

In the
Indiana Supreme Court



Mark J. THATCHER,)	Supreme Court Cause No.
Plaintiff,)	94S00-1109-CQ-570
)	
v.)	U.S. District Court, S.D. Ind.
)	Case No. 1:10-cv-101-WTL-TAB
CITY OF KOKOMO, et al.)	
Defendants.)	

PUBLISHED ORDER ACCEPTING CERTIFIED QUESTION

Pursuant to Indiana Appellate Rule 64, the United States District Court for the Southern District of Indiana has certified questions of Indiana state law for this Court’s consideration. The questions arise in Thatcher v. City of Kokomo, et al., Case No. 1:10-cv-101-WTL-TAB (S.D. Ind.). The questions, as framed by the district court, are:

1. Does Indiana Code section 36-8-4-7(a) apply to a member of the “1977 Fund” [a disability pension fund for police officers and firefighters managed by the Indiana Public Employees’ Retirement Fund and governed by Indiana Code chapter 36-8-8] who is receiving disability benefits and who has been determined to have been recovered pursuant to 35 Indiana Administrative Code 2-5-5(c)?
2. If yes, does Indiana Code section 36-8-8-12(e) apply to determinations of eligibility under Indiana Code section 36-8-4-7(a), such that time spent receiving disability benefits counts toward “years of service” as that term is used in Indiana Code section 36-8-4-7(a)?

The certified questions, which each member of this Court has considered, are hereby ACCEPTED pursuant to Indiana Appellate Rule 64.

The Court further directs as follows:

- a) There shall be simultaneous briefing of this matter. The plaintiff is allowed a single principle brief, and the defendants are jointly allowed a single principle brief. There shall be no responsive briefing thereafter. The plaintiff’s brief shall be bound with a blue cover; the defendants’ brief with a red cover. The briefs shall, to the extent reasonably practicable, conform to the provisions of Appellate Rules 43, 44, and 46, except that they may not exceed the greater of **fifteen (15) pages or 7,000 words**, and any brief exceeding fifteen (15) pages shall conform to the word count and certification requirements found in Appellate Rules 46(C), 46(E) and 46(F). The two briefs, and the appendix (if any), must be filed by **Friday, November 4, 2011**.
- b) In addition, an appendix shall be filed containing copies of documents from the federal court case that the parties believe are necessary or helpful for deciding the questions, including, as applicable, the items listed in Appellate Rule 50. It is anticipated that the parties will confer and agree on the materials to be included in an appendix. The parties should avoid unnecessary inclusion in the appendix of “memorandums of law” filed in the district court, since all necessary legal arguments should be presented to this

Court in the briefs described in the preceding paragraph. The cover of the appendix shall be blue and labeled "Plaintiff's Appendix." The original and eight (8) copies of each brief, the original appendix, and any other filings in this matter shall be filed with the Clerk of the Indiana Supreme Court.

- c) In addition to the service requirements contained in Appellate Rule 24, the parties shall also serve each other, no later than the date the document is filed, via electronic mail.
- d) The parties shall file appearance forms within thirty (30) days of this order or contemporaneously with the first document filed by the appearing party, whichever comes first, as required by Appellate Rule 16(C). The appearance forms shall include electronic mail addresses for each attorney appearing in this case. These e-mail addresses shall be used in this case for transmission of all orders, opinions, and notices from the Clerk of this Court. *See* Ind. Appellate Rule 26.
- e) Extensions of time will be granted only in **truly extraordinary circumstances** and any motion seeking an extension of time must be made jointly by the parties.
- f) An order scheduling oral argument in this matter shall be issued at a later date.
- g) No later than two (2) weeks after the conclusion of this matter before this Court, the parties shall supply, in ".pdf" format via CD-Rom, file-stamped copies of all documents filed in this case, including the orders and opinions issued by this Court, to the Clerk of the United States District of Court for the Southern District of Indiana.

The Clerk is directed to send a copy of this order to the Hon. William T. Lawrence, United States District Judge; to the Hon. Laura Briggs, Clerk of the U.S. District Court for the Southern District of Indiana; to all counsel listed on the U.S. District Court Civil Docket Sheet submitted in this matter by the Clerk of the District Court; and to the Supreme Court Administration Office. The Clerk is also directed to post this order to the Court's website, and Thomson Reuters is directed to publish this order in the bound volumes this Court's decisions.

Done at Indianapolis, Indiana, this 6th day of October, 2011.

/s/ Brent E. Dickson
Acting Chief Justice of Indiana

All Justices concur.