

IN RE MANDATE PURSUANT
TO TRIAL RULE 60.5

CASE NO. 08D01-0611-MI-2

ORDER FOR MANDATE OF FUNDS

The Judge of the Carroll Superior Court, having had this matter brought to his attention, now finds:

The bailiff of the Carroll Superior Court is a statutorily created position. I.C. 33-29-1-5 provides: "The judge of a standard superior court shall appoint a bailiff and an official court reporter for the court." The Carroll County Salary Ordinance for 2006 and 2007 provides for an annual salary of \$21,622.00 for the bailiff. This represents an hourly rate of \$11.55 per hour. The bailiff of the Carroll Superior Court performs the duties of bailiff, provides secretarial services, and acts as receptionist for the court.

Vick Lesh served as bailiff of the court for approximately ten years. On September 8, 2006 the court granted her sick leave without pay for six months. She is no longer performing the duties of bailiff. Although her sick leave is without pay, Vick Lesh is receiving disability benefits from the disability insurance policy provided to employees by Carroll County. She is also receiving medical benefits and will continue to do so during her sick leave.

Within a short period of time after beginning her sick leave, Vick Lesh was placed on the waiting list for a kidney and liver transplant. Fortunately, she was able to receive the transplant on October 22, 2006. Her recovery period will last a minimum of several months. Whether she will be able to return to work as bailiff within the duration of her sick leave is unknown.

When Vick Lesh began her sick leave, the court was without a bailiff. It became necessary for the court to appoint a bailiff to fulfill the statutory requirement and to assure that the work of the court would be done in a timely manner. It is not possible for the other members of the court staff to also assume the duties of the bailiff for an extended period of time. Due to Vick Lesh's illness, there was already a backlog of work.

It was essential for the court to replace Vick Lesh as soon as possible after she began her sick leave with a person who would be able to have an

immediate impact upon the work load and would be a good, competent employee. It was also essential that the person employed be a person suitable for continued employment if Vick Lesh is unable to return to work to avoid training of another person.

In August 2006 applications were received by the court for the position of probation secretary. The qualifications required for a probation secretary are the same qualifications required for a bailiff. To shorten the time necessary to fill the position of bailiff, the court reviewed the applications submitted for probation secretary. Dee Dellenbach was one of those applicants. Based upon her application and interview, Dee Dellenbach was appointed by the court as bailiff.

Dee Dellenbach has had many years of work experience and is well qualified to serve a bailiff. She is also a graduate of Purdue University with a major in english. Dee Dellenbach was advised by Judge Jeffrey R. Smith that her salary would be based upon the annual salary provided for a bailiff in Carroll County Salary Ordinance, \$21,622.00.

As bailiff Dee Dellenbach is a full-time employee working 36 hours per week. She performs all of the duties of bailiff. She is an at-will employee and the term of her employment is indefinite. During Vick Lesh's six-month sick leave her employment is conditional and may be terminated if Vick Lesh is able to return to work during the six month period. Her employment will cease to be conditional after the six-month sick leave ends.

Dee Dellenbach began her employment on September 28, 2006. A claim for wages for Dee Dellenbach for the period from September 28, 2006 to October 8, 2006 was filed with the Auditor of Carroll County based upon the annual salary of the bailiff. The commissioners approved the claim and payment in the amount of the claim was made to Dee Dellenbach.

A claim for wages for the period from October 9, 2006 to October 22, 2006 was filed with the Auditor of Carroll County based upon the annual salary of the bailiff. The Carroll County Auditor, without authority, paid Dellenbach based upon the salary schedule for a part-time secretary, an hourly rate of \$8.83. Additionally, she did not pay Dee Dellenbach for a paid holiday, Columbus Day. This resulted in a \$260.00 reduction in wages for the two week period.

On November 3, 2006, the Carroll County Council passed a resolution finding that Dee Dellenbach was a part-time employee and directing the Auditor of Carroll County to pay her \$8.83 per hour, the hourly rate of a part-time secretary. Based upon the determination by the County Council that Dee

Dellenbach is a part-time employee, she is not receiving the county benefits of a full-time employee: health benefits, retirement, sick days, vacation days, holidays, or personal leave days.

The court has determined that Dee Dellenbach is a full-time employee and not a part-time employee . Although the court is not bound by the Carroll County Employees' Personnel Policy, Dee Dellenbach is a full-time employee as defined by the personnel policy. A full-time employee is defined as: "an employee scheduled to work 36-40 hours per week as a permanent employee for an indefinite term." Part-time employees are defined as: "all employees with a predetermined termination date or all employees who work less than 36 hours per week." Dee Dellenbach is scheduled to work 36 hours per week, her term of employment is for an indefinite period, and there is no predetermined termination date. None of the examples of part-time employment contained in the personnel policy (upon project completion, end of season, including summer help, vacation replacement or relief work) apply.

Even if Dee Dellenbach is not a full-time employee as defined by the Carroll County Employees' Personnel Policy, payment of the bailiff's salary and receipt of benefits is essential to the continued efficient operation of the court. The court is very fortunate that Dee Dellenbach was willing to accept the position of bailiff under the conditions offered. The court does not believe she would have left her prior position and accepted the position of bailiff if she had been offered \$8.83 per hour without benefits or that she will continue in the position at that rate of pay.

The full salary of a bailiff is not a competitive wage to attract and retain a good, competent, and reliable employee. In a recent mandate action by the judges of Montgomery County, an annual salary of \$27,200 was approved as a reasonable salary for a bailiff in that county, 25% more than the salary in Carroll County. Montgomery County, like Carroll County, is a rural county adjacent to Tippecanoe County. The hourly rate of \$8.83 is 74.5% of the salary provided for a bailiff in the Carroll County Salary Ordinance. It is not reasonable to expect the court to be able to employ a person with all of the qualifications required of a bailiff to perform the same duties of a bailiff for 74.5% of a bailiff's salary and no benefits. It is unreasonable to believe that the court could employ a person with the qualifications required of a bailiff for an hourly rate barely above the hourly rate paid to teenagers working part-time at a fast food restaurant. The hourly rate for part-time secretarial used by the County Council in determining Dee

Dellenbach's wages was an hourly rate requested by the court for the employment of a high school student to work after school doing filings.

Trial Rule 60.5 requires that courts limit their requests for funds to those which are reasonably necessary for the operation of the court or court-related functions and that the mandate not be for extravagant, arbitrary or unwarranted expenditures. The Carroll County Salary Ordinance represents an acknowledgment by the Carroll County Council that a reasonable salary for a bailiff in Carroll County is an annual salary of \$21,622. An appropriation of the funds to pay the salary has already been made. Vick Lesh is not receiving the salary, therefore, the funds are available. Because Vick Lesh is continuing to receive health benefits, there will be an additional expense for health benefits. The court has transferred from the alcohol users fees to the general fund an amount sufficient to cover the cost of the health benefits, therefore the funds are also available for such benefits. There will be no cost to the county not already anticipated in the 2006 and 2007 budget.

In support of this request, the court cites the following case law:

"It is trite to say, but nevertheless requires repeating here, that our State, as well as our Federal government, is divided into three parts: executive, legislative and judicial -- each an independent and integral part of the government. This division is created by the Constitution and is inherent in the functions of each department. It follows that the judicial function may not be controlled by the executive or the legislative branch, and the same barriers exist with reference to controlling the discretionary actions of the executive department and the legislative department. It is axiomatic that the courts must be independent and must not be subject to the whim of either the executive or legislative departments."

"The court may, therefore, make such rules and regulations as are necessary to secure its own freedom of action, and to carry on its business with dignity, decorum, order, due dispatch, and convenience." *Carlson v. State*, 247 Ind. 631, 633-639 (Ind. 1966)

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The court has inherent and constitutional authority to employ necessary personnel with which to perform its inherent and constitutional functions and to fix the salary of such personnel, within reasonable standards, and to require appropriation and payment therefor. The necessity of such authority in the courts is grounded upon the most fundamental and far reaching considerations." *Noble Co. Council etc. et al. v. State ex rel. Fifer* (1954), 234 Ind. 172, 180, 125 N. E. 2d 709, 713

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“We quite agree with appellant that the legislature has no power or authority to curtail and hamper the courts in the exercise of their lawful duties, and that the court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and **to employ the relatrix as a page in said court if it was reasonably necessary for the practical and efficient operation of its lawful and designated duties. This power in the court necessarily implies the power and authority to order paid the reasonable and necessary expense of such assistance. [citations omitted] And it then becomes the duty of the County Council to make the proper appropriation to meet such expense.**” *Dunn v. State*, 204 Ind. 390, 395 (Ind. 1933)

IT IS THEREFORE ORDERED THAT:

1. The salary of Dee Dellenbach as bailiff of the Carroll Superior Court shall be \$21,622.00 annually, as previously approved by the Carroll County Council in the Carroll County Salary Ordinance for 2006 and 2007 from the date of employment.
2. Dee Dellenbach shall be paid for the period from October 9, 2006 to October 22, 2006 and all subsequent pay periods the difference between the claim for wages filed and the salary actually paid immediately.
3. Dee Dellenbach shall receive all benefits of a full-time employee of Carroll County, including but not limited to health benefits, retirement, sick days, vacation days, holidays, or personal leave days from the date of her employment.
4. The Carroll County Council and the Auditor shall take all necessary steps to implement this order.

IT IS FURTHER ORDERED THAT the Carroll County Council and the Carroll County Auditor appear before the Carroll Superior Court on a date and at a time to be fixed by further order of the Court and show cause why the salary and benefits ordered above should not be paid.

A copy of this order shall be served upon the Carroll County Auditor and the Carroll County Council by delivering a copy to the Carroll County Auditor as agent for the Carroll County Council.

Ordered this 9th day of November, 2006.

Jeffrey R. Smith, Judge