

IN RE INVESTIGATORY GRAND JURY

NO. 2007-04

: SUPREME COURT
:
: STATE OF CONNECTICUT
:
: AUGUST 7, 2009

THE HARTFORD COURANT COMPANY'S OPPOSITION TO APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The petitioner, The Hartford Courant Company (the "Courant"), hereby opposes the Application for Leave to File Amicus Curiae Brief ("Amicus Application") filed on July 31, 2009, by the panel of judges appointed pursuant to General Statutes § 54-47b(4) to receive applications for investigations into the commission of crimes (the "Grand Jury Panel").

I. Factual Grounds for Opposition

(1) The proposed Amicus Curiae brief is unnecessary, untimely and seeks to inject an argument in this Petition for Review which is completely unrelated to the issues raised by the petitioner or the other interested parties. The Grand Jury Panel has no interest in this Petition for Review, which does not involve its limited statutory status or authority.

(2) This Petition for Review concerns a decision of the Investigatory Grand Jury to seal a portion of the finding and therefore is subject to expedited review pursuant to Section 78-1 of the Rules of Appellate Procedure.¹

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¹ The Courant filed its petition for review of the grand jury order with the Appellate Court on Friday, July 24, 2009, and this Court transferred the case to itself on Monday, July 27, 2009. In keeping with the requirements of Section 78-1 concerning expedited review, the Court required the State of Connecticut and any other interested parties to submit briefs or opposition papers on Tuesday, July 28, 2009 -- four days following the filing of the petition -- and scheduled oral argument one day later, on Wednesday, July 29, 2009.

(3) This Petition for Review concerns considerations of the requirements and application of Sections 54-47g(b) and (c) of the General Statutes. None of the parties sought or opposed disclosure of the record of the grand jury pursuant to Section 54-47g(a).

(4) By way of the Amicus Application, the Grand Jury Panel seeks to present argument concerning the interpretation of the term "public interest" as it appears in Section 54-47g(a).²

(5) The Grand Jury Panel filed the Amicus Application on Friday, July 31, 2009 – three days after the deadline for interested parties to file opposition papers, and two days after the presentation of oral argument.

(6) The Grand Jury Panel would argue, as evidenced by its proposed brief, (1) that this Court should not interpret the phrase "public interest;" (2) that, to the extent this Court does interpret the phrase "public interest;" it should read that term to mean "the policy of protecting grand jury secrecy," and (3) that this Court should impose the same "particularized need" standard with respect to disclosure of the record as existed prior to the sweeping changes to the statute in 1985. (Proposed Br. of Amicus Curiae 2.)

(7) The proposed Brief of Amicus Curiae does not include a statement of amicus counsel's monetary contribution related to the proposed brief.

II. Legal Grounds for Opposition

(1) The Amicus Application, though technically compliant with Section 67-7 of the Rules of Appellate Procedure in that it was filed within 20 days of the briefs of the petitioner

² The Grand Jury Panel is a panel of judges comprising the judicial fact finding body charged with applying Section 54-47g(a) only with respect to applications for disclosure of the record. The Grand Jury Panel also seeks to argue concerning the standard of review for this appeal. The standard of review has been addressed in the briefs and argument of the parties. The proposed amicus brief adds nothing new to the resolution of this question.

and the interested parties, is nonetheless untimely because it did not meet the Court's expedited scheduling requirements. Oral argument already has taken place. Granting the Amicus Petition would deprive the Courant and other interested parties of the opportunity to fully address the new issue of "public interest" raised in the proposed Amicus Brief.

(2) The portion of the statute that the Grand Jury Panel proposes to address in its brief is not at issue in this appeal. This appeal concerns public disclosure of the grand jury finding, which is governed by Sections 54-47g(b) and (c) of the General Statutes. It does not concern subsection (a), the section that includes the term "public interest." The Grand Jury Panel's argument, including its position that the Court should not interpret the phrase "public interest," a phrase which none of the parties addressed, would therefore be of no aid to the Court. See, e.g., In re Bruce R., 234 Conn. 194, 215 n.16 (1995) (declining to consider the arguments of amicus reaching beyond the issues raised by the parties); State v. Mercer, 208 Conn. 52, 56 n.4 (1998) (same).

(3) After suggesting the Supreme Court not address the term "public interest" the Grand Jury Panel then suggests a proposed interpretation of the term "public interest" that is contravened by the plain language of the 54-47g(a) and the legislative history of the statute. Substituting the term "public interest" as it appears in the statute with the "grand jury secrecy interest" proposed by the Grand Jury Panel would result in the statute providing that the panel "may disclose any part of the record when such disclosure is deemed by the panel to be in the [interest of grand jury secrecy]." A result that was clearly not the intent of the Legislature, particularly in light of the sweeping amendments made in 1985.

(4) Finally, the proposed brief fails to comply with Rule 67-7 of the Rules of Appellate Procedure, which requires that "all briefs shall indicate whether counsel for a party wrote the brief in whole or in part and whether such counsel or a party contributed to the cost of the preparation or submission of the brief and shall identify those persons, other than amicus curiae, its members or its counsel, who made such monetary contribution." This requirement is particularly noteworthy since the proposed brief is to be filed on behalf of three judges of the Superior Court.

III. Conclusion

For the reasons stated herein, the petitioner, The Hartford Courant Company, respectfully OPPOSES the Application for Leave to File Amicus Curiae Brief ("Amicus Application") filed on July 31, 2009, by the panel of judges appointed pursuant to General Statutes § 54-47b(4).

PETITIONER/INTERVENOR
THE HARTFORD COURANT COMPANY

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CERTIFICATION

I hereby certify that the foregoing complies with all of the provisions of Rule 66-3 of the Rules of the Appellate Procedure.


William H. Champlin III

CERTIFICATION

I hereby certify that a copy of the foregoing was faxed and mailed, postage prepaid (unless otherwise indicated), to the following counsel on this 7th day of August, 2009:

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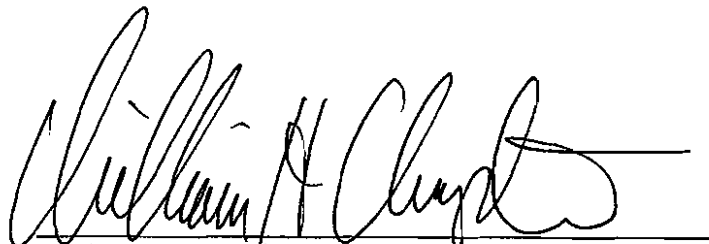
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