

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

CIVIL DIVISION

WENDELL L. GRIFFEN,
FIFTH DIVISION CIRCUIT JUDGE
and LATONYA AUSTIN HONORABLE,
FIFTH DIVISION CIRCUIT JUDGE-ELECT

PETITIONERS

V.

BARRY HYDE,
in his official capacity
as COUNTY JUDGE of Pulaski County,

MIKE HUTCHENS,
in his official capacity
as COMPTROLLER of Pulaski County,

and CHASTITY SCIFRES,
in her official capacity as
HUMAN RESOURCE DIRECTOR
of Pulaski County

RESPONDENTS

PETITION FOR WRIT OF MANDAMUS

Introduction

Fifth Division Circuit Judge Elect Latonya Austin Honorable and Fifth Division Circuit Court Judge Wendell L. Griffen, by and with their co-counsel Austin Porter, Jr., file this Petition for Writ of Mandamus to compel Pulaski County Judge Barry Hyde, Comptroller Mike Hutchens, and Human Resource Director Chastity Scifres to comply with state law and county

ordinances to fill vacant Fifth Division Probation positions and payment of salaries already appropriated by the Pulaski County Quorum Court.

Parties

1. Wendell Griffen (hereafter “Circuit Judge Griffen”) was initially elected Circuit Judge for the Sixth Judicial Circuit of Arkansas, Fifth Division, in May 2010, re-elected in March 2016, and will remain in office until December 31, 2022. Circuit Judge Griffen is a resident of Pulaski County.
2. LaTonya Austin Honorable (hereafter “Circuit Judge-Elect Honorable”) was elected Circuit Judge for the Sixth Judicial Circuit of Arkansas, Fifth Division, in May 2022, and will enter office on January 1, 2023. Circuit Judge-Elect Honorable is a resident of Pulaski County.
3. Barry Hyde (hereafter “County Judge Hyde”) is County Judge for Pulaski County, the chief executive position for Pulaski County government. County Judge Hyde was elected in 2014, re-elected in 2018, and 2022, and will begin his fourth term in office on January 1, 2023. County Judge Hyde is a resident of Pulaski County.

4. Mike Hutchens (hereafter “Comptroller Hutchens”) is Comptroller for Pulaski County. Comptroller Hutchens is a resident of Pulaski County.
5. Chastity Scifres (hereafter “HR Director Scifres”) is Director of Human Resources for Pulaski County. HR Director Scifres is a resident of Pulaski County.

Jurisdiction and Venue

6. This Court has jurisdiction over all parties because each party is a resident of Pulaski County.
7. This Court has subject matter jurisdiction over this cause of action because the Petitioners seek a writ of mandamus compelling the Respondents to enforce an established right or to enforce the performance of a duty. *State v. Vittitow*, 358 Ark. 98, 186 S.W.3d 237 (2004). Mandamus is an appropriate remedy when a public officer is called upon to do a plain and specific duty, which is required by law, and which requires no exercise of discretion or official judgment. Issuance of the writ of mandamus is appropriate when the duty to be compelled is ministerial and not discretionary. *Parker v Crow*, 2010 Ark. 371, 368 S.W.3d 902 (2010).

Facts

8. The Pulaski County Quorum Court (hereafter “Quorum Court”) has funded court supervised probation in Pulaski County circuit courts, and in Fifth Division, specifically, since 1982. See *82-OR-10*. Fifth Division began with one probation officer in 1982 and increased gradually to meet the demands of the administration of justice to a total of six officers in 2008.
9. The Quorum Court expanded court-supervised probation in 1984 to create five (5) new probation officer positions in two divisions (Fourth and Fifth Division). Fourth Division received four (4) probation officers and Fifth Division received one (1) probation officer, respectively. See *84-OR-15*. The Quorum Court also amended the 1984 budget to appropriate funds for the expanded probation services in Fourth and Fifth Divisions. See *84-OR-13*. Pulaski County also recognized probation as a valuable alternative to incarceration in many cases and the County moved to establish fees for probationary services provided by Pulaski County. See *84-OR-37*.
10. After 1984, the Pulaski County Quorum Court created additional probation officer positions for several divisions, including

Fifth Division. See *87-OR-24; 88-OR-44; 89-OR-36; 05-OR-35; 08-OR-56*. No addition to the total number of officers in Fifth Division has been made since 2008.

11. Since 2008, the Quorum Court has passed a yearly budget that appropriated funds for the salaries of six probation officers in Fifth Division: one (1) Chief Probation Officer, three (3) deputies, one (1) intake officer, and one (1) presentence officer. In 2021, the Quorum Court passed an annual budget appropriating funds for the six probation officers for the period beginning January 1, 2022, and ending December 31, 2022. See *21-OR-46*.

12. The Quorum Court Budget Committee approved the 2023 recommended Fifth Division Budget of \$799,278.00 at its October 6, 2022, meeting.

13. On October 7, 2022, a 2022 Budget worksheet was circulated by the office of Comptroller Hutchens titled "2023 Final" that reduced the Fifth Division budget to \$619,122.00. The line item "Total Salaries" reduced the \$731,664.00 approved during the October 6 Budget Committee meeting to \$551,508.00.

14. Fifth Division Deputy Probation Officer Darryel Sanders was hired as Assistant Bailiff on September 26, 2022, leaving a deputy probation vacancy.
15. On October 14, 2022, County Judge Hyde emailed Comptroller Mike Hutchens and Human Resource Director Chastity Scifres: “We dropped the 4 probation officers last night. Do not advertise the probation officer position. We will not fill it.” *See October 14, 2022, Email.*
16. On October 31, 2022, Chief Probation Officer Alice Abson retired leaving a Chief Probation vacancy.
17. Officers Sanders and Abson supervised more than one hundred ninety-five (195) probationers and monitored weekly reporting compliance of fifty-three (53) accused persons released pending trial on their own recognizance.
18. Circuit Judge Griffen has requested on behalf of Fifth Division that the Chief Probation Officer and Deputy Probation Officer positions filled by Abson and Sanders position be advertised.
19. On November 22, 2022, the full Quorum Court voted unanimously to pass Ordinance 22-I-75 adopting the budget for

January 1—December 31, 2023, fully funding six probation officer positions in Fifth Division for 2023.

20. After that vote was cast by the Quorum Court, County Judge Hyde announced that he intended to remove three probation positions, and that he will not fill any vacancies in the probation department under any circumstances – despite the Quorum Court appropriation of funding for the positions – and that he would leave unfilled probation positions in Fifth Division vacant. *See November 22, 2022, Full Quorum Court recording.*

21. Alice Abson retired from the position of Chief Probation Officer for Fifth Division effective October 31, 2022. At the time of her retirement, Abson supervised twenty-eight (28) probation clients and monitored weekly reporting compliance for thirty-six (36) persons who are pending trial for criminal charges. Since her retirement, The Chief Probation Officer position has been vacant since October 31, 2022.

22. Darryel Sanders was a Deputy Probation Officer for Fifth Division until September 26, 2022, when he was hired as Assistant Bailiff for Fifth Division. When Sanders was hired as Assistant Bailiff, he supervised 167 probation clients and monitored weekly reporting compliance for 17 persons who are pending trial for criminal charges.

The Deputy Probation Officer position Sanders filled has been vacant since September 26, 2022.

23. Latonya Hall, currently a Deputy Probation Officer for Fifth Division, is scheduled to retire effective December 31, 2022. Hall supervises 147 probation clients and monitors weekly reporting compliance for 15 persons who are pending trial for criminal charges.
24. The October 14, 2022, directive by County Judge Hyde that Comptroller Hutchens and HR Director Scifres prevents Fifth Division from filling the vacancies caused by the retirement of Abson and transfer of Sanders to Assistant Bailiff, and the announcement by County Judge Hyde that no probation vacancies that occur during 2023 means that the probation staff authorized and funded for Fifth Division will be cut to three persons upon the retirement of Hall.
25. The directive of County Judge Hyde violates Pulaski County Ordinance 21-OR-46, which authorized funding for six probation positions in Fifth Division for January 1 thru December 31, 2022.
26. The directive of County Judge Hyde violates Pulaski County Ordinance 22-I-75, which authorizes funding for six probation positions in Fifth Division for January 1 thru December 31, 2023.

27. Judge Wendell L. Griffen is the duly elected Circuit Judge and department head of Fifth Division through the end of 2022 fiscal year. Judge-Elect LaTonya Honorable is the duly elected Circuit Judge to be sworn for the 2023 fiscal year as department head of Fifth Division. Petitioners have an established, clear, and certain right, duty, and obligation to hire employees (fill vacancies) within their division, including probation officers. Petitioners have no adequate remedy at law for the denial of their right to fill vacancies within his or her division.

28. The affidavit from Probation Officer Jimmy Lamon is attached hereto as Exhibit A and hereby incorporated by reference in its entirety. The facts declared by Officer Lamon demonstrate that the directive of County Judge Hyde and compliance with that directive by Comptroller Hutchens and HR Director Scifres is a present and growing impediment to probation supervision performed by Fifth Division and endangers public safety in Pulaski County. The adverse impact of that interference and endangerment to public safety worsens as more persons are sentenced to probation and recognized for pretrial release pending trial.

29. Petitioners are suffering and will continue to suffer irreparable harm unless Respondents are enjoined by the Court, as it is in the interest of the public and administration of justice. Persons with probation sentences which require supervision and monitoring will go unsupervised and unmonitored and persons recognized after arraignment and have weekly reporting obligations will be unable to have their reporting monitored. The combined effect of these realities is that public safety is and will increasingly be threatened as more probationers requiring supervision and more persons recognized after arraignment with weekly reporting obligations lack access to probation officers to fulfill their reporting requirements.

WHEREFORE, Petitioners respectfully request that this Court:

- (1) Enter an Order or Writ of Mandamus compelling Pulaski County Judge Barry Hyde, Comptroller Mike Hutchens, and Human Resource Director Chastity Scifres to advertise and fill the vacant probation positions.
- (2) Order Respondents to disburse appropriated county funds for the payment of the respective probation officers' salaries and benefits for 2022 and 2023 fiscal years pursuant to Pulaski County Ordinances 21-OR-46 and 22-I-75, respectively.
- (3) Award Petitioners all relief allowed by law and equity.

(4) Award any other relief the Court deems proper.

Respectfully submitted,

/s/ Wendell L. Griffen

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Counsel for Petitioners

CERTIFICATE OF SERVICE

On December ____, 2022, a copy of this pleading was served on County Judge Barry Hyde, Comptroller Mike Hutchens, and Human Resource Director Chastity Scifres, separately, by delivery to their official address (301 Broadway, Little Rock, Arkansas 72201), and by delivery of a copy of this pleading and process to Pulaski County Clerk Teri Hollingsworth pursuant to subdivision (g)(1)(A)(i) of Rule 4, Arkansas Rules of Civil Procedure.

/s/ Wendell L. Griffen

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