

New Jersey Law Journal

VOL. CLXXV – NO. 1 – INDEX 1

JANUARY 5, 2004

ESTABLISHED 1878

In Probation Gun Showdown, Court Is Itself a Party

Can judiciary be neutral in resolving a turf battle over judicial power?

By Charles Toutant

Probation officers and their union are vowing to fight a judge's order that voids the law giving them authority to pack guns, but their right to appeal may depend on the whim of one of the parties: the court system.

In a rare but poignant instance of the court system ruling on the nature and extent of its own powers, the Administrative Office of the Courts won the first round in a suit contesting the 2002 statute on the grounds that it intrudes on the judiciary's constitutional province over the court system and compromises its independence. Mercer County Judge Paulette Sapp-Peterson granted summary judgment for the AOC on Dec. 19.

"This court concludes that while the Act represents a legitimate exercise of the Legislature's police power to address a threat to public safety, its implementation impermissibly intrudes and threatens the Judiciary's constitutional authority over the administration of the courts," the judge wrote in *Williams v. New Jersey*, MER-L-1344-02.

"The specific provisions join together the Legislative, Executive and Judicial branches of government in a manner inconsistent with the Judiciary's role as an independent branch of government constitutionally entrusted with the fair and just resolution of disputes."

But the intervenor Probation Association of New Jersey has raised a

separation-of-powers issue of its own: whether the judiciary is competent to rule on a case in which it is itself a party.

"We view it as a relatively cheap turf battle where the courts, at the expense of public safety, are protecting their turf," says the union's lawyer, David Fox, of Livingston's Fox & Fox.

The probation officers had sought removal of the case to federal court, citing the AOC's opposition to the arming of probation officers and the Supreme Court's authority over personnel assignments and transfers of Superior Court judges. But U.S. District Judge Anne Thompson remanded the matter back to state court in late 2002, finding no questions of federal law.

Fox says the union's exact methods for going forward will depend on whether the state attorney general appeals the ruling. The AOC's attorney, Cynthia Jacob of Somerset's Collier, Jacob & Mills, says the officers have no independent right to appeal but could seek to intervene as a defendant at the appellate level. But Paul Rowe, of Greenbaum, Rowe, Smith, Ravin, Davis & Himmel in Woodbridge, who represented the Attorney General's Office, says no decision has been made on whether an appeal will be filed.

Interfering With Administration

Pending the outcome of its challenge, the AOC has not implemented the law, N.J.S.A. 2B:10A-1 et seq., which creates an armed probation unit within the office, gives its 200 members law enforcement powers and provides for them to be trained in firearms and self-defense by the attorney general's Police Training Commission.

The defendants claimed that the requirement that the Supreme Court

adopt rules to implement the legislation enables it to minimize interference with sound judicial administration. But the AOC countered that the law's impact on administration of the courts is so great that its provisions cannot be harmonized.

Sapp-Peterson said the test of the law's constitutionality lies not in whether it interferes with the judiciary at all but whether it interferes with the judiciary's mandate to administer the courts — and she found that it does.

By directing that a certain number of probation officers be assigned to the new unit, the law exercises administrative prerogatives over management of judicial resources.

By requiring the administrative director of the courts to report to the Legislature on the unit's effectiveness, the law violates the constitution's provision that he is subject to the exclusive supervision of the chief justice.

And by authorizing the armed officers to perform law enforcement duties, the law conflicts with probation's role as it relates to judicial administration.

Authority over its personnel is "the core of the Judiciary's constitutional mandate to administer the courts," Sapp-Peterson wrote. Before the 1995 merger of county court staffs into the AOC, the judiciary suffered a "debilitating" lack of control over its personnel, she wrote, citing a report by Chief Justice Robert Wilentz's Committee on Efficiency in the Operation of the Courts.

Fearing Micromanagement

When the Legislature passed the law, it noted that probation officers frequently venture into high-crime areas late at night to enforce arrest warrants



NO RIGHT TO APPEAL: The AOC's attorney, Cynthia Jacobs, says the officers have no independent right to appeal but could seek to intervene as a defendant at the appellate level.

against those who violate conditions of probation and that at least 36 other states allow arming of probation officers.

But Sapp-Peterson found merit in the AOC's argument against the requirements that it share supervision of the armed officers with the attorney general and that it report to the Legislature on the armed units' effectiveness.

"Aside from this court's conclusion that the legislation compromises the Judiciary's core values of impartiality and integrity, the legislation subjects probation officers to micromanagement by all three branches of government, a result repugnant to judicial independence and superintendence of its per-

sonnel," Sapp-Peterson wrote.

Citing *Knight v. City of Margate*, 86 N.J. 388 (1981), the judge wrote that "the constitutional spirit inherent in the separation of powers doctrine recognizes that each branch of government will exercise fully its own powers without encroaching on powers rightfully belonging to another branch; and where appropriate, will exercise shared responsibility when to do so will not compromise fundamental mandates of the respective branch."

Sapp-Peterson awarded summary judgment without allowing the probation officers' request for pretrial discovery on such issues as the ability of state judges to carry firearms, the volume of outstanding probation warrants and the

magnitude of danger facing probation officers.

Fox says judges' authority to use guns is relevant to the case, but Sapp-Peterson responded that gun laws "apply to judges in the same manner as they would apply to any other persons."

The probation officers noted in a response brief that more than three dozen other states allow arming of probation officers, but Sapp-Peterson responded that unlike New Jersey, probation officers in most of those states are under the executive branch of government.

Last March, the probation officers asked Mercer County Assignment Judge Linda Feinberg, who was then assigned to the case, to appoint a special master, but the request was denied.

Fox says the probation officers are frustrated that they are not allowed to carry guns on the job, while parole officers, who perform a similar job but are under jurisdiction of the executive branch, may do so.

Asked whether transferring New Jersey's probation officers from the judicial to the executive branch would solve the problem, AOC spokeswoman Winnie Comfort says, "That sort of discussion is one that may well take place in the Legislature."

The AOC provides bulletproof vests to its 560 probation officers and trains them in safety techniques, says Comfort. Some probation officers carried firearms before the Supreme Court banned that practice in a 1974 directive that said officers should travel in pairs or call local police for backup in the "occasional" dangerous incidents. Fox says calling for police assistance when officers encounter danger is an impractical remedy.

Jacob, the AOC's lawyer, disputes the intervenor's characterization of the danger level faced by probation officers — for example, not all officers' jobs entail interacting with probationers. But she says the peril can't be quantified given the lack of discovery. ■