



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,  
PENNSYLVANIA  
CIVIL ACTION – LAW

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GRAHAM B. SPANIER,

Plaintiff,

v.

LOUIS J. FREEH and FREEH SPORKIN  
& SULLIVAN, LLP,

Defendants.

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: Docket No. 2013-2707  
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: Type of Pleading: Memorandum  
: In Support of Motion for  
: Assignment of an Out of County  
: Judge  
:  
: Filed on Behalf of: Defendants  
:  
: Counsel of Record for These  
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Docket No. 2013-2707

**MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANTS LOUIS J.  
FREEH AND FREEH SPORKIN & SULLIVAN, LLP  
FOR ASSIGNMENT OF AN OUT OF COUNTY JUDGE**

2015 APR 10 AM 8:33  
 COURT REPORTERS  
 & VIDEO  
 CENTER COUNTY, PA

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Plaintiff Graham B. Spanier (“Spanier”) has filed a motion seeking leave of Court to file a Proposed Complaint against Defendants Louis J. Freeh and Freeh Sporkin & Sullivan LLP (“FSS”) and to join in that Complaint two new defendants, namely Freeh Group International Services, Inc. (“FGIS”) and The Pennsylvania State University (“Penn State” or “PSU”). Plaintiff’s Proposed Complaint arises out of the Gerald A. “Jerry” Sandusky child abuse scandal (the “Sandusky/PSU matter”). Consistent with this Court’s established practice of recusing in all cases relating to the Sandusky/PSU matter, Defendants request that an out-of-county judge be appointed to preside over these related proceedings.

Since the Sandusky/PSU scandal broke in 2011, numerous criminal and civil proceedings have been commenced in this Court against various parties, including criminal proceedings against Jerry Sandusky and civil proceedings against Penn State, the National Collegiate Athletic Association (“NCAA”), and The Second Mile organization. In each one of these Sandusky/PSU-related actions, the entire bench of the Centre County Court of Common Pleas has recused and an out-of-county judge has been appointed to preside over the proceedings.

Here, Plaintiff’s proposed 139-page, 432-paragraph Complaint asserts purported claims that arise out of and touch upon virtually every aspect of the Sandusky/PSU matter. The Proposed Complaint details Sandusky’s criminal activities, the role and involvement in the Sandusky matter of Spanier, former Penn

State Senior Vice President Gary Schultz and former Penn State Athletic Director Timothy Curley, the commissioning and preparation of the Freeh Report, the termination of Coach Joseph Paterno, the role of the NCAA in the Sandusky matter, the role and conduct of the Board of Trustees of Penn State, the role and activities of The Second Mile, and the conduct of the Pennsylvania Attorney General in prosecuting Spanier. Indeed, the “Parties and Relevant Third Parties” identified in the Proposed Complaint include Spanier, Freeh and the Freeh entities FSS and FGIS, Penn State, Jerry Sandusky, The Second Mile, various members of the Board of Trustees, Michael J. McQueary, “prominent” local physician Jonathan Dranov and the NCAA.

Plaintiff’s Proposed Complaint is an amalgam of all of the related Sandusky/PSU cases in this Court. Accordingly, as the Court has recused in all prior Sandusky/PSU cases for what undoubtedly is good and sufficient reason, the same reasons would be operative here. Hence, the Court should recuse here and seek the appointment of an out-of-county judge.

Finally, Defendants respectfully request that the Court consider seeking the appointment of President Judge Todd A. Hoover of Dauphin County to preside over this action. In this action, Spanier contends that Louis Freeh and FSS “defamed” him by accusing Spanier of failing to report suspected child abuse and endangering Sandusky’s child victims. Relatedly, President Judge Hoover is

currently presiding over the criminal proceedings in which Spanier is charged with, among other things, failure to report suspected child abuse and endangering children. In addition to the obvious and substantial overlap between the criminal and civil cases, Spanier alleges that “as a direct and proximate result of the false statements in the Freeh Report. . . the Attorney General criminally charged Dr. Spanier for his alleged role in covering up Sandusky’s crimes.” Proposed Compl. ¶ 13. The cases are therefore directly related and judicial efficiency and economy would be well-served by having President Judge Hoover preside over these proceedings.

### **QUESTION PRESENTED**

Should the Court assign an out-of-county judge to preside over a case that involves the same topics that were implicated in related cases as to which an out-of-county judge was assigned in each instance?

*Suggested Answer: Yes.*

### **PROCEDURAL HISTORY**

On July 11, 2013, Plaintiff Graham Spanier, the former President of Penn State, filed a Praecipe for a Writ of Summons against Louis J. Freeh, a former federal judge and Director of the FBI, and his law firm FSS. Spanier identified the “Type of Matter” to be “Defamation” in the Praecipe. On September 12, 2013, Spanier filed a Praecipe to Issue Amended Writ of Summons. After Defendants

filed a Praecipe to File Complaint, the Prothonotary issued a Rule to File Complaint on September 30, 2013. On October 18, 2013, Spanier filed a Motion to Stay the case, having never filed a Complaint. The Motion to Stay pending the resolution of criminal proceedings pending against Spanier was granted on February 25, 2014. As a result of the stay, no substantive motion practice, discovery, or litigation activity has occurred.

On March 18, 2015, over one year after the stay was entered, Spanier filed a Motion for Leave to Join Additional Parties. Spanier attached as Exhibit 1 to the Motion a draft Proposed Complaint asserting claims for Defamation against Louis Freeh and FSS, adding a claim for Tortious Interference with Prospective Contractual/Business Relations against Louis Freeh, and seeking leave to add additional parties and claims as to which a Praecipe to Issue Writ of Summons has not been filed. No action has been taken on this Motion.

### **STATEMENT OF THE FACTS**

#### **A. Investigation of Alleged Abuse Involving The Pennsylvania State University**

This case involves allegations relating to the tragic child abuse scandal at Penn State that culminated in the indictment, and eventual conviction, of former Penn State Assistant Coach Jerry Sandusky. In November 2011, following a two-year grand jury investigation, Sandusky was criminally charged with the sexual



abuse of minors over a fifteen year period.<sup>1</sup> That same month, the Board of Trustees of Penn State announced that they would convene a Special Investigations Task Force to investigate Penn State's response to allegations of sexual abuse.

On November 12, 2011, the Special Investigations Task Force, on behalf of Penn State's Board of Trustees, engaged FSS as Special Investigative Counsel to perform an independent, full, and complete investigation of: (i) the alleged failure of Penn State personnel to respond to and report to the appropriate authorities the sexual abuse of children by Sandusky and (ii) the circumstances under which the abuse could occur in Penn State facilities. FSS was given unfettered access by Penn State to Penn State staff as well as data and documents maintained throughout the University.

On July 12, 2012, FSS released the "Report of the Special Investigative Counsel Regarding Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky" (the "Freeh Report"). See <http://progress.psu.edu/the-freeh-report>. The Freeh Report made findings regarding the actions of various Penn State officials and personnel and the Penn State Board of Trustees. Furthermore, the Freeh Report issued recommendations

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<sup>1</sup> In June 2012, Sandusky was convicted on 45 of 48 counts relating to sexual abuse of minors, and was sentenced to 60 years in prison in October 2012. See *Jerry Sandusky Gets 30-60 Years for Molesting Boys*, The Patriot News (Oct. 9, 2012 10:11 A.M.), [http://www.pennlive.com/midstate/index.ssf/2012/10/jerry\\_sandusky\\_gets\\_30-60\\_year.html](http://www.pennlive.com/midstate/index.ssf/2012/10/jerry_sandusky_gets_30-60_year.html)

to Penn State regarding university governance and the protection of children in Penn State facilities and programs.

According to the Proposed Complaint, Spanier claims that certain statements concerning him in the Freeh Report were defamatory.

**B. The Centre County Court of Common Pleas Recuses In Each of the Sandusky/PSU Cases**

**1. An Out-of-County Judge Is Assigned to Preside Over the Sandusky Case**

The Sandusky criminal matter was brought in the Centre County Court of Common Pleas in November 2011. *See Commonwealth v. Gerald Sandusky*, No. 11-2421, 11-2422 (Centre County CCP). In that case, prosecutors alleged that Sandusky had sexually abused minors for a fifteen year period, and had used his positions with The Second Mile and Penn State to facilitate that abuse. *See Sandusky Criminal Complaint*. Certain victims were participants in activities sponsored by The Second Mile, and certain acts of abuse occurred on the premises of Penn State. *See id.*

In November 2011, all Judges on the Centre County Court of Common Pleas recused themselves from presiding over the Sandusky case. The Administrative Office of the Pennsylvania Courts (“AOPC”) appointed Judge John M. Cleland from McKean County to preside over the case. In a contemporaneous press release, the AOPC stated that the recusals were “intended to avoid any appearance

of conflict of interest due to real or perceived connections to the defendant [Sandusky], the Second Mile charity, or the Pennsylvania State University.” See News Release: *Centre County Trial Judges Recuse; Out-of-County Judges Assigned* (Nov. 22, 2011), available at <http://www.pacourts.us/news-and-statistics/news-releases?Year=2011>.

## **2. An Out-of-County Judge Is Assigned to Preside Over The Second Mile Case**

The Second Mile case involved the question of whether the assets of The Second Mile, a charity founded by Sandusky, would be needed to satisfy civil judgments arising out of civil litigation brought by the victims of Sandusky against Sandusky or The Second Mile. *In re The Second Mile*, No. 14-12-0255 (Centre County CCP, Orphans’ Court Div.). The Petition filed by The Second Mile noted that the “news media widely reported on the findings of a Statewide Investigating Grand Jury that [Sandusky], the founder of The Second Mile, had engaged in alleged acts of child sexual abuse, and that Sandusky had been indicted for such allegedly unlawful conduct.” The Second Mile Petition ¶ 13. Certain alleged victims of Sandusky filed pleadings claiming that The Second Mile’s assets would be needed to cover civil judgments arising out of Sandusky’s actions that could result as the victims’ cases went to trial. See, e.g., John Doe A’s Objection to Petition for Distribution of Assets ¶ 12 (“Because Sandusky founded [The Second Mile] and sexually abused minors . . . that he met and groomed through [The

Second Mile], there is a legitimate basis to believe that [The Second Mile] will incur substantial liabilities. . . .”). Accordingly, The Second Mile case required the Court to determine, *inter alia*, the likelihood that Sandusky’s victims would obtain civil judgments against The Second Mile arising out of Sandusky’s actions.

In June 2012, the Court recused itself from presiding over The Second Mile case. Judge William Morgan from Warren County was appointed to hear the case.

### **3. An Out-of-County Judge Is Assigned to Preside Over the McQueary Case**

In the McQueary case, former Graduate Assistant Coach McQueary alleged that he was retaliated against for reporting what appeared to be “highly inappropriate and illegal sexual conduct” between Sandusky and a minor child that occurred in the locker room showers on the Penn State Campus. *McQueary v. The Pennsylvania State University*, No. 12-1804 (Centre County CCP); *see* McQueary Compl. ¶ 10. Consistent with the Freeh Report, McQueary alleged that he informed Paterno, Penn State Athletics Director Timothy Curley, and Penn State Senior Vice President Gary Schultz of what he had seen, but that his report was not transmitted to the Penn State university police, the State College police, the Pennsylvania state police, or the Centre County Office of Children and Youth Services. McQueary Compl. ¶¶ 12-19; *see* Freeh Report 66-72. McQueary alleged that after he testified to that effect before the Statewide Investigating Grand Jury,

he was placed on administrative leave and ultimately terminated. McQueary Compl. ¶¶ 23, 30-34.

In October 2012, all judges on the Centre County Court of Common Pleas recused themselves from presiding over the McQueary case, and Judge Thomas Gavin from Chester County was appointed to preside over the case.

**4. An Out-of-County Judge Is Assigned to Preside Over the Paterno Case**

The Paterno case concerned allegations that the NCAA had unfairly penalized Penn State and the Paterno family and had exceeded its authority by levying a penalty for conduct that did not constitute a violation of NCAA rules. *Paterno et al. v. National Collegiate Athletic Association, et al.*, No. 13-2082 (Centre County CCP). The Paterno Complaint directly attacked the Freeh Report, alleging that the NCAA’s reliance on the Freeh Report was improper because “[i]n preparing its report, the Freeh firm did not complete a proper investigation. . . .” Second Am. Compl. ¶ 71-72. The Complaint alleged that, contrary to the findings of the Freeh Report, “there is no evidence that Joe Paterno covered up known incidents of child molestation by Sandusky.” *Id.* ¶ 74; *compare* Freeh Report 15-17, 67-68, 77-79. The Complaint further alleged that the Freeh Report was “improper” and “unreliable,” and asserted that it had “been thoroughly discredited.” Second Am. Compl. ¶ 73.

In May 2013, all judges on the Centre County Court of Common Pleas recused themselves from presiding over the Paterno case. Judge John B. Leete from Potter County was appointed to hear this case.

### **C. The Allegations of the Proposed Complaint**

Spanier's Proposed Complaint contains allegations that encompass virtually every aspect of the Sandusky/PSU scandal. The Proposed Complaint details Sandusky's criminal activities, the involvement of Spanier, Schultz and Curley in Sandusky matters, the preparation of the Freeh Report, the termination of Coach Joseph Paterno, the role of the NCAA in the Sandusky matter, the role and conduct of the Board of Trustees of Penn State, the role and activities of The Second Mile, and the conduct of the Pennsylvania Attorney General in prosecuting Spanier. The Proposed Complaint specifically identifies Spanier, Freeh and the Freeh entities, Penn State, Jerry Sandusky, The Second Mile, various members of the Board of Trustees, Michael J. McQueary, "prominent" local physician Jonathan Dranov, and the NCAA as "Parties and Relevant Third Parties." Spanier's Proposed Complaint alleges that the "primary goal" of the investigation was to "assign blame to specific individuals," and that the Freeh Report was intended to "echo the public position of the Board of Trustees" by "actively participating in a cover-up and actively deciding to conceal Sandusky's criminal activities." Proposed Compl. ¶ 214. Spanier details a laundry list of alleged harms arising out of the Freeh Report,

including reputational harm, negative press coverage, censure by the NCAA, and the loss of Spanier's position at Penn State. *Id.* ¶¶ 235-249.

## ARGUMENT

### **A. Assignment of an Out-of-County Judge to Preside Over This Matter Is Appropriate**

The Pennsylvania Rules of Judicial Administration provide that “Whenever a president judge deems additional judicial assistance necessary for the prompt and proper disposition of court business, he or his proxy shall transmit a formal request for judicial assistance to the Administrative Office. . . . Upon the recommendation of the Court Administrator, the Chief Justice may, by order, assign any retired, former, or active district justice, judge or justice to temporary judicial service on any court to fulfill a request by a president judge . . . or to serve the interest of justice.” Pa. R. Jud. Admin. 701(C)(1)-(2). Accordingly, the rules provide for the appointment of an out-of-county judge in an appropriate case.

In every case involving allegations relating to the Sandusky/PSU scandal, an out-of-county judge has been appointed. *See Commonwealth v. Gerald Sandusky*, No. 11-2421, 11-2422 (Centre County CCP); *In re The Second Mile*, No. 14-12-0255 (Centre County CCP, Orphans' Court Div.); *McQueary v. The Pennsylvania State University*, No. 12-1804 (Centre County CCP); *Paterno et al. v. National Collegiate Athletic Association, et al.*, No. 13-2082 (Centre County CCP).

Spanier's Proposed Complaint<sup>2</sup> contains claims for defamation and tortious interference based on the alleged falsity of the findings of the investigation summarized in the Freeh Report. The claims and defenses in this case will implicate (i) the crimes committed by Jerry Sandusky, (ii) who knew of those crimes, and when, and (iii) the conduct and findings of the Special Investigating Task Force commissioned by Penn State to look into those subjects. This case therefore will involve many of the same individuals and the same subjects that were involved in the four cases as to which appointment of an out-of-county judge was deemed appropriate. Indeed, based on the allegations in the proposed draft Complaint submitted by Spanier, this case will involve elements of *each* of the prior cases involving Sandusky, Penn State, or the Second Mile to which an out-of-county judge was assigned. Accordingly, since the Court has recused in all prior Sandusky/PSU matters for undoubtedly good and sufficient reasons, the very same reasons are operative here.

Further, Spanier's attempt to add Penn State as a defendant underlines the similarity of this case to those prior cases. In two of the four related cases in which

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<sup>2</sup> Defendants do not concede the propriety of Spanier's Proposed Complaint or his Motion for Leave to Join Additional Parties.



an out-of-county judge was assigned, Penn State was joined as a defendant,<sup>3</sup> and the other two cases also prominently featured allegations relating to Penn State.<sup>4</sup> The proposed joinder of Penn State is yet another indication of the connection between this case and those prior Penn State-related cases, and is another factor in favor of assignment of an out-of-county judge here.

Given the fact that this case involves the same subject matter, and many of the same parties, as those cases in which appointment of an out-of-county judge was deemed appropriate, such an appointment likewise is appropriate here. Assignment of an out-of-county judge to hear this case would serve the interest of justice, and would be consistent with the approach taken in every prior case involving Sandusky, Penn State, or The Second Mile litigated in Centre County of which Defendants are aware.

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<sup>3</sup> See *McQueary v. The Pennsylvania State University*, No. 12-1804 (Centre County CCP); *Paterno et al. v. National Collegiate Athletic Association, et al.*, No. 13-2082 (Centre County CCP).

<sup>4</sup> The Sandusky criminal trial included allegations relating to actions taken in Sandusky's role as Assistant Coach and events occurring on the campus of Penn State. See *Commonwealth v. Gerald Sandusky*, No. 11-2421, 11-2422 (Centre County CCP). The Second Mile case also involved allegations regarding such actions and events. *In re The Second Mile*, No. 14-12-0255 (Centre County CCP, Orphans' Court Div.).

**B. Appointing President Judge Hoover to Hear This Case Will Promote Judicial Efficiency**

Should the Court approve the Motion for Appointment of an Out-of County Judge, Defendants Freeh and FSS respectfully suggest that the Court consider requesting the appointment of Dauphin County President Judge Todd Hoover to preside over this case. President Judge Hoover currently is presiding over the criminal case against Plaintiff, which involves many of the same issues that are implicated in this case. The two proceedings are substantially related and appointing President Judge Hoover to preside makes sense for several reasons.

First, this case mirrors in a civil action a number of the aspects of the criminal case against Spanier. In this case, Spanier's Proposed Complaint asserts that the Freeh Report "defamed" him by stating that Spanier "knowingly failed to protect potential sexual abuse victims," that he exhibited "total and consistent disregard . . . for the safety and welfare of Sandusky's child victims," and that he "conceal[ed] Sandusky's activities from the Board of Trustees, the University community and authorities." *See, e.g.*, Proposed Compl. ¶¶ 153, 164. In the criminal case, Spanier stands accused of engaging in that very conduct. According to the Statewide Investigating Grand Jury's findings, Spanier "endangered the welfare of children by failing to report the incident [involving Sandusky]," he "engaged in a repeated pattern of behavior that evidenced a willful disregard for the safety and well-being of minor children on the Penn State campus," and "[t]he

Board of Trustees was never informed . . . about the conduct of Jerry Sandusky.”

*See* Grand Jury Presentment at 34; *id.* at 33; *id.* at 27. Thus, the allegations in this case are closely related to those asserted against Spanier in the criminal case.

Second, Spanier himself has alleged a direct relationship between this case and the criminal case. Spanier’s Proposed Complaint alleges that the criminal case resulted from the Freeh Report’s findings relating to his conduct:

**As a direct and proximate result of the false statements in the Freeh Report about Dr. Spanier** — and the public pressure placed on the Attorney General of Pennsylvania by the media and others who read and believed Freeh’s false statements — **the Attorney General criminally charged Dr. Spanier for his alleged role in covering up Sandusky’s crimes.** Dr. Spanier has pleaded “not guilty” to the charges. Although nearly two and a half years have elapsed since he was charged, **Dr. Spanier is still awaiting trial and enduring the consequences of criminal charges stemming directly from the false statements contained in the Freeh Report.** Dr. Spanier denies the allegations in the criminal proceedings and has aggressively and continuously sought justice and a timely opportunity to clear his name. **The criminal case’s protracted start has exacerbated and continued Dr. Spanier’s ongoing reputational damage and the pain associated therewith, all of which are a direct result of Freeh’s and FSS’s intentionally false statements.**

Proposed Compl. ¶ 13 (emphases added). Thus, according to Spanier, the criminal case that was filed against him is a major part of the purported damage he claims to have suffered in this case.

Finally, President Judge Hoover is well-suited and well-positioned to coordinate the two ongoing actions and address any issues that arise in this case

and might arguably impact the criminal case. In this regard, Spanier’s Motion to Modify the Stay expressly recognizes that the proceedings in the criminal case will impact this case as well. Spanier states that “sequencing of discovery . . . may be necessary or appropriate to accommodate the criminal case as it unfolds.” Pl. Mem. of Law in Support of Mot. to Modify Stay at 10. Moreover, while Spanier represents that he will not assert the Fifth Amendment, “the concern with respect to third party witnesses invoking the Fifth Amendment”—namely, Spanier’s criminal co-defendants Curley and Schultz—“remains as acute as it was when the Court issued its February order.” *Id.* at 14. All of these considerations weigh heavily in favor of assigning President Judge Hoover to oversee this case. President Judge Hoover is well-equipped to address any such issues and to effectively coordinate the two cases.

### **CONCLUSION**

For the foregoing reasons, Defendants Louis J. Freeh and Freeh Sporkin & Sullivan, LLP respectfully request that the Court request that an out-of-county judge be assigned to this proceeding.

Respectfully submitted,



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Dated: April 10, 2015

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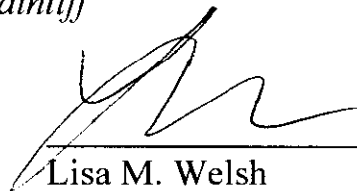
**CERTIFICATE OF SERVICE**

I, Lisa M. Welsh, hereby certify that I caused to be served on April 10, 2015,  
a true and correct copy of the foregoing Memorandum in Support of Motion for  
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