

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Supreme Judicial Court
No. OE-123

**STATEMENT OF THE JUSTICES OF THE SUPREME JUDICIAL COURT
RELATIVE TO THE REPORT OF THE INDEPENDENT COUNSEL
November 18, 2010**

By order dated May 24, 2010, the Justices appointed Attorney Paul F. Ware, Jr., of the law firm of Goodwin Procter LLP, as Independent Counsel with the powers of Special Master and Commissioner "to conduct a prompt and thorough administrative inquiry into alleged improprieties with respect to the hiring and promotion of employees within the Probation Department, as well as other practices and management decisions within the Probation Department that have been called into question." On November 9, 2010, Independent Counsel submitted his Report and accompanying exhibits to the Justices. The Report was impounded on that date pending review by the Justices. Having conducted that review, and having concluded that the public interest is served by lifting the impoundment order as soon as practicable, the Justices today have modified the impoundment order and release the Report and eight appendices to the Report. The exhibits to the Report (six volumes) remain impounded at this time, except as hereinafter provided.

The Report describes in careful detail a systemic abuse and corruption of the hiring and promotion processes of the Probation Department. Such abuse and corruption are intolerable and are a betrayal of the just expectations of the public and of employees in the judicial branch, including those in the Probation Department. Corrective measures must now be taken to repair

the damage wrought by the conduct laid bare by Independent Counsel's investigation, and to restore the integrity of all aspects of the Probation Department. The widespread practices depicted in the Report also require that more be done to instill the values and principles that are fundamental to good government.

In light of these considerations, as first steps, the Justices direct the following:

1. The Chief Justice for Administration and Management, Robert A. Mulligan (CJAM), in consultation with the Acting Commissioner of Probation, Ronald P. Corbett, Jr. (Acting Commissioner), shall forthwith take such steps as may be necessary to remove those senior officials found most responsible for the reported abuses in the hiring and promotion processes; shall initiate disciplinary proceedings they deem appropriate against those other employees who participated in those abuses; and shall report to the Justices by December 1, 2010, the nature of the actions taken or to be taken. Until further notice, the CJAM shall provide monthly written reports to the Justices on all personnel actions he takes in this regard. The CJAM has informed the Justices that he will immediately commence proceedings to terminate Commissioner of Probation John J. O'Brien and that, acting in concert with the Acting Commissioner, he will immediately place on administrative leave First Deputy Commissioner Elizabeth V. Tavares, Deputy Commissioner Francis M. Wall, and Deputy Commissioner and Legal Counsel Christopher J. Bulger pending the conclusion of disciplinary proceedings, and that proceedings to discipline each of them, which discipline could include termination, will commence immediately.

2. In accordance with the Independent Counsel's recommendations, the Justices

are providing copies of the Report, the appendices, and all of the exhibits, to the United States Attorney for the District of Massachusetts, the Massachusetts Attorney General, the Massachusetts Inspector General, and the Office of Bar Counsel of the Board of Bar Overseers, for such action as any of them may deem appropriate.

3. To restore public confidence in the management of the Probation Department and to end the abusive practices described in the Report, the Justices direct the Acting Commissioner of Probation to take all measures necessary to ensure that hiring, evaluations, and promotions are based on the qualifications of candidates. Until further notice, the Acting Commissioner shall provide monthly written reports to the CJAM and to the Justices on hiring and promotion of employees in the Probation Department. The CJAM, in turn, shall monitor and ensure that all appointments "are made on their merits in conformity with governing requirements and standards, and that performance remains subject to the supervision of judges."¹

4. The Justices will appoint a task force to undertake a comprehensive review of the hiring and promotion procedures in the Judicial Branch and to make recommendations designed to ensure a fair system with transparent procedures in which the qualifications of an applicant are the sole criterion in hiring and promotion. The task force will report to the Justices. To lead this task force the Justices today have appointed L. Scott Harshbarger, Senior Counsel in the law firm of Proskauer Rose LLP and former Massachusetts Attorney General. The names of the members of the task force will be

¹First Justice of the Bristol Div. of the Juvenile Court Dep't v. Clerk-Magistrate of the Bristol Div. of the Juvenile Court Dep't, 438 Mass. 387, 408 (2003).

made public when the Justices make those appointments.

The Judicial Branch has the constitutional authority and responsibility to ensure that employees serving in our courts "are qualified and possess the skills and competence to enable them to perform their duties in a professional manner and in conformity with governing statutes, rules, orders, and standards of accountability."² Probation officers perform duties essential and unique to the successful functioning of the trial courts of this Commonwealth and to the proper administration of justice. Probation officers play an integral role in the decisions made by judges every day and in every court house. Working closely with trial court judges, they are responsible, for example, for gathering information necessary for the setting of bail and the imposition of conditions of release for those charged with crimes, and necessary for the determination of sentences of those found guilty of committing crimes.

As the Independent Counsel has made clear, public officials, elected or otherwise, appropriately may recommend constituents or other candidates whom they believe may be qualified for employment within the Judicial Branch. The problem arises when officials base their hiring decisions on personal connections rather than on qualifications of candidates. The problem is exacerbated when hiring officials operate on the premise that some or all of the funding of the Judicial Branch, a separate branch of government, will be enhanced or secured if special consideration is given to candidates recommended by public officials. It is these circumstances and their demoralizing consequences documented in the Report of Independent

² First Justice of the Bristol Div. of the Juvenile Court Dep't v. Clerk Magistrate of the Bristol Div. of the Juvenile Court Dep't, supra at 401.

Counsel that must be addressed and it is our obligation to do so.

The steps that the Justices take today are necessary to ensure that the right of every individual to the fair, effective, and impartial administration of justice is protected. The Justices contemplate that additional measures will be necessary to address the abuses described in the Report and to prevent their occurrence in the future, and to address areas not completed by Independent Counsel. Those measures will be made public as appropriate.