

NOTICE TO THE BAR

GRAND JURY – PROPOSAL TO AMEND RULE 3:6-6 (“WHO MAY BE PRESENT; RECORD AND TRANSCRIPT”) – PUBLICATION FOR COMMENT

The Supreme Court invites written comments on proposed amendments to Rule 3:6-6 (“Who May be Present; Record and Transcript”) so as (1) to eliminate the presumption that the prosecutor remains present during grand jury deliberations; and (2) to specify the individuals who may or must be present at each phase of grand jury proceedings.

New Jersey is the only jurisdiction that starts with a presumption that the prosecuting attorney will remain with the grand jury during its deliberations. The atypicality of our Court Rules thus prompted further review.

The proposal is intended to bolster the sanctity of grand jury proceedings. At the same time, the proposed rule amendments would confirm and codify the authority of the grand jury to pose questions to the prosecutor, so long as those questions and any response or colloquy are made on the record.

Rule 3:6-6. Who May Be Present at Session and Deliberations; 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.

(b) Attendance at Deliberations.

(1) No person other than the jurors [, the clerk, the prosecuting attorney and the stenographer or operator of the recording device] and any sign interpreter or other person assisting a hearing- or visually-impaired juror 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.]

(2) The clerk shall not be present during deliberations but shall return to record the vote of the grand jury.

(3) During deliberations, if the grand jury has a question for the prosecutor or would like to hear additional testimony, any inquiry, comments, or testimony shall be recorded and shall take place in the presence of the clerk of the grand jury and a stenographer, or operator of a recording device, as well as any interpreter or assistant as described in paragraph (b)(1), if necessary.

[(b)] (c) 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 (including the session as described in paragraph (a) and any inquiry, comments, and testimony as described in paragraph (b)(3)) 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)] (d) 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.

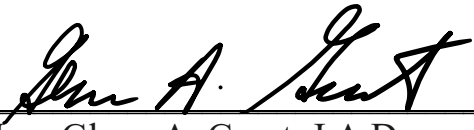
The above proposed amendments would bring New Jersey into closer alignment with the federal courts and with those other state courts that use grand juries.

Please send any comments on the proposed amendments to Rule 3:6-6 in writing by June 7, 2021 to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposed Amendments to Rule 3:6-6
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Comments may also be submitted via email to: Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by email should include their name and email address). Comments are subject to public disclosure upon receipt.



Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: May 7, 2021