

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 96-2809

Chinyere Jenkins, by her next friend, *
Joi Jenkins; Nicholas Paul Winchester- *
Rabelier, by his next friend, Paula *
Winchester; Margo Vaughn-Bey, by her *
next friend, Franklin Vaughn-Bey; *
Nicholas C. Light, by his next friend, *
Marian Light; Stephon D. Jackson, by *
his next friend, B. J. Jones; Travis N. *
Peter, by his next friend, Debora Chadd- *
Peter; Leland Guess, by his next friend, *
Sharon Guess; *

Plaintiffs - Appellants *

American Federation of Teachers, Local *
691, *

Intervenor - Appellee *

v. *

State of Missouri; Mel Carnahan, *
Governor of the State of Missouri; Bob *
Holden, Treasurer of the State of *
Missouri; Missouri State Board of *
Education; Peter Herschend, Member of *
the Missouri State Board of Education; *
Thomas R. Davis, Member of the *
Missouri State Board of Education; *
Robert E. Bartman, Commissioner of *
Education of the State of Missouri; Gary*

* Appeals from the United States
* District Court for the
* Western District of Missouri.

D. Cunningham, Member of the *
Missouri State Board of Education; *
Terry M. Riley, Member of the Board of*
Directors; Sharon M. Williams, Member*
of the Missouri State Board of *
Education; Lance Loewenstein, Member*
of the Board of Directors; Betty *
Preston, Member of the Missouri State *
Board of Education; Russell Thompson, *
Member of the Missouri State Board of *
Education; Jacquelline Wellington, *
Member of the Missouri State Board of *
Education; Marilyn Simmons, Member *
of the Board of Directors; Sandy *
Aguire Mayer, Member of the Board of *
Directors; School District of Kansas *
City; Dr. Henry D. Williams, *
Superintendent thereof; John A. Rios, *
Member of the Board of Directors; *
Darwin Curls, Member of the Board of *
Directors; Patricia Kurtz, Member of the*
Board of Directors; Edward J. *
Newsome, Member of the Board of *
Directors; John W. Still, Member of the*
Board of Directors, *

Defendants - Appellees. *

No. 96-2918

Chinyere Jenkins, by her next friend, *
Joi Jenkins; Nicholas Paul Winchester- *
Rabelier, by his next friend, Paula *
Winchester; Margo Vaughn-Bey, by her *

next friend, Franklin Vaughn-Bey; *
Nicholas C. Light, by his next friend, *
Marian Light; Stephon D. Jackson, by *
his next friend, B. J. Jones; Travis N. *
Peter, by his next friend, Debora Chadd-*
Peter; Leland Guess, by his next friend, *
Sharon Guess, *

Plaintiffs - Appellees *

American Federation of Teachers, Local*
691, *

Intervenor - Appellee *

v. *

State of Missouri; Mel Carnahan, *
Governor of the State of Missouri; Bob *
Holden, Treasurer of the State of *
Missouri; Missouri State Board of *
Education; Peter Herschend, Member of *
the Missouri State Board of Education; *
Thomas R. Davis, Member of the *
Missouri State Board of Education; *
Robert E. Bartman, Commissioner of *
Education of the State of Missouri; *
Gary D. Cunningham, Member of the *
Missouri State Board of Education; Rice*
Pete Burns, Member of the Missouri *
State Board of Education; Sharon M. *
Williams, Member of the Missouri State*
Board of Education; Betty Preston, *
Member of the Missouri State Board of *
Education; Jacquelline Wellington, *
Member of the Missouri State Board of*
Education; Russell Thompson, Member *

of the Missouri State Board of *
Education, *

Defendants - Appellants *

School District of Kansas City; Dr. *
Henry D. Williams, Superintendent *
thereof; Terry M. Riley, Member of the *
Board of Directors; Lance *
Loewenstein, Member of the Board of *
Directors; Marilyn Simmons, Member of *
the Board of Directors; Sandy Aguire *
Mayer, Member of the Board of *
Directors; John A. Rios, Member of the *
Board of Directors; Darwin Curls, *
Member of the Board of Directors; *
Patricia Kurtz, Member of the Board of *
Directors; Edward J. Newsome, *
Member of the Board of Directors; Dr. *
Julia H. Hill, Member of the Board of *
Directors; John W. Still, Member of the *
Board of Directors, *

Defendants - Appellees. *

No. 96-3215

Chinyere Jenkins, by her next friend, *
Joi Jenkins; Nicholas Paul Winchester- *
Rabelier, by his next friend, Paula *
Winchester; Margo Vaughn-Bey, by her *
next friend, Franklin Vaughn-Bey; *
Nicholas C. Light, by his next friend, *
Marian Light; Stephon D. Jackson, by *

his next friend, B. J. Jones; Travis N. *
Peter, by his next friend, Debora *
Chadd-Peter; Leland Guess, by his next *
friend, Sharon Guess; *

Plaintiffs - Appellees *

American Federation of Teachers, Local*
691, *

Intervenor - Appellee *

v. *

State of Missouri; Mel Carnahan, *
Governor of the State of Missouri; Bob *
Holden, Treasurer of the State of *
Missouri; Missouri State Board of *
Education; Peter Herschend, Member of *
the Missouri State Board of Education; *
Thomas R. Davis, Member of the *
Missouri State Board of Education; *
Robert E. Bartman, Commissioner of *
Education of the State of Missouri; Gary*
D. Cunningham, Member of the *
Missouri State Board of Education; *
Rice Pete Burns, Member of the *
Missouri State Board of Education; *
Sharon M. Williams, Member of the *
Missouri State Board of Education; *
Betty Preston, Member of the Missouri *
State Board of Education; Jacqueline *
Wellington, Member of the Missouri *
State Board of Education; Russell *
Thompson, Member of the Missouri *
State Board of Education, *

Defendants - Appellants *

*

School District of Kansas City; Dr. *
Henry D. Williams, Superintendent *
thereof; Terry M. Riley, Member of the *
Board of Directors; Lance Loewenstein, *
Member of the Board of Directors; *
Marilyn Simmons, Member of the *
Board of Directors; Sandy Aguire *
Mayer, Member of the Board of *
Directors; John A. Rios, Member of the *
Board of Directors; Darwin Curls, *
Member of the Board of Directors; *
Patricia Kurtz, Member of the Board of *
Directors; Edward J. Newsome, *
Member of the Board of Directors; Dr. *
Julia H. Hill, Member of the Board of *
Directors; John W. Still, Member of the *
Board of Directors, *

*

Defendants - Appellees. *

No. 96-3568

Chinyere Jenkins, by her next friend, *
Joi Jenkins; Nicholas Paul Winchester- *
Rabelier, by his next friend, Paula *
Winchester; Margo Vaughn-Bey, by her *
next friend, Franklin Vaughn-Bey; *
Nicholas C. Light, by his next friend, *
Marian Light; Stephon D. Jackson, by *
his next friend, B. J. Jones; Travis N. *
Peter, by his next friend, Deborah *
Chadd-Peter; Leland Guess, by his next *

friend, Sharon Guess, *

*

Plaintiffs - Appellees *

*

American Federation of Teachers, Local*
691, *

*

Intervenor below - Appellee *

*

v. *

*

State of Missouri; Mel Carnahan, *
Governor of the State of Missouri; Bob *
Holden, Treasurer of the State of *
Missouri; Missouri State Board of *
Education; Peter Herschend, Member of *
the Missouri State Board of Education; *
Thomas R. Davis, Member of the *
Missouri State Board of Education; *
Robert E. Bartman, Commissioner of *
Education of the State of Missouri; Gary*
D. Cunningham, Member of the *
Missouri State Board of Education; *
Rice Pete Burns, Member of the *
Missouri State Board of Education; *
Sharon M. Williams, Member of the *
Missouri State Board of Education; *
Betty Preston, Member of the Missouri *
State Board of Education; Jacqueline *
Wellington, Member of the Missouri *
State Board of Education; Russell *
Thompson, Member of the Missouri *
State Board of Education, *

*

Defendants - Appellants *

*

School District of Kansas City; Dr. *

Henry R. Williams, Superintendent *
thereof; Terry M. Riley, Member of the *
Board of Directors; Lance Loewenstein, *
Member of the Board of Directors; *
Marilyn Simmons, Member of the Board *
of Directors; Sandy Aguire Mayer, *
Member of the Board of Directors; John *
A. Rios, Member of the Board of *
Directors; Darwin Curls, Member of the *
Board of Directors; Patricia Kurtz, *
Member of the Board of Directors; *
Edward J. Newsome, Member of the *
Board of Directors; Dr. Julia H. Hill, *
Member of the Board of Directors; John *
W. Still, Member of the Board of *
Directors, *
*

Defendants - Appellees.

No. 96-3870

Chineyere Jenkins, by her next friend, *
Joi Jenkins; Nicholas Paul Winchester- *
Rabelier, by his next friend, Paula *
Winchester; Margo Vaughn-Bey, by her *
next friend, Franklin Vaughn-Bey; *
Nicholas C. Light, by his next friend, *
Marian Light; Stephon D. Jackson, by *
his next friend, B. J. Jones; Travis N. *
Peter, by his next friend, Debora Chadd- *
Peter; Leland Guess, by his next friend, *
Sharon Guess, *

Plaintiffs - Appellants *

American Federation of Teachers, Local*
691, *

Intervenor *

v. *

State of Missouri; Mel Carnahan, *
Governor of the State of Missouri; Bob *
Holden, Treasurer of the State of *
Missouri; Missouri State Board of *
Education; Peter Herschend, Member of *
the Missouri State Board of Education; *
Thomas R. Davis, Member of the *
Missouri State Board of Education; *
Robert E. Bartman, Commissioner of *
Education of the State of Missouri; Gary*
D. Cunningham, Member of the *
Missouri State Board of Education; *
Rice Pete Burns, Member of the *
Missouri State Board of Education; *
Sharon M. Williams, Member of the *
Missouri State Board of Education; *
Betty Preston, Member of the Missouri *
State Board of Education; Jacquelline *
Wellington, Member of the Missouri *
State Board of Education; Russell *
Thompson, Member of the Missouri *
State Board of Education, *

Defendants - Appellees *

School District of Kansas City; Dr. *
Henry D. Williams, Superintendent *
thereof; Terry M. Riley, Member of the *
Board of Directors; Lance Loewenstein, *

Member of the Board of Directors; *
Marilyn Simmons, Member of the *
Board of Directors; Sandy Aguire *
Mayer, Member of the Board of *
Directors, John A. Rios, Member of the *
Board of Directors; Darwin Curls, *
Member of the Board of Directors; *
Patricia Kurtz, Member of the Board *
Directors; Edward J. Newsome, *
Member of the Board of Directors; *
Dr. Julia H. Hill, Member of the Board *
of Directors; John w. Still, Member of *
the Board of Directors, *
*
*
Defendants. *

Submitted: November 6, 1997

Filed: March 15, 1999

Before McMILLIAN, HEANEY, and JOHN R. GIBSON, Circuit Judges.

JOHN R. GIBSON, Circuit Judge.

The Jenkins class seeks an award under 42 U.S.C. § 1988 (Supp. II 1996) for attorneys' fees and expenses incurred in defending against the State's petitions for rehearing on earlier fee awards. We grant an award of fees and expenses reduced to account for partial success.

After we awarded fees in Jenkins v. Missouri, Nos. 96-2809, 96-2918, 96-3215, and 96-3568 (8th Cir. July 11, 1997) (unpublished), and held that fees should

be awarded in Jenkins v. Missouri, No. 96-3870, 115 F.3d 554 (8th Cir. 1997), the State petitioned for rehearing on both orders. Rehearing was denied as to No. 96-2809 and consolidated cases, but granted as to No. 96-3870. Jenkins v. Missouri, 124 F.3d 1310 (8th Cir. 1997). We then entered a revised panel opinion in No. 96-3870 in which we adhered to our original holding that fees should be awarded and in fact awarded fees. However, we only awarded half the amount requested by the class, to reflect the class's limited success in the particular matter for which fees were requested. Jenkins v. Missouri, 127 F.3d 709 (8th Cir. 1997) (Jenkins Fees VI). The Jenkins class then requested an award of fees and expenses for defending against the rehearing petitions. The State and the KCMSD oppose the request.

The State argues that the Jenkins class is not entitled to fees because it was not successful in resisting the rehearing petition in No. 96-3870. This is a question of whether the glass is half full or half empty, since the Jenkins class retained its award but suffered a reduction from its requested amount. Fortunately, Hensley v. Eckerhart, 461 U.S. 424 (1983), gives us a framework for handling such cases. As we developed at length in Jenkins Fees VI, 127 F.3d at 716, the Jenkins class is the prevailing party in this litigation, and the litigation at issue in No. 96-3870 was integrally related to the underlying case in which the class has been quite successful. 127 F.3d at 719. The fees requested here were incurred in work that was “useful and of a type ordinarily necessary.” Id. at 718 (quoting Pennsylvania v. Delaware Valley Citizens' Council, 478 U.S. 546, 561 (1986)). Because we held that an award of fees was proper in the two underlying appeals, it follows that defending against an attack on the propriety of those awards is also work that is a proper subject for a fee award.

The KCMSD argues that fee awards for fee litigation must have an end, and that awarding fees in this case will encourage counsel to file further requests “in seriatim and in perpetuity.” The short answer to that argument is that the Jenkins class

did not file the rehearing petitions; it is hardly equitable to blame the class for litigation initiated by the State, which the class was required to defend.

We recognized in Jenkins Fees VI that success in the particular matter litigated is “relevant but not determinative to the reasonableness of the fee” in that matter. 127 F.3d at 718. We therefore conclude that a reasonable fee for defending against the partially successful rehearing motion in No. 96-3870 is half the amount requested. We thus award the Jenkins class fees of \$11,648.75 and expenses of \$835.78 in No. 96-3870. In No. 96-2809 and consolidated cases, in which the rehearing petition was denied, we award full compensation of \$1,840.35 for fees and expenses. As the fees and expenses were all incurred before November 10, 1997, the State is liable for the award, in accordance with our opinion in Jenkins v. Missouri, 158 F.3d 980, 983 (8th Cir. 1998) (Jenkins Fees IX).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.