

**IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

IN RE: FORTIETH STATEWIDE INVESTIGATING GRAND JURY	: Nos. 74 and 75 WM 2018 : : Applications for Stay of Release of : Report No. 1 : : : : :
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OPINION

PER CURIAM

DECIDED: JUNE 25, 2018

On June 20, 2018, this Court issued an Order staying the public release of Report No. 1 of the 40th Statewide Investigating Grand Jury, pending further order of the Court. This opinion is in support of that Order.

The 40th Statewide Investigating Grand Jury was convened in 2016 per the Investigating Grand Jury Act.¹ Under 42 Pa.C.S. §4550, the Attorney General initiated confidential grand jury proceedings to investigate allegations of child sexual abuse by individuals associated with the Roman Catholic Church, including several Pennsylvania dioceses, and failure to make mandatory reports, acts endangering the welfare of children, and obstruction of justice by church officials, local public officials, and community leaders. *See, e.g., In re 40th Statewide Investigating Grand Jury*, No. 571 M.D. 2016, *slip op.* at 9 (C.P. Allegheny June 5, 2018). As required by the Pennsylvania General Assembly, these proceedings were conducted under the umbrella of secrecy pertaining

¹ Act of Oct. 5, 1980, P.L. 693, No. 142, §216(a)(2) (as amended 42 Pa.C.S. §§4541-4553).

to investigating grand jury proceedings, subject to the discretion of the supervising judge to permit the public release of information. See 42 Pa.C.S. §4549(b).

Prior to the expiration of its term, the 40th Statewide Investigating Grand Jury submitted a report of the above investigation to its supervising judge, the Honorable Norman A. Krumenacker, III. See 42 Pa.C.S. §4552. This report is denominated “Report No. 1,” and its submission triggered a statutory procedure pertaining to such reports. See *id.* By law, the supervising judge was required to examine the report and the confidential record of the proceedings and to issue an order accepting and filing the report as a matter of public record “if the report is based upon facts received in the course of an investigation authorized by [the Investigating Grand Jury Act] and is supported by the preponderance of the evidence.” *Id.* §4552(b).

Additionally, the statutory scheme allocates discretion to the supervising judge to permit the submission of responses by individuals who are not charged with any crime, but about whom a report is critical. See *id.* §4552(e). Again, in the discretion of the supervising judge, such responses may be incorporated into the report and also released publicly. See *id.*

The supervising judge accepted the grand jury’s Report No. 1 and has signaled his intention to file the report publicly. Furthermore, the supervising judge has found that this report may be construed as critical of certain unindicted individuals, and he has permitted living individuals so named or implicated to submit responses to material allegations in the report. The supervising judge then devised a procedure to afford notice to these individuals, allowing them until June 22, 2018, to respond.²

² To the extent that this opinion discusses matters that remain subject to grand jury secrecy requirements, the Court has confirmed with the supervising judge that release of the information does not impair any protected interests.

Many individuals have lodged challenges to Report No. 1 with the supervising judge, generally asserting a denial of constitutional rights. Although the claims evidently differed in particulars to some degree, they shared certain key commonalities. Most, if not all, of the petitioners alleged that they are named or identified in Report No. 1 in a way that unconstitutionally infringes on their right to reputation and denies them due process based upon the lack of a pre-deprivation hearing and/or an opportunity to be heard by the grand jury. See PA. CONST. art. I, §§1, 11. A number of the petitioners asserted that they were not aware of, or allowed to appear at, the proceedings before the grand jury.

In an opinion and order of June 5, 2018, the supervising judge denied a series of motions seeking pre-deprivation hearings. That decision was released to the public and is self-explanatory. See *In re 40th Statewide Investigating Grand Jury*, No. 571 M.D. 2016, *slip op.* at 9 (C.P. Allegheny June 5, 2018). Otherwise, the supervising judge has generally maintained the grand jury seal to ensure that identifying details are not disclosed prematurely.

The supervising judge has certified his orders in those and other challenges for immediate appeal, in recognition of the existence of controlling questions of law over which there are substantial grounds for a difference of opinion. See 42 Pa.C.S. §702(b). Despite this certification, the supervising judge did not temporarily halt the release of Report No. 1. Rather, and although responses are not due before him until June 22, 2018, he has indicated that the report would be published as early as June 23, 2018.

Affected individuals have filed multiple petitions for review, along with emergency applications for stay, in this Court. At some dockets, the Office of Attorney General advised that “a temporary stay would be appropriate so that this Court can thoughtfully and dutifully consider the petition for review and the [forthcoming] answer thereto[.]” In later submissions, the Office of Attorney General stated it did not oppose “a brief stay of

a matter of days, consistent with the emergency nature of these proceedings.” The Office of Attorney General requested, however, that any such stay be sufficiently limited as to permit release of the report in the week following receipt of the responses.

Some of the petitions for review disclose aspects of Report No. 1. Nevertheless, the report has not yet been presented to this Court in its entirety.

This Court is cognizant that Report No. 1 is a matter of great public interest. The Court has found, however, that a temporary stay is appropriate for the following reasons:

1) the release of Report No. 1 on June 23, 2018 -- while affected individuals are permitted to file responses through June 22, 2018 -- provides inadequate time for essential judicial review;

2) consistent with the supervising judge’s certification, the Court recognizes that many of the petitions for review pending before it raise constitutional claims and matters of first impression;

3) the proceedings on the petitions for review filed in this Court are incomplete, and adequate development and consideration of the constitutional claims presented is necessary;

4) this Court does not possess sufficient information at this time to address the petitions for review as, for example, Report No. 1 has not yet been presented to the Court in its entirety; and

5) the Office of Attorney General has alternatively confirmed the appropriateness of a stay and otherwise indicated that it has no objection.

The Court intends to revisit the stay order when the proceedings before it have advanced to a stage at which either the petitions for review can be resolved, or an informed and fair determination can be made as to whether a continued stay is warranted. The Office of Attorney General may withdraw its agreement and/or acquiescence to the

stay at any time and lodge an objection to a continued stay on developed reasoning addressing the petitioners' entitlement to orderly judicial review.