

Grand Jury to Hear Case for Alleged Voter Fraud

Armed with dozens of witnesses, sworn statements, handwriting samples and DNA swabs, a special prosecutor begins presenting a case of alleged voter fraud against two local officials to a grand jury today.

Trey Smith, who was appointed by a judge last year to investigate allegations of absentee ballot fraud in the Sept. 15, 2009 Working Families Party primary, will ask 23 Rensselaer County grand jurors to indict at-large Councilman Michael LoPorto and Edward McDonough, the county's Democratic election commissioner, on charges court papers indicate could include possessing a forged instrument and offering a false instrument for filing.

Both counts are felonies.

Smith is expected to offer as many as five dozen witnesses, sworn statements included, behind closed doors to the panel by Thursday, when his presentation is scheduled to end, according to individuals with knowledge of the investigation.

Further grand jury proceedings are expected in the future against other defendants in the case, which has seen DNA samples taken from LoPorto, McDonough and seven other city Democrats. LoPorto, who was elected a year ago, was one of two suspects who fought a request for the sample until ordered by a judge to provide one.

Handwriting on absentee ballot applications alleged to be fraudulent is consistent with samples given by LoPorto and McDonough, according to court documents.

It is unknown if either will testify before the grand jury. McDonough's attorney, Brian Premo, would not say last week if he would have his client take the stand, and Michael Feit, who represents LoPorto, said last week he was still considering it.

LoPorto himself said he would be glad to testify if asked to do so by Feit.

Thomas Carr, a legal commentator and attorney with Tully Rinckey PLLC in Albany, said it's typically not a good idea for the suspect in a criminal investigation to take the stand.

"The grand jury is run entirely by the prosecutor," Carr said. "Outside of the grand jurors, the only people inside the grand jury room are the assistant district attorney, the stenographer and whoever is testifying. Defense attorneys are allowed in if they represent a defendant before the grand jury, but even the defense attorney has no right to object during the grand jury proceeding."

That's why, he said, defense attorneys are known to invoke the adage that a grand jury will indict "a ham sandwich."

LoPorto is alleged to have handed nearly 30 fraudulent absentee ballots to Sara Couch, a former Working Families Party operative, to hand in on Election Day.

He later told her to "forget" he had done so once news of the alleged fraud appeared in the news, according to Couch's sworn statement to State Police.

McDonough was accused by Councilman Kevin McGrath, who also gave a DNA sample, of falsifying information on absentee ballots the day before the election.

McDonough told investigators he delivered those ballots to Troy City Clerk William McInerney, who also was ordered to give a DNA sample.

Investigators believe many of those ballots, which stemmed from request forms delivered by Councilman John Brown, were among those LoPorto handed to Couch.

While 23 jurors were empanelled to sit on the current grand jury weeks ago, only 16 are required for a quorum to conduct business.

They must determine if there is a "reasonable cause to believe" a crime has been committed by a suspect, according to the law.

"It's a lesser standard than beyond a reasonable doubt," Carr said. "That's the job of the jury at trial."

Employees at the Rensselaer County Board of Elections were issued subpoenas last week ordering them to testify.

After a meeting of the Troy City Council last week, McGrath and McInerney refused to say if they had been subpoenaed. The other Democratic councilmen said they had not.