



MEMORANDUM

To: John Bruggen
Subject: Mandate Assessment
Date: October 20, 2008

On October 2, 2008 the Court received an e-mail regarding a "Mandated Services Process" which included 5 attachments;

1. A letter from Board President Todd Portune introducing the 2009 policy goals and the approved policy document.
2. The 2009 budget packet for your department.
3. A letter from the Budget Office introducing the minimum mandated assessment approach.
4. The Budget Office minimum mandate assessment for your department.
5. Directions for departmental response to the mandate assessment.

One of the primary objectives of the e-mail was to inform the Court of a new budget process that requires County Administration to identify the state mandated, statutorily obliged, and judicially defined minimal levels of service and performance for all county operations. The assessment for the Hamilton County Probate Court determined the following positions/services to be non-mandated, representing an 18% reduction of staff and 26% reduction in budget:

- a. Assistant Administrator, Personnel Director, System Administrator, two (2) Computer Programmers.
- b. Three (3) Deputy Clerk Supervisors.
- c. Overtime, part-time compensation, temporary employee compensation, court reporting, payments to RCC, travel reimbursements, mileage, subscriptions, and training.

After reviewing the assessment, departments are required to complete the 2009 Non-Mandated Expenditures Department Response for each assessment including but not limited to authority mandating the position/services (i.e. ORC citation, Code of Federal Regulation and/or relevant case law) and impact if positions were abolished.

After reviewing the assessment prepared by the Office of Budget and Strategic Initiatives, the Court requested the logic and/or methodology used to determine which positions/services in the assessment were not mandated. BSI replied that they assumed that all functions of the Court were mandated and therefore they performed a staffing assessment based on what they perceived was necessary to operate the Court specifically, how many supervisors were needed and by a proposal to combine administrative positions/functions with the Common Pleas Court creating a centralized court services department.

Before the Court responds to the assessment it wants to reiterate that the Court has and will continue to work with the Board of Commissioners on reasonable budgetary requests, targets and goals.

Probate Response to Assessment (1) Assistant Administrator, Personnel Director, System Administrator and (2) Programmers:

As stated above, the BSI assessment concluded that the positions/services were needed but their assessment determined that the positions could be abolished and/or provided by a centralized court services department under the Common Pleas Court. The Court has many issues with this assessment.

1. The Court would like to clarify the job titles of the System Administrator and (2) programmers as identified in the BSI assessment. The correct titles are (IT Director position 4512), (IT Specialist position 451) and (Computer Programmer position 450000014). While the Court tries to identify job titles in the Performance Position Budgeting module of the Performance Accounting application, they should not be used to identify the organizational structure of the Court.
2. The BSI assessment does not take into consideration that some or all of these positions have other duties that would still require their position and presence in the Court in the event some of their functions were centralized in another office which would provide no savings as indicated in the BSI assessment.
 - a) The role of the Assistant Administrator is to assist the Court Administrator who also serves as the Court's Chief Magistrate devoting the majority of his time including but not limited to, conducting hearings, writing decisions, reviewing and commenting on proposed legislation and facilitating weekly magistrate meetings. In order to fulfill his legal duties the Court Administrator must delegate some of his administrative functions to the Assistant Administrator including but not limited to, budget, case management audits, quality control, project development, investments, problem solving case management issues, escrow account maintenance/reconciliation, statistical reporting/trend analysis, and strategic planning/initiatives. Eliminating the Assistant Administrator position would require the Court Administrator to divest himself of a large portion of his caseload and legal duties to assume those administrative duties which would require hiring another magistrate to pick up the Administrators legal duties. The Assistant Administrator is also cross trained to backup the Assignment Desk and Judge's Bailiff during illness, vacation etc.
 - b) In addition to serving as the Court's human resource officer, the Personnel Director also serves as the Court's Public Relations officer, interoffice liaison, and last but not least, Executive Administrative Assistant to the Probate Judge. This sole position is

responsible for judicial support functions, personnel management (i.e. job advertisement, payroll, benefits, training and staff development, performance reviews, employee orientation, attendance monitoring and tracking), dissemination of information and customer complaints. This position also serves as judicial liaison to the Ohio Probate Judges Association, Probate Law & Procedure Committee and Cincinnati Bar Association, etc. The position is routinely required to work more than 40 hours per weekly and be available 24/7. Without this position the Court would not have anyone to handle the personnel management of the Court. More importantly, the Judge would have no one to coordinate his schedule, type his opinions, correspondence, handle media requests, or cover his phone when he is on the bench.

- c) The Court is required to maintain various records which shall also be indexed.¹ The Court is authorized to maintain these records and indices by record keeping methods other than bound volumes of paper pages.² The probate court is a pioneer in court technology and has computerized the operation. The IT Director, Programmer and IT Specialist are responsible for maintaining the Court's IT infrastructure. They developed and maintain the Court's Case Management Application Software which saved the taxpayers approximately \$1,000,000 in development cost and hundreds of thousand of dollars for third party maintenance support, Human Resource Application, Document Imaging Application, Capital Outlay Application, and Website. They also troubleshoot and fix problems with operating systems and hardware.

If the IT department was abolished court operations would cease. The impact of "centralizing" (outsourcing) IT staff to county personnel or private vendors would create the following.

1. Disruptions of service. There will be a potential for the disruption of service if the case management system is maintained by those with limited knowledge of court operations and/or the specific technologies used by the case management and document management systems.
2. Lack of responsiveness. The ability to respond flexibly, efficiently, and rapidly to the unique needs of the court would be severely diminished. Identification of opportunities for increased efficiencies or better customer service and development of new technology would be diminished or non-existent.
3. Document security. Security of computerized case files and documents would be diminished.
4. Information security. Responsibility for the safekeeping of sensitive information and documents (adoptions, pre-adjudicated civil commitments) would be in the hands of non-court personnel. This could lead to a breach of sensitive information and potential liability to the Board of County Commissioners and general fund.

¹ R.C. §2101.12 (See pages 6-7)

² R.C. §2101.121 (See page 8)

5. Consider the use of RCC/Hamco as a centralized source of IT support staff. County departments and agencies using RCC/Hamco experienced high prices and poor service and most, if not all, have stopped using Hamco as a result.
3. As stated above, the BSI assessment as it relates to these positions is based solely on a proposal to abolish these positions/services under the Probate Court and provide them through a centralized court services department under the Common Pleas Court. There are problems with this assessment including, but not limited to, the following:
 - a) The Court has exclusive jurisdiction over Civil Commitments, Adoptions. These and other case types contain information which is confidential by law³ and can only be accessed and/or viewed by personnel under the direct control of the probate judge. In fact, only certain employees of the probate court have access to confidential data.
 - b) The probate judge shall employ and supervise all clerks, deputies, magistrates, and other employees of the probate division⁴. The probate judge may appoint deputy clerks, stenographers, a bailiff, and any other necessary employees, each of whom shall take an oath of office before entering upon the duties of the employee's appointment and, when so qualified, may perform the duties appertaining to the office of clerk of the court⁵. The Ohio Constitution provides that the probate court is a separate division of the court of common pleas.⁶ The Probate Judge is elected specifically to the probate division.⁷ The Ohio Revised Code provides that, in counties with a population greater than 60,000, there must be a probate court that is separate from the common pleas court.⁸ In counties where there are less than 60,000 people, the Revised Code sets forth a mandatory procedure that must be followed in order to combine the probate court with the common pleas court.⁹ Before combining the courts, there must be an election process allowing the public to vote on the question of whether to merge the courts.¹⁰ The budgeting process may not be used to circumvent state law requirements, which only allow combination of the probate court with the common pleas court in counties of less than 60,000 and only after a ballot question. In addition to the separate court function, state law mandates that the clerk function of the probate court must be separate from that of other courts. "[T]he Probate Judge shall have the care and custody of the files, papers, books, and records belonging to the probate court."¹¹ The Probate Judge "*shall* be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts."¹² There is a constitutional requirement that the Probate Judge must maintain exclusive control over the employees that he has hired to carry out his functions both as Judge and Clerk of the probate court.

³ §3107.17 & §5122.31 (See pages 53-56)

⁴ §2101.01 (See page 1)

⁵ §2101.11(A)(1) (See pages 3-5)

⁶ Ohio Constitution Article 4 § 4(C) (See pages 13-17)

⁷ *Id.*

⁸ § 2101.46 (See page 12)

⁹ §2101.44 & §2101.45 (See pages 10 -11)

¹⁰ §2101.43 (See page 9)

¹¹ §2101.11 (See pages 3-5)

¹² Ohio Constitution Article 4 § 4(C) (See pages 13-17)

Probate Response to Assessment (2) (Three (3) Deputy Clerk Supervisors):

The BSI assessment was based on the assumption that there are six supervisors supervising 20.33 deputy clerks with each supervisor overseeing 3-4 clerks and that the number of supervisors could be cut in half so that there would be one supervisor overseeing 6-7 clerks. There are problems with this assessment including, but not limited to, the following:

- a) The Court would like to clarify the job titles of the six positions identified as Deputy Clerk Supervisors in the BSI assessment. While the Court tries to identify job titles in the Performance Position Budgeting module of the Performance Accounting application, they are not always updated in the system and should not be used to identify the organizational structure of the Court. The Court has four Deputy Clerk Supervisors (positions 450000005, 450000027, 4511, and 45000002) resulting in one supervisor for every 5 clerks. Position (450000033) is a Probate Auditor and position (450000003) provides triage services and secretarial support for five magistrates and Chief Deputy.
- b) The BSI assessment does not take into consideration that some or all of these positions have other duties in addition to their supervisory functions that would still require their position and presence in the Court which would provide no savings as indicated in the BSI assessment. In addition to having supervisory responsibility of their department and dealing with state and local agencies, each supervisor performs the same daily functions as the front line clerks. This was taken into consideration during the National Center for State Courts staffing study of the Court which determined the staffing needs of the Court which were found to be reasonable and necessary by the Ohio Supreme Court.
- c) Deputy Clerk Supervisor position (4511) manages the Mental Health division and is solely responsible for tracking and submitting reimbursement of cost associated with civil commitment proceedings. If this position were abolished the general fund would lose approximately \$250,000 annually. More importantly, the doctors and attorneys who provide mental services would not get paid and would not represent the respondents which would essentially shut down the mental health hearings conduct by the court.
- d) In response to the BSI assessment that these positions are non-mandated, refer to the response to assessment (3)(b) response.

Probate Response to Assessment (3) (Overtime, part-time employee compensation, temporary employee compensation, court reporting, payments to RCC, travel reimbursements, mileage, subscriptions, training):

The BSI assessment determined that none of the services contained in assessment 3 are mandated. (Note: the assessment does not determine that the services not necessary only non-mandated). There are problems with these assessments including but not limited to:

- a. Overtime, part-time employee and temporary compensation are all mandated¹³ and were found to be reasonable and necessary by the Ohio Supreme Court¹⁴. In addition, the temporary employees work primarily during the summer months to maintain caseload requirements when full time employee vacation usage is highest.
- b. Court reporting is a mandated and essential function of any court. The assessment fails to mention that the Court implemented FTR Gold software solution for recording the proceedings of the probate judge and magistrates and only uses a court reporter¹⁵ when required to reduce the proceedings to writing by a licensed stenographer as mandated¹⁶, saving the general fund significant savings.
- c. RCC is no longer providing services and therefore RCC expenditures will be removed from the budget per John Bruggen,¹⁷ producing additional general fund savings of over \$5,000 each year.
- d. Attorneys are required to complete 24 hours of continuing legal education every two years. Magistrates are required to complete 10 hours of judicial college instruction. Judges are required to complete 40 hours of judicial college instruction¹⁸. While there may not be specific statutory authority for travel reimbursements, mileage, and subscriptions, there is significant case law¹⁹ which determined the request to be reasonable and necessary. In addition, BSI determined that subscriptions (magistrates' dues for local & state bar associations) are not reimbursed by the employer in the private sector and that it is the employee's obligation to cover these expenditures. The BSI determination is incorrect, in this respect because law firm employees generally have such dues provided. Another reason that the Court covers these expenditures is the fact that magistrates generally earn between significantly less than their counterparts in the private sector²⁰.

The Hamilton County Probate Court has historically implemented efficiencies and demonstrated sound & prudent fiscal practices and responsibility of taxpayer dollars. The Court has historically worked with the Board of County Commissioners and budget department in meeting budget goals and targets and will continue to work with county administration on reasonable budget goals and targets.

¹³ R.C. §2101.01 & R.C. §2101.11 (A)(1) (See pages 3-5)

¹⁴ State ex rel. Wilke v. Hamilton County Bd. Of Commrs, 90 Ohio St. 3d 55, 64(2000) (See pages 32-52)

¹⁵ R.C. §2101.08 (See page (2))

¹⁶ R.C. §2107.27[B], R.C. §2107.181, R.C. §2109.50 & R.C. §2109.60 (See pages 57-60)

¹⁷ E-mails from John Bruggen regarding RCC discontinuation (See pages (18-19))

¹⁸ GovBar X(3) See page (20-26) GovJudR IV(2) (See page 61)

¹⁹ State ex rel. Wilke v. Hamilton County Bd. Of Commrs, 90 Ohio St. 3d 55, 64(2000) See pages (32-52)

²⁰ Local starting salaries for attorneys at law firms in the local labor market See pages (27-31)