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State, Federal Courts Diverge on Internal Affairs File Discovery

By Charles Toutant

In a decision that contrasts with a federal magistrate's recent ruling in a similar case, a state appeals court has reversed an order compelling the New Jersey State Police to produce 373 internal affairs files in connection with an excessive-force suit.

The appeals court ruling in *Crawford v. State of New Jersey* calls for a remand to the trial court, where the judge was ordered to conduct an in camera review before deciding whether the files are subject to disclosure. In that respect, the state court's ruling seems to set a higher standard for disclosure than a recent federal court ruling in *Costantino v. City of Atlantic City*, in which a judge ordered the defendant to provide the plaintiff around 2,000 files without first conducting an in camera review.

In *Crawford*, the appeals panel said the trial court's exercise of discretion was mistaken because it failed to examine each file separately and make findings about whether it is subject to disclosure.

The plaintiff sought files regarding complaints against troopers for excessive force and assault and complaints against troopers investigating domestic violence incidents between 2005 and 2010. The trial judge's order allowed the plaintiff to inspect, redact and copy the

files.

Appellate Division Judges Joseph Yannotti and Jerome St. John remanded the case for an in camera determination of the documents' relevance, which would look at whether each item contains "evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action."



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Once an item is deemed relevant, the trial judge is required to examine each document individually to decide whether a plaintiff's interest in disclosure outweighs the state's interest in non-disclosure, the appeals court said. The court must then state the reason for its decision on each document, the panel said. In *Crawford*, the court failed to conduct an analysis with respect to each of the files, and make findings as to each

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file.

The court cited *Bayer v. Township of Union*, a 2010 case in which another Appellate Division panel tacitly approved the disclosure of police personnel files in the context of a civil case, but only after an in camera review of the files.

In *Crawford*, plaintiff Don Crawford Jr. filed suit over his Jan. 15, 2010, arrest by state police in the parking lot of a bar in Burlington City. His suit claims he was kicked by six state troopers while handcuffed and lying face-down on the pavement. Crawford allegedly suffered a broken ankle and other injuries during his arrest, according to the appeals court's opinion.

The trial court issued an opinion weighing the competing interests of the parties and the potential prejudice each might suffer, and concluded that the plaintiff asserted a valid need and that the defendant was unlikely to be prejudiced by disclosure. The trial court order called for names to be redacted from all the 373 files.

On remand, the trial court's findings should state reasons for its decision, and a finding for nondisclosure should take pains not to disclose the secrets sought to be protected, the court said. The findings can be issued in a separate, sealed opinion, the panel said.

Shelley Stangler of the Law Offices

of Shelley L. Stangler in Springfield Township represented Crawford. She said the in camera review imposed by the appeals court is a heavy burden on disclosure and is "not necessary."

Stangler said the release of internal affairs files in civil litigation "remains a battle" generally and that more transparency is needed. But she was pleased that the appeals court rejected a "blanket assertion of privilege" by the state.

Assistant attorney general Lisa Puglisi represented the state. Lee Moore, a spokesman for the Attorney General's Office, declined to comment on the ruling.

Production of police internal affairs files has also been an issue of contention in several federal suits accusing the Atlantic City Police Department of excessive force, including the *Costantino* case, which was filed by a woman who claims she was assaulted by two Atlantic City police officers while visiting a nightclub at the Caesar's Hotel and Casino.

In an April 2015 ruling in *Costantino*, U.S. Magistrate Judge Joel Schneider of the District of New Jersey ordered the department to turn over every internal affairs file it generated from 2003 to 2014—around 2,000 files.

The city appealed Schneider's disclosure ruling to U.S. District Judge Robert Kugler, who upheld the decision Nov. 12, 2015. ■

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