Exhibit D which shows as follows:

	FYE 11/30/09 Expenditures <u>Actual</u>	FYE 11/30/10 Expenditures <u>Budgeted</u>
General Revenue Fund	\$4,243,492	\$4,147,968
Court Automation	\$1,017,235	\$1,666,147
Court Document Storage	\$1,091,612	\$1,378,878
Child Support	\$ 203,769	\$ 276,192
Cir. Clerk Admin Services	\$ 150,293	\$ 322,191
Total all funds	\$6,706,402	\$7,791,376

32. A factor supporting a reduced budget is that there are fewer case filings. The number of cases filed in the Court system has been trending down.

Overall court case filings are down from a high of 150,000 in FYE 06 to 147,000 for FYE 09. Records indicate that the number of cases filed in 2010 has not seen any increase above 2009 levels and in fact are significantly fewer. (A copy of a schedule showing the detail of the numbers and kinds of cases filed from FY2006 to FY2009 is attached as Exhibit E; a copy of a schedule with a count of cases filed through June, 2010 showing that the projected FY2010 case filings are significantly below FY2009 case filings is attached as Exhibit F).

33. Another factor supporting a reduced budget is automation. In addition to there being a trend towards fewer cases being filed, the County has appropriated and the Circuit Clerk has spent several millions of dollars over the past five years to improve the electronic systems for case filing, docketing, handling and document storage, all adding efficiencies to the Circuit Clerk's recordkeeping. The extra expenditures for improving electronic systems has been done year after year, and the Circuit Clerk has explained that these expenditures have been done to improve efficiency in the actual recordkeeping work and systems. Consequently, as a result of millions of dollars of efficiencies and the fact the filings in general are diminishing, the Board determined that the Circuit Clerk's budget needs for FYE 11/30/10 from the GRF should not be above the FYE 11/30/09 level, but still provided an overall budget from all funds, with a \$1 million increase above FYE 11/30/09 expenditures, using the available special funds collected as litigation fees to meet the Circuit Clerk's budget needs.

34. The Circuit Clerk during FYE 11/30/09 met her duties with 117 or fewer employees (84 or fewer of which were deputies). At FYE 11/30/09 and the start of fiscal year 11/30/10, the Circuit Clerk had 117 employees and 84 deputies.

35. Despite the limits on the expenditure of GRF funds set by the FYE 11/30/10 budget, beginning in February and March 2010, the Circuit Clerk hired new additional deputies and several other new employees, raising the number of deputies to 89 and the number of employees to 120, which have remained employed and with an employee count at said level to this date. Thereafter, the Circuit Clerk charged the compensation for these newly hired deputies and employees to the GRF budget. The Circuit Clerk knew or should have known that, when coupled with all other charges to the GRF, adding new employees in February and March would exhaust the GRF for FYE 11/30/10 before the 12 months were completed. The Circuit Clerk has advised in her Complaint that her GRF budget will be exhausted by mid-October 2010, with the Clerk projecting an overage of obligation for the FYE 11/30/10 GRF budget of \$555,000.

36. The Circuit Clerk in February 2010 added 5-6 deputies and other employees above the FY 11/30/09 levels and by that addition has caused the premature exhaustion of the GRF budget, as described above.

THE CIRCUIT CLERK'S ALLEGATIONS AND ADMISSIONS

37. The Circuit Clerk in the Complaint asserts that she is the sole arbiter of her budget needs and that the County Board has no say in and

cannot limit her in her budget.

38. The Circuit Clerk claims in her Complaint that, at the time the County Board gave her the budget, she already believed she needed additional funds in her FYE 11/30/10 GRF budget.

39. The Circuit Clerk alleges in her Complaint that she decided to and did hire additional deputies because she deemed that she needed more deputies, knowing it would cause her budgeted funds to be exhausted before year end. The Circuit Clerk thus decided that she had the unilateral authority to incur additional obligations beyond the budget upon the County.

40. The Circuit Clerk made the new hires knowing they would cause her to exhaust her GRF budget before the completion of FYE 11/30/10. Thus, she intentionally disregarded the limits of the County Board's budget.

41. The Circuit Clerk claims she will run out of money before the end of the FYE 11/30/10, averring at Paragraph 92 of the Verified Complaint that:

If the County Board fails to approve the Amended Budget; the Circuit Clerk will run out of funding to operate her office prior to the end of FY 10.

42. Thus, her Complaint shows she will run out of GRF funds sometime in October 2010 and will not thereafter have GRF funds available to run and maintain the operations of her office and that she caused such intentionally.

43. The Circuit Clerk claims that the County is now required to pay from GRF funds an additional \$555,000 to operate her office through the remainder of FYE 11/30/10. She asks this Court to order the County to pay

\$555,000 more than the amount budgeted to her in the FYE 11/30/10 budget to meet her office's obligations.

THE COUNTY'S PREDICAMENT

44. The Circuit Clerk essentially admits that as the months proceeded from February 2010 to September 2010 with her retaining the new hires, she continued to incur those new hire obligations for the GRF fund knowing they would exhaust the GRF before the conclusion of the fiscal year and cause additional obligations upon the County in excess of her budget.

45. The Circuit Clerk, all the while incurring obligations above budget, waited and did not seek administrative or judicial relief to contest the budget. Between November 10, 2010 when the budget was set, there were over 200 days she could have, but failed to, take lawful action.

46. The Circuit Clerk acted knowing she was spending public funds unlawfully by adding the new hires, knowing that there always would be the need to operate the court system for the entire fiscal year and that the County would have to meet the obligation.

47. Based on the Circuit Clerk's claim that she will exhaust her GRF budget and needs \$555,000 more, the County will have to pass a supplemental budget of taxpayer funds to keep the courts operating.

48. The County, to meet its obligations to the public, must seek redress and injunction against the Circuit Clerk for her intentional breach of her constitutional and statutory duties and misuse of public funds.

Count I
(Constitutional Tort for Restitutional Recovery)

49. Counterplaintiff incorporates Paragraphs 1-48, above, as though fully set forth here.

50. Article VIII, §1(b) of the Illinois Constitution states that expenditures of public funds may be made only pursuant to law, providing that:

The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law.

51. The Constitution defines local government to include Kane County. Article VII, §1.

52. Section 6-1005 of the Counties Code, 55 ILCS 5/6-1005, forbids any person, including the Circuit Clerk, from making contracts or obligations for the County in excess of the budget appropriation provided, stating, in relevant part, that:

Contract or obligation in excess of appropriation. Except as herein provided, neither the county board nor any one on its behalf shall have power, either directly or indirectly, to make any contract or do any act which adds to the county expenditures or liabilities in any year anything above the amount provided for in the annual budget for that fiscal year ... Nothing herein shall be construed to deprive the board of the power to provide for and cause to be paid from the county funds any charge upon said county imposed by law independently of any action of such board. Except as herein provided, no contract shall be entered into and no obligation or expense shall be incurred by or on behalf of a county unless an appropriation therefore has been previously made.

53. The budget set by the County Board is by law the appropriated amount of county funds an official can spend in discharging the obligations of

the office. Because operations of the circuit clerks' offices are paid for by the counties, any payments made from the county treasuries on their behalf must comport with the requirements of the Counties Code.

54. The Circuit Clerk concedes that, despite knowing that the new hires would cause her to exhaust her GRF budget before the completion of FYE 11/30/10, she hired them anyway. She avers at Paragraph 92 of the Verified Complaint that:

If the County Board fails to approve the Amended Budget; the Circuit Clerk will run out of funding to operate her office prior to the end of FY 10.

55. The Circuit Clerk is obligated to allocate her budget and control her spending during the fiscal year to assure that her contracts and obligations for running the office are met but also to meet her duty not to exceed her appropriated budget. Contrary to the Circuit Clerk's claims, it is her duty to the public to act to assure that the funds budgeted for a fiscal year are used such that the obligations of her office are met for the complete fiscal year.

56. The Circuit Clerk thus chose to violate 55 ILCS 5/6-1005. She did not timely obtain additional budget approval yet she caused expenditures to obligate the County GRF for \$555,000 above the budget.

57. The actions of the Circuit Clerk are an intentional violation of (i) her duties as Clerk, (ii) the Illinois Constitution, and (iii) Section 6-1005 of the Counties Code, 55 ILCS 5/6-1005. The Circuit Clerk has several months left in this fiscal year and she will be starting a new fiscal year with a County Board budget. The Circuit Clerk should be expressly enjoined from continuing

to intentionally disregard the budget set by the County Board.

58. The parties disagree about the Circuit Clerk's interpretation of the law, namely that she has *carte blanche* and may unilaterally and intentionally disregard the budget set by the County Board.

59. Counterplaintiff seeks a declaration herein that the Circuit Clerk has breached her fiduciary duty to the County by intentionally exceeding her budget and that she has violated the Illinois Constitution and the Counties Act at 55 ILCS 5/6-1005 by intentionally and unilaterally acting to obligate the County GRF in excess of the budget .

60. Counterplaintiff has clearly ascertainable rights in need of protection. There is an actual, existing controversy between the Counterplaintiff and the Circuit Clerk which is properly resolved by declaratory judgment that if her budget needs are more than the budget she must obtain legal authority to increase the budget before she expends funds.

61. Further, Counterplaintiff is suffering and will continue to suffer irreparable harm as a result of the unlawful and unconstitutional actions of the Clerk in spending funds without authority as set forth above. If the Circuit Clerk is left unchecked, there is no adequate remedy at law that will properly compensate Counterplaintiff for the injuries it will sustain. Her unchecked abuses coupled with the need to keep the courts running will continue to cause obligation on the County and its public funds.

WHEREFORE, Counterplaintiff prays that this Court award the following relief:

- (a) entry of a declaratory judgment that the Circuit Clerk's conduct has violated Article VIII, Section 1(b) of the Illinois Constitution;
- (b) entry of judgment against the Circuit Clerk and an order requiring her to personally pay all monies that were expended in violation of the Constitution or which were otherwise expended in violation of the law that are not recovered; and
- (c) For the costs and expenses incurred in this action, including reasonable attorneys' fees, and such other relief as may be necessary, just, and equitable.

COUNT II
(Violation of Section 6-1005 of the Counties Code)

62. Counterplaintiff incorporates Paragraphs 1-62, above, as though fully set forth here.

63. The Circuit Clerk intentionally has caused obligation and expenditures for the County for the fiscal year FYE 11/30/10 GRF budget in excess of the Board's appropriated budget. Her conduct therefore violates Section 6-1005 of the Counties Code, 55 ILCS 5/6-1005, which prohibits any person, including the Circuit Clerk, from making contracts or obligations for the County in excess of the budget appropriation provided.

WHEREFORE, Counterplaintiff prays that this Court award the following relief:

- (a) entry of a declaratory judgment that the Circuit Clerk has obligated the County in violation of Section 6-1005 of the Counties Code;
- (b) entry of a preliminary and permanent injunction prohibiting the Circuit Clerk from further violations of the Counties Code and the County budget;

(c) entry of a preliminary and permanent injunction prohibiting the Circuit Clerk from obligating her office and spending funds in excess of her budget; and

(d) any other relief that this Court determines equitable and appropriate.

COUNT III

(Alternative Relief: Enjoining The Circuit Clerk's Expenditure of Funds And Ordering Her To Exhaust Special Funds)

64. Counterplaintiff incorporates Paragraphs 1-63, above, as though fully set forth here.

65. Alternative to the foregoing claims, and the claims of the Circuit Clerk that her budget is insufficient to meet her actual projections for FYE 11/30/10, the County Board's budget for the Circuit Clerk for FYE 11/30/10 is in fact budgeted in an amount that is in excess of \$1 million greater than the amount the Circuit Clerk expended in FYE 11/30/09, and the amount projected by the Circuit Clerk to be spent in FYE 11/30/10 is within the entire budget appropriated to the Circuit Clerk by the County Board. The amounts the Circuit Clerk states are unfunded overage in her GRF budge are properly paid from the total funds budgeted by the County Board to the Circuit Clerk already. See the schedule attached as Exhibit D.

66. The Circuit Clerk in her filings in this matter and in her representation, as well as under her duties, is charged to use her employees and deputies to accept court filings, make entries into the records about same, make entries into the court records to record and document the filings, dates, and judgments made in cases, and to make and preserve those filed documents

for access by the litigants, the judges and the public, and she is compelled by law to do so by electronic docket, electronic case search, and electronic document storage.

67. The Circuit Clerk takes the position now in this budget year and in her Complaint that she can pay some portion of her deputies' cost from the non-GRF funds, Court Automation, Court Document Storage, Child Support and Clerk Administrative Services, but that she cannot pay any more than she has allocated. Further, the Circuit Clerk takes the position that the efforts of the deputies at filing counters and the deputies in courtrooms are services not properly paid from Court Automation, Court Document Storage, Child Support and Clerk Administrative Services funds, other than in the very limited amounts she has allocated.

68. Counterplaintiff disagrees. To effect electronic docket entry (entering details about each filing, including case, party, type of document, dates, court rooms, and rulings) the Circuit Clerk has had to develop standard order format, docket entries, and design forms to allow for electronic docketing. Further, the Circuit Clerk's entire staff of deputies, including those at the filing counters and those receiving papers and taking possession of orders and other papers in the courtroom, have modified their procedures and their tasks to take possession of all paper documents in a manner to facilitate and allow the documents to first be utilized for docket entry into the court automation system, and then to be scanned into the Circuit Clerk's electronic document storage system.

69. As a result, most, if not all, of the deputies working for the Circuit Clerk are engaged in significant implementation and operation of the Court Automation system and the Court Document Storage system, and an allocation of a significant amount of their compensation to the Court Automation Fund, the Court Document Storage Fund as well as the Clerk Administrative Service Fund, and to the Child Support Fund where permitted, is proper.

70. Upon information and belief, in previous budget years, the Circuit Clerk paid a portion of the compensation of her regular counter and courtroom deputies from these non-GRF funds.

71. The Circuit Clerk in her Complaint states she is only requesting relief relative to her budget's GRF budget. However, as shown above, the overall FYE 11/30/10 budget for the Circuit Clerk was \$7,791,376, which exceeds last year's FYE 11/30/09's actual expenditures of \$6,706,402 by approximately \$1,085,000. (See Exhibit D) And, through the nine months ended August 31, 2010, the expenditures for the total budget had amounted to \$5,418,007, or 70% of the \$7,791,376 budgeted, leaving the amount of \$2,373,368 still available for expenditure in FYE 11/30/10.

72. The August 2010 total expenditures of the Circuit Clerk were \$652,394. The foregoing shows that, projecting expenditures for September through November 2010 at the rate of August 2010 spending, (3 times \$652,394 = \$ 1,957,182), will leave over \$400,00 unspent from the total budget given the Circuit Clerk for FYE 11/30/10 and shows the Circuit Clerk's actual expenditures for the FYE 11/30/10 budget for all funds is within the FYE

11/30/10 budget. (A true and correct copy of the County's 8/31/10 Circuit Clerk' Budget Performance Report is attached as Exhibit G).

73. The Circuit Clerk refuses to seek to use and allocate funds budgeted with regard to Court Automation, Court Document Storage, Child Support and Clerk Administrative Services, to pay for the expenditures she is incurring and claims as above are an overage of her budget.

74. Under the legislation creating the Court Automation fund:

... the board shall make expenditure from the fund in payment of any cost related to the automation of court records, including hardware, software, research and development costs and personnel related thereto, provided that the expenditure is approved by the clerk of the court and by the chief judge of the circuit court ...

705 ILCS 105/27.3a.

75. The legislation creating the Court Document Storage fund provides that:

... the board shall make expenditures from the fund in payment of any costs, relative to the storage of court records, including hardware, software, research and development costs, and related personnel, provided that the expenditure is approved by the clerk of the circuit court ...

705 ILCS 105/27.3c.

76. The services of counter and courtroom deputies is in part activities maintaining and implementing court record automation and document storage and, upon information and belief, an allocation of 25% of each and every counter and courtroom deputies' compensation could be made to the Automation and/or Document Storage fund, as the services of such deputies are inextricably intertwined with automation and document storage, and their

services are now the foundation of the assembly of materials for electronic entry and storage.

77. Upon information and belief, the allocation of 25% of each counter and courtroom deputies' compensation to the several special funds as above would, for FYE 11/30/10, be an amount that would cause in excess of \$555,000 more to be allocated and charged to the special funds and not the GRF.

78. That budget performance reports show that there are sufficient funds budgeted in the non-GRF special funds of the Circuit Clerk for FYE 11/30/10 to meet the Clerk's projected uses of the special funds and to pay out an additional \$555,000 to pay for counter and courtroom deputies' compensation for FYE 11/30/10 and still finish FYE 11/30/10 with budgeted funds unspent over \$400,000. (A true and correct copy of current fund projected use is attached as Exhibit H).

79. The County suggests an allocation as follows:

Court Automation	\$150,000
Document Storage	\$350,000
Cir. Clerk Admin Services	\$100,000

80. The payment of \$555,000 from the special funds as above will still allow for \$400,000 of the funds budgeted to remain unspent in FYE 11/30/10.

81. That the parties disagree as to the use of the special funds as above and the Court should declare that the Circuit Clerk may and should use an additional \$555,000 of non-GRF budgeted funds to pay deputies'

compensation in FYE 11/30/10.

82. The Board has made budget provisions for expenditures from the special funds and the Circuit Clerk should be compelled by injunction to seek the Chief Judge's agreement to expend the Court Automation fund as above, and to act to utilize the budgeted funds from the non-GRF funds to pay an additional \$555,000 of deputies' compensation in FYE 11/30/10 that the Circuit Clerk has allocated to be paid from special funds.

WHEREFORE, Counterplaintiff prays that this Court award the following relief:

- (a) entry of a declaratory judgment that the Circuit Clerk can and should use an additional \$555,000 of non-GRF funds to pay deputies compensation in FYE 11/30/10;
- (b) entry of a temporary, preliminary, and permanent injunction directing the Clerk to use \$555,000 of additional non-GRF special funds budgeted already to pay counter and courtroom deputies' compensation after seeking the Chief Judge's approval; and
- (c) any other relief that this Court determines equitable and appropriate.

COUNT IV

(Alternative Relief: Enjoining The Circuit Clerk's Expenditure of Funds And Ordering Her To Pursue Administrative Remedies)

83. Counterplaintiff incorporates Paragraphs 1-79, above, as though fully set forth here.

84. Section 15 of the Clerks of Courts Act, 705 ILCS 105/15, provides:

Any clerk who fails to enter of record any order or judgment of his or her court within 45 days after the same is made or rendered, or any clerk having the duty to forward to the Department of Public Health the record of any judgment of dissolution of marriage or declaration of invalidity of marriage, who willfully fails to do so within 45 days after the

close of the month in which the same is made or rendered, shall be guilty of a petty offense and shall be fined by the court not exceeding \$100, and for any subsequent offense he or she may be fined in a like amount or proceeded against as for a Class A misdemeanor in office and removed from office. In any county of less than 500,000 inhabitants, **when it appears to the majority of judges of such court that there are an insufficient number of persons employed in the office of the clerk of the court to properly make the entries in accordance with this Section, the majority of judges of such court shall thereupon determine and fix the number of deputies they find necessary to so properly maintain the records, and their reasonable compensation shall be paid out the earnings of the office.**

Id. (emphasis supplied).

85. The Circuit Clerk alleges in her Complaint that she is about to exhaust all GRF funds and will be unable to pay for any services and further alleges that the Clerks of Courts Act allows a majority of the judges of the Court to determine and fix the number of clerks necessary to perform these services, averring in Count IV of her Complaint that:

Pursuant to 705 ILLS 105/15, relating to the entry of orders or judgments, the forwarding of payments to the Department of Public Health, and, the entry of records relating to judgments of dissolution or invalidity of marriage, a majority of judges of the Court may determine and fix the number of clerks necessary to perform these services, and may order such clerks to be employed and compensated.

and further that:

This Court is endowed with broad discretion to fashion such remedies or grant such relief as equity may require.

See id. at Paragraphs 96 and 97.

86. Further, Section 22 of the Clerks of Courts Act, 705 ILCS 105/22, provides that:

The judges of the several courts shall, as often as once in each year, make an examination of the offices of the clerks of their respective courts, and may give such directions and make such orders in regard to the keeping of the same, and the records and papers thereof, not contrary to law, as they shall deem best.

87. The Circuit Clerk's actions disregarding constitutional and statutory restrictions on her budget use for the compensation and hiring of deputies were taken though she had an administrative remedy through the above statutes, which she did not invoke.

88. The provisions of these statutes show that in fact the Circuit Clerk has a statutory remedy that she could have engaged before choosing to unilaterally and blatantly disregard the budget laws and the Constitution.

WHEREFORE, Counterplaintiff prays that this Court award the following relief:

- (a) entry of a declaratory judgment that the Circuit Clerk had an adequate remedy at law which she did not exhaust;
- (b) entry of a temporary, preliminary, and permanent injunction prohibiting the Circuit Clerk's expenditure of funds above her budgeted amounts and compelling her to pursue and exhaust her remedies at law; and
- (c) any other relief that this Court determines equitable and appropriate.

AFFIRMATIVE DEFENSES

Defendants the County of Kane and Karen McConnaughay in her capacity as Kane County Board Chairman (collectively, "Defendants") state the following Affirmative Defenses to the Verified Complaint for Declaratory Judgment and Other Relief filed by Plaintiff Deborah Seyller in her capacity as

Kane County Clerk of the Circuit Court (the "Circuit Clerk"). By listing any matter as an Affirmative Defense, Defendants do not assume the burden of proving any matter as to which the Circuit Clerk bears the burden of proof under the applicable law. Further, by setting forth certain Affirmative Defenses below, Defendants do not waive the right to assert additional Affirmative Defenses based on subsequently discovered facts.

First Affirmative Defense: Unclean Hands

For the reasons set forth in the foregoing Counterclaim, the Circuit Clerk is not entitled to equitable relief as she comes to this Court with unclean hands.

Second Affirmative Defense: Laches

"Laches is an equitable doctrine that precludes a litigant from asserting a claim when the litigant's unreasonable delay in raising the claim has prejudiced the opposing party," *Madigan v. Yballe*, 397 Ill. App. 3d at 493, citing *In re Sharena H.*, 366 Ill. App. 2d 405, 412, (1st Dist. 2006). Laches is "grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his rights to the detriment of the opposing party." *Id.*, citing *Tully v. State*, 143 Ill. 2d 425, 432 (1991). To prevail on a laches affirmative defense, a defendant must prove that (1) the plaintiff failed to exercise due diligence in bringing suit, and (2) plaintiff's delay served to prejudice the defendant. *Madigan v. Yballe*, 397 Ill. App. 3d at 493 (citations omitted).

While "as a general rule, the doctrine of laches does not apply to

government entities absent extraordinary circumstances,” it does apply “if the governmental officers initiated an affirmative act that induced the action of the respondent. *Madigan v. Yballe*, 397 Ill. App. 3d at 493-494 (citations omitted).

Laches applies when a plaintiff files a complaint challenging budget decisions for a fiscal year that has ended. *Monson v. County of Grundy*, 394 Ill. App. 3d 1091 (3d Dist. 2009) (laches barred superintendent of Veterans Assistance Commission of Grundy County’s claim against county to pay vouchers). Laches also applies when a plaintiff files a complaint challenging budget decisions months after budget decisions have been made. *See Pace v. RTA*, 346 Ill. App. 3d 125, 144 (2d Dist. 2003).

The Circuit Clerk had over 200 days from November of 2009 when she was given her budget until September 20, 2010 when she could have filed this lawsuit. She did not and instead slept on her rights. Accordingly, for the reasons set forth above and in the foregoing Counterclaim, the Circuit Clerk’s claims and requests for relief are barred by the equitable doctrine of laches.

Third Affirmative Defense: Failure to Exhaust

For the reasons set forth in Count IV of the foregoing Counterclaim, the Circuit Clerk is not entitled to equitable relief as she admits that she has and had available to her administrative remedies at law and has failed to exhaust or pursue them.

Fourth Affirmative Defense: Failure to State a Cause of Action

For the reasons set forth in the foregoing Counterclaim, the Circuit Clerk has failed to state a claim for the equitable, declaratory and injunctive relief

requested in the Complaint. That the affirmative matters set forth in the Counterclaim, above, provide facts that are affirm matters showing the causes of action in the Complaint are subject to dismissal.

Dated: September 28, 2010 Respectfully submitted,

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Special State's Attorneys on behalf of
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