

The Star-Ledger

N.J. police unions say plan to name disciplined cops will place a ‘scarlet letter’ on officers

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NJ Advance Media for NJ.com and The Star-Ledger

Published Sept. 17, 2020

Police unions told a New Jersey court a plan to name cops who were disciplined for serious violations would arbitrarily hurt officers' privacy while doing little to educate the public, in a case that could have far-reaching effects on law enforcement statewide.

Just because an officer was punished does not necessarily mean they used excessive force or racially profiled someone, unions told three appellate division judges during a four-hour hearing Wednesday.

“What this directive will essentially do is place a scarlet letter on the backs of many retired state troopers who served honorably,” said Carl Soranno on behalf of the Association of Former New Jersey State Troopers, one of ten lawyers representing a coalition of unions and law enforcement groups.

The month after George Floyd was killed in Minneapolis police custody, state Attorney General Gurbir Grewal announced a plan to name officers who received “major discipline,” including some cases going back decades. New Jersey has historically hidden that information, and past State Police reports don’t identify officers who drank on the job, gave false testimony or abused family members.

Releasing the names would “build trust in law enforcement in the middle of a once-in-a-generation reckoning over transparency and accountability,” State Solicitor Jeremy Feigenbaum said Wednesday, according to an audio recording provided by the court system. Pandemic rules prevent the public from listening to oral arguments live.

Police unions sued to block the plan, and a state appeals court halted the release until the two sides could meet in court.

Much of the court arguments, conducted over the phone, centered on how much power a New Jersey attorney general has. Grewal’s office does have more authority than attorneys general in many states, and his directives have the force of law.

But in this case he went too far, unions said.

Many troopers accused of misconduct pleaded guilty and waived their right to a public hearing in exchange for confidentiality, lawyers argued. A cop in an offensive T-shirt could technically trigger a “major discipline” suspension, which was hardly worthy of exposure, said Kevin Jarvis, with the New Jersey Superior Officers Association.

In one case, a female State Trooper signed a document to hide her husband's discipline for domestic violence, said John McAusland, on behalf of the State Troopers Non-Commissioned Officers Association. Releasing his name would improperly reveal the incident to the couple's children, he said.

Ultimately a plan like this should be weighed by lawmakers, not one unelected public official, union lawyers said.

Yet other states already offer this information and more, and releasing names would give the public more power to act as a watchdog, said Feigenbaum and lawyers representing the public defender's office and civil rights groups, as well as two other law enforcement organizations.

"We're not trying to just embarrass officers," Feigenbaum said. "We are trying to really open up the books and let people see how the IA process works — and how the IA process doesn't work." "IA" refers to "internal affairs," the office in a police department that investigates complaints.

Officers will be able to challenge the release of their name on an individual basis, Feigenbaum said, and officials would be careful not to identify victims.

But even if an old case was marked "confidential," Feigenbaum said, the attorney general has always had the authority to release details about it.

The public should also be trusted to distinguish between, say, uniform violations and serious abuses of power, said Alexander Shalom, a lawyer with the American Civil Liberties Union of New Jersey. Residents could already find out if lawyers and judges made big mistakes, he said, so why not cops? Especially since some companies hire former officers on the assumption that the officer is credible, Shalom said.

Credibility problems were also relevant in court, said Joseph Krakora, the state's top public defender. Right now it was hard to know if an officer had a history of lying, he said, which made it difficult to defend people accused of crimes.

Transparency helps cops too, said CJ Griffin, on behalf of the National Coalition of Latino Officers and the Law Enforcement Action Partnership. Knowing who received major discipline would help flag if minorities or women were more likely to be punished, she said.

The judges — Mitchel Ostrer, Allison Accurso and Francis Vernoia — frequently challenged lawyers on both sides. They questioned if the attorney general could override past promises of confidentiality, while appearing open to the argument that officials do have considerable authority to release records.

In response to a union lawyer saying the plan was too broad, Accurso brought up a recent and far more sweeping plan in New York.

“The AG is releasing very little information here,” she said.

The judges gave no timeline for when they might issue a decision.