

Judge said 'reason to believe' Brian Joyce used lawyer to hide alleged corruption

[Maria Cramer](#) May 05, 2018

Prosecutors in the corruption case against former state senator Brian Joyce convinced a grand jury he likely used his lawyer, Howard Cooper, to hide alleged criminal behavior, a federal judge ruled Friday.

In a 24-page memorandum, US District Judge Nathaniel Gorton ruled that Joyce's indictment "provides a good faith reason to believe that Joyce retained and instructed Cooper with the intent of committing or fostering the commission of a crime."

Joyce, a lawyer and Democrat who once served as the Senate's assistant majority leader, faces 113 counts of corruption and racketeering. Federal prosecutors say he received \$1 million in bribes and kickbacks laundered through his Canton law office. He has pleaded not guilty to the charges.

On Thursday, Gorton ruled that prosecutors could issue a "limited subpoena" for communications between Joyce and Cooper from March 2015 to May 21, 2016, when Joyce was fielding questions from The Boston Globe and the Massachusetts Ethics Commission about alleged transgressions while in office.

Gorton's decision was a boost for federal prosecutors, but there is no guarantee they will be able to review the evidence or present it to the jury. Gorton must first determine whether any of the material is exempt from attorney-client privilege.

Prosecutors sought a subpoena for texts, e-mails, recordings, instant messages, and other communication between the two men while Joyce was submitting responses to the Globe and the ethics commission about a series of allegations that included; a backdated check for \$1,698 for Dunkin' Donuts coffee that Joyce reportedly received for free; energy legislation that was backed by a company Joyce was working for; and meetings he had with the state insurance commissioner on behalf of the same company, Energi. The company was not identified in the indictment but was named in previous Globe reports.

Joyce's lawyers argued that those communications should be shielded by attorney-client privilege. But Gorton said there is an exemption to the privilege if an attorney's client sought the lawyer's services to help him commit what the client knew was a crime or an act of fraud.

Gorton said he would review any documents obtained through the subpoena to determine if there is evidence that happened.

If he determines there is an exemption to the privilege, Joyce's lawyers would have another chance, at a closed-door hearing, to convince Gorton that the evidence should be withheld from prosecutors. Prosecutors would not be allowed at that meeting.

If Gorton still believes the evidence is exempt, he would hand it over to prosecutors. Defense lawyers would have additional opportunities to have the evidence withheld from jurors through motions and objections leading up to trial.

In his order Thursday, Gorton denied the prosecution's request to disqualify Cooper. Prosecutors had argued that Cooper "was a participant in, and has first-hand knowledge of" key events in the case, creating a conflict of interest.

Joyce has denied he was dishonest and has agreed to stipulate that he authorized any statements Cooper provided to the state ethics commission.

"The government has yet to produce any evidence that Cooper acted illegally," Gorton said. "Second, Massachusetts attorneys have no independent duty to investigate the truth of a client's representations. There is no indication thus far that Attorney Cooper has run afoul of his ethical responsibilities in this case."

Martin G. Weinberg, a veteran criminal defense attorney who has advised Joyce, said Gorton's decision "is a vindication of a citizen's fundamental right to select his own counsel."

Max D. Stern, one of Joyce's lawyers, noted that Gorton said in his ruling that prosecutors had not alleged Cooper did anything improper.

"We are gratified that the Court confirmed that there are no grounds for disqualification of Howard Cooper," Stern said in an e-mail. "Cooper has not done anything other than present his client's defense, which has yet to be heard by a jury."

A spokeswoman for the Massachusetts US Attorney's office declined to comment.

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