IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
TAZEWELL COUNTY, ILLINOIS

IN RE THE APPOINTMENT OF A SPECIAL PROSECUTOR	)	
SHELLY I. HRANKA,	)	
Petitioner	)	Case No.
vs.	)	
STEWART UMHOLTZ, Tazewell County State's Attorney,	)	
Respondent	)	

PETITION FOR THE APPOINTMENT OF A SPECIAL PROSECUTOR

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TABLE OF CONTENTS

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NOW COMES Petitioner, SHELLY I. HRANKA, by her attorney, Donald K. Birner, and based upon her own knowledge and investigation, as well as the investigation of her attorney, in support of her Petition to Appoint a Special Prosecutor states:

INTRODUCTION

This Petition is divided into three separate parts.

Part I summarizes the justification for the appointment of a Special Prosecutor.

Part I of the Petition then sets forth the statutory threshold requirements relative to the state's attorney's disqualification of which are all met.

Having met these threshold requirements, Part II of the Petition states the underlying colorable claims which illustrate the necessity of the appointment of a special prosecutor.

They are not set forth as a complaint in any regard, however, there has been a concerted effort to detail the claims relative to county officials in an exhaustive manner for the court's consideration. Part II also illustrates the damage imposed upon the county and its taxpayers as a

result of the actions of these officials, underscoring the importance of the appointment to address this conduct and its consequences.

Part III sets forth viable remedies for the county's recoupment of the substantial over payments to the insurer and other third parties, if a Special Prosecutor were appointed.

PART ONE

JUSTIFICATION FOR THE APPOINTMENT

I. Grounds Justifying the Appointment of a Special Prosecutor

A. The Misuse of Public Funds and the Breach of Fiduciary Duties are Material Factors Giving Rise to the County Having One of the Highest Median Property Taxes in the United States

✓ The Chairman of the Board, for almost ten years, used public funds to pay his purported commuter mileage expense in violation of state statute.

✓ The Chairman of the Board for almost two decades filed incomplete and/or false statements of economic interest.

✓ The Chairman of the Board, since 2015, has taken the 65 years and older homestead exemption to which he was not and is not entitled.

✓ The Chairman of the Board executed a contract ostensibly on behalf of the county for payment of his own legal representation, without board authorization, constitution official misconduct.

✓ The Chairman of the Board breached his fiduciary duties to the public he serves because he has divided loyalties between the County and the County's insurance company for whom he serves as an Executor Director and the Treasurer.

✓ The State's Attorney, despite having 15-17 State's Attorney assistants, retained the legal services of private law firms at county expense to perform services exclusively entrusted to his office by the County Code and the Illinois Constitution.

✓ The State's Attorney breached his fiduciary duty owed to the county by representing the Chairman of the Board against the interest of his county seeking to recover misused public funds by the chairman.

✓ The Chairman of the Board executed numerous contracts for liability insurance without prior competitive bids permitting the insurer to escalate premiums and tack on enormous surcharges for claims administration.

✓ The Chairman of the Board approved and executed contracts that obligated the

county to pay broker's fees that were the responsibility of the insurance company and not the county.

- ✓ The Chairman of the Board executed an emergency order that forced the county to pay the annual insurance premium sooner than required by contract.
- ✓ The Chairman of the Board executed a contract ostensibly on behalf of the county for the payment of his own legal representation, without board authorization, constituting official misconduct, as well as violating the prohibited interest in contracts statute.
- ✓ The Chairman of the Board's prohibited interest regarding ICRMT contracts of insurance disadvantaged the county.
- ✓ The Chairman of the Board for almost two decades filed incomplete and/or false statements of economic interest.

B. Divided Loyalties and Infidelities by Officers Led to Contracts that Prejudiced the County While Favoring the Insurer

In this matter, the appointment of a special prosecutor is imperative to address the divided loyalties of the Chairman of the Board, J. David Zimmerman ["Zimmerman"] and the Tazewell County State's Attorney, Stewart Umholtz ["state's attorney" or "Umholtz"] resulting in the taxpayers, as well as county employees, to shoulder enormous unwarranted insurance costs over the past decade and misuse of county funds and resources.

The appointment is vital in order to seek recompense to the county for bogus charges by the insurer for services already covered by the insurance policy and paid for by the policy premiums.

A prime example of these divided loyalties is Zimmerman, who also chairs the Risk Management Committee governing liability/casualty/health insurance for the county. He is personally entrusted by county board resolution with signing, executing and approving the county's insurance contracts, which as a result are laden with terms and conditions that heavily favor the insurer.

Zimmerman's performance of these critical tasks, while holding the undisclosed positions of executive director and treasurer of the county's insurer, Illinois Counties Risk Management Trust ["ICRMT"] who, since 2014, has annually been awarded the insurance contract by the

county under the leadership of Zimmerman and lack of objection by the state's attorney—without competitively bidding the contract.

C. No Bid Annual Contract Renewal Renders the County a Captive of the Insurer.

These repeated violations of the state bidding statute and relevant local ordinance since 2014, have occurred because not only Zimmerman, but the state's attorney, has chosen not to comply with the required bidding protocols.

In fact, the state's attorney chief civil assistant, Mike Holly, designated by the state's attorney to act in his place as a member of the Risk Management Committee, has approved or failed to object to resolutions recommending that the board simply 'renew the contract' with the insurer foregoing the necessity of bidding it. See Exhibit 1, Resolutions Approved by State's Attorney.

The state's attorney's mantle of authority reinforced the purported legality of the 'renewal' approval and vote. At the very least, he should have insisted upon requiring quotes from other insurance companies.

Indeed, the county administrator present at the 10/21/20 Risk Management Committee meeting, in reference with the contract of insurance with ICRMT, remarked: *"[she] advised the committee members that to keep the cost down, she would like to bid these annually*." [Taken from 10/21/20 meeting minutes.] Yet that plea was ignored. See Exhibit 2, Minutes of Risk Management Committee Meeting of 10/21/20. Bidding is also required by state law and county ordinance.

The function and responsibility of the insurer's executive director position held by Zimmerman is to protect the interests and maximize insurance company profits while overseeing the day-to-day activities of the insurer. A core function of the "treasurer," also held by Zimmerman, is to protect the financial interests of the insurer which, in part, means maximizing income from premiums paid by counties, such as Tazewell County, and reducing losses or claims

paid on behalf of the customers of the insured. [Black's law dictionary on line 2nd Ed. defines Treasurer as: " officer of a public or private corporation, company, or government, charged with the receipt, custody, and disbursement of its moneys or funds."]

D. Claims Administration by Contract and Necessity is the Responsibility of the Insurer, Not the County.

Charges and fees for claims administration by Insurance Program Managers Group ["IPMG"] on behalf of insurer ICRMT have generated incredible profits for the insurer at immense cost to the county — approximately $60,000.00 per month so far in 2022. These charges and fees for claim administration services are customarily paid for by the premium. Indeed, the proposal accepted by the county included claim management services. See Exhibit 3, page five, ICRMT/IPMG joint proposal.

In addition, these variable fees could have been excluded by properly drafted bid documents clearly placing the responsibility for processing claims upon the insurer, not the county. A diligently loyal chairman would have read the insurance proposal and discovered that claim administration was already covered under the policy of insurance.

The entity referred to as "IPMG" actually administers claims presented to the insurer by the county on behalf of the insurer, yet the county is paying the insurer a monthly surcharge, a hefty premium, and substantial deductible, plus lasers.

In fact, the standard insurance proposal by ICRMT as prepared by IPMG and presented by Kuhl Insurance Agency ["Kuhl"] to the insurance customer, Tazewell County, page 5, the proposal states IPMG claims management services are included in the program of insurance. The standard pitch of the insurance company, by means of its written proposal, is that the insurance program is administered by IPMG, providing an integrated approach to claims administration. There is no additional cost mentioned for these services. See Exhibit 3 pg. 2 of the ICRMT/IPMG joint 2021-2022 proposal.

In this lopsided arrangement, the county, in practice, pays over $30,000 in fees to Kuhl,

who is the presenter of ICRMT's proposal; the proposal preparer and claims administrator, IPMG, currently bills the county over $60,000.00 per month, all of which could have been utterly eliminated by the bidding process or requiring multiple quotes. *In any event, the proposal indicates claims administration is a covered benefit.*

E. The Emergency Order Entered by the Zimmerman Illustrates the Favoritism Accorded the Insurance Company All to the Detriment of the County.

Zimmerman declared an emergency declaration on behalf of the county approving and, it appears, paying the insurance company's annual premium for the fiscal year 2021 in late September, instead of on the renewal date of December 1, 2020, or for that matter, making installment payments that appear to be an option under the proposal. See Exhibit 3, pg. 20. Since Zimmerman held the positions of executive director and treasurer of ICRMT, it was a conflict of interest for him to have acted upon such matters. This bailout demand by the insurer was not the responsibility of the county.

Regarding this emergency order, essentially, the county administrator unconvincingly explained to the insurance review committee that Zimmerman's emergency order was necessary because:

> "We were informed on September 25th [2020] that if the quote was not signed that day, the cost would increase substantially and additional lasers between $100,000 and $650,000 would be added for the upcoming year." [See Exhibit 18]

The grave problem with this explanation is that it is vague, imprecise, incomplete and problematic. The reason for the quote to expire on the 25th of September, seemingly without prior notice, is not clear nor explained. The amount of the threatened premium increase is not stated nor the timing of it— only that it is expressed as a foregone conclusion. The wide range $100,000 to $650,000 of additional lasers is quite suspect and not documented in any manner. The reason the renewal quote effective December 1, 2020, could be changed, withdrawn or was no longer viable or enforceable, is not explained.

The insurer's right to revoke the quote subjecting*, in the words of the administrator, "the*

county and our employees to additional increases" and compelling the county to declare an emergency without any historicity, lacks a good measure of credibility and, if true, is cause for real concern in that the county was in the position that it could be threatened in such a manner, without any recourse or so it seems. The state's attorney involvement or opinion, if any, who might have been able to assert the rights of the county, is conspicuously omitted.

However, if the account is taken as accurate, the county was being blackmailed to approve the quote at once or suffer dire consequences inflicted by the insurer, and since the insurance company has no competitors, the county, or at least its 'quick to act' chairman, seems to have accepted the fact it is captive to any whim of the insurer. [It should be mentioned that petitioner's attorney filed a FOIA requesting any public records including emails that verified the claim by the administrator, but no records of verification were produced. [See Exhibit 4]

In addition, board members and insurance review committee members probably were not aware of Zimmerman's undisclosed positions with the insurer, which if known, might have provoked some skepticism, one would hope, over this emergency declaration,

F. The Practices of No Bid Contracts and Bogus Supplemental Service Payments Have Egregiously Injured Taxpayers.

The no bid contracts have resulted in run away inflated costs since 2014 damaging the county's taxpayers profoundly. Such practices have made Tazewell County one of the highest median property taxes, not only in the State of Illinois, but in the United States based upon three separate criteria. [1]

[1]Tazewell County has one of the highest median property taxes in the United States, and is ranked 322nd of the 3143 counties in order of median property taxes. The average yearly property tax paid by Tazewell County residents amounts to about 3.68% of their yearly income. Tazewell County is ranked 326th of the 3143 [0.11 %] counties for property taxes as a percentage of median income. Tax rates. org 2022. See Exhibit 5.

Tazewell County Property Taxes		
Median Property Tax	As Percentage Of Income	Percentage Of Property Value
$2,320 ± $44 (322nd of 3143)	3.68 ± 0.11% (326th of 3143)	1.85 ± 0.04% (158th of 3143)
tax rate org. 2022 [See Exhibit 5]		

II. Statutes Relevant to the Appointment of a Special Prosecutor in this Case.

A. Section 55 ILCS 5/3-9005 - Powers and Duties of State's Attorney.

(a) The duty of each state's attorney shall be:

(1) *To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for the county*, in which the people of the state or county may be concerned.

(2) To prosecute all forfeited bonds and recognizances, and all actions and proceedings for the recovery of debts, revenues, moneys, fines, penalties and forfeitures accruing to the state or the county * * *

(3) *To commence and prosecute all actions and proceedings brought by any county officer in the county officer's official capacity.*

(4) *To defend all actions and proceedings brought against the county, or against any county or State officer, in the county or State officer's official capacity, within the county.* * * *

(7) To give the state's attorney's opinion, without fee or reward, to any county officer in the county, upon any question or law relating to any criminal or other matter, in which the people or the county may be concerned * * *

(11) To perform such other and further duties as may, from time to time, be enjoined on the state's attorney by law.

B. 55 ILCS 5/3-9008 Appointment of Attorney to Perform Duties.

(a) (Blank).

(a-5) The court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the state's attorney is sick, absent, or unable to fulfill his or her duties. The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the state's attorney is sick, absent, or otherwise unable to fulfill his or her duties. If the court finds that the state's attorney is *sick, absent, or otherwise unable to fulfill his or her duties*, the court may appoint some competent attorney to prosecute or defend the cause or proceeding.

(a-10) *The court on its own motion, or an interested person in a cause, proceeding, or other matter arising under the state's attorney's duties, civil or criminal, may file a petition alleging that the state's attorney has an actual conflict of interest in the cause, proceeding, or other matter.* The court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the state's attorney has an actual conflict of interest in the cause, proceeding, or other matter. [emphasis supplied] If the court finds that the petitioner has proven by sufficient facts and evidence that the state's attorney has an actual conflict of interest in a specific case, the court may appoint some competent attorney to prosecute or defend the cause, proceeding, or other matter.

(a-15) Notwithstanding subsections (a-5) and (a-10) of this section, the state's attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section.

C. Competitive Bids § 55 ILCS 5/5-1022 of the County Code.

(a) Any purchase by a county with fewer than 2,000,000 inhabitants of services, materials, equipment or supplies in excess of $30,000, other than professional services, shall be contracted for in one of the following ways:

(1) by a contract let to the lowest responsible bidder after advertising for bids in a newspaper published within the county or, if no newspaper is published within the county, then a newspaper having general circulation within the county; or

(2) by a contract let without advertising for bids in the case of an emergency if authorized by the county board.

D. Tazewell County § 31.02 Competitive Bidding Ordinance.

(A) Condition for use. All purchases for goods and services, in an amount of $30,000 or an amount set by state statute, except as otherwise provided herein, must utilize competitive bidding as required by 55 ILCS 5/5-1022.

(B) Invitation for bids. An invitation for bids shall be issued and shall include specifications, bid evaluation requirements, and all applicable contractual terms and conditions in a form as reviewed and approved by the State's Attorney's Office and the County Auditor. Bid specifications shall be recommended to the parent committee by the requesting department head and shall describe clearly the goods and services to be contracted, but shall not be drawn so narrowly as to preclude or diminish competition. A copy of invitations shall be sent to the Auditor. [underline added]

(C) Public notice. Public notice of the invitation for bids shall be made. Such notice shall include publication in a newspaper of general circulation within the county not less than ten calendar days prior to the date set forth therein for the opening of bids.

(D) Bid opening. Sealed bids must be written and shall be opened publicly in the presence of at least three of the following county officials: requesting department head; assistant department head; County Administrator; Assistant State's Attorney; Auditor; and chairperson or member of parent committee, when applicable. Sealed bids shall be opened and read at the time and place designated in the invitation for bids. At a minimum, the amount of each bid, and the extent to which each bid conforms to the evaluation criteria, together with the name of each bidder shall be recorded in the form of a bid summary. The summary and each bid shall be open to the public inspection.

(E) Late bids. No bids received after the specified time in the bid information will be considered. It is the bidder's responsibility to see that the bid is delivered at the time and place specified.

(F) Bid evaluation. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine bid acceptability such as prior related work experience, workmanship, suitability of the item bid for the purpose intended, discounts, transportation costs, and the total or life cycle costs. No criteria may be used in bid evaluation that are set forth in the invitation for bids.

III. The Threshold Requirements to Appoint a Special Prosecutor are Conclusively Met.

A. Section § 5/3-9008 States that the Court May Appoint a Special Prosecutor if the State's Attorney is Either Unable to Fulfill His Duties or Has an Actual Conflict of Interest

County Code § 5/3-9008 states that an interested person in a cause or proceeding may file a petition alleging that "*the State's Attorney is sick, absent, or unable to fulfill his or her duties"* 5/3-9008 (a-5) "*or has an actual conflict of interest in the cause, proceeding, or other matter*." 5/3-9008 (a-10). If either of the circumstances set forth by subsections (a-5) or (a-10) exists, "the court may appoint some competent attorney to prosecute or defend the cause, proceeding, or

other matter." In this matter both contingencies exist.

B. County Code Obliges the State's Attorney to Represent the Interests of Each of the Persons Relative to the Underlying Cause, Proceeding or Other Matter, Resulting in Irreconcilable Conflicts of Interest.

This petition underscores the inherent conflict of interest that arises when the state's attorney is called upon to investigate or prosecute alleged wrongs by officers acting in their official capacity – when the state's attorney is also required by statute to defend these same officers, and to offer them all legal advice without fee. [See 55 ILCS 5/3-9005 Duties and Powers of State's Attorney]. Respondent's office is in fact representing Zimmerman in a case currently pending in Tazewell County (2019-L-000092).

This conflict is particularly acute when the states's attorney has collaborated with Zimmerman for many years, and has an ongoing business and legal relationship with him. The state's attorney has approved and defended past practices of Zimmerman, such as charging the county for commuter mileage expense disguised as administration expense.

Without serious doubt, the various duties assigned by the county code to the state's attorney in this case results in inevitable conflicts, creating divided loyalties. In fact, Zimmerman is a current client of Umholtz in case 2019-L-000092 pending in this jurisdiction against the interests of the County. People v. Courtney, 288 Ill. App. 3d 1025, 1031-32 (Ill. App. Ct. 1997) ("it has long been the law in Illinois that 'an attorney cannot represent conflicting interests or undertake to discharge inconsistent duties.' People v. Gerold, 265 Ill. 448, 477, 107 N.E. 165, 177 (1914)") These conflicting duties nullify an impartial or independent investigation or prosecution by the state's attorney, if so inclined.

From an historical perspective, these were the type of conflicts leading to major changes in federal law spurred by the public's outrage in the wake of the Watergate scandal. The same phenomenon is present here where political interests tend to obscure impartial justice.

In an editorial regarding the appointment of a special prosecutor under federal law, the New York Times wrote, "This law [special prosecutor] protects officials and citizens alike from

government self-investigations that lack credibility and heighten public distress. You trust your mother, but you cut the cards." N.Y. Times, May 26, 1981, at A22, col. I. The other side of the coin: "The law protects the public by guarding against favoritism, and it can be a boon to officeholders by giving them credible clearance when they deserve it." N.Y. Times, June 30, 1982, at A22, col. I. See 28 USC 591-598 et seq.[2]

C. The State's Attorney is a Substantive Party to the Underlying Cause, Proceeding or Other Matter.

In addition to the conflicting roles of the state's attorney, the need to appoint a special prosecutor is absolutely essential when the county's chief law enforcer allegedly acted in a manner inconsistent with the law he is charged with enforcing, such as: assuming the role of a defense attorney for the chairman against his county who seeks to restore public funds misappropriation by Zimmerman; referring legal cases to outside counsel without judicial appointment; and approving resolutions for no 'bid contracts' for the last several years as a member of the Risk Management Committee. People v. Tracy, 291 Ill. App. 3d 145, 151 (1997); People v. Morley, 287 Ill. App. 3d 499, 504 (1997); People v. Dall, 207 Ill. App. 3d 508, 530 (1991); People v. Trolia, 107 Ill. App. 3d 487, 496 (1982) " McCall v. Devine, 334 Ill. App. 3d 192, 199 (Ill. App. Ct. 2002) [where state's attorney is interested as a private individual or he is a party to the action in his official capacity he is interested for the purposes of Section 3-9008.]

D. The State's Attorney has an Actual Conflict of Interest in this Cause, Proceeding, or Other Matter Pursuant to the Illinois Rules of Professional Conduct and Therefore, is Unable to Fulfill his Duties.

County Code § 5/3-9008 states that an interested person in a cause or proceeding may file

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[2]As former Watergate Special Prosecutor, Archibald Cox, testified before the Senate, "The pressures, the tensions of divided loyalty are too much for any man, and as honorable and conscientious as any individual might be, the public could never feel entirely easy about the vigor and thoroughness with which the investigation was pursued. Some outside person is absolutely essential." Former U.S. Attorney Whitney North Seymour succinctly stated the same sentiment in his Senate testimony, noting that, "loyalty to the political interests of the administration may often require disloyalty to the goal of impartial justice." 14 See generally Special Prosecutor: Hearings Before the Senate Comm. on the Judiciary, 93d. Cong., 1st Sess. (1973); Removing Politics From the Administration of Justice: Hearings on S. 2803 and S. 2978

a petition alleging that "*the State's Attorney is sick, absent, or unable to fulfill his or her duties"* 5/3-9008 (a-5) "*or has an actual conflict of interest in the cause, proceeding, or other matter*." 5/3-9008 (a-10). If either of the circumstances set forth by subsections (a-5) or (a-10) exists, "the court may appoint some competent attorney to prosecute or defend the cause, proceeding, or other matter." Both an actual conflict of interest exists along with being unable to fulfill his duties ethically to the county in this cause, proceeding, or other matter. [We note that the statute was amended effective 1/01/22 with addition ("or other matter") presumably to make it clear the conflict applied to the underlying claims necessitating the appointment.]

Since the conflict of interest rules of the Illinois Rules of Professional Conduct [IRPC], which have the force of law, prohibit the state's attorney from ethically representing any of the parties he is *unable to fulfill his duties* to those parties he is obliged by the county code to represent, particularly the county. *§ 5/3- 9008.* (a-5) Therefore the court may consider the appointment on that basis alone, which disqualifies him as a matter of law, otherwise this court would be sanctioning unethical conduct.

E. The State's Attorney is Unable to Ethically Fulfill his Duties.

Since the state's attorney is duty bound by the county code to represent virtually all of those who have interest in the underlying claims, this creates a *per se* conflict of interest between his present and former clients, as set forth by the IRPC, specifically Rule 1.7 Conflict of Interest: Current Clients, as well as Rule 1.9 Duties to Former Clients. *The IRPC apply to the state's attorney disqualifying him from prosecuting or defending anyone respondent in this cause.*

F. The Paramount Duty of a State's Attorney is to his County, not the Chairman

Illinois case law unequivocally holds that the IRPC apply to public officials, specifically, to conflicts of interest between clients. In Re Vrdolyak, 137 Ill.2d 407 (1988) [Chicago Alderman an attorney is accountable to city for conflict of interest] See also Chicago Park District v. Kenroy, Inc. (1980), 78 Ill.2d 555, 562. ["it is beyond dispute that respondent [a city

alderman] owed his undivided loyalty and a fiduciary duty to the City"] See also Ferguson v. Patton, 369 Ill.Dec. 14, 25 (Ill. 2013) "Rule 1.7(a) of the Rules of Professional Conduct (Ill. R. Prof. Conduct(2010) R. 1.7(a) (eff. Jan. 1, 2010)), a provision (conflict of interest) which is binding on lawyers such as the Corporation Counsel who serve as public officers (Ill. R. Prof. Conduct (2010) R. 1.11(d) (eff. Jan. 1, 2010))" These ethics forbid the state's attorney from any participation in the underlying matters.[3] See Comment #1 to rule 1.11

G. The State's Attorney Conceded on the Record in a Case Involving the Same Parties, that the Illinois Rules of Professional Conduct Disqualifies Him.

Indeed, State's Attorney Umholtz, proclaimed on the record, in Case No. 2018-MR-147 involving the appointment of a special prosecutor that the IRPC applied as follows:

> "Illinois State Statute designates the state's attorney as the legal representative for both the plaintiff and respondents in this matter." See 55 ILCS 5/3-9005(4) and 55 ILCS 5/3-9005(5). Illinois Rules of Professional Conduct indicate that the state's attorney cannot represent opposing parties in any manner and he his prohibited from doing so." See IRPC 1.7 [4]

Although the facts of the two cases differ, he conceded in his entry of appearance that the IRPC applied to him as a government attorney; he also admitted that the IRPC conflict of interest rules directly applies to appointment matters under Section 9008 creating an actual conflict of interest disqualifying him. See his entry of appearance filed in case no. 2018-MR-147 attached hereto as Exhibit 6.

In the often quoted words of Justice Brandeis in Olmstead v. United States (1928), 277 U.S. 438,485,486 (dissenting opinion)

"Decency, security and liberty alike demand that government officials shall be subjected

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[3] Rule 1.11 special conflict of interest government officers; comment [1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7.

[4]The state's attorney also acknowledged in 2018-MR-147 in a suit with identical parties that he was disqualified by virtue of IRPC 1.7 Conflict of interest-Current clients; IRPC 3,7 Lawyer as Witness; and IRPC 1.9 Duties to Former Clients

> to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher."

H. It is the Obligation of the State's Attorney to Recuse Himself Pursuant to Section (a.15) of the Appointments Statute.

Pursuant to the IRPC, State's Attorney Umholtz suffers from an irreconcilable conflict of interest and is unable to fulfill his duties to the county or the officers. He should recuse himself. IRPC (Rule 1.7 Conflict of Interest-Current Clients; Rule 1.9 Duties to Former Clients and Rule 1.16 Declining or Terminating Representation, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law.)

If he should fail to follow the ethical directions of the IRPC that require his recusal, this court should enforce these rules requiring him to recuse himself and proceed as if he did so voluntarily and proceed to appoint a special prosecutor under the mandatory provisions of (a.15)

> (a.15) " Notwithstanding subsections (a-5) and (a-10) of this section, the state's attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section." (emphasis supplied)

In the event the state's attorney fails to recuse himself, he should not benefit by unethical conduct. As a consequence, it is rational under the circumstances, as well as the duty of the court, to enforce and implement subsection (a.15) "[T]he judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct." United States v. Young (1985), 470 U.S. 1, 9, 84 L.Ed.2d 1, 8, 9, 105 S.Ct. 1038, 1043, 1044. ["a trial judge should deal promptly with any breach by either prosecutor or defense counsel"] citing cases People v. Lyles, 106 Ill. 2d 373, 412-414 (Ill. 1985) [prosecutor has the obligation to comport himself in a manner that inspires respect for the administration of justice.]

"Where a per se conflict of interest exists, the state's attorney has the burden of showing

why a special state's attorney should not be appointed (Courtney, 288 Ill.App.3d at 1034, 687 N.E.2d at 526)" People v. Lanigan, 353 Ill. App. 3d 422, 431 (Ill. App. Ct. 2004)

Many of these claims that support the appointment involve moral turpitude and constitute criminal offenses on the part of Zimmerman. Therefore, the mere existence of a *per se* conflict is sufficient to constitute a violation of this Respondents' rights. See Courtney, 288 Ill. App. 3d at 1033, 687 N.E.2d at 526, quoting Arizona v. Latigue, 108 Ariz. 521, 523, 502 P.2d 1340, 1342 (1972) ["Given the dangers of prejudice and influence inherent in a per se conflict, the mere existence of the conflict is sufficient to constitute a violation of the Respondents' rights, regardless of whether the conflict actually influenced counsel or the outcome of the case. Justice and the law must rest upon the complete confidence of the thinking public and to do so they must avoid even the appearance of impropriety"]

Any participation by the state's attorney as prosecutor or defense counsel in a case, such as this one, where a current client of the state's attorney is claimed to have misused or misappropriated county funds would result in an apparent and obvious conflict of interest.

Zimmerman is a current and former client of this state's attorney.

In that regard, see A.B.A. Criminal Justice Standard 3-1.7 (d), "The prosecutor should not be involved in the prosecution of a former client."

In addition, this petition states claims against the Office of the State's Attorney which illustrates the state's attorney, is an *actual party to the litigation*, has interests directly at odds with those of Zimmerman. Environmental Protection Agency v. Pollution Control Board, 69 Ill. 2d 394, 400-01 (1977). The paramount duty of a prosecutor is to the public he swore under oath to serve, which includes the protection and preservation of public funds, certainly not to defend an officer who has allegedly misused county funds.

"Clearly, a per se conflict of interest exists in this case. If the state's attorney were to both prosecute and defend respondents, the appearance of impropriety would be grossly evident." See Morales, 329 Ill. App. 3d at 106, 768 N.E.2d at 92, rev'd on other grounds, 209 Ill. 2d 340, 808

N.E.2d 510, citing Lawson, 163 Ill. 2d at 210, 644 N.E.2d at 1183; Stoval, 40 Ill. 2d at 113, 239 N.E.2d at 444."

People v. Weeks, 2011 IL App (1st) 100395, ¶ 46 [special prosecutor may be appointed when the prosecutor is an actual party to the litigation] The diverging interests of the state's attorney, from which he cannot escape, require the appointment.

PART TWO

ITEMIZED COLORABLE CLAIMS SUPPORT APPOINTMENT OF SPECIAL PROSECUTOR

Underlying Claims that support the appointment of a Special Prosecutor relative to J. David Zimmerman, Chairman of the Board

IV. The Colorable Claims Asserted in this Petition Justify the Appointment.

A. Definition of Colorable Claims.

Black's Law Dictionary (10th Ed. 2014) defines a "colorable claim" as "[a] claim that is legitimate and that may reasonably be asserted, given the facts presented and the current law (or a reasonable and logical extension or modification of the current law)." Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) similarly construes a viable claim as one that is "well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." Haney v. Winnebago Cnty. Bd., 2020 Ill. App. 2d 190845, 11 (Ill. App. Ct. 2020 [adopted and defined a colorable claim standard]) To the same effect applying 'colorable claim' applied in Hoffman v. Madigan, 2017 Ill. App. 4th 160392 (Ill. App. Ct. 2017)

B. The Application of Colorable Claims Standard in the Appointment Process and the Exercise of the Court's Discretion.

The appellate court in *Sub. Cook Co. Reg. Off. v. Cook Co. Bd.* 282 Ill. App. 3d 560, *575* (Ill. App. Ct. 1996) utilized the '*colorable claim*' standard stating, "If the official is able to establish a colorable claim which the state's attorney is unwilling to support or if the state's attorney is representing two agencies which are in conflict, the court should be able to exercise

its discretion to appoint private counsel."

Even if the appointment is discretionary, the dismissal of all of the underlying charges or claims is a drastic measure, which would be the result if the appointment was not granted here. Such a result, the court in People v. Trolia (1982), 107 Ill.App.3d 487, 437 N.E.2d 804, could not countenance— "we conclude that under the circumstances of this case, the failure to appoint a special prosecutor as a less drastic alternative to the dismissal of the charges was an abuse of discretion." People v. Polonowski, 258 Ill. App. 3d 497, 503-04 (Ill. App. Ct. 1994). Citing Environmental Protection Agency v. Pollution Control Board, 69 Ill. 2d 394, 400-01, 372 N.E.2d 50 (1977); Morley, 287 Ill. App. 3d at 504. In re Harris, 335 Ill. App. 3d 517, 521 (Ill. App. Ct. 2002)

V. Unlawful Acceptance and Retention of Homestead Exemption Benefits.

On August 29, 2014, the premises commonly know as 134 Maple Ridge Dr., Morton, Illinois, was conveyed to J. David Zimmerman and his wife by the grantors, Brown Trust which had the benefit of an homestead exemption. The Brown Trust, having title to the property on January 1, 2014, was responsible for the payment of the 2014 property tax payable in 2015. [Trustees deed, Exhibit 7; and the Property Tax Statement for 2014, Exhibit 8] The Property had the benefit of a homestead exemption for year 2014 in the Grantors, Brown Trust.

As a matter of due course, the assessor's office is required to remove the senior tax exemption status from the property upon transfer and require the grantees to file the proper form showing eligibility to receive the homestead exemption; otherwise, the exemption must be cancelled by the assessor. 35 ILCS 200/15-175

> If the new owner fails to apply or reapply for a homestead exemption during the applicable filing period or the property no longer qualifies for an existing homestead exemption, the assessor shall cancel such exemption for any ensuing assessment year. 35 ILCS 200/15-175

Inexplicably this cancellation procedure was *not* followed by the assessor in the case of

Zimmerman, who appointed the assessor to his well paid position and has alone has the sole power to retract the appointment, although this transgression became quite public. In fact, Petitioner is informed and believes that Zimmerman was asked during a recent television interview if he intended to pay back the amount of the homestead exemption. He responded by saying he would have to speak with his wife.

Petitioner is informed and believes that Zimmerman leveraged his position and appointment powers to pressure or influence the chief assessor or the office personnel which enabled him to retain the exemption unlawfully, without completing the necessary forms used to apply for the homestead exemption, notwithstanding the assessor's duty to cancel such exemption.

By virtue of 35 ILCS 200/15-170, the Senior Citizen Homestead Exemption requires the recipient of the homestead exemption to be 65 years or older and occupy the premises as an owner. Zimmerman and his wife are not 65 years old and were and are not entitled to such exemption. The Senior Exemption allowance was clearly stated in the right side column of Zimmerman's property tax bills payable in 2015, 2016, 2017 and 2018 received by Zimmerman. [See Exhibit 9 tax bills for 2015, 2016, 2017 & 2018 respectfully]

Subsection (d) of the statute requires that eligible senior citizens apply for the exemption during the application period, which Zimmerman failed to do. [See PTAX Application for senior citizen homestead exemption form attached as Exhibit 10.]

Subsequently, Zimmerman was requested by the assessor to reimburse the amounts improperly discounted, but he refused to do so in violation of 735 ILCS 5/20-103 [Section 20-103 provides that a person who receives compensation benefits or remuneration "to which he is not entitled, or in a greater amount than that to which he is entitled" shall be liable to repay those amounts and, in addition, be liable for civil penalties, including treble damages. Zimmerman clearly used his position and powers to gain this monetary advantage and to retain this advantage refusing to pay back any of the amounts gained by the exemption from 2015

through 2018.

Moreover, the senior exemption was removed from the face of Zimmerman's [public] property tax bill for the years 2019 and 2020. [Exhibit 11] However, Zimmerman, while fully cognizant that he has no right to claim the exemption, unabatedly received the exemption in 2019 and 2020 'off the public record' on the pretense that he refused to submit a certificate of error to the treasurer's office. [See Exhibit 12 allegedly removing senior exemption for taxes incurred in the year 2019 and 2020 due to clerical error] Notwithstanding that the governing statute 35 ILCS 200/15-175, infra, required cancellation without question according to its plain terms to wit; "*if the new owner fails to apply for the exemption * * * the assessor shall cancel such exemption for any ensuing assessment year."* The Chairman abused and leveraged his power and position to illegally retain since 2015 the undeserved inapplicable exemption.

In any event, Petitioner is informed and believes that Zimmerman was given notice to file a certificate of error with the treasurer's office, which he consciously elected not to do.[5]

Furthermore, as a public official, Zimmerman owed the public a duty of absolute loyalty and fidelity, and who occupied a position of the highest public trust which he breached. See People v. Bordeaux (1909), 242 Ill. 327, 89 N.E. 971; County of Cook v. Barrett (1975), 36 Ill. App.3d 623, 344 N.E.2d 540. Village of Wheeling v. Stavros, 89 Ill. App. 3d 450, 453 (Ill. App. Ct. 1980). Intentionally receiving the benefit of an unlawful homestead exemption breaches his duty of absolute loyalty, fidelity and highest trust of the public he was elected to serve.

In addition, Zimmerman has been and continues to be unjustly enriched. [An action to prevent such unjust enrichment is maintainable in all cases where one person has received money under such circumstances that in equity and good conscience he ought not retain.] M.J. McCarthy

[5]Any person who, with intent to defeat or evade the law in relation to the assessment of property, delivers or discloses to any assessor or deputy assessor a false or fraudulent list, return or schedule of his or her property not exempted by law from taxation, is guilty of a Class A misdemeanor. 35 ILCS 200/25-40

Motor Sales Co. v. Van C. Argiris Co. (1979), 78 Ill. App.3d 725, 396 N.E.2d 1253; Cohon v. Oscar L. Paris Co. (1958), 17 Ill. App.2d 21, 149 N.E.2d 472; Village of Wheeling v. Stavros, 89 Ill. App. 3d 450, 454 (Ill. App. Ct. 1980)] The acceptance and retention of the monetary value of the exemption and the deprivation of the funds rightfully due the county also constitutes theft by deception under Illinois law.

VI. Zimmerman Breached His Fiduciary Duty to the Public by Automatically Renewing the Insurance Contract and Holding Office with the Insurer.

A. Zimmerman's ICRMT Positions and Conflicting Duties Resulted in Breaching his Fiduciary Duty of Undivided Loyalty to the County.

It has long been established in Illinois that "a public officer occupies a fiduciary relationship to the political entity on whose behalf he serves." Chi. Park Dist. v. Kenroy, Inc., 78 Ill.2d 555, 37 Ill.Dec. 291, 296, 402 N.E.2d 181, 186 (1980). [Alderman occupied fiduciary relationship to the city] The most well-known of a public official's fiduciary duties is that of undivided loyalty to the office and the people whom he serves. See Madlener v. Finley, 128 Ill.2d 147, 131 Ill.Dec. 145, 147, 538 N.E.2d 520, 522 (1989) (citing People v. Savaiano, 66 IU.2d 7, 3 Ill.Dec. 836, 841, 359 N.E.2d 475, 480 (1976), and City of Chicago ex rel. Cohen v. Keane, 64 Ill.2d 559, 2 Ill.Dec. 285, 288, 357 N.E.2d 452, 455 (1976)); see also Brown v. Kirk, 64 Ill.2d 144, 149 355 N.E.2d 12, 15 (1976). ["long-standing common law doctrine that the faithful performance of official duties is best secured if a governmental officer, like any other person holding a fiduciary position, is not called upon to make decisions that may advance or injure his individual interest"] Emanating in part from section 3 of the Illinois Corrupt Practices Act, 50 ILCS 105/3, see Keane, 2 Ill.Dec. 285, 357 N.E.2d at 455, this duty is "sweeping," see People v. Scharlau, 141 Ill.2d 180, 152 Ill.Dec. 401, 407, 565 N.E.2d 1319, 1325 (1990), and commands a public official to refrain from self-dealing and conflicts of interest, see Madlener, 131 Ill. Dec. 145, 538 N.E.2d at 522."[6] Also conflict of interest provisions *" are designed to prevent the*

[6]The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee,in respect to the trust and confidence involved in

creation of relationships which carry in them the potential of such abuse by removing the possibility of temptation." Brown v. Kirk, 64 Ill.2d 144, 151. (1976) See also Hoskins v. Walker (1974), 57 Ill.2d 503,509 illustrative of that conflict of interest design being the School Code provision prohibiting any State Board of Education member from being employed by or administratively connected with any school or school system.

Zimmerman, by virtue of the conflicting duality of his position as county board chairman simultaneously acting as ICRMT's executive director and treasurer, not only breached his duty of undivided loyalty to his office, but he betrayed the trust of the people of the county which he swore to serve.

B. The Failure of the Chairman to Disclose His Position with ICMRT to the County Board Constituted Fraudulent Concealment.

Notably Zimmerman failed to publicly disclose that he held these positions with ICRMT. "The person occupying the relation of fiduciary or of confidence is under a duty to reveal the facts to the plaintiff (the other party)" and failure to do so amounts to fraudulent concealment. Chicago Park District v. Kenroy, Inc., 78 Ill. 2d 555, 562 (Ill. 1980) Numerous internal citations at p. 562 of opinion. Restitution is proper on behalf of the County.

"There can be no dissent from the principle that all officials must act with unwavering integrity, absolute impartiality and complete devotion to the public interest," citing O. Reynolds, Local Government Law § 84 (1982) (People v. Scharlau 19900 141 Ill. 2d 180, 196)[7]

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it and the scrupulous good faith and candor which it requires. Thus, a person Is a fiduciary who is invested with rights and powers to be exercised for the benefit of another person. Svanoe v. Jurgens, 144 111.507, 33 N. E. 955; Stoll v. King, 8 How. Prac. (N. Y.) 299. As an adjective it means of the nature of a trust; having the characteristics of a trust; analogous to a trust; relating to or founded upon a trust or confidence. Black's law dictionary

[7]"It is well established that a public officer occupies a fiduciary relationship to the political entity on whose behalf he serves. (City of Chicago ex rel. Cohen v. Keane (1976), 64 Ill.2d 559, 565; Brown v. Kirk (1976), 64 Ill.2d 144, 149; People v. Bordeaux (1909), 242 Ill. 327, 334; County of Cook v. Barrett (1975), 36 Ill. App.3d 623, 627; Flaum and Carr, The Equitable Bill of Accounting — A Viable Remedy for Combating Official Misconduct, 62 Ill. B.J. 622 (1974); see also United States v. Bush (7th Cir. 1975), 522 F.2d 641, 646-48, cert. denied (1976), 424 U.S. 977, 47 L.Ed.2d 748, 96 S.Ct. 1484; United

C. The Lack of Competitive Bidding Injured Taxpayers.

The competitive bidding structure accomplishes at least two major advantages which benefit the county. As aptly stated by Smith v. F.W.D. Corp, "competitive bidding [i]nvite[s] competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable. McQuillin, Municipal Corporations sec. 29.29, at 302 (3d ed. 1981)." Smith v. F.W.D. Corp., 106 Ill. App. 3d 429, 431 (Ill. App. Ct. 1982)

Competitive bidding's major advantage here is that the county would have been able to structure the terms and conditions during the bid process to protect and favor the county, instead of the insurance company presenting a one sided contract which the Chairman doubling as the Executor Director for the insurance company, ipso facto executes and approves.

D. Premiums have Risen Dramatically Absent Competition.

For instance, the insurance premiums, without facing any competition, have risen dramatically over this eight year bidless period. The premiums over the past four years have increased in a dramatic fashion as shown below:

2018-2019	2019-2020	2020-2021	2021-2022
$494,216	$582,039	$618,811	$751,100

From 2018 to 2021 the total premium increased about 75%. Last year alone, the premium increased by about 21.3% (from $618,811.00 to $751,100.00). [Exhibit 13, premium sheets]

Nonetheless, the contracts were not let to bid during this time frame. The insurance contracts were hardly arms length transactions. The insurer received preferential treatment to the detriment of the county.

States v. Keane (7th Cir. 1975), 522 F.2d 534, 545-46, cert. denied (1976), 424 U.S. 976, 47 L.Ed.2d 746, 96 S.Ct. 1481; 63 Am.Jur.2d Public Officers Employees sec. 275 (1972).)" Chicago Park District v. Kenroy, Inc., 78 Ill. 2d 555, 564-65 (Ill. 1980)

E. Committee Members were Misinformed about Bid Requirements.

Interestingly, when a relatively new member of the Risk Management Committee asked how often the county should bid the contract, she received a less than candid response from both Zimmerman and a ranking member of the committee to wit:

Risk Management Committee meeting minutes. . . . . December 1, 2014.

> "Proehl (committee member) asked what the time frame would be to resubmit for bid. Neuhauser (committee member & co-chair) stated that a reasonable time is every three years. The process is complicated, and you want to establish a history and not be an insurance hopper. Chairman Zimmerman pointed out that they were quick to settle for us."

[According to the record, Assistant State's Attorney Mike Holly, was present at this meeting]

* * *

Risk Management Committee meeting minutes. . . . . November 10, 2015.

Harris asked how often an RFP [request for proposal] is needed. Ferrill (County administrator) stated that normally it is every three to five years.

[Zimmerman was present, as was Assistant State's Attorney Mike Holly, and Nancy Proehl according to the record]

VII. Claims Administration Fees are Numerous, Incalculable, Enormous and Were Covered Under the Proposal and Paid for with the County's Premium Payment.

A. The Chairman Executed Contracts that Currently Cost the County $60,000 per Month for Claim Services Already Paid for by the Annual Insurance Premiums.

Zimmerman executed an agreement with an affiliate of ICRMT, namely IPMG that was a carte blanche agreement for IPMG to charge often at variable amounts for claim administration and associated services that have a price tag cost in excess of **$60,000.00 per month**. See Exhibit 14, IPMG claims service agreement. The monthly charges for the first three months of 2022[8] are as follows:

[8]In 2021 the average monthly cost for the service was roughly $51,000.00.

1/1/2022. . . . . $64,444.13
2/1/2022. . . . . $61,046.11
3/1/2022. . . . . $61,821.99
Actual total for first three months. *$187,312,23*
Projected cost for 2022. . . . . . *$749,248.92*

The dispiriting situation for the county's taxpayers is that claims administration is customarily included in the cost of the insurance premium and is not worthy of an additional fee or charge. In fact, the standard proposal of ICRMT accepted by the county includes coverage for Claim Management Services, as discussed above. These fees by an entity, essentially the alter ego of the insurer, doubles the cost of the insurance and represents clear profit for the insurer.

The insurance premium—not including the cost of lasers—for the current year 2021 - 2022 is $751,000.00.

The separate surcharges for handling claims by IPMG projected for the year, based upon the invoices for the first three months of this year, total $749,244.96 for various and sundry fees related to claims administration.

Exhibit 15 reflects the invoices from IPMG for the first three months of 2022 and the first and last months of 2021, which illustrate the steady escalation of the monthly invoices increasing from $50,101.75 for 1/1/2021 to $62,322.31 for 12/1/2021.

B. IPMG's Extraneous Administrative Claims Contract was Approved Annually and Executed by Zimmerman.

The division of ICRMT that handles the county claims administration, IPMG, shares a common address with ICRMT, to wit: 225 Smith Rd in St Charles, Illinois. IPMG is prominently displayed as an integral part of the organization chart of ICRMT [Exhibit 16]. Although the insurance company attempts to cast IPMG as a third party administrator, it is just a division of ICRMT, occupying the same offices in St Charles, Illinois. The annual standard proposal presented by IPMG on behalf of ICRMT to the county, read as a whole, clearly indicates they are one and the same.

The contract is unconscionable, because the administration of claims is covered by the premium payment for the policy. In addition, the proposal by the insurer states claims administration is included as part of the insurance program.

It strains the imagination for the customer to actually *pay* the insurance company (or its surrogate) to administer or handle the customer's claims when the insurer is responsible for processing and paying the claims as the designated payor of the those claims, bearing in mind that the insurer has a strong incentive to pay *as little as possible* for the customers claims since their business consists mainly of inflows of money from policy premiums and outflows from claim pay outs which they call "losses."

Unlike the insurer, the insurance customer has an equally strong counter incentive to have the insurer to pay *as many and as much as possible* of the customers claims since the payment of its claims is an inflow of money while the payment of policy premiums represents an outflow of the customer's money.

So why in world would the customer, in addition to paying hefty premiums, bankroll—to the tune of $60,000.00 per month—the claims administrator, who is the offspring of the insurance company, acting on behalf of and for the benefit of the insurance company.

It seems more than unsound, but then having an undisclosed executive director/treasurer of the insurance company as the chairman of the board, who executes contracts and resolutions that award no bid contracts to the insurer, it should hardly be surprising.

C. The Charges for Administrative Services are Oppressive and Shock the Conscience

The invoices for these administrative services are daunting and incapable of budgetary restraint. The contract consists of 31 single-spaced pages in about 6-point font. The fee provisions are never-ending. The IPMG contract is oppressive and, in most respects, unconscionable.

For instance, the fee schedule lists 12 types of administrative fees. Some fees are listed

as variable. There are three separate enrollment service fees and four termination fees on a time and material basis with no mention of the hourly rate. Indeed an example of the breadth and unreasonableness of these fees is the county being charged for the cost of completing the insurer's 1099's *after termination of the plan*. See Exhibit 14, service agreement.

Yet another egregious example of IPMG transferring its overhead to the county is the charge for the storage/transfer of files which again is open ended and unpredictable at *"actual expenses' plus 15%" after termination of the plan*. [Since when is the customer responsible for the expense of storing insurance companies claim files?]

D. The Fees Are Never Ending and Unscrupulous

There 18 different additional service fees. The amount of these fees are difficult to discern or calculate and repugnant. For example, if IPMG reviews a bill and successfully reduces the bill the fee is 25% of any savings, 5% is retained by IPMG. Apparently IPMG is the final word on the reduction. This fee reduction charge is problematic and illusory since medical care providers, for their own reasons, typically bill at the market rate and it is understood that the bill will be automatically reduced to the listed contract rate for that service. The cost of the service is usually identified based upon a CPT code or ICD code.

The so called reduction is an illusion since adjusting the 'mark up' to the contract rate is a perfunctory measure. It benefits the insurance company more so than the county. Stated differently, the 'reduction' is merely a matter of converting the retail price to the contract price, and is usually accomplished automatically by a software program.

Furthermore, the county should not be required to pay for the reduction which benefits the parent corporation ICRMT as much as it does the county, or more, because if the deductible is met by the county, the insurer alone stands to benefit simply by the reduction. If the deductible is not met, the reduction again benefits the insurer because more medical services rendered fall within the county's deductible allowance for each patient.

Subrogation fees are another example of overreaching by IPMG on behalf of the insurer.

Subrogation benefits the insurer as much as the county, or more, yet the county is charged a service fee of $750.00 per case for preparation & coordination even if subrogation efforts yield no return. The fees are confiscatory and are certainly not the product of any sort of compromise or negotiation. The misplaced loyalty of Zimmerman to ICRMT is quite evident by virtue of these fee provisions that favor the insurer and treat the taxpayers pocket book with utter disdain.

The county is even charged, in some instances, for a copy of the plan's summary of benefits and coverage at $150.00 per hour with a minimum of 2 hours. See attached agreement and fee schedule. Exhibit 14.

Every aspect of the agreement favors IPMG, an entity that is nothing more than an extension of the insurer, not the county. See Exhibit 16, ICRMT organizational chart.

Zimmerman, who signs and executes these contracts, was deficient in his duties to the public he serves. If he was unable to discern these discrepancies, at the very least, he should have consulted with someone more knowledgeable than himself. The county ordinance requires the state's attorney to review such contracts.

As a public official, Zimmerman, as well as Umholtz, owe to the principal, the duties of absolute loyalty, fidelity while occupying a position of the highest public trust. See People v. Bordeaux (1909), 242 Ill. 327, 89 N.E. 971; County of Cook v. Barrett (1975), 36 Ill. App.3d 623, 344 N.E.2d 540. The fees and the chairman's role in these financial matters is unfair, deceptive and injurious to the employees who contribute to premium payments and the taxpayers who have been forced to fund these unfounded and absurd charges.

E. Formidable Unfair Costs Could Have Been Avoided by the Terms and Specifications of Bidding Documents.

The unfortunate reality for county taxpayers is formidable, needless costs and fees associated with claims administration could and should have been avoided by carefully crafted bid documents yielding an eventual contract that took into consideration that the premiums paid usually includes or covers claim administration services and completely shun the ridiculous fees

just mentioned. The claims administration contracts were hardly arms length transactions but nothing less than a sweetheart deal for the insurer.

VIII. The Payment of Kuhl's Broker's Fees and Declaration of Lasers is Unconscionable.

A. The Right to Declare Lasers During Policy Period is Devastating.

The right to declare lasers during the policy period raises the deductible for insured participants suffering from chronic medical conditions, who pose a greater risk of incurring significant medical expense. Lasers which increase the cost of the deductible can be devastating. The use of lasers is also inconsistent with the a central tenet of group insurance. Lasers prejudice the health and welfare of those most vulnerable and as a practical matter, threaten their employment security.

However, if the bid were let, the specifications could include a "No New Laser" (NNL) clause designed to protect self-funded groups, at least for the next foreseeable renewal cycle. It seems that this protection was not bargained for by the county. For the year 2021, according to a memo issued by the administrator working under Zimmerman, the county was subject to lasers in the amount of $525,000 in 2021.

Zimmerman, serving two masters, wholly failed to protect the interests of the public who voted him into office. ICRMT received preferential treatment by the county due Zimmerman's influence, who signed off on the these oppressive contracts. Zimmerman violated his fiduciary duties of undivided loyalty to the office and the people he was elected to serve who placed their trust in him.

B. Annual Renewal Commissions Paid to Kuhl & Co. are Not the Responsibility of the County and are not Supported by Contract or Itemized Statements.

At the outset, this payment has been made without the benefit of any written agreement. Each year, Kuhl, a broker who ostensibly submits a claim each year for $30,000 without being required to bid or compete with other brokers quotes for placing the contract of insurance with ICRMT. The $30,000 amount of the payment is designed to evade the bid requirements, which

commence above $30,000. The existence of a contract to protect the interests of the county and approved by the board has been wholly disregarded.

In addition, Kuhl is actually paid in two installment, that totaled about $38,000 not, $30,000, which indicates that this service should have been bid. Interestingly, it was passed on to the county as a service fee added to the policy by law. The fee is the responsibility of the insurer, not the County. [Exhibit 17, service fee letter and Kuhl invoices showing two invoices per year that deal with placement of the insurance. Neither is itemized.]

Perhaps more importantly, the broker who is successful in securing or placing the contract insurance *is customarily paid a commission by the insurance company, not by the purchaser of the insurance/policy holder.*

These charges, without the benefit of a contract with Kuhl setting forth the terms and conditions, services and duties to be rendered and itemized invoices specifying the date and description of the services actually rendered by Kuhl to the county should have been declined.

IX. Zimmerman's Prohibited Interest Regarding ICRMT Contracts of Insurance Disadvantaged the County.

A. Prohibited Interest as Defined by Statute.

The prohibited interest in contracts, 50 ILCS 105/3, provides as follows:

> (a) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote.

B. Zimmerman's Undisclosed Positions as Executive Director and Treasurer of ICMRT Created a Conflict of Interest.

All of the elements constituting violation of the prohibited interest section are present here.

Illinois courts have concluded § 105/3 presents a "sweeping prohibition against public officials and officers engaging in conduct which divides their loyalty between their personal

interests and their fiduciary duties." (193 Ill.App.3d at 292) People v. Scharlau, 141 Ill.2d 180, 189 (Ill. 1990)

At all times mentioned, Zimmerman, as chairman of the board, held the undisclosed positions of executive director and treasurer for the insurer ICRMT, who has been awarded the county's contract of insurance since 2014, without public bidding, contrary to state statute and the county ordinance cited and set forth, infra.

According to official documents received from the Illinois Department of Insurance by virtue of a FOIA request, Zimmerman is one of six executive ICRMT board members. The insurance company describes the duties of the executive board as follows: "ICRMT's elected executive board oversees the administration of the program by Insurance Management Group, LLC (IPMG) via monthly meetings." And the board of trustees annually elects an executive board from its member to "oversee the day today operations of the ICRMT." The organizational chart filed with the Illinois Department of Insurance depicts the executive board in a central position of the structure. [See Exhibit 16, organizational chart]

Since the enactment of the Prohibited Interest in Contracts Statute, ICRMT or "insurer", an insurance company operating in the State of Illinois, has been awarded the county's annual contract for property, health, casualty and liability insurance coverages for a current annual premium of 3/4 of a million dollars or more. This sum does not include the huge duplicitous fees, as much as $60,000.00 per month, charged by ICRMT's subsidiary, IPMG, for claims administration services, which are customarily included and covered by the premium charged the policyholder and by contract is a covered service.

Zimmerman, in his official capacity, has acted upon those contracts and used his elected office to influence and secure such contracts for ICRMT without competitive bidding and on at least one occasion entered an emergency order effecting early payment of the insurance premiums. He acted upon these contracts with ICMRT by approving and executing the actual contract without disclosing his position and interest in ICMRT.

Petitioner is informed and believes that the Chairman is and has been financially interested directly or indirectly in ICMRT in that he receives a gerous stipend for his attendance at monthly meetings on behalf of ICMRT as one of its executive directors. He also receives mileage and travel expense reimbursement.

C. The Chairman's Emergency Order Benefitting Insurer.

In this instance, Zimmerman unilaterally and individually declared an emergency which gave him the power to recommend that the county pay the insurance premiums in September, rather than the due date of December 1, as a concession to the insurer, ICRMT, to the detriment of the county purse. [Exhibit 18, emergency order declared by Zimmerman along with relevant documents, such as FOIA request and follow up efforts that indicate that no public records exist that document the basis for the emergency order.]

The emergency order and premature payment were simply a concession to the insurance company. The county administrator claims in an October 5, 2020, letter to the insurance review committee that, *"we were informed on September 25th that if the quote was not signed that day, the cost would increase substantially. It was anticipated that the premiums would increase and additional lasers ranging from $100,000 and $650,000 would be added for the upcoming year."* The letter goes on stating that quick action by chairman Zimmerman was necessary to save the day, so to speak. This appeal, if true, strikes one as extortion by the insurance company and illustrates that the county's position is compromised, which would not have been the case, if above the table bidding protocol was adhered to.

D. No Records Produced to Indicate Need for the Emergency Order.

Petitioner's attorney requested, by way of a FOIA request, any and all public records that substantiated the claims made in the letter relative to lasers of premium increases, *but no such records were produced.* Petitioner's attorney followed up with another request directly to the author of the letter and once again no records were produced, not even an email. Suffice it to say that the claim does not appear to be credible, but if it were, the county should not be subject to

being given an 'ultimatum' by the insurance company that results in the need for an emergency order in the first place.

At all relevant times, Zimmerman also chaired the Executive, Insurance, and Risk Management Committees; all three committees deal with ICRMT insurance matters. The Risk Management Committee, chaired by Zimmerman, annually passes a resolution to the board recommending that the board award the contract to ICRMT. The chairman duly executes the resolution upon its passage. The Office of the State's Attorney, through Mike Holly, is a member of this Risk Management Committee. See resolutions attached bearing the approval of the Chairman as Group Exhibit 19.

Zimmerman also 'acts upon the contract by signing, executing and approving the terms and conditions of the so called 'renewal' contract with ICRMT and its claims administrator, IPMG, on behalf of the county board summarily *binding the county to the contract of insurance.* When a "public official has an opportunity to influence the negotiations in any way, the statute is violated." People v. Savaiano, 66 Ill. 2d 7, 15 (1976)

At all times mentioned, Zimmerman was financially interested in the contract of insurance being awarded to ICRMT, and he had a personal interest in maintaining his position as executive director and treasurer and the benefits associated with those positions..[9] See: Mulligan v. Village of Bradley (1985), 131 Ill. App.3d 513. Robertson v. Binno (1978), (3rd Dist.) 56 Ill. App.3d 390. People v. Weber (1985), 133 Ill. App.3d 686. [personal interest

[9]It would not stagger the imagination to learn that there is a basis to believe that ICRMT paid sums to municipal officials to gain and retain their municipalities/counties insurance business. Indeed fourth term Columbia, IL, Mayor Kevin Hutchison was indicted by Federal Grand Jury for lying to investigators about commissions he received from **ICRMT** on City insurance contracts. He subsequently plead guilty to such charge. Red Bud Illinois mayor was also indicted & he plead guilty. Both indictments were handed down in February 2021 with guilty pleas entered in March of 2021in the Federal District Court for the Southern District of Illinois in East St. Louis. See Exhibit 20 copies of two indictments.

includes an interest in continued employment or income. See People v. Scharlau 141 Ill. 2d 180,199 (Ill. 1990) (incidental benefit enough)

Petitioner is advised and believes that Zimmerman received payments from ICRMT for various services [e.g Exhibit 21, all expense paid for trip to San Francisco on behalf of ICRMT and its affiliate IPMG]. Petitioner is informed and believes that Zimmerman also receives monetary compensation for his attendance at monthly meetings and travel expenses on a routine basis from the insurer or through its affiliates, United Counties Counsel of Illinois ("UCCI") and IPMG.

Zimmerman arranged for this insurer to be awarded the annual contract by renewal, bypassing the required competitive bidding process mandated by state statute and county ordinance. This neglect to bid precluded the county from gaining the lowest price for insurance and setting forth crucial terms and conditions in the bid specifications and subsequently in the contract awarded, that protected the county and its taxpayers.

If the insurance was bid, the invitation to bid would regulate the substance of the ensuing contract. "*Invitation for bids shall be issued and shall include specifications, bid evaluation requirements, and all applicable contractual terms and conditions in a form as reviewed and approved by the State's Attorney's Office and the County Auditor."* Tazewell County Ord. 33.03, competitive bidding.

The bidding process is squarely within Zimmerman's administrative domain and it was his duty to ensure that the bidding requirements were fulfilled each year to avoid favoritism and to seek the lowest competitive price for taxpayers along with reasonable terms and condition that could be set forth in a request to bid, which he failed to do.

Zimmerman did not seek any other quotes for these services. He also signed off on a resolution to the board recommending that it approve a contract with IPMG that neglected to reveal the cost of the contract which presently is about **$60,000.00 per month**. [Exhibit 22,

Resolution of the Risk Management Committee approving the IPMG contract without mention of the cost of services.][10] The colossal fees year after year are variable and numerous.

Zimmerman possessed a prohibited interest in the insurance contracts awarded to ICRMT in violation of the Prohibited Interest in Contracts section. He acted upon these contracts in his official capacity as chairman and was financially interested in same.

X. Zimmerman Filed Incomplete and False Statements of Economic Interest Annually for the Past Several Years.

State statute requires office holders such as Zimmerman to file a Statement of Economic Interest with the county clerk annually. The statement is required to by true and complete; otherwise the office holder is subject to penalties pursuant to *5 ILCS 420/4A-107 Penalties for failure to file or false, incomplete forms*.

> Any person required to file a statement of economic interest under this Article who willfully files a false or incomplete statement shall be guilty of a Class A misdemeanor. 5 ILCS 420/4A-107

Zimmerman, for almost two decades, made it his practice to respond to each of the inquiries with "n/a", which either means “no answer” or “not applicable” which is evasive, non responsive and an incomplete response. The statements regarding interests apply to all office holders, including Zimmerman, who is not exempt from a duty to respond directly and completely to each statement. the n/a response is evasive and imparts no information and is an incomplete response.

Such use of the n/a designation in response to questions answered under oath has been dimly viewed by the courts. ["Most of the answers in the response stated ‘not applicable’ * * Under these facts, we find a willful violation of the court's order." In re Medlock, 406 F.3d 1066, 1072 (8th Cir. 2005); (Plaintiff answers "Pacheco is not applicable." this answer is nugacious.) Short v. Associated Milk Producers, Inc., 92 N.M. 204, 205 (N.M. Ct. App. 1978) The answer

[10]Sound governmental practices require that the cost of a service be know for appropriation and budgeting/levy purposes—here many of the fees being charged are variable

"not applicable" does nothing to shed any light on that question. Windsor Oaks, LLC v. Cincinnati Ins. Co., No. 17-CV-689-SMY-SCW, at *5 (S.D. Ill. Sep. 10, 2018) The commissioner will not accept "not applicable" for an answer. In Atlantic Healthcare Benefits Trust v. Googins, 2 F.3d 1, 6 (2d Cir. 1993)] Plaintiff responded, "N/A" or "Not Applicable." Plaintiff failed to provide full answers to these questions. Mackin v. Charles Schwab & Co., Civil Action No. DKC 16-3923, at *3-4 (D. Md. May 22, 2018) See Exhibit 4. Statements of Economic Interests filed with County Clerk —every single response was N/A

In addition, each year for the past several years, Zimmerman falsely responded to statement #6 which states:

> 6. List the name of any entity doing business with a unit of local government in relation to which the person is required to file, from which income in excess of $1,200 was derived during the preceding calendar year other than for professional services and the title of and description of any position held in that entity.
>
> Answer: n/a

Zimmerman responded in his usual “n/a” manner which was not only incomplete and evasive, but in this instance false, because Zimmerman held the elevated positions of executive director and treasurer for ICRMT, the insurer of the county, which he received periodic income and travel expenses for appearances on behalf of ICRMT and IPMG. For instance, for travel to San Francisco, CA, sponsored by ICMRT and IPMG paid for his first class air fare and hotel accommodations exceeded $1,200.00 alone. Exhibit #23

For the past several years, Zimmerman served as vice president of UCCI, which does business with the county and who is the originator, sponsor and parent company of ICRMT. UCCI urges counties to contract with ICRMT and refunds 80% of the dues paid if the county insures with ICRMT. UCCI charges the county a membership fee, but kicks back that fee in the same calendar years in virtually every case. The amount refunded exceeds the initial payment made due to discounts also being refunded. [Exhibit 23]

Petitioner is informed and believes that Zimmerman receives compensation directly or indirectly on his county travel expense line or by other means for attendance at meetings in the amount of $400.00 per meeting, plus mileage at the federal rate, and other income as vice president of UCCI.

This entity UCCI. does business with the county and ostensibly represents itself as agency assisting counties, but in fact, seeks to persuade counties to contract with ICRMT for its insurance needs and is part and parcel of the organizational structure of ICRMT. See Exhibit 23.

These incomplete and in some instances false responses to the direct questions in the statements of economic interest are probably actionable pursuant to the Illinois False Claim Statute, 740 ILCS 175/3 et. seq.

XI. Zimmerman Repeatedly Violated State Statute by Applying for and Receiving Commuter Mileage Expense by Fraudulent Means.

A. Controlling Statute § 1018 Relating to Reimbursement of Expenses.

The controlling state sections in effect at the time Zimmerman claimed commuter mileage stated as follows:

> § 5-1018. Reimbursement for expenses; employment of personnel
>
> A county board may reimburse the chairman and other members of the county board for travel and other expenses necessarily incurred while in the conduct of the business of the county. (emphasis supplied) 55 ILCS 5/5-1018

Zimmerman has repeatedly violated the state statute regarding reimbursement by regular practice of seeking and receiving, by misleading means, compensation for commuting mileage to and from his office and home.

B. The Plain Meaning of § 1018 is Abundantly Clear that the Expenses Must be Necessarily Incurred While in the Conduct of the Business of the County.

The statutory provision limits reimbursement to county board members for, "expenses *necessarily incurred while in the conduct of the business of the county.*" People v. Wilkinson 285 Ill. App. 3d 727, 735 (Ill. App. Ct. 1996) The attorney general, in an opinion issued to Mr. Bruce Black, former State's Attorney for the County of Tazewell, 1983 Ill. Atty. Op. 74 (Ill.

A.G.) 1983 WL 41840 (the clause reimbursement of expense and necessarily incurred in conduct of business is self explanatory concluding reimbursement to travel to meetings not compensable.)

Considerable and unanimous sister state law construing similar statutes all reach the similar conclusion that commuting is a personal expense not an expense incurred in the performance of one's official duties as follows:

Koch v. Rhodes, 177 Ohio St. 163, 164 (Ohio 1964)

"Each member of the Board of Liquor Control shall receive an annual salary of four thousand five hundred dollars, together with his actual and necessary traveling expenses incurred in the performance of his official duties" Koch v. Rhodes, 177 Ohio St. 163, 164 (Ohio 1964)

The plaintiff contended that the above phrase included expenses incurred in traveling between his place of residence and "the headquarters and principal place of business of the Board of Liquor Control in the City of Columbus."

The Ohio Supreme Court ruled that, "Expenses incurred by a member of the Board of Liquor Control in traveling between his place of residence and Columbus during the years 1954 to 1957 to attend board meetings held in Columbus were not incurred in the performance of 'his official duties' as set forth in Section 121.12, Revised Code, and, therefore, were not allowable expenses." Koch, supra

United States v. Shields (1894) 153 U.S. 88, 90

In the Shields case, a United States District Attorney resided in Canton and performed his duties in Cleveland. He traveled home on weekends and sought mileage expenses for the trip both ways. These expenses were denied, and the opinion stated, at page 90: "Mileage allowed to public officials involves the idea that the travel is performed in the public service, or in an official capacity. * * * If he [the district attorney] is entitled to mileage for each one of these trips, made during the uninterrupted session of the court, it is difficult to see upon what principle he would not be entitled to mileage for a daily trip of that sort, which would enable him to spend each night of the week at home. * * * There is, in principle, no essential difference between the

claim for mileage on a daily trip to and from the officer's home, and a weekly trip when performed for his own pleasure and convenience so as to spend Sunday at home. The travel, whether made daily or weekly, cannot be said to have been made in the character of a public official, or in the performance of a public s service, but merely in a private and unofficial capacity." United States v. Shields (1894) 153 U.S. 88, 90

State ex rel. Overhulse v. Appling, 226 Or. 575, 590-91 (Or. 1961)

The question was whether members of the board of supervisors of Maricopa County were entitled to charge mileage to the county for travel from their residences to the county seat. The response of the court: "County officers' traveling expenses between their residences and offices held not allowable as *'necessary expenses incurred by them in the conduct of their offices,' in* absence of statute allowing them expressly or by conclusive implication." (Rev. Code 1928, § 889; Laws 1931, Chap. 49) Austin v. Barrett, 41 Ariz. 138, 139 (Ariz. 1932) Attorney General opinion C-198-199 To only reimburse the chairman and other members of the county board for travel and other expenses necessarily incurred while in the conduct of the business of the county.***(Emphasis added)

In other states, legislation providing for the payment to each member of the legislature of a fixed amount not limited to expenditures for legislative purposes has been held unconstitutional. Ashton v. Ferguson, 164 Ark. 254, 261 S.W. 624 (1934); The State ex rel. Griffith v. Turner, Auditor, 117 Kan. 755, 233 P. 510 (1925); Opinion of the Justices, 95 N H 533, 64 A.2d 204 (1949); Scroggie v. Bates, et al., 213 So C 141, 48 S.E.2d 634 (1948); Peay v. Nolan, 157 Tenn. 222, 7 S.W.2d 815, 60 ALR 408 (1928)

Likewise receiving payment for mileage expense for commuting increases the Chairman's pay during his term of office in violation of the Illinois Constitution that prohibits an increase or decrease in compensation during the term in office. Art VII Section 9 (b) Salaries & fees- (b) An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected.

Everyone needs to get to their workplace, employees, officers and business owners alike; commuter expense is not incurred while in the conduct of the business. Stated differently, you are not on the job until you arrive at your place of employment from your residence and you are off the job when you leave your place of employment to drive home.

Elected officials at large are considered to be employees of the county. Petitioner is informed and believes all the other officers of the county such as the sheriff, treasurer, state's attorney, auditor, county clerk have not sought nor received compensation for commuter expense mileage.

Zimmerman has been chairman of the Tazewell County Board continually since November 2008. He previously served as a board member for twelve years. Zimmerman's position is considered to be a full-time position, who is eligible for retirement benefits and other fringe benefits.

Zimmerman's regular work office as chairman is located at 11 S. 4th Street, Suite 432 in the McKenzie Building, Pekin, IL 61554. In an analogous sense, the I.R.S defines the principal place of business as ones tax home. His office has been in the same location for all the years he applied for and accepted compensation for his commuting expenses. The committee and board meetings take place in the same building on the same floor. At all times relevant, his residence was in Morton, Illinois. His consistent commuter mileage claim, although not designated as commuter mileage expense, was 32 miles per day, which is the round trip distance from his residence to his office over the period in interest.

Petitioner is informed and believes that since Zimmerman assumed office in December 2008 up until the Internal Revenue Service discovered Zimmerman failure to report the mileage 'disbursement' as income sometime in 2018.

In addition to his full time position as chairman of the board, Zimmerman, at all relevant times, was and is a full time institutional sales representative for Merck Drug Company for

which he receives a generous vehicle allowance. The same vehicle he often uses to commute to the county building.

Zimmerman's habit of requesting compensation for commuting expenses or mileage ceased when discovered by the Auditor in January, 2017. She promptly sent Zimmerman an email informing him that commuter mileage was not a compensable activity. Although asked to do so, he has not repaid the county any of the compensation he received for commuter mileage for the years prior to January, 2017.

C. The Deceptive and Incomplete Claim Voucher.

Vicki Grashoff ["Grashoff"], county auditor during this entire period, approved Zimmerman's monthly commuter mileage expense utilizing a claim voucher form that was in effect at all relevant times. See Exhibit 24, Claim Voucher. This form was routinely delivered each month to Grashoff by Zimmerman. *The true purpose, origin, and destination of travel, is not provided.* It is a reasonable inference that the particulars required by the ordinance were not provided because if they were, the board would not or should not have paid the voucher.

The claim voucher used by Zimmerman and Grashoff lists on the front side the date of travel, with *'admin.*' listed as the *Expense Purpose* of travel, and the mileage claimed as 32 miles. The use of the term 'admin.' is purposefully vague because the actual purpose of the trip is commuting. Neither the origin or destination is stated on Zimmerman's claim voucher form.

For instance, Zimmerman's claim voucher delivered to Grashoff for the month of October 2014, claims Zimmerman logged a total of 1,206 miles which included approximately 608 commuting miles (admin.) x $.56 for approximately $340.00. The board eventually paid $675.36 for the total logged miles of 1,206 miles. This claim voucher form was delivered and filed by Grashoff in the auditor's office and was not presented to the board members. There is no itemization provided to the board other than total mileage and a balance due.

The claim voucher indicates at times Zimmerman returned to his home during the workday and returned to his office later, billing the county for two round trips or 64 miles,

doubling the amount charged to the county. The destination is not stated, but the mileage is consistent with commuting to his office and back. See Ex. 24 line item for October 14, 2014.

The reverse side of the claim voucher bears the signatures of Zimmerman and Grashoff in her capacity as Tazewell County Auditor. [Exhibit 24, Claim Voucher reverse side]

The claim voucher, Exhibit 24, provided more information than the documents presented to the board, but nonetheless failed to state the real purpose of the trips, their origin and destination. The claim vouchers were filed by Grashoff in her office and were not subject to review by the board at the monthly meetings. Nowhere on the form does its disclose or mention commuter expense or commuting mileage.

D. The Misleading Claims Docket Expenditure Account.

The invoice ultimately submitted to the board is titled "Claims Docket Expenditure Account Sheet" [Exhibit 25] and is bundled along with a massive number of claims for the county to pay. Significantly, this docket expenditure account form lacks the *date, origin, destination of travel, and purpose* of each trip.

E. Expense Report.

The Expense Report [Exhibit 26] prepared by Grashoff was a compilation of all the claims docket expenditures, which board members primarily relied upon to approve various expenditures. This expense report shows that Zimmerman's mileage expense is commingled with all board members expenses and in the scheme of things, loses its identity completely.

F. Conspiracy by Zimmerman and Grashoff.

At all relevant times, Grashoff was the duly elected auditor of Tazewell County. Part of her duties were to approve or disapprove vouchers and to recommend or not recommend the claims which were submitted to the board at its monthly meeting. The board relied upon her recommendation to pay an expense or not pay it. Grashoff, as the elected auditor, had a fiduciary relationship with the board. She was a person who was charged with the statutory duty to

approve or disapprove these mileage expenses for commuting and make recommendations to the board to pay or not pay same. She had an obligation to exercise a high duty of care in managing taxpayers funds and advising the board of the true character of the claims for commuter expenses of Zimmerman, which she failed to do.

Zimmerman, with the planned assistance of Grashoff, (who submitted, approved and recommended payment to the board) submitted payment of Zimmerman's nondisclosed commuter expense, which was noncompensable by reason of the applicable ordinance. The concerted actions of Zimmerman and Grashoff were united for the unlawful purpose of Zimmerman being compensated for commuter mileage expense.

Grashoff at all relevant times was the Auditor of the County of Tazewell who initially approved, aided and abetted Zimmerman's unlawful conduct, which consisted of seeking and being compensated by the county for daily mileage commuting to and from his home to his place of employment, and back, in violation of the applicable County Ordinance pertaining to mileage.

Grashoff wrongfully approved the commuter mileage vouchers submitted by Zimmerman knowing the entries of 32 miles represented daily commuting and she knew or should have known that compensation for same was unlawful and in violation of the County Ordinance set forth above. Yet she recommended that the board pay for the expense without disclosing that some of the mileage was for commuting mileage.

Grashoff had a duty to disapprove the submission for commuting mileage and recommend to the board not to pay same. However, she elected to do the opposite and approve the vouchers and recommend them for payment by the board. Her failure to disapprove the vouchers resulted in the board paying the sums for commuting to Zimmerman all to the financial detriment of the county.

The process employed to obtain payment by Zimmerman and Grashoff was deceptive.

Grashoff overtly assisted and abetted the violation of the ordinance resulting in damage to the county over the years in the total amount of $22,143.52. This total amount is shown in

Exhibit 27 which also discloses the yearly and monthly breakdown for commuter miles for the years 2008 to 2017.

The county could not have discovered the truth through a reasonable inquiry and relied upon the fact that the mileage claim was legitimate because the auditor approved it and on its face, the expense report showed absolutely no evidence that the mileage was for commuting. If the board had known that the mileage was for commuting and that the ordinance in effect did not allow compensation for that activity, the board would not have legitimately compensated Zimmerman for his mileage.

Zimmerman and Grashoff withheld and actively concealed information that would have disclosed that the request was barred by ordinance and commingled the mileage cost of Zimmerman with all other board members mileage in the expense report which was customarily the document that the board members in the final analysis reviewed in determining whether payment was proper.

The board relied upon the material statements of Zimmerman and Grashoff, who were in positions of trust, that the mileage claimed conformed to the controlling ordinance and properly presented.

XII. Zimmerman Executed Contracts with a Law Firm Falsely Representing that He had Board Authority to do so When in Fact He Lacked any Such Authority.

A. Knowingly False Written Statement Regarding Board Authorization to Execute Contract on behalf of the County.

Zimmerman was a respondent in case number 2018-MR-000147, a mandamus action brought by the county auditor at that time, Shelly Hranka, in her official capacity and filed in Tazewell County. Zimmerman was represented by the law firm of Heyl Royster Voelker and Allen P.C. ("HRVA") who the court appointed as special prosecutor to defend Zimmerman and the county.

The court appointed HRVA as special prosecutor, but did not state or enter any order setting forth the terms and conditions of the relationship between the respondents and the law firm representing them. See Exhibit 28, Handwritten Order.

Rather, the court ordered both parties' counsel to file a letter of engagement outlining the retention terms of counsel.

On October 18, 2018, the law firm of HRVA executed an engagement agreement whereby HRVA would serve as legal counsel for Zimmerman and the county in case number 2018-MR-000147. The contract between the parties consisted of 10 pages, single spaced, setting forth in detail the agreement between the parties. See Exhibit 29.

The contract or engagement agreement was executed on 10/18/2018 by Timothy Bertschy for HRVA. The agreement was executed by Zimmerman on page nine (9) on 10/22/1018 on behalf of the County of Tazewell in his capacity as County Board Chairman. Zimmerman also signed the agreement on page ten (10), the last page, as County Board Chairman, with the recitation under the signature line to wit: "David Zimmerman, in his official capacity as Chairman of the Board of the County of Tazewell."

The last paragraph of the engagement agreement immediately above Zimmerman's signature states:

> By signing this agreement you confirm that you have read this engagement agreement, understand its provisions and agree to abide by it. If you are signing this on behalf of an entity you warrant that you have authority to sign for and bind the entity to this engagement agreement.

Zimmerman knew the board had not passed on the agreement and had not authorized Zimmerman to execute any agreement concerning attorney fees for himself to be paid by the county or for the County of Tazewell as the entity; nonetheless, he represented that he had actual authority to do so. ["If you are signing this on behalf of an entity, you warrant that you have authority to sign for and bind the entity to this engagement agreement."]

In fact, Zimmerman was not given the authority to sign the agreement by the county board, nor has the engagement of services agreement been brought before the board according to the records of the county. Neither has it been filed with the county clerk.

Only the county board by majority vote may approve the contract and give Zimmerman actual authority to sign the agreement.

Furthermore, time was not of the essence. The engagement agreement was executed and finalized by Zimmerman on 10/22/2018. However, the agreement was not filed in the case until 12/9/2018, as shown by the file stamp on the document. [Exhibit 29, Ten Page Agreement]

Zimmerman was a member of the county board for 12 years and another 12 years as its chairman. He knew full well that he had no authority to execute the contract, but did so anyway. The petitioner herein is informed and believes the agreement was not ratified after the fact.

The signatory law firm HRVA to the agreement was ordered to file monthly bills on the record by the judge and has done so. The billing statements closely mirror the terms and conditions of the agreement and incorporate the hourly rate for professional services rendered.

For instance, the agreement recited under fees and billing statements on page 2 of the agreement § 4:

On the basis of our time, our charges are as follows:

$263 per hour for the services of Tim Bertschy, Senior Partner

$234 per hour for the services of Seth Uphoff, of counsel and

$198 per hour for the services of Kayla Spencer, Associate

Per the terms of the agreement, the law firm of HRVA has filed monthly billing statements for almost one year incurring fees and costs in excess of $100,000.00 consistent with the terms of the agreement executed by Zimmerman without authority of the board presumptively payable by the county. [Actually, Mr. Bertschy billed slightly higher at $269.00 per hour; Mr. Uphoff billed at $232 per hour; Ms. Spencer billed at $196.00; however, the actual cumulative rate billed for all three is $697 as opposed to $695 per the agreement.]

Furthermore, it is unlikely that the board would have approved all aspects of the engagement agreement, such as the vague illusory rate schedule:

> From time to time, it is necessary to adjust our hourly rates to compensate for increased experience factor or for inflationary cost increases in our economy. We will notify you of such adjustments. [Page 2, Ex.25, immediately below hourly fee schedule]

By executing the agreement without board confirmation or approval, but warranting he had authority to do so, Zimmerman knowingly presented or caused to be presented a false or fraudulent claim for payment or approval of attorney fees and expenses by the county constituting a violation of the False Claim Act and/or knowingly made, used or caused to be made or used, to be used, a false record or statement material to a false or fraudulent claim (740 ILCS 175/3 (a)(1) (A)&(B) respectfully).

This conduct violates the False Claim Act, rendering Zimmerman liable to the county for actual damages and civil penalty of not less than the minimum amount and not more than the maximum amount allowed for a civil penalty for a violation of the federal False Claims Act (31 U.S.C. 3729 et seq.) as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461), plus three times the amount of damages which the state (county) sustains because of the acts of Zimmerman, plus the costs of bringing a civil action.

By signing the agreement without board authorization, in his official capacity, to obtain a personal advantage (which consisted of legal services for himself paid for by the board), this act was performed "with intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority." 720 ILCS 5/33-(a) (3) Official misconduct.

B. Unauthorized Agency.

Zimmerman executed the agreement with HRVA both for himself and ostensibly for the county, representing he had the authority to do so, when lacked any authority to do so. A governmental entity is not liable by reason of any apparent authority, therefore, Zimmerman is

liable personally for any sums owed by virtue of the agreement he executed without authority to do so.

XIII. Zimmerman's Unauthorized Execution of the Contact for Legal Services Violated the Prohibited Interest in Contracts Section and Constituted Official Misconduct.

The Prohibited Interest in Contracts 50 ILCS 105/3 provides as follows:

> (a) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote.

Zimmerman was a respondent in case number 2018-MR-000147, a mandamus action brought by the county auditor in her official capacity and filed in Tazewell County. He was represented by the law firm of HRVA who the court appointed as special prosecutor to defend Zimmerman and the county, subject to an engagement agreement approved by the county. Zimmerman, instead applying for County Board approval and upon reaching a agreement with HRVA as to terms and conditions, if the board saw fit to do so, Zimmerman, executed the contract without any authority to do so whatsoever.

The court appointed HRVA as special prosecutor, but did not state or enter any order setting forth the terms and conditions of the relationship between the respondents and the law firm representing them. See Exhibit 28.

Rather, the court ordered both parties' counsel to file a letter of engagement outlining the retention terms of counsel. The board retained the right to negotiate the terms as it deemed fit to do so or if necessary petition the court for other counsel. Zimmerman's forgery foreclosed those opportunities.

Zimmerman, as an elected officer, acted upon and executed a contract for legal services for the county without authority of the board, but represented in writing that had authority to do so.

Only the county board, by majority vote, may approve the contract and give Zimmerman actual authority to sign the agreement.

Zimmerman was financially interested directly in his own name when he executed the contract purportedly upon the behalf of the county in violation of the Prohibited Interest in Contracts Statute . [The Prohibited Interest in Contracts, 50 ILCS 105/3]

The elements of the Prohibited Interest in Contracts section are: (1) person holding any office by election; (2) in any manner financially interested directly or indirectly; (3) in any contract; (4) acts upon or votes.

All of these elements are satisfied. Zimmerman held the office of chairman by election, he was financially interested directly in the contract since the county would bear the substantial legal expense for his defense, and he acted upon the contract in his official capacity by executing the contract.

Furthermore, the same conduct constitutes official misconduct pursuant to 720 ILCS 5/33-3 which provides as follows:

> (a) A public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he or she commits any of the following acts:
>
> (2) Knowingly performs an act which he knows he is forbidden by law to perform; or
>
> (3) With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority.

The chairman, in his capacity as public officer, executed the agreement with the law firm with intent to obtain a personal advantage for himself by obtaining legal services paid for by the county, with the act of performing the execution the fee engagement contract without board approval which he knew was an act in excess of his lawful authority.

In any event the court did not bestow upon Zimmerman the right to sign any contracts on behalf of the County.

XIV. The State's Attorney Referred the Prosecution or Defense of County Cases to Outside Attorneys at County Expense in Violation of the Required Judicial Process Set Forth in Section 5/3-9008 Entitled Appointment of a Special Prosecutor.

Despite the fact that the Office of the State's Attorney houses approximately 15-17 full time assistant prosecutors, all of whom are licensed attorneys, Umholtz chose to farm out numerous legal court cases to independent private law firms at prodigious cost to the taxpayers of the County that he was required by statute to defend the County to the Illinois Constitution, as well as, the County Code. which shows the law firms the state's attorney referred cases, not designated since 7/01/99 as special assistant state's attorney with the amounts paid based upon the 1099 tax forms provided per FOIA request from 2016 to 2021.] This list excludes, any payments to public defenders by the county.

These outside counsel referrals have cost taxpayers about $ 600,000 for the just the last six years. See Exhibit 30, Chart of Fees Paid to Outside Firms by Taxpayers.

The County Code requires the office of the state's attorney to represent the county in all matters that are of interest to the county. § 5/3-9005 (1) *To commence and prosecute **all** actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for the county, in which the people of the state or county may be concerned. & (4) "To defend **all** actions and proceedings brought against the county."* 55 ILCS 5/3-9005 (emphasis supplied)

The right to appoint special prosecutors lies solely within the domain of the court who is endowed with the responsibility to insure that the appointment is proper and that the fees charged are monitored, controlled and reasonable as set forth in Section § 5/3-9008 of the county code.

The referrals were unauthorized. They mostly include the defense of the actions against the county or its officers, which the state's attorney as the elected official and constitutional officer, was required to defend pursuant to County Code 5/3-9005 and the Illinois Constitution. [Ill. Const. 1970, Art. VI, § 19] The State's Attorney's constitutional powers "cannot be placed" with persons not having the responsibility of the office. Nagano, 389 Ill. at 252.

As one Illinois Appellate Court remarked; the state's attorney duties cannot be delegated other attorneys to conduct state's business, "anytime the state's attorney wants to go fishing." "The county budgetary constraints and the repository of common sense that circuit judges possess should militate against cavalier uses of a special prosecutor." People v. Woodall, 333 Ill. App. 3d 1146, 1154 (Ill. App. Ct. 2002) Making reference to § 5/3-9008 of the County Code governing the appointment of special prosecutors.

The Illinois Supreme Court explained that it is a longstanding principle that the "State's Attorney is a constitutional officer with rights and duties analogous to or largely coincident with the Attorney General ... and the one to represent the county or the People in matters affected with a public interest." People ex rel. Alvarez v. Gaughan , 410 Ill.Dec. 890, 72 N.E.3d 276, 287 (2016) (emphasis added) (quoting County of Cook ex rel. Rifkin v. Bear Stearns & Co. , 215 Ill. 2d 466, 476, 294 Ill.Dec. 613, 831 N.E.2d 563 (2005)).

The statute that defines the powers and duties of the state's attorneys includes the officials' responsibility to "commence and prosecute all actions, ... civil and criminal, in the circuit court for his county, in which the people of the State ... may be concerned." 55 Ill. Comp. Stat. 5/3-9005(a)(1). And Illinois courts have made clear, "State's Attorneys should be classified as State, rather than county, officials." Ingemunson v. Hedges , 133 Ill. 2d 364, 369, 140 Ill.Dec. 397, 549 N.E.2d 1269 (1990). "The State's Attorney is a constitutional officer who represents the people in matters affected with a public interest. (Ill. Const. 1970, art. VI, § 19; People ex rel. Kunstman v. Nagano (1945), 389 Ill. 231)" In re C.J, 166 Ill. 2d 264, 269 (Ill. 1995) The People v. Winston, 399 Ill. 311, 318 (Ill. 1948) [We held there the board of commissioners was prohibited by law from employing private attorneys to collect delinquent taxes and that the resolution of the board authorizing and directing appellant to perform such services was wholly void and imposed no obligation upon the county"] County of Cook v. Bear Stearns Co., 215 Ill. 2d 466, 468 (Ill. 2005) [the state's attorney has the exclusive power to represent the County in litigation when the County is the real party in interest.]

In addition, the state's attorney was not authorized by the county board to enter into contracts that committed public funds.

The only entity that has the power to contract on behalf of the county is the board. County Code §5/5/1004 provides that: "The powers of the county as a body corporate or politic, shall be exercised by a county board." Only the board has the power to make contracts. See 55 ILCS 5/5-1005 (3) - Powers. Each county shall have the power:

> "3. To make *all* contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers." 55 ILCS 5/5-1005(3) (West 2000). Inland Land App. Fund v. County of Kane, 344 Ill. App. 3d 720, 725 (Ill. App. Ct. 2003) [emphasis supplied]

"The use of special prosecutors is limited by statute. They can be appointed by the circuit court order only after a judicial determination that the elected State's Attorney is sick or absent, or [is] unable to attend, or is interested in any cause or proceeding." 55 ILCS 5 /3-9008 (West 1998)" People v. Woodall, 333 Ill. App. 3d 1146, 1154 (Ill. App. Ct. 2002)

Much like the state's attorney in this case, in People v. Wilkinson, id 735, the Grundy County board members accepted $21,129.44 from the County of Grundy "without first having their legal representative appointed as a special state's attorney" by the court. The appellate court stated:

> Under Section 3-9008 of the Counties Code, either party may petition the court for relief in the form of competent counsel to fulfill the State's Attorney's statutory duty to prosecute or defend a county officer in his official capacity. 55 ILCS 5/3-9008 (West 1994). Our court has long held a county board is not authorized to employ at public expense an attorney to perform the duties of State's Attorney. Abbott v. County of Adams, 214 Ill. App. 201, 207 (1919); see also Hazen v. County of Peoria,138 Ill. App.3d 836, 842-43, 485 N.E.2d 1325, 1330 (1985); [Without a judicial decision to appoint counsel for the VAC at an early stage of this litigation, plaintiffs are not entitled to obtain payment of attorney fees from county funds after the suit is concluded.] Sommer v. Goetze ,(3rd Dist.)102 Ill. App.3d 117, 119, 429 N.E.2d 901, 903 (1981). We therefore conclude that, under

> Illinois law, a public official acts *in excess of his lawful authority* when he fails to obtain the court appointment of legal counsel to act as a special assistant State's Attorney and accepts public funds to pay for that same privately retained legal counsel. People v. Wilkinson, 285 Ill. App. 3d 727, 735 (Ill. App. Ct. 1996) [emphasis supplied]

See also Ferguson v. Patton, 2013 IL 112488, 369 Ill. Dec. 14 (Ill. 2013) ((holding that City's Inspector General could not lawfully retain private counsel to enforce administrative subpoena, even on a pro bono basis, absent express legislative authorization to do so.)

Petitioner's counsel in the instant case is aware that the 55 IlCS 5/4-2003 was recently amended January 1, 1999, to state that "(b) The state's attorney may appoint qualified attorneys to assist as special assistant state's attorneys when the public interest so requires" 55 ILCS 5/4-2003. However this not germane here, because based a recent FOIA request to the state's attorney confirmed that this possible approach was utilized upon only one occasion by Umholtz and it is not relevant here.

Furthermore, the right to appoint does not equate to a right to commit funds or contract to do so, which is the province of the board. The contracts for the retention of outside law firms by the state's attorney are ultra vires notwithstanding subsection (b) referenced above. The terms and conditions for any payments rest with the contractual powers of the board. This rationale is consistent with the overall separation of powers clauses permeating the county code such as the internal operations provision for each department for county officers that allow officers to control the internal operations of the office subject to in each case to the budgetary limitations established by the board. , 55 IlCS 5/4-2003 (a)

The extrajudicial referral habit of this state's attorney violates the county code that states the state's attorney has the exclusive power "to represent the county in litigation when the county is the real party in interest" County of Cook v. Bear Stearns Co., 215 Ill. 2d 466, 468 (Ill. 2005) The referral actions violate the Official Misconduct Statute. People v. Wilkinson, id. The

outside independent law firms are not designated as special assistant state's attorneys of any ilk nor do they operate under the oath of office nor under the supervision of the State's attorney.

The state's attorney acts *in excess of his lawful authority* when he fails to obtain the court appointment of legal counsel.

Ultimately, the polestar is the Illinois Constitution as applied by the Illinois Supreme Court.

In conclusion, as our supreme court has held: "We reasoned that the State's Attorney and the Attorney General are the only officers who could constitutionally prosecute such a suit at any time and that the State's Attorney's constitutional powers "cannot be placed" with persons not having the responsibility of the office." Nagano, 389 Ill. at 252." County of Cook v. Bear Stearns Co., 215 Ill. 2d 466, 476 (Ill. 2005) [emphasis supplied]

XV. State's Attorney Breached His Fiduciary Duties to the County and Violated the Code of Professional Conduct by Representing Zimmerman in a Matter in which the County was the Real Party in Interest.

A. Colorable Claims Exist Base upon Both the State's Attorney's Breach of His Fiduciary Duties and His Violation of Ethical Rules.

A Colorable underlying claim exists that the state's attorney breached his fiduciary and ethical duties to the county to whom he owed his undivided loyalty by representing Zimmerman against the county before this circuit court, as well as the 3rd District Appellant Court in case no. 92- L-000097, involving Zimmerman's alleged misappropriation of county funds.

B. State's Attorney Breached His Duties to County by Representing Zimmerman in a Matter in which the County was an Interested Party.

Umholtz was required by ethical standards to recuse himself rather than represent the chairman accused of the theft by deception of the public funds of his own county, but he did not do so; in fact, he proceeded to represent Zimmerman both in trial and appellate courts. See In re Vrdoylak, id at 426 (constituted a conflict of interest) "professionally improper for a lawyer, who is a member of the county board, to represent a party suing an agency of the county." (ISBA Op.

544 (July 2, 1976)). See also Becker, 16 Ill.2d at 510-11 (Klingbiel, J., concurring); ISBA Op. 175 (February 6, 1959); ISBA Op. 298 (July 1, 1968); ISBA Revised Canon 49 (approved December 10, 1965) ("A lawyer who holds public office * * * shall not represent clients before a body or office in any matter in which * * * the [governmental unit] is an interested party").)" In re Vrdolyak, 137 Ill. 2d 407, 422-23 (Ill. 1990) [Unethical for City Alderman to represent workers compensation clients against the City.]

See also: (ISBA Op. No. (January 12, 1982) (It is professionally improper for a salaried city attorney, or the members of his firm, to accept employment for criminal defense in cases where the alleged crime occurred within the city) Ref. ISBA Opinions 186, 323, 477, 291, 364, 455 and 522; ISBA Op. No. 789 (Jun 28, 1982) (It is a conflict of interest for a lawyer who is a part-time assistant state's attorney assigned to civil cases the lawyer cannot represent private clients on zoning matters before the county board); ISBA Op. No 871 (April 27, 1984) Conflict of interest (An assistant state's attorney who is responsible for all family court matters in the county may not represent private clients in marriage dissolution cases in the same county.) ISBA Op. No. 91-22 9 (April 3, 1992) (Lawyer who is a part time assistant state's attorney engaged in criminal work, may not represent defendants in criminal matters in a contiguous county absent appropriate consent)

Common sense, as well as the rules governing professional conduct dictate the state's attorney should *not* be involved with the representation of any person in criminal proceedings in the prosecutor's jurisdiction or for that matter where the underlying matter concerns the criminality misappropriation of public funds by Zimmerman in Umholtz's own jurisdiction. (See A.B.A Criminal Justice Standard 3-1.7 (b.) Conflicts of Interest. A prosecutor should not defend a person within his own jurisdiction.] Op. No. 91-4 (September 14, 1991) conflict of interest (It is improper for a member of a county board to represent criminal defendants being prosecuted by the state's attorney of that county.) Controlled by Vrdolyak; USBA Op, 94-20 9 (March 1995) Conflict of Interest; Lawyer in public office (Partner of lawyer who is also a

municipal police officer should not represent a client in a claim against the municipality) the Committee is concerned that the representation of this client by a lawyer, or the partner of a lawyer, holding an office in the criminal justice system could be viewed as an attempt to obtain more favorable treatment for the claimant. If this concern were factually correct, such an attempt would constitute a violation of Rule 8.4(b)(2).

"The parties are cautioned that our supreme court rules are not suggestions but rather are mandatory requirements and must be followed." Bank of America v. Northwestern Memorial, 2014 IL App (1st) 133008, ¶ 20, 387 Ill.Dec. 564, 22 N.E.3d 121; Salier v. Delta Real Estate Investments, LLC, 2020 IL App (1st) 181512, ¶ 30 ("As an exercise of this court's inherent power over the bar and as rules of court, the Code operates with the force of law."); People v. Hope, 148 Ill.Dec. at 248, 560 N.E.2d at 845; Kaplan v. Pavalon Gifford, 12 F.3d 87, 90-91 (7th Cir. 1993)

The A.B.A. Criminal Justice Standards for the Prosecution are instructive in this regard following the same line of reason:

Standard 3 1-7 Conflicts of Interest

(a) *The prosecutor should know and abide by the ethical rules regarding conflicts of interest that apply in the jurisdiction, and be sensitive to facts that may raise conflict issues*. When a conflict requiring recusal exists and is non-waivable, or informed consent has not been obtained, the prosecutor should recuse from further participation in the matter. The office should not go forward until a non-conflicted prosecutor, or an adequate waiver, is in place.

(b) *The prosecutor should not represent a defendant in criminal proceedings in the prosecutor's jurisdiction*. (emphasis supplied)

The Illinois Supreme Court [prior to the formal adoption of discipline rules] acknowledged in In re Friedman, 76 Ill. 2d 392, 396 (Ill. 1979), that A.B.A. standards serve as a guide. ("it frequently serves as a guide for standards of professional conduct." See In re Spencer (1977), 68 Ill.2d 496 (conflict of interest); In re Taylor (1977), 66 Ill.2d 567 "the [A.B.A.] Code,

it is true, is not binding on the court. However, such canons of ethics have been found to constitute a safe guide for professional conduct and an attorney may be disciplined for not observing them." Also see In re Krasner (1965), 32 Ill.2d 121, 129 [safe guide for professional conduct] In re Broverman (1968), 40 Ill.2d 302, 306.

It is pointed out that the IRPC are patterned after the A.B.A. model rules.

The state's attorney violated his fiduciary duty of undivided loyalty to the public which he serves. "The most well-known of a public official's fiduciary duties is that of undivided loyalty to the office and the people whom he serves. See Madlener v. Finley, 128 Ill.2d 147, 131 Ill.Dec . 145, 147, 538 N.E.2d 520, 522 (1989) (citing People v. Savaiano, 66 IU.2d 7, 3 Ill.Dec. 836, 841, 359 N.E.2d 475, 480 (1976), and City of Chicago ex rel. Cohen v. Keane, 64 Ill.2d 559, 2 Ill.Dec. 285, 288, 357 N.E.2d 452, 455 (1976)); see also Brown v. Kirk, 64 Ill.2d 144, 355 N.E.2d 12, 15 (1976). Emanating in part from Section 3 of the Illinois Corrupt Practices Act, 50 ILCS 105/3, see Keane, 2 Ill.Dec. 285, 357 N.E.2d at 455, this duty is "sweeping," see People v. Scharlau, 141 Ill.2d 180, 152 Ill.Dec. 401, 407, 565 N.E.2d 1319, 1325 (1990), and commands a public official to refrain from self-dealing and conflicts of interest, see Madlener, 131 Ill. Dec. 145, 538 N.E.2d at 522. Gross v. Town of Cicero, 619 F.3d 697, 709 (7th Cir. 2010)

The state's attorney owed his county his undivided fidelity and loyalty. The State's attorney's representation of Zimmerman— who it was alleged in great detail surreptitiously took county funds in violation of a state statute which clearly forbids being reimbursed for commuter mileage not incurred while conducting county business— tends to cover up and legitimize unlawful conduct, undermining the integrity of the office and politicizing the enforcement of the law in this county. Such representation by the state's attorney also gives the impression that Zimmerman should receive more favorable treatment than other defendants. The wrongful[11]

[11]5 ILCS 312/7-104 ("the term "official misconduct " generally means the wrongful exercise of a power or the wrongful performance of a duty and is fully defined in Section 33-3 of the Criminal Code of 2012. The term "wrongful" as used in the definition of official misconduct means unauthorized, unlawful, abusive, negligent, reckless, or injurious")

conduct of Zimmerman violated the Illinois Official Misconduct Section 33 (a) (3) of the Criminal Code.

C. Illinois Law Permits a Complete Forfeiture of Any Salary Paid to a Fiduciary During the Time When He was Breaching His Duty to the Employer.

In addition, "Illinois law permits a complete forfeiture of any salary paid to a fiduciary during the time when he was breaching his duty to the employer in this case the County. Levy v. Markal Sales Corp., 268 Ill.App.3d 355, 205 Ill.Dec . 599, 612, 643 N.E.2d 1206, 1219 (1994)" Gross v. Town of Cicero, 619 F.3d 697, 712 (7th Cir. 2010) Levy v. Markal Sales Corp., 268 Ill. App. 3d 355, 373 (Ill. App. Ct. 1994) Also see Vendo Company v. Stoner 58 Ill. 2d 289,314. (Ill. 1974) (S. Ct. affirming trial judge's Order forfeiting defendant's total salary during the period of time beginning with the breach of his duty of loyalty.) " In fact, in Vendo the court found that "[i]t borders upon the frivolous for defendant to claim a right to retain the compensation" earned while breaching his duty of loyalty to the corporation, even though he did legitimate work for the plaintiff during his breach. Vendo, 58 Ill.2d at 314." Levy v. Markal Sales Corp., 268 Ill. App. 3d 355, 373 (Ill. App. Ct. 1994)

Furthermore, as a fiduciary the State's attorney had a duty to "deal openly and honestly" with the county and its board and to exercise good faith and honesty in all dealings and transactions" that affect his principal.

The State's attorney should not place himself in a position where the interests of the Chairman would interfere with his duty of undivided loyalty to the County. Indeed, the burden of establishing the fairness and propriety of his representation of Zimmerman to his principal rests with the State's attorney, in the event charges were filed. Levy v. Markal Sales Corp at 365. (Internal citations omitted)

XVI. The Power and Duty of the Court to Enforce Conformity With Ethical Rules and Address the Damages Caused by Such Breaches is Unquestionable.

The power to compel attorneys conformity with ethical rules rests largely with the trial court. Brayfield v. Johnson, 62 Ill. App. 2d 59, 64 (Ill. App. Ct. 1965) County of Jackson v.

Wayman, 369 Ill. 123, 127 (Ill. 1938) "State's attorneys have a duty to comport themselves in a manner which inspires respect for the administration of justice. People v. Lyles, 106 Ill.2d 373, 412, 87 Ill.Dec. 934, 478 N.E.2d 291 (1985)" People v. Boston, 49 N.E.3d 859, 868 (Ill. 2016) "This court has a duty to protect the public from an attorney's improper practices. (In re Fisher (1958), 15 Ill.2d 139, 154.)" In re Estate of Burgeson, 125 Ill. 2d 477, 488 (Ill. 1988)

"[T]he judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct. United States v. Young (1985), 470 U.S. 1, 9, 84 L.Ed.2d 1, 8, 9, 105 S.Ct. 1038, 1043, 1044." ["a trial judge should deal promptly with any breach by either prosecutor or defense counsel"] citing cases[12] People v. Lyles, 106 Ill. 2d 373, 414 (Ill. 1985)

XVII. The State's Attorney Breached His Fiduciary Duties by Approving the 'Renewal' Contract With ICRMT and Bypassing State Statute and Local Ordinance Bid Requirements.

It is reasonable to presume that the state's attorney and his assistant state's attorneys operating under his supervision and control have notice and knowledge of the bid requirements of the state statute and county ordinance which mandates bidding such insurance purchases.

The state's attorney, who is a named governing official, by virtue of the county's ordinance, of the Risk Management Committee, not only failed to enforce the bid mandate, but thorough his delegated assistant's acting as members of the Risk Management Committee, year after year approved resolutions recommending that the board approve such renewals abdicating his fiduciary duty owed to the public he serves.

And he appeared to stand by as the members of the same committee were mislead regarding the requirements to bid the contracts. [See attached resolutions approved by the office of state's attorney Exhibit 31]

The state's attorney, by vouching for the resolution, carried with it the imprimatur of the government inducing other committee members to trust the government's judgment, rather to

[12]I is noted that the United States Supreme Court at pg 10 adopted ABA standards for criminal justice cited by petitioner in this petition

assess the resolution on its merits with the member's duties owed to the public in mind.

PART THREE

REMEDIES FOR THE COUNTY FOR MISSPENT FUNDS

XVIII. Action for a Constructive Trust and Restitution from ICRMT for the County and its Taxpayers is Because the Insurance Proposal Accepted by the County Covers Claims Management Services.

A. The Proposal of ICRMT Presented by IPMG and Accepted by County Covers Claim Servicing of Supplemental Payments Which Unjustly Enriched ICRMT/IPMG.

The standard insurance program proposal presented by IPMG to the county on behalf of ICRMT states that IPMG Claims Management Services is an included benefit of ICRMT's insurance program. The proposal accepted by the county on page 5, states *verbatim* as follows:

. . . . . .

CLAIMS MANAGEMENT SERVICES

IPMG Claims Management Services offers a full-service claims team specializing in the public entity sector.

IPMG CMS services claims for property, casualty and workers compensation claims.

IPMG CMS has a staff of 19 including 21 seasoned claims professionals with an average claims experience of over 10 years. IPMG CMS leadership team boasts well over 20 years of experience. IPMG CMS's staff specializes in program business, including unique self-insured retention structures.

SERVICES INCLUDED

- Dedicated service adjuster approach, which promotes service continuity and trust
- On-line claims reporting and investigation tool through In-Sight with last experience access
- On-line claim review and claim report generation
- 24 hour contact on every new claim submission
- Clients are updated on all critical events and participate in all major claims decisions
- Quarterly claim file reviews

- Data analytics to quickly identify potential high cost claims
- Tailor made service plans
- Nurse Case Management

. . . . . .

Nowhere on the page referenced above is there any mention that there is an additional charge for claims administration. On the contrary, the insurer is points out the virtues of the insurance program and the included services. Nor is claims administration mentioned as an option for an additional fee.

For the past several years the county has paid IPMG a substantial monthly fee for claim administration or servicing. However, this service was included by the insurance proposal presented by IPMG on behalf of ICRMT. The supplemental payment by the county unjustly enriched both IPMG and ICRMT and in equity and good conscience, these payments must be refunded to the county.

IPMG charged for claims administration which it knew was and is covered by the policy as described and advertised by IPMG on behalf of ICRMT.

An action to prevent such unjust enrichment is maintainable in all cases where one person has received money under such circumstances that in equity and good conscience he ought not retain. M.J. McCarthy Motor Sales Co. v. Van C. Argiris Co. (1979), 78 Ill. App.3d 725, 396 N.E.2d 1253; Cohon v. Oscar L. Paris Co. (1958), 17 Ill. App.2d 21, 149 N.E.2d 472. Village of Wheeling v. Stavros, 89 Ill. App. 3d 450, 454 (Ill. App. Ct. 1980)

B. Illinois Recognizes a Cause of Action by a Governmental Entity for the Imposition of a Constructive Trust Against a Third Party who has Induced, Involved With or Knowingly Participated in the Public Officer's Breach of Fiduciary Duty.

A constructive trust may be imposed upon benefits obtained by a third person through his knowledge of or involvement in a public official's breach of a fiduciary duty. (Chicago Park District v. Kenroy, Inc.; see also United States v. Carter (1910), 217 U.S. 286, 54 L.Ed. 769, 30

S.Ct. 515.) To impose a constructive trust, no fiduciary duty or relationship need exist. A third party who induces a breach of a trustee's duty of loyalty, or participates in such a breach, or knowingly accepts any benefit from such a breach, becomes directly liable to the aggrieved party. Lawrence Warehouse Co. v. Twohig (8th Cir. 1955), 224 F.2d 493; Hammonds v. Aetna Casualty Surety Co. (N.D. Ohio 1965), 237 F. Supp. 96. Village of Wheeling v. Stavros, 89 Ill. App. 3d 450, 455 (Ill. App. Ct. 1980) The purpose of a constructive trust is to compel the party unfairly holding the money or property to convey it to whom it justly belongs.

The insurance company, ICRMT, and its affliate, IPMG, induced the breach of fiduciary duty by Zimmerman to the County of Tazewell by appointing him as executor director and treasurer of ICRMT creating the conflicting divided loyalties of the chairman of the board resulting in his breach of duty and inequitably benefitting from such breach.

"Under Illinois law, a third party who knowingly participates in or induces a breach of duty by an agent is liable to the person to whom the duty was owed. Corroon Black of Illinois, Inc. v. Magner, 145 Ill. App.3d 151, 161, 98 Ill.Dec. 663, 668, 494 N.E.2d 785, 790 (1st Dist. 1986); Chicago Park District v. Kenroy, Inc., 78 Ill.2d 555, 37 Ill.Dec. 291, 402 N.E.2d 181 (1980); A.T. Kearney, Inc. v. INCA International, 132 Ill. App.3d 655, 87 Ill.Dec. 798, 477 N.E.2d 1326 (1st Dist. 1985); Village of Wheeling v. Stavros, 89 Ill. App.3d 450, 44 Ill.Dec. 701, 411 N.E.2d 1067 (1st Dist. 1980)"

The Supreme Court of Illinois has held that:

> "[i]t is a fundamental rule in the law of restitution that [a] third person who has colluded with a fiduciary in committing a breach of duty, and who obtained a benefit therefrom, is under a duty of restitution to the beneficiary.' (Restatement of Restitution Sec. 138(2) (1937). [Further citations omitted.]) Recognition of this salutary principle has resulted in the imposition of constructive trusts on benefits obtained by third persons through their knowledge of or involvement in a public official's breach of fiduciary duty." [Citations omitted.] Chicago Park Dist. v. Kenroy, Inc., 78 Ill.2d 555, 565, 37 Ill.Dec. 291, 402 N.E.2d 181 (1980). It is equally well established that "a public officer occupies a fiduciary relationship to

the political entity on whose behalf he serves." Id. at 564, 37 Ill.Dec. 291, 402 N.E.2d 181; cited by County of Cook v. Lynch, 560 F. Supp. 136 (N.D. Ill. 1982)

C. Illinois Recognizes a Claim for Damages by County for the Breach of Fiduciary Duties by a Public Official as well as the Forfeiture of Salary.

"Illinois law permits a complete forfeiture of any salary paid to a fiduciary during the time when he was breaching his duty to the employer in this case the County. Levy v. Markal Sales Corp., 268 Ill.App.3d 355, 205 Ill.Dec . 599, 612, 643 N.E.2d 1206, 1219 (1994) An action to prevent such unjust enrichment is maintainable in all cases where one person has received money under such circumstances that in equity and good conscience he ought not retain. Village of Wheeling v. Stavros, 89 Ill. App. 3d 450, 454 (Ill. App. Ct. 1980) Also where a fiduciary duty exists which is breached and damages are proximately caused therefrom are recoverable. Duffy v. Orlan Brook Condo. Owners' Ass'n 367 Ill. Dec. 341, 346 (Ill. App. Ct. 2012

XIX. These Facts Support an Action Sounding in Fraud as well as Deceptive Practices.

These same facts justify a cause of action sounding in fraud against both entities, IPMG and ICRMT. Both entities knew that claims management servicing was covered by the policy of insurance. Charging a substantial premium and an additional surcharge each month was fraudulent for a service it knew was covered by the policy of insurance supports a cause of action for theft by deception.

The aforesaid conduct also qualifies and supports an action under the Consumer Fraud and Deceptive Business Practices Act. [815 ILCS 505/10a Action for actual damages.] Linhart v. Bridgeview Creek Development, Inc. 391 Ill. App. 3d 630 (Ill. App. Ct. 2009) (noting that the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq., explicitly allows for the recovery of punitive damages where the conduct of the defendant was willful or intentional and done with evil motive or reckless indifference to the rights of others.)

CONCLUSION

Petitioner requests that the court enter an order or orders as follows:

1. That the chief judge of this circuit request that the appropriate Supreme Court Justice, enter a supervisory order changing the venue of this action pre appointment to another county as outlined in the motion filed in this matter; and

2. The court enter an order or orders appointing a private attorney as a special prosecutor and if the court sees fit appoint petitioner's attorney, Donald K. Birner, as the special prosecutor to investigate and in his discretion prosecute matters stated in this petition.

Dated: May ____, 2022

SHELLY I. HRANKA, Petitioner,

By: /S/ Donald K. Birner
Donald K. Birner, Her Attorney

DONALD K. BIRNER
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on May ___, 2022, I, Donald K. Birner, electronically filed the foregoing **PETITION FOR THE APPOINTMENT OF A SPECIAL PROSECUTOR**, with the Clerk of the Circuit Court for the Tenth Judicial Circuit, Tazewell County, Illinois by using the Odyssey EfileIL system.

I further certify that other participants in this matter, named below, are registered service contacts on the Odyssey EfileIL system, and thus will be served via the Odyssey EfileIL system:

Stewart Umholtz, State's Attorney
sumholtz@tazewell.com
sa@tazewell.com

and

Michael P. Holly, Assistant State's Attorney
mholly@tazewell.com

S/ Donald K. Birner

TABLE OF EXHIBITS