

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

IN RE: FORTIETH STATEWIDE : Nos. 75, 77-82, 84-89, and 104 WM
INVESTIGATING GRAND JURY : 2018
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:
:

ORDER

PER CURIAM

AND NOW, this 2nd day of August, 2018, upon consideration of the Application for Relief to Stay Release of the Office of the Attorney General’s Redacted Brief, the application is GRANTED, and the tasks assigned to the grand jury supervising judge per this Court’s Order dated July 6, 2018, are REASSIGNED to a special master to be designated by separate order containing specific directions and updated timelines. In support of this directive, we set forth as follows:

On July 6, 2018, this Court issued an Order directing the petitioners and the Commonwealth to submit merits briefs pertaining to the petitioners’ claims, grounded in the Pennsylvania Constitution, that the public release of Report 1 of the 40th Statewide Investigating Grand Jury would violate their reputational rights. The order further directed the supervising judge, the Honorable Norman A. Krumenacker, III, to resolve objections to redacted versions of the briefs intended to be released to the public to protect the identities of the petitioners, pending this Court’s further review of the merits of their claims.

Subsequently, the supervising judge declined to comply with this Court’s July 6 Order for two stated reasons. First, he reasoned that his own determination that Report 1 should be released to the public meant that grand jury secrecy no longer pertained to

the report. Second, the judge opined that he lacked jurisdiction to supervise the redaction process for briefs. See *In re 40th Statewide Investigating Grand Jury*, Nos. 75 WM 2018, *et al.*, (C.P. Allegheny, Opinion and Order dated July 20, 2018).

As to secrecy, the supervising judge recognized that: “It is beyond question that matters occurring before a grand jury are secret and remain so even after the conclusion of the grand jury unless their release is authorized by either a specific provision of the Investigating Grand Jury Act . . . or by order of court.” *Id.* at 2-3 (citations omitted). Nevertheless, the supervising judge posited that secrecy no longer pertained, because he had ordered that the report should be released publicly. See *id.* at 5.

The supervising judge, however, had himself certified the order denying the constitutional challenges to Report 1 for immediate appeal to this Court on the ground that the matter “involves a controlling question of law as to which there is a substantial ground for difference of opinion” *In re 40th Statewide Investigating Grand Jury*, Nos. 75 WM 2018, *et al.*, (C.P. Allegheny, Opinion and Order dated June 5, 2018). And the supervising judge was well aware that this Court had accepted that certification and *stayed the effectiveness* of the order on which he has relied. See *In re 40th Statewide Investigating Grand Jury*, Nos. 74 & 75 WM 2018 (Pa., Opinion and Order dated June 20, 2018). Moreover, throughout this litigation, this Court has repeatedly conveyed its overt and manifest intention that the petitioners’ identities be protected pending this Court’s further consideration of their constitutional challenges. This, of course, was reflected in the very nature of the task at hand -- a protective redaction of the briefs -- assigned to the supervising judge.

For the above reasons, the supervising judge was in error in his pronouncement that grand jury secrecy no longer pertained to Report 1.

As to jurisdiction, the Pennsylvania Supreme Court exercises general supervisory authority over all courts in the Commonwealth. See PA. CONST. art. V, §10(a); see also *id.* §2 (defining the Supreme Court as the highest judicial tribunal in this Commonwealth). Here, the supervising judge was properly enlisted, or assigned, to serve as an auxiliary to the Court -- while we retained jurisdiction -- to aid in vindicating this Court's clear intention for the petitioners' identities to be safeguarded, as best as reasonably possible, until we could finally determine whether Report 1 violated their constitutional rights (or at least pending a stage at which the Court might otherwise determine that a stay was no longer necessary). A seven-member appellate court is not set up to serve the first-line-of-review function for redacting briefs. By contrast, the supervising judge was ideally situated for such a task, particularly given his experience with the grand jury report in issue.

In other words, the supervising judge's "jurisdiction" to perform the task he was assigned was secure, as this Court retained the jurisdiction under which the supervising judge was directed to operate.

In order to prevent any further misunderstandings, and to facilitate the expeditious completion of the task at hand, we have provided for the reassignment of that task to a special master. Again, further direction will follow in the appointment order.

The instant order is unsealed.