



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

Making government work better

Official Audit Report – Issued February 11, 2016

Lowell 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





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

Making government work better

February 11, 2016

Thomas M. Brennan, Acting First Justice
Lowell Division of the District Court Department
41 Hurd Street
Lowell, MA 01852

Dear First Justice Brennan:

I am pleased to provide this report on the Lowell 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 Lowell 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

TABLE OF CONTENTS

| | |
|--|-----------|
| EXECUTIVE SUMMARY | 1 |
| OVERVIEW OF ENTITY | 3 |
| OBJECTIVES, SCOPE, AND METHODOLOGY | 5 |
| DETAILED FINDINGS WITH COURT RESPONSE | 8 |
| 1. The court does not always waive monthly probation supervision fees as required or effectively track community service..... | 8 |
| a. The court does not always waive probation supervision fees as required. | 8 |
| b. LDC does not effectively track community service performed by probationers. | 9 |
| 2. Some probationers were allowed to perform community service even though they had been ordered to pay PSFs..... | 12 |

LIST OF ABBREVIATIONS

| | |
|-----|--|
| LDC | Lowell Division of the District Court Department |
| OCC | Office of Community Corrections |
| OCP | Office of the Commissioner of Probation |
| PSF | probation supervision fee |

EXECUTIVE SUMMARY

This report reflects audit testing performed at the Lowell Division of the District Court Department (LDC) 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 LDC, 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 LDC 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.

| | |
|--|--|
| Finding 1a Page 8 | Some judges at LDC allow probation officers to choose whether a probationer should pay a monthly PSF or perform community service, contrary to the General Laws. |
| Finding 1b Page 9 | The Probation Office does not have a centralized method to effectively track hours of community service performed. |
| Recommendations Page 10 | <ol style="list-style-type: none">1. LDC 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, based on court order, a probationer will pay a monthly PSF or whether a finding of fact has been held to allow the fee to be waived and community service performed instead.2. LDC 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. |

| | |
|---|---|
| Finding 2 Page <u>12</u> | LDC allowed some probationers to pay off their PSF assessments by performing community service instead of the fee the judge had ordered. |
| Recommendations Page <u>13</u> | <ol style="list-style-type: none"><li data-bbox="440 302 1474 409">1. LDC should inform its probationers that if they are ordered by the court to pay a PSF, then they are not allowed to arrange to perform community service in lieu of paying the fee without a judicial order.<li data-bbox="440 409 1474 596">2. The Probation Office should require community-service work arrangements with local nonprofit agencies to be preapproved by a probation officer before a probationer is allowed to perform community service to replace a PSF. A prerequisite to that preapproval should be a judge's decision that the fee would constitute an undue hardship. |

OVERVIEW OF ENTITY

The Lowell Division of the District Court Department (LDC) presides over civil, criminal, and other matters falling within its territorial jurisdiction: the towns of Billerica, Chelmsford, Dracut, Tewksbury, and Tyngsboro and the city of Lowell. 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. LDC's Probation Office is responsible for enforcing court orders when an individual before the court is placed on probation.

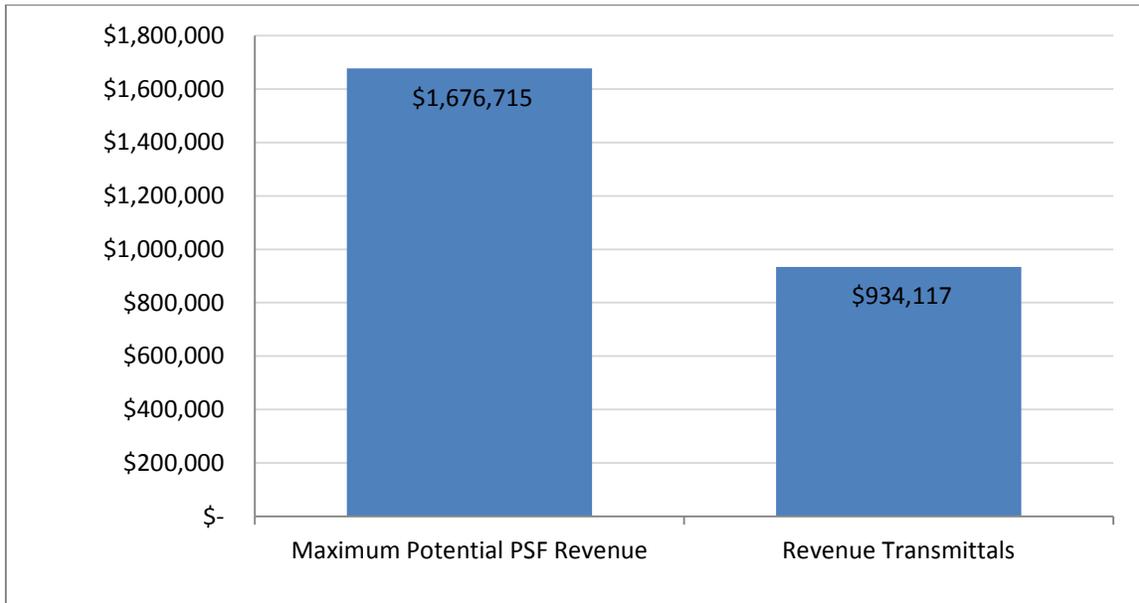
When an individual is placed on probation, Section 87A of Chapter 276 of the Massachusetts General Laws requires courts to assess the individual a \$50 (administrative) or \$65 (supervised) monthly probation supervision fee (PSF). Supervised probation requires more interaction with a probation officer 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), LDC reported 2,301 new probation cases and 2,229 discharged probation cases, leaving 1,529 probation cases at the end of this period. As of December 31, 2013, 55% of the probationers were on supervised probation and 45% were on administrative probation.

During the testing period, LDC collected and transmitted \$934,117 of PSFs to the State Treasurer. LDC's actual transmittals were approximately 56% of the estimated potential PSF revenue. We calculated this estimate by combining LDC'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 probationers performing community service

instead of paying PSFs, subsequent court-ordered remittals¹ of PSFs (either the full amount or any remaining unpaid PSF balance), and/or probationers defaulting on their payment obligations.

The following chart compares estimated potential PSF revenue with actual PSF revenue transmittals.



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.

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 Lowell Division of the District Court Department (LDC) was one of the 16 court locations selected. LDC accounted for \$934,117 in PSF revenue transmitted during those 18 months.

The procedures we completed at LDC 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 LDC, 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 Finding 1a |
| 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? | No; see Finding 2 |
| 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 Finding 1b |

Our analysis of LDC’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 LDC 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 LDC and reviewed relevant documents, statutes, and regulations as well as LDC’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 LDC’s monthly report of probation activity for the testing period.
- We obtained from the Trial Court PSF assessment data (financial docket reports) for LDC, which we compared to LDC case files for accuracy.
- We obtained and analyzed case data from selected court criminal case docket records and traced and compared them to MassCourts (LDC’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.

- 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 1,913 cases on the financial docket reports to test 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 chose 8 from our selection of 60, and randomly selected an additional 2 out of 102 probationers assigned community service through the Office of Community Corrections, 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 LDC'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.

DETAILED FINDINGS WITH COURT RESPONSE

1. The court does not always waive monthly probation supervision fees as required or effectively track community service.

a. The court does not always waive probation supervision fees as required.

Some judges at the Lowell Division of the District Court Department (LDC) allow a person's probation officer to choose whether s/he should pay a monthly probation supervision fee (PSF) or perform community service, a procedure that is contrary to Section 87A of Chapter 276 of the Massachusetts General Laws. Specifically, the sentencing judge imposes either a monthly probation fee or unpaid community service on the probationer. However, the judge allows the supervising probation officer to decide which penalty is appropriate without documenting a finding-of-fact hearing that would determine whether the probationer was able to pay the monthly probation fee. Because probation officers can choose to allow probationers to perform community service instead of paying PSFs, the usual requirements of the Office of the Commissioner of Probation (OCP), such as conducting administrative and surrender hearings for nonpayment of PSFs, may be bypassed. As a result, the Commonwealth may be forgoing PSFs that probationers would have been able to pay.

We randomly selected 60 case files in which an individual had been placed on probation and ordered to pay a monthly PSF or perform community service during the testing period. The purpose of our review was to determine whether the court was adequately documenting PSF waivers and requiring community service of probationers who could not pay PSFs.

Of the 60 probationers selected, we identified 19 for whom the judge had added "or community service" to the probation sentence, allowing the probation officer to decide which penalty—a fee or community service—was appropriate. Additionally, the sentencing judge did not sufficiently document that the PSF would be an undue hardship for any of these 19 probationers.

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.

Reasons for Assessment Issues

Court officials could not provide an explanation of why probationers are allowed to choose between paying PSFs and performing community service, except to say that it is common practice among judges sitting at LDC.

b. LDC 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)² or independent work arrangements³ made outside OCC. As a result, LDC 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 probationers' files and copies of community-service records maintained by the LDC Probation Office to determine whether Probation Office personnel verified the community-service hours.

LDC prefers its probationers to perform monthly community service through independent work arrangements; the court makes minimal use of OCC as a conduit for community-service assignments. We therefore selected 10 criminal cases (8 cases from other tests and 2 from OCC's list of 102 probationers assigned community service) in which the probationer was performing community service in lieu of paying a monthly PSF. For these 10 cases, we found that the probationer's community-service hours were not always updated in MassCourts as they were performed; they were sometimes 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

-
2. OCC is the office within the Office of the Commissioner of Probation that administers the Trial Court's community-service program.
 3. In addition to allowing probationers to perform community service at local public or nonprofit agencies, LDC also allows probationers to perform it within the court building. Types of work include shoveling snow, emptying trash, and sweeping floors.

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, LDC 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. LDC 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, based on court order, a probationer will pay a monthly PSF or whether a finding of fact has been held to allow the fee to be waived and community service performed instead.
2. LDC 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.

Court Response

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

Finding 1a

By permitting the probationer the option of either performing the required hours of community work service or paying the equivalent cash amount as each installment becomes due, some judges feel that the probationer is able to take advantage of temporary employment opportunities that he or she would have to forgo if they were unable to temporarily switch their court obligations from community work service to a cash payment. Their experience as judges indicates that many probationers have seasonable job opportunities rather than any kind of steady employment.

However, going forward, I intend forthwith to ask all of the judges assigned to sit in the Lowell District Court to document a finding of fact hearing and determination of whether probationer

*should pay a monthly probation supervision fee or whether such fee constitutes an undue hardship for probationer or his/her family and should be waived, by diligently using the existing Administrative Office of the District Court form on the **Assessment or Waiver of Moneys in Criminal Case**. . . .*

Finding 1b

During the audit period, individual probation officers in the Probation Office in the Lowell District Court kept track of community service hours ordered for each probationer on their supervised and unsupervised caseloads. If any questions arose about a judge's community service order, the individual probation officers could check the court's Docket Sheet. All community service placements were approved by the court before the performance of any hours.

When a probationer completed hours and submitted to Probation a Certificate of Completion of hours, probation officers attempted to verify completion of those hours by calling the private placement. At the end of the probation term, Probation reported to the judge that all community service hours were completed. Through this process, each probation officer knew at any given moment the hours owed, the hours performed, and whether any hours remained to be performed for each case on the caseload.

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 be made available to the judge and clerk at any time. On an interim basis Probation in the Lowell District Court office currently is speaking with the Probation Community Services program about it sending a detailed spreadsheet at regular intervals showing those ordered to perform community service from the Lowell District Court. The spreadsheet would show the total number of hours as ordered by the court and the number of hours performed. The spreadsheet would be kept in a central location in the Lowell Probation office and be used as its centralized tracking method available to all probation officers and other Probation staff whenever needed. The spreadsheet would allow Lowell District Court Probation at any given time centrally to track performance of community service obligations for the court.

Auditor's Reply

We believe that the actions taken by the First Justice (reiterating to all judges assigned to LDC the statutory requirement of holding and documenting findings of fact and completing the appropriate form) 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, without a central record, the court lacks an efficient means to do this. During the testing period, there were 2,301 new probation cases that would need to be reviewed to determine whether the probationer was ordered to perform community service rather than paying PSF and how far the probationer had progressed toward completion. Moreover, in order to determine the

aggregate amount of community service ordered, performed, and owed and its equivalent dollar value, the Probation Office staff would need to review every probation file. This is less efficient than a single centralized record.

We understand that LDC is considering an interim solution for a centralized record by working with OCC through the community-service program. In order for this solution to work, the centralized record would need to provide a breakdown of community service by type of penalty, indicating the amount ordered, number of hours completed monthly, and equivalent dollar value.

2. Some probationers were allowed to perform community service even though they had been ordered to pay PSFs.

LDC allowed some probationers to pay off their PSF assessments by performing community service even though the sentencing judge had ordered them to pay PSFs. As a result, the Commonwealth forwent PSFs that probationers were able to pay.

As part of our testing, we reviewed the probationers' files and copies of community-service records maintained by the LDC Probation Office to determine whether the Probation Office staff verified that the community-service hours were completed as ordered. We selected 10 criminal cases in which a probationer was performing community service in lieu of making monthly PSF payments. Within those 10, we identified 2 (20%) in which the probationer performed unpaid community service instead of paying the PSF that the judge had ordered.

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.

Additionally, probation officers are responsible for monitoring probationers' compliance with court orders. According to Section 2:01 of the 1989 OCP Supervision Standards, "the court, not the probation officer, sets the conditions of probation / terms of supervision." Furthermore, probationers must obtain consent from the court to change from payments to community service, 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. **No allowance is available to assess a fiscal obligation and then to convert the obligation to community service without a judicial order.***
[emphasis added]

Reasons for Noncompliance

According to Probation Office officials, these probationers, unbeknownst to the officials, made community-service arrangements with local nonprofit agencies for which other probationers had been authorized to perform community service instead of paying PSFs. Since the probationers in question were on administrative probation (which does not require intensive supervision by a probation officer), unauthorized community service went unnoticed until a nonprofit agency sent notice to the Probation Office that a probationer had performed a certain number of hours of community service at the agency. Once this was brought to the attention of the probation officer, the cases were brought back before the court, where a judge retroactively waived the PSF and allowed community service at the request of the probation officer.

Recommendations

1. LDC should inform its probationers that if they are ordered by the court to pay a PSF, then they are not allowed to arrange to perform community service in lieu of paying the fee without a judicial order.
2. The Probation Office should require community-service work arrangements with local nonprofit agencies to be preapproved by a probation officer before a probationer is allowed to perform community service to replace a PSF. A prerequisite to that preapproval should be a judge's decision that the fee would constitute an undue hardship.

Court Response

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

Currently probationers in the Lowell District Court are instructed that if ordered to pay probation supervision fees they may not instead perform community service without a further judicial order.

Auditor's Reply

We believe that the actions taken by the First Justice (having the court instruct probationers that they cannot switch from paying a PSF to performing community service without a judge's order) was responsive to our concerns and should help address this matter.