

A Full-Court Press Against Gun-Toting Probation Officers

Suit underscores judiciary's bent
for neutrality in criminal matters

By Henry Gottlieb

Four months after judiciary lobbyists failed to stop the Legislature and governor from adopting a statute giving probation officers police powers, the court system is suing to declare the law unconstitutional.

Richard Williams, the administrative director of the courts, filed a declaratory judgment action in Superior Court on Tuesday, charging that the law violates constitutional separation of powers.

The litigation reflects state court leaders' longstanding view that giving probation officers police powers and guns will blur the line between the executive and judicial branches and undermine the judiciary's hard-won reputation for neutrality in criminal matters.

For officers, it appears to be another slap at a unionized probation force that works in dangerous neighborhoods and merely wants the same gun-carrying privileges as New Jersey parole officers and probation officers in other states.

"It's a safety issue, not a separation of powers issue," says David Fox of South Orange's Fox and Fox, counsel to the Probation Association of New Jersey.

Even so, the litigation will test the



JUDGE-SEEKING JUDGE: The judiciary's chief executive, Richard Williams, said he filed the suit only because he had no other way to stop probation officers from carrying guns.

constitutionality of amendments to the criminal code, adopted by the Legislature over the judiciary's objections and signed by Acting Gov. Donald DiFrancesco on Jan. 7. The law, N.J.S.A. 2B:10A-2, requires the judiciary to create "Probation Officer Community Safety Units" in every county. Those units are to be staffed by at least 200 probation officers statewide, who would have law-enforcement powers, the right to carry firearms and training from the Police Training Commission.

The declaratory judgment action, *In the Matter of P.L. 2001, Chapter 362*, says the law violates the state constitution because the chief justice has exclusive regulatory control of court officers, including probation officers. In addition, the law gives the

judiciary law-enforcement functions reserved for the executive branch, the pleading says.

"While it is with great reluctance that I filed this complaint, I believe the constitutional concerns raised in Chapter 362 are so fundamental to be impossible for the Judiciary to ignore," Williams said in a statement released by his spokeswoman, Winnie Comfort.

Former State Bar President Cynthia Jacob of Somerset's Collier, Jacob & Mills, who is representing Williams, says she does not know whether Mercer County Assignment Judge Linda Feinberg or another judge will hear the matter.

Fox, whose motion to intervene is unopposed, says he would like to see a special master who is not a judge appointed for the first phase of the

case. He concedes, however, that the matter is likely to end up with the Supreme Court.

The justices already are on record against the central provisions of the law, according to the record of the judiciary's lobbying effort, particularly letters to sponsors by David Anderson, director of the AOC's Office of Professional and Governmental Services.

On Jan. 22, 2001, Anderson wrote to Assemblyman David Russo, R-Bergen, that Williams asked the Supreme Court to review the PANJ proposal that became the core of the law. The justices' reaction: "The Supreme Court unanimously rejected the alternative proposal and reaffirmed its opposition to the carrying of firearms and the performance of law enforcement functions by probation officers employed by the Judiciary."

In a May 18, 2000, letter to other sponsors, Anderson wrote, "There are no circumstances under which the Supreme Court will allow Judiciary employees to carry firearms or perform law enforcement duties."

Nothing in Anderson's letters suggested that the justices had addressed the constitutional issues, but Fox says the statements "clearly create an issue as to that court hearing it." Chief

Justice Deborah Poritz has already said she would recuse herself if the matter reached her. But Fox says it is far too early to even discuss the possibility of seeking recusal of the other justices.

Anderson's lobbying letters explain why the judiciary doesn't like the idea of arming probation officers. He said there have been no serious injuries to officers under the current system of calling in police officers for protection when necessary. Rather than using police powers to arrest violators, he said, "probation officers must remain totally impartial to fulfill their judicial support role. Requiring them to perform law enforcement duties conflicts with that role." He said giving firearms and police duties to probation officers "conflicts with rehabilitative objectives of probation and the way in which probationers perceive probation officers."

Turning probation officers into gun-carrying enforcement officers "would ally probation officers with the Executive branch and may subject them to the authority of the Attorney General who has supervisory authority over law enforcement officers," he added.

Probation officers have said for years that having guns won't change

public perception because the public and the defendants they deal with already view them as an arm of law enforcement.

During a Statehouse news conference on Friday, PANJ leaders and their allies in state police unions repeated their plea for law-enforcement powers and guns. "Our duties bring us into contact with violent people in sometimes dangerous confrontations and we are simply not trained and armed to defend ourselves under these conditions," said PANJ President George Christie.

It's not a new experience for probation officers to have the court system reject their desire for closer ties to law enforcement.

In 1994, retired Appellate Division Judge Paul Huot recommended that the Court approve a PANJ request to become affiliated with the Policemen's Benevolent Association. In a per curiam opinion, however, the Supreme Court denied the request for philosophical reasons that are echoing in Williams' pleading.

The Court said of the officers, "their identification as the impartial employees of the judiciary will be overwhelmed by their identification as law enforcement officers allied with the police, and in fact the distinct risk exists that they will become such." ■