



Attorneys gain access to Baltimore police officer's internal affairs records

By: Heather Cobun Daily Record Legal Affairs Writer March 21, 2017

Defense attorneys will seek to have evidence from more than 30 internal affairs records relating to a Baltimore police sergeant admitted in multiple criminal cases after a judge granted them access to the files last week.

Attorneys for 20 defendants argued earlier this month in consolidated proceedings that records related to Sgt. Joseph M. Donato should be discoverable material. In an order dated Friday, Baltimore City Circuit Judge John S. Nugent granted them access to 33 of 35 requested files but granted a protective order preventing attorneys from disclosing any information in the files outside of trial preparation.



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Donato is "a very active officer and we have never seen these files before and if we had not asked, based on history, we would not have gotten them," said Deborah K. Levi, the assistant public defender who led the effort.

Defense attorneys who have clients with active cases involving Donato were also included. Levi called Donato "prolific" and said he has testified in countless cases.

"How many times have people decided to plead without having seen these documents that this court now is discoverable?" she said.

Levi said she argued, based on the available information, that there was discoverable material or information that could lead to usable evidence in Donato's records which could be relevant at each defendant's trial to attack Donato's credibility.

"More specifically, the records will shed light on the officer's aggressive police practices and their prior bad conduct involving sworn police reports, potential threats, and baseless arrests," the motion states.

Levi's motion cited a 2014 opinion in a federal lawsuit in which U.S. District Judge Catherine C. Blake said Donato was engaged in "unacceptable behavior" by allegedly entering a home without a warrant, destroying the residence door frame and writing a report that conflicted with his fellow officers' accounts of the incident. Blake also referenced findings in Donato's internal affairs file.

The case ended in a grant of summary judgment for the defendant officers but Blake noted the court "in no way condones (their) alleged conduct."

The motion also cites a 2014 City Paper article reporting an internal affairs complaint was filed against Donato over the conduct alleged in the civil case.

In an emailed statement, Chaz R. Ball, Donato's attorney, said the officer has the presumption of innocence like criminal defendants.

"The court has the task of balancing the due process and fair trial rights of criminal defendants against the rights of public servants, such as Sgt. Donato," he said. "The court has not made any finding that any of the allegations were verified or verifiable, or even that the allegations would be admissible in cross-examination of Donato at these defendants' criminal trials."

Ball, of Schlachman, Belsky, and Weiner P.A. in Baltimore, also said Donato has "never been found responsible for any use of excessive force or any charge impugning his integrity."

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Each defense attorney will now have to argue for the admissibility of evidence from the files in their clients' cases.

Bigger picture

The Maryland Office of the Public Defender has made repeated pushes for transparency of disciplinary records recently in their submission to U.S. District Judge James K. Bredar on the pending consent decree with the Department of Justice.

"We uniformly face opposition from Assistant State's Attorneys on motions for in camera review of (internal) files and demands for discovery are heavily litigated," representatives alleged.

Seven Baltimore police officers recently were indicted on federal racketeering conspiracy charges of robber extortion and overtime fraud. Levi said that case shows "how bad it can get" when misconduct is ongoing.

"It's my position that (the recent federal indictments) sort of highlight on what can happen when this type of conduct goes undetected and unannounced for so long," she said.

Levi said the onus is on defense attorneys to show there is a reason to believe there is something in an officer's file that may be relevant but it is difficult to find proof when the files are secret.

"They keep it behind a wall of secrecy, they keep it locked up, and then we're supposed to use information from the files to get access to them," she said.

Legislative provisions in the Law Enforcement Officers' Bill of Rights and Maryland Public Information Act limit access to an officer's records, but Levi said she argued to the court that "the Constitution trumps these rules."

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