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July 22, 2015

David Solet
Chief Legal Counsel, EOPSS
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Re: Comments on the Proposed Revisions to the Code of Massachusetts Regulations Regarding Attorney Access at Massachusetts Correctional Institutions (103 CMR 486)

Dear Attorney Solet,

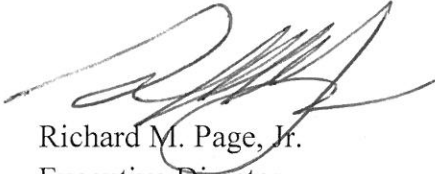
On behalf of the Boston Bar Association (BBA), I thank you for the opportunity to comment on the proposed revisions to 103 CMR 486 and recognize the efforts put forth by the Executive Office of Public Safety and Security (EOPSS) and Department of Corrections (DOC) in addressing recent concerns raised by the bar related to attorney access at Massachusetts correctional facilities.

The proposed revised rule was discussed and reviewed by the BBA's Criminal Law Section which expressed general support and suggested some revisions.

The BBA is pleased to see these revisions made expeditiously after recent concerns raised by members of the bar. We believe that the revisions will make it easier for attorneys to visit their clients in correctional facilities and will help alleviate concerns about intrusive searches. We offer these comments with the hope that they may be useful to EOPSS and the DOC as they consider the proposed revisions to this rule.

Thank you for providing members of the bar with an opportunity to weigh in on this important issue, and please feel free to contact me should you have any questions or concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. M. Page, Jr.', written in a cursive style.

Richard M. Page, Jr.
Executive Director

**Comments of the Boston Bar Association and the Boston Bar Association's Criminal
Law Section on the Proposed Revisions to the Code of Massachusetts Regulations
Regarding Attorney Access at Massachusetts Correctional Institutions (103 CMR 486)
(7/22/15)**

In response to an invitation for comments from the Executive Office of Public Safety and Security (EOPSS), the Boston Bar Association (BBA) and its Criminal Law Section reviewed the proposed revisions to the Code of Massachusetts Regulations regarding attorney access at Massachusetts correctional institutions (103 CMR 486).

The BBA supports the efforts of the EOPSS and Department of Corrections (DOC) to expeditiously address concerns raised by the bar about intrusive searches of attorneys and inconsistent application of the existing CMR. We believe that the revised rule will make it easier for attorneys to visit their clients at correctional facilities and will help to standardize application of the CMR and alleviate concerns about intrusive searches of attorneys. We hope the final rules will be uniformly enforced by all DOC facilities and support training for all involved personnel to assure their proper implementation.

We note that 103 CMR 486 applies only to attorney visits at Massachusetts Correctional Institutions, while 103 CMR 950 applies to County Correctional Facilities and gives individual Sheriff/facility administrators broad authority to develop individualized visitation rules and regulations within much looser guidelines. We encourage EOPSS to consider the issue of whether to extend the application of revised 103 CMR 486 to county correctional facilities in order to assure uniform proper treatment of attorneys at all correctional institutions.

The Criminal Law Section discussed the revised rule and was also largely supportive. The Section agreed that the revised rule is generally fair, reasonable, easy to follow and an improvement over the existing CMR.

While the Section was pleased to see increased record keeping requirements (such as incident reports detailing the pat down search of an attorney whenever one is requested by an officer), individual members voiced concerns that additional paperwork might be burdensome or impracticable. In addition, though the Section was pleased to see a general presumption supporting the reasonableness of an attorney's explanation for the cause of any interference indicated by the metal detector scan, individual members hoped that the changes would not overly limit correction officers in keeping prisons safe. One member also expressed concern that a non-contact visit as defined in the revised rule may be overly burdensome to both attorney and client and hinder their ability to share documents and information.

Another member noted that 103 CMR 486.07(6) could be read to limit reasonable suspicion to the presence of metal objects, and felt that the same standard should apply to reasonable suspicion by a correction officer of the presence of any contraband, whether metal or not. This

could be achieved by making the last sentence of paragraph (6) a new paragraph (7) which would state “If the correctional officer has a reasonable suspicion of the presence of contraband the attorney shall be afforded the opportunity to consent in writing to a pat down search, leave the institution, or to request a non-contact visit with the inmate . . .” Under this revision, it would be clear the reasonable suspicion standard applies to both metal and non-metal objects as the provision would stand alone, disconnected from metal detector hits.

Some members expressed concerns that the revisions did not address rules regarding specific articles of clothing, particularly women’s clothing, that have been inconsistently implemented and enforced at certain correctional facilities throughout the state.