

**STATEMENT AND DIRECTIVES OF THE JUSTICES OF
THE SUPREME JUDICIAL COURT
REGARDING THE HIRING AND PROMOTION PRACTICES
OF THE MASSACHUSETTS PROBATION DEPARTMENT**

February 24, 2011

In the wake of the disclosures in the Report of Independent Counsel Paul F. Ware, the Justices of the Supreme Judicial Court appointed a Task Force to Review Hiring and Promotion Practices in the Judicial Branch (Task Force) under the leadership of Scott Harshbarger 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" in the Probation Department and throughout the Judicial Branch. Shortly thereafter, the Governor, Senate President, and House Speaker established a Probation Reform Working Group (Working Group) comprised of Legislative and Executive Branch officials to study ways to reform the Probation Department and provide recommendations for change. As reflected in their recently issued reports and sets of recommendations, it is apparent that the Task Force and the Working Group have diligently studied the relevant issues. The Justices very much appreciate the hard work and dedication of the Task Force as well as the Working Group, and have carefully studied both reports and given consideration to the thoughtful recommendations contained therein.

While there are some differences in the recommendations of the Task Force and the Working Group, the Justices are struck by the extent of their agreement especially in the following respects:

- Both recognize that strong and capable leadership of the Probation Department is essential to its reform, and commend the appointment of Dr. Ronald Corbett, Jr., to a two-year term as Acting Commissioner.
- Both speak of the importance of filling the Deputy Commissioner positions with individuals who will assist the Acting Commissioner in implementing the necessary reforms, and call for the recruitment of candidates from inside and outside the Probation Department.
- Both recommend amendments to the legislation that gave the Commissioner of Probation "exclusive authority" over employee hiring and promotion, and recognize the need for the Chief Justice for Administration and Management

Robert A. Mulligan (CJAM) to have clear oversight authority over such employment decisions.

- Both propose that the Probation Department implement new procedures reflecting national best practices to ensure that the hiring and promotion of probation officers are fair, are perceived to be fair, and are based solely on merit.
- Both recommend that an outside Advisory Board be appointed to oversee the reforms and progress of the Probation Department.

The Justices fully embrace and support these recommendations.

The Task Force has further recommended a two-phase approach to the substantial improvements necessary to the Probation Department's hiring and promotion practices. The Justices are in agreement with this approach in light of the urgency and need to address these concerns and the priority that must be given to the corrective actions required. A properly functioning Probation Department plays a vital role in the day-to-day success of our court system.

After consultation with the CJAM and the Acting Commissioner, the Justices have today informed the CJAM that it is "necessary and appropriate" that the following additional actions be taken:

1. Best Practices. The CJAM shall direct the Acting Commissioner to implement what the Task Force identified as the seven national best practices, including developing a well-defined mission statement, job descriptions that outline the demonstrated "competencies" required to fulfil the essential aspects of each job, the recruitment of high quality candidates from multiple sources through internal and external job postings, objective screening to determine whether job candidates meet the baseline criteria for each position, "behaviorally based interviews" that will give hiring managers insight into how a candidate has handled and will handle specific situations that will likely arise in the job, candidate assessments that provide an objective rating of a candidate's aptitude and capability to perform job requirements, and an applicant tracking system to ensure full transparency in the recruiting process.

2. Implementation. The CJAM shall direct the Acting Commissioner to implement Phase 1 of the process recommended by the Task Force for the rapid rebuilding of the Probation Department's human resources and recruiting infrastructures in order that critical management

positions (including more than thirty Chief Probation Officer positions now held by "acting" appointees) can be promptly and properly filled, and morale and public confidence restored. The implementation of this phase depends on securing the expertise of one or more experienced human resource professionals to assist the Acting Commissioner in designing and overseeing a hiring and promotion process that utilizes the national best practices that the Justices direct be adopted. That assistance is to include:

- the implementation of an applicant tracking system;
- the revalidation and updating of job descriptions;
- the development and implementation of both a screening mechanism and an assessment tool to ensure a "science based" evaluation of a candidate's suitability for positions with the Department; and
- the development and implementation of an interview process and candidate evaluation criteria to be used during that process.

In performing these tasks, the Acting Commissioner is to give consideration both to the utility of incorporating objective testing into the screening and assessment processes, and to including members from outside the public sector in the interview process, and to report back to the CJAM and the Justices his conclusions regarding the same. The Acting Commissioner is to be further directed to use his best efforts to complete Phase 1 and report to the CJAM and the Justices within six (6) months, and to proceed with planning for Phase 2 of the Task Force's recommendations so that Phase can proceed promptly following our joint consideration of the progress and accomplishments of Phase 1.

3. Candidates' Recommendations. The CJAM shall direct that the hiring managers and those responsible for recommending finalists for consideration for appointment to positions within the Probation Department, not be informed of recommendations, from public officials or others, until such time as a candidate becomes a finalist and his or her references are being checked as a prelude to the final selection. All oral and written recommendations submitted on behalf of those candidates who have been appointed shall be documented and made available for public inspection.

4. Staffing Model. The CJAM shall direct the Acting Commissioner to update and, where necessary, develop credible staffing models (based on national probation standards) designed to determine the number and type of Probation Department employees necessary in each court location and area of responsibility; and that these models be ready to be used in planning for the next budget cycle (FY2013).

5. Annual Performance Evaluations. The CJAM shall direct the Acting Commissioner to continue to develop and deploy an annual evaluation system for all probation operations and probation professionals based on objective performance measurements, and implement the data collection and monitoring systems necessary to such evaluations.

The Justices have also asked the Task Force to remain in place on an interim basis after it concludes its remaining work regarding hiring and promotion throughout the Judicial Branch, to provide oversight of the Probation Department's progress in implementing these reforms in hiring and promotion and to provide periodic reports to the Supreme Judicial Court and to the public with regard to the same.

Finally, the Justices take note of the significant progress that has been made in the last eight months toward the goal of reestablishing the Probation Department as a credible and reliable institution within our judicial system and more broadly, within our justice system, both criminal and civil. In particular, the Justices encourage and support the measures the Acting Commissioner has taken toward working cooperatively with the other branches of government and with the other agencies and officials of State and County government involved in the criminal justice system to ensure a more coordinated approach to using the resources and expertise available to meet their collective challenges. The Justices also support and encourage the development of uniform, state-of-the-art risk assessment tools that are applicable and useful across the broad spectrum of public safety and rehabilitation decisions made by these agencies and officials in the performance of their respective responsibilities. These are measures emphasized in the report of the Working Group with which the Justices are in complete agreement.

Massachusetts was and can again become a national leader in probation services with the proper leadership and oversight. The judges who rely every day on the independent and professional assistance of the employees of the Probation Department in making tens of

thousands of sentencing, pretrial release, custodial, and support decisions are fully committed to that end, as are the Justices of this Court. Accordingly, the Justices will conduct a full review of the progress made on each of these initiatives and directives at the end of this calendar year, and will consider such further measures as may be appropriate at that time.