

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 3:6. THE GRAND JURY

Rule 3:6-1. Summoning the Grand Jury

The Assignment Judge of each county shall order and organize according to law one or more grand juries for the county not exceeding 23 members each to be summoned at such times as the public interest requires. At least one grand jury shall be serving in each county at all times.

Note: Source-R.R. 3:3-1.

Rule 3:6-2. Objections to Grand Jury and Grand Jurors

The prosecuting attorney or a defendant, after being held to answer a complaint charging an indictable offense or after indictment, may, in writing, challenge the array of the grand jury which has returned or is expected to return the indictment on the ground that it was not selected, drawn or summoned according to law, and may challenge an individual juror on the ground that the juror is not legally qualified. All such challenges shall be made within 30 days of the service of the complaint or no later than at the Initial Case Disposition Conference that is scheduled pursuant to R. 3:9-1(e). For good cause shown, the court may allow the motion to be brought at any time. Such challenges shall be tried by a judge designated by the Assignment Judge. If a defendant has already been indicted, such challenges may be the basis of a motion to dismiss the indictment.

Note: Source-R.R. 3:3-2(a) (b); amended July 13, 1994 to be effective January 1, 1995; amended April 12, 2016 to be effective May 20, 2016; amended August 1, 2016 to be effective September 1, 2016.

Rule 3:6-3. Supervising and Charging the Grand Jury

(a) Potential Bias. When appropriate, the Assignment Judge shall inquire of potential grand jurors about such aspects of their background as may reveal possible bias or interest in a matter to come before the grand jury. The Assignment Judge shall instruct the grand jury that without the Assignment Judge's approval no grand juror shall participate in any matter in which that juror has a bias or a financial, proprietary, or personal interest; and if that juror wishes to participate, the juror shall forthwith so inform the prosecutor. The prosecutor shall forthwith inform the Assignment Judge, who shall determine, in camera, whether such bias or interest exists and whether it justifies excusal.

(b) Copy of Charge. When the judge designated by the Assignment Judge charges the grand jury, that judge shall cause a copy of the charge to be promptly furnished to each juror.

Note: Source-R.R. 3:3-3; caption amended paragraph (a) adopted, and former rule captioned and redesignated paragraph (b) June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 13, 1994 to be effective September 1, 1994.

Rule 3:6-4. Foreperson; Deputy Foreperson

The Assignment Judge shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have power to administer oaths and shall endorse all indictments. During the absence of the foreperson, the deputy foreperson shall act as foreperson.

Note: Source-R.R. 3:3-4; amended July 14, 1992, to be effective September 1, 1992.

Rule 3:6-5. Clerk

The clerk of the grand jury shall make and keep minutes of the proceedings of the grand jury as well as a record of the vote of each juror, by name, on each considered matter. If there is no clerk of the grand jury, the foreperson or another juror designated by the foreperson shall keep such a record. The record of the vote on every count of every indictment and on every presentment shall be filed with the clerk of the grand jury. The record shall not be made public except on order of the Assignment Judge.

Note: Source-R.R. 3:3-5. Amended July 14, 1972 to be effective September 5, 1972; amended July 29, 1977 to be effective September 6, 1977; amended July 13, 1994 to be effective September 1, 1994.

Rule 3:6-6. Who May Be Present; Record and Transcript

(a) Attendance at Session. No person other than the jurors, the prosecuting attorney, the clerk of the grand jury, the witness under examination, interpreters when needed and, for the purpose of recording the proceedings, a stenographer or operator of a recording device may be present while the grand jury is in session. No person other than the jurors, the clerk, the prosecuting attorney and the stenographer or operator of the recording device may be present while the grand jury is deliberating. The grand jury, however, may request either (1) the prosecuting attorney and the stenographer or operator or (2) the clerk to leave the jury room during its deliberations.

(b) Record; Transcript. A stenographic record or sound recording shall be made of all testimony of witnesses, comments by the prosecuting attorney, and colloquy between the prosecuting attorney and witnesses or members of the grand jury, before the grand jury.

When a digital sound recording of the grand jury proceedings has been made, after an indictment has been returned and if the indictment is not sealed, the court shall furnish

or make available a copy of the grand jury proceedings to the parties on compact disk or by other electronic means. After an indictment has been returned, at the request of the defendant, a transcript of the grand jury proceedings shall be made. The request shall designate the portion or portions of the proceedings to be transcribed and the person or persons to whom the transcript is to be furnished. A copy of the request for a transcript will be served contemporaneously by the defendant upon the prosecutor, who may move for a protective order pursuant to R. 3:13-3(e). The prosecutor may request a copy of the transcript at any time.

(c) Retention of Records. If no request has been made or order entered directing a transcript of the grand jury proceedings to be made within six months after their termination, the stenographic record or sound recording shall be sealed and deposited with the operations division manager's office who shall retain it subject to the directions of the Administrative Director of the Courts.

Note: Source-R.R. 3:3-6(a)(b)(c); paragraphs (a) and (b) amended July 15, 1982 to be effective September 13, 1982; paragraph (b) amended and second paragraph added to paragraph (b) July 13, 1994, new text in paragraph (b) amended December 9, 1994, to be effective January 1, 1995; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 21, 2011 to be effective September 1, 2011; paragraph (b) amended December 4, 2012 to be effective January 1, 2013.

Rule 3:6-7. Secrecy of Proceedings

Except as otherwise provided by R. 3:13-3, the requirement as to secrecy of proceedings of the grand jury shall remain as heretofore, and all persons other than witnesses, permitted by R. 3:6-6 to be present while the grand jury is in session, shall be required to take an oath of secrecy before their admission thereto. Such oath shall also be taken by typists making transcripts of testimony given before the grand jury.

Note: Source-R.R. 3:3-7; amended July 13, 1994 and December 9, 1994, to be effective January 1, 1995.

Rule 3:6-8. Finding and Return of Indictment; No Bill

(a) Return; Secrecy. An indictment may be found only upon the concurrence of 12 or more jurors and shall be returned in open court to the Assignment Judge or, in the Assignment Judge's absence, to any Superior Court judge assigned to the Law Division in the county. With the approval of the Assignment Judge, an indictment may be returned to such judge by only the foreperson or the deputy foreperson rather than with all other members of the grand jury. Such judge may direct that the indictment shall be kept secret until the defendant is in custody or has been released pending trial and in that event it shall be sealed by the clerk, and no person shall disclose its finding except as necessary for the issuance and execution of a warrant or summons.

(b) No Bill. If the defendant has been held to answer a complaint and, after

submission to the grand jury, no indictment has been found, the foreperson shall forthwith so report in writing to the court, who shall forthwith order the defendant's release unless the defendant's detention is required by other pending proceedings. Notice of the action of the grand jury shall also be mailed by the clerk of the court to the defendant's attorney, a defendant not in custody, and the defendant's sureties if monetary bail has been posted.

Note: Source-R.R. 3:3-8(a) (b); paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended June 15, 2007 to be effective September 1, 2007; paragraphs (a) and (b) amended August 30, 2016 to be effective January 1, 2017.

Rule 3:6-9. Finding and Return of Presentment

(a) Finding. A presentment may be made only upon the concurrence of 12 or more jurors. It may refer to public affairs or conditions, but it may censure a public official only where that public official's association with the deprecated public affairs or conditions is intimately and inescapably a part of them.

(b) Return. A presentment shall be returned in open court to the Assignment Judge, who shall be notified in advance thereof by the foreperson so that the judge may arrange to be available in court to receive it.

(c) Examination; Reference Back; Striking. Promptly and before the grand jury is discharged, the Assignment Judge shall examine the presentment. If it appears that a crime has been committed for which an indictment may be had, the Assignment Judge shall refer the presentment back to the grand jury with appropriate instructions. If a public official is censured the proof must be conclusive that the existence of the condemned matter is inextricably related to non-criminal failure to discharge that public official's public duty. If it appears that the presentment is false, or is based on partisan motives, or indulges in personalities without basis, or if other good cause appears, the Assignment Judge shall strike the presentment either in full or in part. As an aid in examining the presentment the Assignment Judge may call for and examine the minutes and records of the grand jury, with or without the aid of the foreperson or the prosecuting attorney, to determine if a substantial foundation exists for the public report. If the presentment censures a public official and the Assignment Judge determines not to strike, a copy of the presentment shall forthwith be served upon the public official who may, within 10 days thereafter, move for a hearing, which shall be held in camera. The public official may examine the grand jury minutes fully, under such reasonable supervision as the court deems advisable, and be permitted to introduce additional evidence to expose any deficiency.

(d) Filing and Publication. Such portions of the presentment as are not referred back to the grand jury for further action or are not stricken in accordance with paragraph (c) of this rule shall be filed and made public, and the Assignment Judge shall instruct the clerk of the grand jury to send copies thereof to such public bodies or officials as may be concerned with the criticisms and recommendations made therein and to the

Administrative Director of the Courts. The presentment or any portion thereof shall not be made public by any person except the Assignment Judge. The Assignment Judge shall withhold publication of the presentment until the expiration of the time for the making of a motion for a hearing by a public official pursuant to R. 3:6-9(c), and if such motion is made, shall withhold publication of the presentment pending the judge's determination.

(e) Review. The action taken by the Assignment Judge pursuant to this rule is judicial in nature and is subject to review for abuse of discretion by the State or by any aggrieved person, including any member of the grand jury making the presentment.

Note: Source-R.R. 3:3-9(a) (b) (c) (d) (e); paragraphs (a), (b), (c) and (d) amended July 13, 1994 to be effective September 1, 1994.

Rule 3:6-10. Discharge; Continuance of Term

(a) Term. A grand jury shall serve until discharged by the Assignment Judge, but not longer than 20 weeks unless the Assignment Judge shall order it continued as hereinafter provided. A grand jury shall not be discharged before the expiration of its term of service except for good cause. The continuance of such grand jury shall not affect the usual drawing, selecting and serving of further grand juries.

(b) Order for Continuance. Whenever it appears to the Assignment Judge that the grand jury has not completed its labors, although its ordinary term is about to expire, the Assignment Judge may, if satisfied of the necessity therefor, order that its term be continued. The order shall be made and filed within the session of court for which such grand jury shall have been drawn, and shall provide a continuance for a definite period of time not exceeding 3 calendar months, provided, however, that the Assignment Judge may make a further order, or orders, continuing such grand jury in office for a further term or terms of 3 calendar months each.

Note: Source-R.R. 3:3-10(a) (b) (c); paragraph (b) amended July 13, 1994 to be effective September 1, 1994.

Rule 3:6-11. Impanelment and Judicial Supervision of State Grand Jury

(a) Generally. All rules relating to grand juries shall apply to the State Grand Jury except as otherwise specifically provided by statute or rule.

(b) Designation of Assignment Judge. The Chief Justice shall designate an Assignment Judge of the Superior Court to impanel and supervise the State Grand Jury or Grand Juries. The Chief Justice may also designate one or more Judges of the Superior Court to assist said Assignment Judge with regard to impanelment and supervision of the State Grand Jury or Grand Juries and to perform such other duties and responsibilities with regard thereto as ordered by the Chief Justice or the designated Assignment Judge.

Note: Adopted July 17, 1975 to be effective September 8, 1975.