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Pennsylvania Supreme Court Stiffens Standards for Investigatory Grand Jury Reports

WRITTEN BY

Michael A. Schwartz | Isabela P. Herlihy

On October 24, the Supreme Court of Pennsylvania issued a pivotal ruling regarding the public release of investigatory grand jury reports and the due process rights of individuals named in such reports but not charged with any crimes. The court clarified the legal standards affecting investigatory grand jury reports as follows: (1) to qualify as an investigatory grand jury report addressing public corruption, the report must specify the unlawful nature of the activities described and laws alleged to be violated; (2) a report that proposes recommendations for action in the public interest must not be focused on punishing uncharged persons or providing answers to the victims of a crime; and (3) due process requires that all named but uncharged individuals criticized in an investigatory grand jury report be given notice and an opportunity to respond prior to publication.

Based on these holdings, the court refused to permit the release of a grand jury report which did not specify what laws allegedly had been violated and was focused on meting out punishment and blame and providing answers to the victim's family. The court also made clear that even if the report did identify what laws allegedly had been violated or proposed broad-based legislative, executive, or administrative action, the Commonwealth's constitutional right to the protection of reputation and due process requires that named but uncharged persons receive notice before the public release of a grand jury report and the opportunity to respond.

In *In Re: The Thirtieth County Investigating Grand Jury*, the court addressed the statutory requirements for an investigatory grand jury report under the Investigatory Grand Jury Act (IGJA). The IGJA authorizes investigatory grand juries to submit an "investigatory grand jury report" to the supervising judge. 42 Pa. C.S. § 4552(b). Reports supported by a preponderance of the evidence and meeting the requirements of the IGJA are accepted by the supervising judge and filed as public record in the Court of Common Pleas. *Id.*

To qualify as an "investigatory grand jury report" under the IGJA (and thereby be subject to public disclosure), the report must either (1) relate to "organized crime or public corruption;" or (2) propose "recommendations for legislative, executive, or administrative action in the public interest." 42 Pa. C.S. § 4542.

Definition of "Public Corruption" Under the IGJA

At issue in *In Re: The Thirtieth County Investigating Grand Jury* was whether the investigatory grand jury report involved "public corruption." The IGJA defines "public corruption" as "unlawful activity under color of or in connection with any public office or employment by any public official or public employee, or their agents, under color of or in connection with any public office or employment." 42 Pa. C.S. § 4542.

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The investigatory grand jury report in this case (the Report) related to a death of a criminal suspect shortly after arrest and the subsequent investigation of that death. While the Report referenced violations of internal law enforcement directives, it did not identify specific laws potentially violated by the individuals named, nor did it explain how the activities described were unlawful. Based on a petition filed by one of the named, criticized, and uncharged persons, the court held that for an investigatory grand jury report to address "public corruption," it must not only describe the wrongful activity but also specify what makes that activity unlawful, including identifying the specific laws potentially violated. The court found that the Report did not relate to "public corruption," thereby failing to meet the statutory definition of "investigatory grand jury report."

The court also considered whether the Report proposed "recommendations for legislative, executive, or administrative action in the public interest." In holding that the Report also did not meet the second prong required by IGJA, the court relied on its previous decision in *In re Grand Jury Investigation No. 18*, 224 A.3d 326, 332 (Pa. 2020), and determined that it is against the public interest to use investigatory grand jury reports, when criminal prosecution is unavailable, to "mete out punishment or provide relief for specific victims of unproven, albeit serious, crimes." (citing *Investigation No. 18*, 224 A.3d at 332).

Notice and Opportunity to Respond by Named but Uncharged Individuals

The court, on its own initiative, also addressed the due process rights of individuals named but not charged in investigatory grand jury reports. The IGJA grants the supervising judge discretion to allow named but uncharged individuals to submit a response to the allegations against them, prior to the publication of an investigatory grand jury report. 42 Pa. C.S. § 4552(e).

Notwithstanding a supervising judge's discretion, the court held that a named but uncharged individual's fundamental right to reputation is implicated when they are criticized in such reports. The Pennsylvania Constitution recognizes an individual's fundamental right to reputation. Pa Const. art 1, § 1. Named and uncharged individuals are deprived of their fundamental right to reputation and due process if an investigatory grand jury report is published without giving those individuals notice and an opportunity to respond.

In its analysis, the court considered both the risk of erroneous deprivation of a fundamental right to reputation and the burden on the grand jury system to provide additional process. The court noted that although the Commonwealth has an interest in the publication of investigatory grand jury reports, the risk of the erroneous deprivation of a named but uncharged individual's right to reputation is high and the burden to provide additional process is small. Due process therefore requires that all named but uncharged individuals criticized in a grand jury report must be given notice and an opportunity to respond.

Impact on Investigatory Grand Jury Reports

This decision clarifies the legal standards for what constitutes "public corruption" under the IGJA, emphasizing the need for investigatory grand jury reports to specify the unlawful nature of the activities described and laws alleged to be violated. The court makes clear that vaguely described objectionable behavior is insufficient to satisfy IGJA's definition of public corruption.

The decision also makes clear that, for a report to be made public under the IGJA, it is not enough for the report to

contain “some recommendations.” For recommendations to be in the public interest, such recommendations must be aimed at broad-based legislative, executive, or administrative action, not just punishing a specific uncharged individual or providing answers to a victim.

As a result of this decision, supervising judges of grand juries must carefully consider the grand jury’s proposed report to protect the reputations of the uncharged and to ensure that the publication of a grand jury report meets the strict statutory requirements. On the one hand, grand juries may be encouraged to add specificity to their reports to meet the IGJA definition of “public corruption” and/or provide detailed recommendations for actions in the public interest. Alternatively, reports that are tangentially related to public corruption or do not recommend broad-based action may be sealed from public disclosure.

Additionally, the court’s ruling reinforces the due process protections for individuals named but not charged in grand jury reports. By requiring notice and an opportunity to respond, the decision helps safeguard the reputations of these individuals. This ensures that individuals have a chance to protect their reputations before the report is made public.

If you or your business have been named or expect to be named in an investigatory grand jury report or have additional questions regarding the impact of this ruling on you or your business, please contact our office.

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