

77-10a-17 Grand jury report on noncriminal misconduct -- Action on the report.

- (1) A grand jury may upon completion of its original term or each extension, with the concurrence of a majority of its members, submit to the managing judge a report concerning noncriminal misconduct, malfeasance, or misfeasance in office as a basis for a recommendation of removal or disciplinary action against a public officer or employee.
- (2) The judge to whom the report is submitted shall examine it and the minutes of the grand jury. The judge shall make an order accepting and filing the report as a public record, but only if the judge is satisfied that it complies with Subsection (1) and:
 - (a) the report is based on facts revealed during the grand jury's investigation and is supported by a preponderance of evidence; and
 - (b) each person named and any reasonable number of witnesses on his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of the report.
- (3) An order accepting a report made under this section and the report itself shall be sealed by the managing judge and may not be filed as a public record or be subject to subpoena or otherwise made public until:
 - (a) at least 31 days after a copy of the order and report are served on each public officer or employee named and an answer has been filed;
 - (b) the time for filing an answer has expired; or
 - (c) an appeal is taken or until all rights of review of the public officer or employee named have expired or terminated in an order accepting the report.
- (4)
 - (a) An order accepting the report may not be entered until 30 days after the delivery of the report to the public officer or body having jurisdiction, responsibility, or authority over each public officer or employee named in the report.
 - (b) The managing judge may issue orders it finds necessary and appropriate to prevent unauthorized publication of a report. Unauthorized publication of a report may be punished as contempt of court.
- (5)
 - (a) A public officer or employee named in a report may file with the clerk a verified answer to the report not later than 20 days after service of the order and report upon him. Upon a showing of good cause, the managing judge may grant the public officer or employee an extension of time to file an answer and may authorize limited publication of the report as necessary to prepare an answer.
 - (b) The answer shall plainly and concisely state the facts and law constituting the defense of the public officer or employee to the charges in the report. Except for those parts the managing judge determines have been inserted scandalously, prejudicially, or unnecessarily, the answer becomes an appendix to the report.
- (6) Upon the submission of a report made under this section the managing judge shall order the report sealed if he finds the filing of the report as a public record may prejudice fair consideration of a pending criminal matter. The report may not be subject to subpoena or public inspection during the pendency of the criminal matter except upon order of the managing judge.
- (7)
 - (a) When the managing judge to whom a report is submitted is not satisfied that the report complies with the provisions of this section, he may direct that additional testimony be taken before the same grand jury or he shall make an order sealing the report.

- (b) If the report is sealed, it may not be filed as a public record or be subject to subpoena or otherwise made public until the provisions of this section are met.
- (8) A grand jury's term may be extended by the managing judge so additional testimony may be taken or the provisions of this section met.

Enacted by Chapter 318, 1990 General Session