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Tussle continues over probe records

Information sought on hospital deaths case

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BATON ROUGE -- A state district judge could decide this week how much more information, if any, Attorney General Charles Foti can release from his long investigation into deaths at New Orleans' Memorial Medical Center following Hurricane Katrina.

But Judge Donald Johnson's decision will come only after continued wrangling among a gaggle of competing attorneys representing The Times-Picayune, Cable News Network, Foti's office and dozens of Memorial employees, including the doctor and two nurses that Foti accused of killing patients with lethal doses of morphine and Versed.

Lawyers for Memorial employees, identified in the records dispute only as John and Jane Does, first sued to block Foti's office from releasing its case file, claiming that disclosure would harm their clients and violate Louisiana laws requiring secrecy of grand jury proceedings.

Groups seek records

Foti's office maintains it wants only to comply with public records requests made under Louisiana law. The Times-Picayune and CNN are seeking release of the documents. Lawyers for Tenet Health Corp., which owned the hospital in 2005, want to recover more than 30,000 pages of documents that it produced under subpoenas from state prosecutors. Also intervening are attorneys who represent some of the deceased patients' families in pending lawsuits.

For two days, the group has filled a courtroom for proceedings driven more by procedural maneuvering than by arguments on the relevant laws affecting how public records laws and competing privacy statutes intersect on the release of investigative documents, including those that may have been presented to a grand jury.

Louisiana law states that "persons present at a grand jury meeting and all persons having confidential access to information concerning grand jury proceedings, shall keep secret the testimony of witnesses and all other matters occurring at, or directly connected with, a meeting of the grand jury."

The acrimonious dispute is the latest in an affair that has seen Foti arrest Dr. Anna Pou and nurses Lori Budo and Cheri Landry on second-degree murder charges in July 2006, only to turn the matter over to Orleans Parish District Attorney Eddie Jordan. Under Jordan's watch, Budo and Landry became witnesses -- rather than defendants -- before a grand jury refused to indict Pou earlier this year.

Foti, widely criticized for his handling of the case, blasted Jordan's effort and released his office's executive summary of the case and several reports from hired medical experts who reviewed patients records and told the attorney general that nine of the deaths could be classified as homicides.

Index unsealed

Johnson on Tuesday unsealed an index that the attorney general's office prepared to summarize what is in its case file. The list shows a collection of materials including the items Foti released, transcripts of interviews with witnesses, patient records, and personnel and e-mail records of hospital employees.

But all names have been blacked out. It is not clear whether the file includes contracts and payment information for the medical experts Foti hired, documents the newspaper has requested. The list also does not identify what of the material may have come before the grand jury.

That point could become a key distinction, as Lori Mince, the newspaper's attorney, has argued essentially that a seal should apply only to the identity and testimony of grand jury witnesses. In questioning the state prosecutor who initially handled the case for Foti, Mince on Tuesday framed an argument that records generated before the grand jury convened in February 2007 should not be sealed. She has said, too, that documents that would otherwise be public do not become sealed simply because they are presented to a grand jury.

Pauline Hardin, who represents the medical employees, countered by attempting to elicit testimony from Assistant Attorney General Arthur Schafer that Foti's office knew from the beginning that it was pursuing murder charges, which can be brought only by a grand jury. Under Hardin's argument, that would mean all the records of the investigation are "directly connected" with the grand jury and cannot be disclosed.

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