

IN THE INDIANA COURT OF APPEALS  
CAUSE NO. 18A-PL-02528

HENDRICKS COUNTY, INDIANA, and )	
HENDRICKS COUNTY COURTS )	Appeal from the
)	Boone Superior Court 1
Appellants (Defendants Below) )	
)	Trial Court Cause No.
v. )	06D01-1711-PL-1416
)	
GWYN L. GREEN, )	
)	Hon. Matthew C. Kincaid
Appellee (Plaintiff Below) )	

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**BRIEF OF *AMICUS CURIAE* PROBATION OFFICERS PROFESSIONAL  
ASSOCIATION OF INDIANA, INC., IN SUPPORT OF APPELLEE  
GWYN L. GREEN**

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**BRIEF STATEMENT OF INTEREST**

The Probation Officers Professional Association of Indiana, Inc. (“POPAI”) has a direct interest in the issues presented in this appeal. According to information available to its Board of Directors, there are approximately 1,578 active probation officers in the State of Indiana, and POPAI has approximately 896 active probation officers as members, including at least one member in every county in Indiana. POPAI was established in 1985 by a group of chief probation officers from throughout Indiana who were concerned about soaring caseloads, low pay, and dangerously high probation officer turnover in Indiana. POPAI’s membership is composed of individuals involved in all areas of probation services: administrators, line probation officers, supervisory staff, community corrections/probation officers, detention/probation personnel, and support staff. There is no other organization in the State of Indiana whose sole purpose is to work on behalf of probation officers.

In addition to active members, POPAI’s extended memberships include retired probation officers and support staff, and those individuals who have been recognized for their outstanding contributions to the field of probation. POPAI also offers corporate memberships to organizations who assist in the delivery of quality probation services.

This appeal is of critical importance to the members of POPAI because it directly impacts the employer-employee relationship between probation officers and the courts for which they work. Probation officers have specialized skills and cultivate a unique relationship with the judges who rely on their efforts. Appellee

Gwyn Green was a member of POPAI for over twenty years and a current member at the time of her resignation. Regardless of that, with over half of the probation officers in the State of Indiana as members, POPAI has an interest in preserving, protecting, and promoting the close relationship between probation officers and the judicial officers they serve.

### **SUMMARY OF ARGUMENT**

Probation officers are properly considered to be agents of the judges that they serve. They have a particular set of skills and work directly for the courts to develop information necessary for the judges to make appropriate decisions. Ms. Green was no exception. She had been a probation officer with the Hendricks County Courts (the “Local Courts”) for approximately twenty-four years. At no time was her work directed by anyone from the Hendricks County Council. State law may require county involvement in providing basic financial compensation for probation officers, but because the courts employ the probation officers, the courts should have the freedom and authority to provide additional benefits that promote the acquisition and retention of the best employees. Indiana’s statutory framework appropriately gives judges the authority to tailor their compensation packages. The Trial Court properly determined that Ms. Green was employed by the Local Courts, which had the authority to provide greater benefits than those provided to non-judicial employees of Hendricks County.

**ARGUMENT**

Appellee Green’s case presents the question of whether she is bound by the PTO (“Paid Time Off”) program promulgated by Hendricks County for county employees, or by the PTO program promulgated by the Hendricks County Courts for its judicial employees. POPAI respectfully requests to be heard with respect to the broader implications of this dispute: whether probation officers like Appellee Green are employees of the courts, and whether their compensation is subject to Indiana’s Wage Payment Statute. As set forth below, POPAI submits that probation officers are indeed employees of the courts that hire them, and their compensation should be subject to Indiana’s Wage Payment Statute.

**I. Probation Officers Are Employees of the Courts.**

The Trial Court properly determined that Ms. Green, like all probation officers, was the employee of the Local Courts that hired her and for whom she performed her duties. (Appellant’s App. Vol. II, p. 11.) As a threshold issue, it is undisputed that Ms. Green worked directly for the judges who hired her. In fact, Appellant concedes that “Ms. Green worked as a probation officer for the Local Courts.” (Appellant’s Br., p. 8 (citing App. Vol. II, p. 13)).

An instructional case on this matter recognized that the critical role of probation officers in the courts they serve. “Because courts are constitutionally obligated to be open and because the operation of a probation office is a court-related function, the courts have the corresponding constitutional power to pay probation officers at a level sufficient to attract and maintain qualified personnel.” *Matter of*

*Madison Cty. Prob. Officers' Salaries*, 682 N.E.2d 498, 501 (Ind. 1997). Put simply, “[p]robation officers are employees of the court.” *Smith v. State*, 829 N.E.2d 1021, 1025 (Ind. Ct. App. 2005). Other opinions also have recognized, sometimes in *dicta*, that probation officers are properly considered employees of the court. *See e.g.*, *Orange v. Morris*, 23 N.E.3d 787, 790-791 (Ind. Ct. App. 2014) (“The City Court’s probation department is the largest department in the court...” and “[T]he City Court employs two probation officers who speak Spanish...” (emphasis added)); *Kramer v. Hancock County Court*, 448 N.E.2d 1190, 1191 (Ind. 1983) (citing *State ex rel. Adams Circuit Court v. Adams County Council*, 413 N.E.2d 905 (Ind. 1980) (“The record discloses that the three employees, the reporter, bailiff, and probation officer, were court employees who fall within that category subject to court mandate authority.”) (emphasis added)).

The conclusion that probation officers are employed by the courts is inescapable. The multi-factor approach that is now ubiquitous in the determination of employee/employer relationship, includes: (1) right to discharge; (2) mode of payment; (3) supplying tools or equipment; (4) belief of the parties in the existence of an employer-employee relationship; (5) control over the means used in the results reached; (6) length of employment; and, (7) establishment of the work boundaries. The most important of these factors is the right of the employer to exercise control over the employee. *McCann v. City of Anderson*, 951 N.E.2d 614, 617 (Ind. Ct. App. 2011) (quoting *GKN Co. v. Magness*, 744 N.E.2d 397, 402-03 (Ind. 2001)). Although the mode of payment may be controlled by the county, the remainder of the factors

all point to the Local Courts as the true employers of probation officers. And even on that point, “the authority to determine probation officers’ salaries is vested in judiciary.” *See Knoebel v. Clark County Superior Court No. 1*, 901 N.E.2d 529, 533 (Ind. Ct. App. 2009).

The plain language of the governing statute also favors a conclusion that the appointing court is the employer of a probation officer: “Probation officers shall serve at the pleasure of the appointing court and are directly responsible to and subject to the orders of the court.” Ind. Code § 11-13-1-1(c). This statute implicitly recognizes several of the factors cited above: the appointing court has the right to discharge a probation officer, and controls the means used in the results reached, controls the length of employment, and establishes the work boundaries. A probation officer works for (at the pleasure of) the appointing court and is responsible to and subject to the orders of appointing court. Accordingly, probation officers are properly considered employees of the appointing court.

## **II. The Wage Payment Statute Applies to Probation Officers As Employees of the Courts.**

Because probation officers like Appellee Green are employed by the courts, the next question is whether the courts are obligated to those probation officers for PTO pay under Indiana’s Wage Payment Statute. For the reasons set forth below, the answer must be “yes.”

First, it is indisputable that PTO pay is a wage for purposes of the Wage Payment Statute, Ind. Code § 22-2-5-1 *et seq.* “[I]f vacation pay is to be compensated, it is deferred compensation in lieu of wages and is subject to the provisions of the

Wage Payment Statute.” *Naugle v. Beech Grove City Schools*, 864 N.E.2d 1058, 1067 (Ind. 2007).

Second, just like any other employer, courts are obligated by the Wage Payment Statute to pay wages that are owed to their probation officer employees. In pertinent part, Indiana’s Wage Payment Statute provides as follows:

Every person, firm, corporation, limited liability company, or association, their trustees, lessees, or receivers appointed by any court, doing business in Indiana, shall pay each employee at least semimonthly or biweekly, if requested, the amount due the employee....

Ind. Code § 22-2-5-1(a). As our Supreme Court explained in *Naugle v. Beech Grove City Schools*, 864 N.E.2d 1058 (Ind. 2007), for purposes of the Wage Payment Statute “Indiana Code section 1–1–4–5(17) extends the definition of a ‘person’ to include ‘bodies politic and corporate.’” *Naugle*, 864 N.E.2d at 1063-64 (applying the Wage Payment Statute to a school corporation). Accordingly, it follows that the Wage Payment Statute applies to employees of a county’s court system as courts have been interpreted as a “person” to include “bodies both political and corporate.” *Id.*

Reliance on *Hickman v. State* is misplaced for the proposition that if no policy allows an employee to “cash out” unused PTO time, PTO must be “used to take time off of work during the employee’s tenure with the employer.” (Appellant’s Brief at pg. 11). *Hickman* involved an employee who was involuntarily terminated by the Indiana Department of Correction (the “DOC”). *Hickman v. State*, 895 N.E.2d 353, 355 (Ind. Ct. App. 2008). As a threshold issue, because the plaintiff was involuntarily



terminated, a different statute—the Wage Claims Act—applied to *Hickman*, and not the Wage Payment Statute. As explained by the Indiana Supreme Court:

The Wage Claims Statute references employees who have been separated from work by their employer and employees whose work has been suspended as a result of an industrial dispute. I.C. § 22-2-9-2(a)(b). By contrast, the Wage Payment Statute references current employees and those who have voluntarily left employment, either permanently or temporarily. I.C. § 22-2-5-1(b)).

*St. Vincent Hosp. and Health Care Center, Inc. v. Steele*, 766 N.E.2d 699, 705 (Ind. 2002). *Hickman* was decided in part on a provision in the Indiana Administrative Code dealing with vacation pay for DOC employees like *Hickman*. 895 N.E.2d at 357 (citing 31 Ind. Admin. Code § 1-9-3(a)) Because there was a published policy of the State – which was the actual employer – under which dismissed state employees forfeited their accrued but unused vacation time, that policy informed the Court’s decision not to award *Hickman* accrued but unused vacation time. *Id.* at 357-358. “[A]n employee is entitled to accrued vacation pay to the time of termination provided no agreement or published policy exists to the contrary.” *Id.* 356-357. Notably, the Indiana Court of Appeals in *Hickman* implicitly found that the Ind. Code § 22-2 *et seq.* applied where a government entity was the employer. Neither the regulation, nor the statute, that governed the *Hickman* result are applicable here. Where there is no contradiction between the court employer’s published policy and the terms of employment, then the probation officer employees should be protected by the Indiana Wage Payment Statute.

As the Trial Court determined, the statutory exercise in collaboration that establishes the salary of probation officers in each county cannot be understood to create the entirety of the compensation package. (Appellant's App. Vol. II, p. 11.) Issues such as PTO, sick leave, bereavement leave, reimbursable expenses, appropriate continuing education, discipline, and many other employment policies are best left to the true employer of the probation officer: the court. Only the judiciary has the authority to make the best determination of these matters consistent with the goal of being able to "attract and maintain qualified personnel." *Madison Cty. Prob. Officers' Salaries*, 682 N.E.2d at 501. The legislature's silence on these matters respects the fundamental authority the courts have to provide for the compensation of their own employees.

From the perspective of the probation officers who serve judges throughout the State of Indiana, their employers are the courts that hire them and control their work. And when those courts establish salaries and offer benefits to the probation officers in their employ, the officers who earn those salaries and benefits are entitled to receive them, regardless of any political squabbles that may arise between various arms of county government. Because it is the courts that will suffer for the failure to hire and retain appropriately trained and experienced probation officers, it is properly the courts that should determine the total compensation package available.

**CONCLUSION**

On behalf of all probation officers in Indiana, POPAI submits that as employees of the court, probation officers should be entitled to the benefit of the compensation packages provided by their appointing court.

Respectfully submitted,

*/s/ F. Anthony Paganelli*

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**WORD COUNT CERTIFICATE**

Pursuant to Appellate Rule 44(E), I certify that this Brief of Amicus Curiae contains fewer than 7,000 words, excluding the items listed in Appellate Rule 44(C), as counted by Microsoft Word, which was used to prepare the Brief.

*/s/ F. Anthony Paganelli*

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was served on January 22, 2019,  
via the Court's electronic filing system, upon the following counsel of record:

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