



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – Issued February 22, 2016

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## Fitchburg Division of the District Court Department— Review of Probation Supervision Fees: Transactions and Monitoring of Fulfillment by Probationers

For the period July 1, 2012 through December 31, 2013





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*Making government work better*

February 22, 2016

Christopher P. LoConto, First Justice  
Fitchburg Division of the District Court Department  
100 Elm Street  
Fitchburg, MA 01420

Dear First Justice LoConto:

I am pleased to provide this report on the Fitchburg Division of the District Court Department. This report details the scope of our overall audit of the Trial Court as well as the objectives, procedures, findings, and recommendations related to our audit testing at this specific court for the period July 1, 2012 through December 31, 2013. My staff discussed the contents of this report with court personnel, whose comments we considered in drafting this report.

I would also like to express my appreciation to the Fitchburg Division of the District Court Department for the cooperation and assistance provided to my staff during the audit testing.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written in a cursive style.

Suzanne M. Bump  
Auditor of the Commonwealth

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## LIST OF ABBREVIATIONS

DCD	District Court Department
FDC	Fitchburg Division of the District Court Department
OCC	Office of Community Corrections
OCP	Office of the Commissioner of Probation
PSF	probation supervision fee

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## EXECUTIVE SUMMARY

This report reflects audit testing performed at the Fitchburg Division of the District Court Department (FDC) as part of an audit of the Trial Court’s administration and oversight of probation supervision fee (PSF) assessments. A PSF is a monthly fee that judges are statutorily required to assess for a criminal offender placed on probation (a probationer), to be paid for the length of his or her probation term. Section 87A of Chapter 276 of the Massachusetts General Laws allows for PSFs to be waived in certain instances; normally, in order to grant a waiver, the court must document the existence of financial problems or other issues that would make paying the monthly fee an undue hardship for the probationer. In these situations, the statute requires the probationer to perform unpaid monthly community service for as long as the potential undue hardship exists.

Our overall audit of the Trial Court’s administration of PSFs (Report No. 2014-5160-3J) included audit testing at 16 district-court locations, including FDC, to assess the process the Trial Court has established for PSFs, determine whether PSF-related transactions were properly documented in court records, and determine whether probationers were adequately monitored to ensure that they were fulfilling the PSF requirement. This report presents the results of our audit testing at FDC specifically. Audit findings for the entire audit project are presented in a separate report for that project.

Below is a summary of our findings and recommendations, with links to each page listed.

<b>Finding 1</b> <b>Page <a href="#">9</a></b>	FDC allows some probationers to pay PSFs—even if they have been assigned community service instead—without the required judge’s order.
<b>Recommendations</b> <b>Page <a href="#">10</a></b>	<ol style="list-style-type: none"><li>1. FDC should flag community-service orders in MassCourts to ensure that court personnel do not accept payments from probationers who have been assigned community service instead.</li><li>2. When a probationer can no longer comply with the judge’s order of community service, FDC should ensure that the decision of whether to change the type of penalty is made by a judge, not by other court employees.</li></ol>

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<b>Finding 2a</b> <b>Page <u>11</u></b>	Some judges waive PSFs without documenting the decision or assigning community service.
<b>Finding 2b</b> <b>Page <u>12</u></b>	The Probation Office does not have a centralized method to effectively track hours of community service performed.
<b>Recommendations</b> <b>Page <u>13</u></b>	<ol style="list-style-type: none"><li>1. FDC should comply with the requirements of Section 87A of Chapter 276 of the General Laws for the imposition and waiving of PSFs and the restitution made for nonpayment. Specifically, it should make sure that it documents whether a finding of fact has been held to allow the fee to be waived and community service performed instead.</li><li>2. FDC should establish a centralized method of tracking community service performed.</li><li>3. The Probation Office should promptly report all hours of community service performed by each probationer, regularly throughout the probation term, to the Clerk-Magistrate's Office for recording in MassCourts so that both offices can readily determine the status of probationers' accounts.</li></ol>

## **OVERVIEW OF ENTITY**

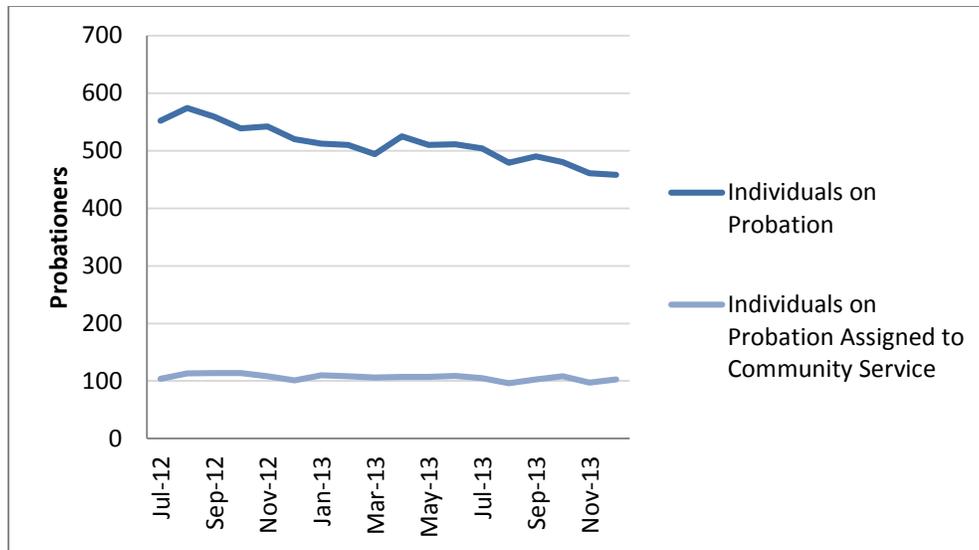
The Fitchburg Division of the District Court Department (FDC) presides over civil, criminal, and other matters falling within its territorial jurisdiction: the town of Lunenburg and the city of Fitchburg. It is responsible for scheduling, holding, and recording proceedings in civil and criminal matters and for the care and custody of all the records, books, and papers that pertain to, or are filed or deposited in, the Clerk-Magistrate's Office. FDC's Probation Office is responsible for enforcing court orders when an individual before the court is placed on probation.

When an individual is placed on probation, Section 87A of Chapter 276 of the Massachusetts General Laws requires courts to assess the individual a \$50 (administrative) or \$65 (supervised) monthly probation supervision fee (PSF). Supervised probation requires more interaction with a probation officer than administrative probation, which may only require the individual to report to the officer quarterly or at the end of the probation term. It also generally has a longer duration than administrative probation. The statute allows judges to waive the fee in full if the individual is making monthly restitution payments that are greater than or equal to the fee. It also allows the judge to waive the fee if the court "determines after a hearing and upon written finding that such payment would constitute an undue hardship on [a probationer] or his family due to limited income, employment status or any other factor." That waiver requires the individual to perform unpaid monthly community service.

During the audit testing period (July 1, 2012 through December 31, 2013), FDC reported 863 new probation cases and 916 discharged probation cases, leaving 458 probation cases at the end of this period. As of December 31, 2013, 46% of the probationers were on supervised probation and 54% were on administrative probation.

Additionally, FDC records indicated that approximately 21% of these probationers were required to perform unpaid community service.

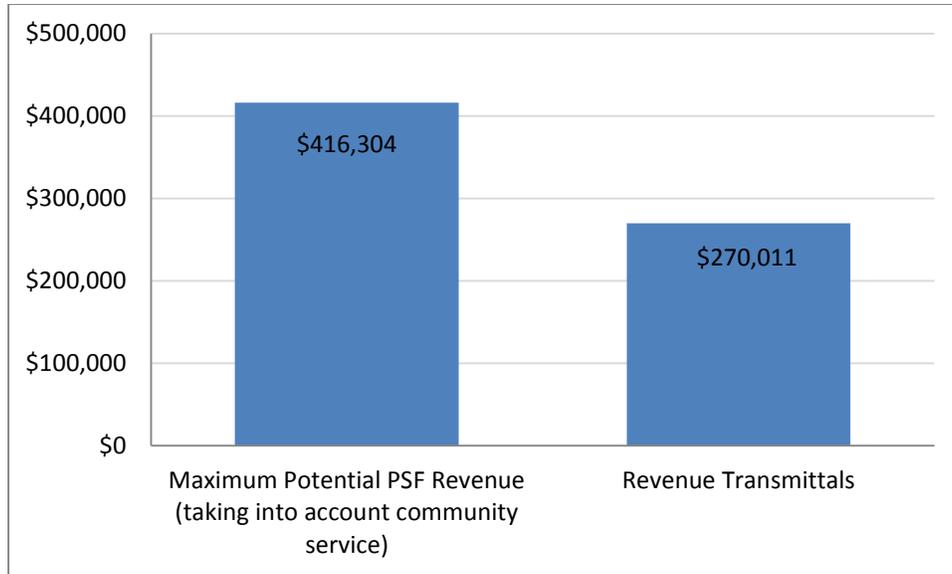
The graph below reflects the month-end number of probationers and how many of them were assigned community service.



During the testing period, FDC collected and transmitted \$270,011 of PSFs to the State Treasurer. Taking into account the number of individuals required to perform community service, FDC’s actual transmittals were approximately 65% of the estimated potential PSF revenue. We calculated this estimate by combining FDC’s 18 monthly reports of probation activity; totaling the numbers of individuals on administrative and supervised probation at the end of each month; and multiplying those numbers by either \$50 or \$65, as applicable. The estimate does not include probationers whose supervision may have been transferred to another court but who are carried on the original court’s record. The difference between this percentage and 100% could be the result of subsequent court-ordered remittals<sup>1</sup> of PSFs (either the full amount or any remaining unpaid PSF balance) and/or probationers defaulting on their obligations.

1. Remittal occurs when the court terminates a person’s probation because s/he has not complied with the terms and conditions of probation (sometimes resulting in incarceration) or when the court waives the balance of a PSF for a documented reason at the end of the probation term.

The following chart compares estimated potential PSF revenue with actual PSF revenue transmittals (after the community-service percentage is accounted for).



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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Trial Court’s administration and oversight of monthly probation supervision fees (PSFs) for the period July 1, 2012 through December 31, 2013. The scope of that audit includes an assessment of the process the Trial Court has established for PSFs and whether court divisions are adequately recording, monitoring, and fulfilling court-ordered assessments of PSFs at 16 selected district-court locations, which together account for \$7.5 million (23%) of the \$32.8 million in PSF collections transmitted to the state for the 18 months covered by the audit. The Fitchburg Division of the District Court Department (FDC) was one of the 16 court locations selected. FDC accounted for \$270,011 in PSF revenue transmitted during those 18 months.

The procedures we completed at FDC were part of the overall Trial Court PSF audit, which we conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objective of our work at each court location was limited to determining the extent to which the court was complying with the responsibilities established by Section 87A of Chapter 276 of the General Laws, as well as guidance issued by the Trial Court; the Office of the Commissioner of Probation (OCP); and the court location itself, if it had issued any.

Below is a list of our objectives related to the procedures completed at FDC, indicating each question we intended our audit testing to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in our findings.

Objective	Conclusion
1. Are PSFs assessed in the correct amounts, and when a PSF is waived, does the court record include a written finding that the fee would constitute an undue hardship that requires monthly community service instead?	No; see <a href="#">Finding 2a</a>
2. Are PSF assessments properly recorded by the Clerk-Magistrate’s Office?	Yes

Objective	Conclusion
3. Are probation officers enforcing the requirement that probationers pay PSFs?	Yes
4. Is the performance of community service, when allowed by the court in lieu of monthly PSF payments, adequately tracked, promptly reported, and accurately recorded?	No; see Findings <b><u>1</u></b> and <b><u>2b</u></b>

Our analysis of FDC’s information and data was intended to determine whether PSF transactions and the court’s monitoring of probationers’ PSF obligations were adequately supported by the court records; it was not designed to detect all weaknesses in the court’s internal control system. Further, our procedures did not include tests of internal controls to determine their effectiveness, because in our judgment, such testing was not necessary to determine the accuracy or reliability of PSF records. Our understanding of internal controls and management activity at FDC was based on our interviews and document reviews. Our audit testing was limited to what we considered appropriate when determining the cause of any PSF noncompliance.

To achieve our objectives, we performed the following procedures:

- We interviewed officials and other staff members from the Trial Court, OCP, and FDC and reviewed relevant documents, statutes, and regulations as well as FDC’s policies, procedures, and accounting records.
- We reviewed internal audits conducted by the Trial Court and OCP to determine whether any weaknesses that had been identified pertained to our current objectives.
- We obtained statistical data regarding probationer counts from OCP and compared the data to counts in FDC’s monthly report of probation activity for the testing period.
- We obtained and reviewed records of community service from OCP’s Office of Community Corrections, which operates the Trial Court’s community-service program.
- We obtained and analyzed case data from selected court criminal case docket records and traced and compared them to MassCourts (FDC’s case-management system) for consistency and completeness. We also interviewed court officials who were knowledgeable about MassCourts data-input activities. Since the court case docket record is the source document used to update MassCourts and the principal document that identifies all court activity for a civil or criminal case (including the assessment and collection of various fees and fines, civil judgments, and criminal case adjudication), we did not rely on MassCourts for the purposes of our audit testing. We believe the information we obtained from case docket records was sufficient for the purposes of our analysis and findings. We relied on hardcopy source documents, interviews, and other non-computer-processed data as supporting documentation on which we based our conclusions.

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- We obtained and analyzed information regarding probationers from the Probation Office's hardcopy files and traced and compared it to MassCourts for consistency and completeness. Since the Probation Office file is the source document that identifies all the probationer's activity (including documentation of assessment, waiving, and collection of monthly PSFs and monitoring of monthly PSFs and/or performance of community service), we did not rely on computer-processed data. We believe the information we obtained from the Probation Office files was sufficient for the purposes of our analysis and findings.
  - For our examination of PSFs, we selected transactions primarily by using random, nonstatistical sampling in order to eliminate bias by giving all items in the population an equal chance of being chosen. Therefore, we did not project the results of our samples to the population. More specifically,
    - For recording and fulfillment of court-ordered PSF assessments, we randomly selected 60 out of 3,719 criminal cases entered in MassCourts during the testing period to determine whether the PSF activity was accurately and promptly recorded by the Clerk-Magistrate's Office and whether, when PSFs were waived, judges provided written findings of fact and required probationers to perform monthly community service instead.
    - For performance of community service (when allowed by the court as a means of fulfilling the PSF assessment), we randomly selected 21 out of 190 probationers assigned community service to verify that probation officers were monitoring and tracking the probationers' progress toward completion.

Any financial data we obtained from the Massachusetts Management Accounting and Reporting System about FDC's activities during the testing period were not used in our testing; the data were used solely for the purpose of presenting background information in our report. Consequently, we did not assess the reliability of these data.

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## DETAILED FINDINGS WITH COURT'S RESPONSE

### 1. The court allows some probationers to pay probation supervision fees, rather than perform community service, without the required judge's order.

The Fitchburg Division of the District Court Department (FDC) allowed some probationers to pay probation supervision fees (PSFs), even though they had been ordered to perform monthly unpaid community service instead, without the required consent from a judge. This results in inefficient use of the Probation Office's limited staff resources, since court personnel may be unnecessarily completing the paperwork and other tasks necessary to establish the community-service account. Additionally, nonprofit and public-service agencies (e.g., homeless shelters, schools, and city parks) that count on this community service are not getting the benefit.

As part of our testing, we obtained a list of FDC's probationers who had been ordered to perform community service in lieu of making monthly PSF payments. We randomly selected a sample of 21 criminal cases from this list. We determined that 29% (6 of 21) of these probationers had either partially or fully paid the PSF rather than perform the equivalent amount of community service. We believe that this occurrence calls into question the effectiveness of FDC's PSF waiver process.

### Authoritative Guidance

According to Section 87A of Chapter 276 of the Massachusetts General Laws, if a judge finds that assessing a PSF would constitute an undue hardship on a probationer or his/her family, the probationer must instead perform monthly community service as part of his/her penalty.

*In lieu of payment of said probation fee the court shall **require** said person to perform unpaid community work service at a public or nonprofit agency or facility, as approved and monitored by the probation department. [emphasis added]*

Additionally, probationers must obtain consent from the court to change from community service to payments, according to Section 5 of the Trial Court's Fiscal Systems Manual:

*If a community service order is changed (judicial order required) from a monetary assessment to a non-monetary assessment or vice versa, the appropriate community service docket codes must be entered in the MassCourt system. . . . Any change to a fiscal obligation requires the case to be modified only by a judicial order in the courtroom.*

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## Reason for Noncompliance

MassCourts records all PSFs as money owed, even when it has actually been determined that the probationer owes community service instead. Community-service hours performed are not documented in MassCourts (as a reduction in the amount owed) until the probation ends or the probationer's community-service hours are reported as complete (which also may not occur until the end of the probation term). Therefore, if a probationer makes a monetary payment toward his or her PSF balance, the Clerk-Magistrate's Office cannot readily see that this is not the approved payment method. Furthermore, Probation Office officials stated that they believe probationers do not realize how strenuous and time-consuming it is to do community service until they try it, at which point they find a way to come up with the equivalent amount of money instead.

## Recommendations

1. FDC should flag community-service orders in MassCourts to ensure that court personnel do not accept payments from probationers who have been assigned community service instead.
2. When a probationer can no longer comply with the judge's order of community service, FDC should ensure that the decision of whether to change the type of penalty is made by a judge, not by other court employees.

## Court's Response

After consulting with the Chief Probation Officer and Clerk-Magistrate, the First Justice provided the following response:

*Permitting the probationer to pay the probation supervision fee instead of performing the required hours of community work service enables the probationer to take advantage of employment opportunities that he or she might be required to forgo if they could not change their court obligations from community work service to a cash payment.*

*Permitting the probationer this option of paying the probation supervision fee instead of performing community service, does not appear to be inconsistent with the statute which specifically provides that a waiver of probation supervision fees "shall be in effect only during the period of time that said person is unable to pay his monthly probation fee." G.L. c. 276A, § 87A.*

## Auditor's Reply

We agree with FDC that statutory provisions require waiving of PSFs only during the time that they are documented to be an undue hardship. However, we found that a significant percentage of PSF waivers were granted by FDC to probationers who could actually afford to pay the monthly fee, suggesting that

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FDC's PSF waiver process is flawed. According to the FDC records for the 6 cases in question, FDC waived PSFs for hardship reasons and required the probationers to perform monthly community service. Additionally, allowing the probationer to substitute payment when s/he has been ordered to perform monthly community service is contrary to the Trial Court's policy requiring changes to be brought back before the court and "modified by judicial order." We therefore stand by our finding and recommendations.

## **2. The court does not always waive monthly PSFs as required or effectively track community service.**

### **a. The court does not always waive PSFs as required.**

Some FDC judges waive PSFs without documenting that the payment of the fee would constitute an undue hardship on the probationer or his/her family and without ordering the probationer to perform monthly community service instead.

As a result, the Commonwealth may be forgoing PSFs that probationers would have been able to pay, and some probationers might appear to be receiving preferential treatment by not being penalized with monthly community service.

We randomly selected 60 criminal-case files to determine whether the assessment and payment of the PSF for each case was accurately and promptly recorded by the court and whether the court was adequately documenting PSF waivers and requiring community service of probationers who could not pay PSFs.

Of the 60 criminal-case files selected, 17 had PSFs assessed, and we identified 5 in which the judge had waived the fee without documenting that a finding-of-fact hearing had been held and without recording the decision on the mandatory form. Additionally, none of the probationers were required to perform the equivalent amount of monthly community service instead of paying the PSF.

### **Authoritative Guidance**

Section 87A of Chapter 276 of the General Laws requires the imposition of a designated fee, depending on which type of probation the probationer is placed on. The PSF can be waived (in which case community service must be performed) upon order of the court after a finding of fact establishing that the probationer cannot pay the fee.

In addition, the Chief Justice of the District Court Department (DCD), in a memorandum dated September 1, 2006, clarified DCD's position on the statutory PSF requirement and reiterated the required process for documenting a hardship:

*It is important that each judge routinely use the mandatory "Assessment or Waiver of Moneys in Criminal Case" form **whenever the judge disposes of a criminal case that involves the assessment or waiver of any required financial amount.***

### **Reasons for Noncompliance**

According to court officials, judges consider the probationer's circumstances when sentencing; this includes determining issues that could make the fee a hardship that might be documented in the tape-recorded court session but not on the assessment form. Court officials also said that some judges sentence probationers to attend various programs as part of the conditions of probation, which are an implied hardship on the probationer, and therefore waive the PSF without ordering community service. Finally, they explained that no additional finding-of-fact hearing was considered necessary in some cases because the probationer had regularly been brought before the court on past criminal charges, so the court was very much aware of the probationer's inability to pay the fee. In this type of case, a judge might write "waived" on the docket record for a new case as evidence of the fact-finding decision.

#### **b. FDC does not effectively track community service performed by probationers.**

The Probation Office does not have a centralized method to effectively track all the hours of community service performed through the Office of Community Corrections (OCC)<sup>2</sup> or independent work arrangements made outside OCC. As a result, the court cannot readily determine how many community-service hours are owed, what community service amounts to in dollars, and whether offenders will be able to fulfill the requirements of court orders on schedule.

Our review was intended to confirm that the Probation Office staff tracks whether probationers are performing community service during each month in which it is required. We reviewed the

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2. OCC is the office within the Office of the Commissioner of Probation that administers the Trial Court's community-service program.

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probationers' files and copies of community-service records provided to the Probation Office by OCC to determine whether Probation Office personnel verified the community-service hours.

We reviewed 21 criminal cases in which an individual was placed on probation and was ordered to perform community service in lieu of paying a monthly PSF. For these 21 cases, the community-service hours were not updated in MassCourts as they were performed; they were updated at the end of the probation term.

### **Authoritative Guidance**

The Probation Office is responsible for monitoring community service performed by individuals under Section 87A of Chapter 276 of the General Laws. Though the General Laws do not address the issue of a centralized tracking method, they do require adequate monitoring, and best business practices would require the use of a centralized tracking system. Adequate monitoring requires the maintenance of accurate records.

### **Reasons for Ineffective Tracking**

Rather than tracking specific types, dates, and amounts of community service via a single centralized method, FDC has a system wherein each probation officer keeps files to record community service performed by individual probationers. The officer files a Community Service Completion Certificate with the court when the probationer has finished community service or probation. This information is not updated in MassCourts until the end of probation. Therefore, the court cannot readily determine the aggregate amount of community service owed and its dollar value.

### **Recommendations**

1. FDC should comply with the requirements of Section 87A of Chapter 276 of the General Laws for the imposition and waiving of PSFs and the restitution made for nonpayment. Specifically, it should make sure that it documents whether a finding of fact has been held to allow the fee to be waived and community service performed instead.
2. FDC should establish a centralized method of tracking community service performed.
3. The Probation Office should promptly report all hours of community service performed by each probationer, regularly throughout the probation term, to the Clerk-Magistrate's Office for recording in MassCourts so that both offices can readily determine the status of probationers' accounts.

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## Court's Response

After consulting with the Chief Probation Officer and Clerk-Magistrate, the First Justice provided the following response:

### Finding 2a

*The finding of fact hearing and waiver of the probation fee is often documented by the Clerk in the written docket sheet, by the Probation officer in his or her notes, on the Tender of Plea form and on the recording of the court proceeding. However, I intend forthwith to ask all of the judges assigned to sit in the Fitchburg District Court to document a finding of fact hearing and the waiver by diligently using the existing Administrative Office of the District Court form on the Assessment or Waiver of Moneys in Criminal Case.*

*The Draft Audit also notes that in some instances, where the probation supervision fee is waived Community Service was not imposed. I intend to remind all judges assigned to sit in the Fitchburg District Court that the imposition of community service is mandatory. . . .*

### Finding 2b

*The Probation Office in the Fitchburg District Court has a centralized method of effectively tracking all hours of community service assigned, performed and owed. For many years, a designated person on the Fitchburg District Court Probation Office support staff has received a spreadsheet weekly from the Community Service office identifying current probationers assigned to community service. The spreadsheet includes up-to-date information about every person assigned by the court to perform community service, their obligation, hours performed, termination dates, etc. The support staff person is responsible for keeping the most recent spreadsheet in a book in a central location in paper format so all Fitchburg Probation employees have access to it at all times in order to keep accurate records and perform effective monitoring. Should the office have questions about the spreadsheet or need information between weekly deliveries, employees contact the Community Service staff. Many times the Probation office receives information from Community Service between weekly deliveries of the spreadsheet.*

*For individuals ordered to do community service with non-profit locations not coordinated through the Probation Community Service Program, the Fitchburg Probation Office receives a completion letter and verifies that the hours were performed. The Chief Probation Officer or her designee does the verifications and submits the letters to the Clerk if verified. A copy of the letter is kept in the probationer's file.*

*As a result of the above information and tracking, Probation Office employees are able to determine at any time how a probationer is doing with a community service obligation, know the monetary value remaining on the obligation, and whether the obligation is anticipated to be fulfilled on schedule.*

*Probation submits to the Clerk a Community Service Completion form whenever hours are completed, sometimes prior to the end of a term of probation or if the matter is before the court*

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*for any reason, such as a violation of probation. It has been the practice of the court to ask Probation to monitor a probationer to encourage compliance with the community service obligation by the end of a probation term. . . .*

*Currently the Trial Court is working on a change to its case management system which will permit Probation to report community service hours as they are completed rather than on the Community Service Completion Form and therefore available to the judge and clerk at any time. On an interim basis we are discussing how Probation can report community service information to the clerk's office on a more routine basis rather than waiting until the end of the probationary period.*

## **Auditor's Reply**

We agree with FDC that the waiver is documented by the word "waived" being written on the docket sheet maintained by the Clerk-Magistrate. However, the statute requires every person on probation to pay a monthly PSF unless there is a written finding by the judge that the PSF would be an undue hardship, in which case the probationer must perform monthly community service. Indigency and temporary employment may be factors contributing to the possibility of undue hardship, but the determination of such a hardship must be made by a judge, documented on the applicable court form, and accompanied by a requirement of monthly community service. We believe that the actions taken by the First Justice (reiterating to all judges assigned to FDC the Trial Court's process of holding and documenting findings of fact on PSF waivers) were responsive to our concerns and should help address this matter.

We do not dispute that the court may be able to determine a probationer's progress toward fulfilling the community-service obligation. However, the court lacks an efficient means to do this, because the spreadsheet referred to in FDC's response does not specify the balance owed for each type of fee or the dates when community service was performed. Rather, the spreadsheet is an aggregate of information from various other sources, all of which a staff member would have to consult separately to find specific information. It also does not include probationers who have fulfilled their community-service obligations; it only reflects people currently on probation. This is less efficient than a single centralized record.

For instance, the community-service spreadsheet referred to does not break down community service by fee type. If a probationer is ordered to perform community service for various purposes (e.g., as a replacement for a legal counsel fee, as an intermediate sanction, and as a replacement for a PSF), the total obligation is recorded as one number, not segregated by type. Intermediate sanctions have no dollar equivalents, but the other assessments do; their hourly rates range from \$8.13 per hour to \$12.50 per hour, depending on the penalty. Additionally, when a probationer performs community service, there is

no policy regarding which fee it should be applied to first. Without reconstructing the spreadsheet referred to in FDC's response, it would not be possible to determine the total amount owed to the court specifically for PSFs by all probationers, let alone by each individual probationer.