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Administrative Office of the Courts

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**Updated Supplement to Directive # 23-06**
[Questions should be directed to (609) 376-3000]

**TO:** **Assignment Judges**

**FROM:** **Glenn A. Grant, J.A.D.**

**SUBJ:** **Updated COVID-19 – Virtual Grand Jury Program – (1) Supplement to the Grand Jury Charge; and (2) Supplement to the Oath of Secrecy**

**DATE:** **September 30, 2020**

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Directive #23-06 ("Grand Jury Standards – Implementation and Questionnaire") promulgated standard grand jury policies and procedures, including a standard charge to the grand jury (Attachment 3) and a standard oath of secrecy (Attachment 5). The grand jury standards as promulgated by directive #23-06 have been implemented statewide for over a decade.

In response to the ongoing COVID-19 coronavirus pandemic, the Supreme Court on May 14, 2020 authorized a pilot program for virtual (video) grand jury sessions in Mercer and Bergen counties. Consistent with the Court's May 14, 2020 Order, the Judiciary on May 15, 2020 issued a supplement to directive #23-06, which promulgated on a temporary basis a supplement to Attachment A (grand jury charge) and a supplement to Attachment B (secrecy oath). Those approved supplements have been issued to all county and state grand jurors convening in a virtual format during COVID-19.

Virtual grand juries have continued and are expanding as permitted by the Supreme Court. Consistent with the Court's September 17, 2020 Eighth COVID-19 Omnibus Order, all counties are in the process of selecting new grand jury panels in a virtual format, and those new grand juries will be ready (and equipped with technology) to hear cases by December 1, 2020.

This update (to the May 15, 2020 supplement to directive #23-06) clarifies operational requirements for administration of the supplemental grand jury charge and oath and refines the language to cover new grand jury panels (rather than grand juries empaneled before COVID-19 that then reconvened in a virtual format).

Questions or comments regarding this Updated Directive Supplement should be directed to the Office of the Administrative Director at (609) 376-3000.

Attachments:

(1) Updated COVID-19 Supplement to the Charge for Grand Juries Convening in a Virtual Format

(2) Updated COVID-19 Supplement to the Oath of Secrecy for Grand Juries Convening in a Virtual Format

cc: Chief Justice Stuart Rabner
Attorney General Gurbir S. Grewal
Public Defender Joseph E. Krakora
Criminal Division Judges
Veronica Allende, Director, Div. of Crim. Justice
County Prosecutors
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Special Assistants to the Administrative Director
Trial Court Administrators
ATCAs / Operations Division Managers
Jennifer Weatherby-Morris, Chief
Brian J. McLaughlin, Manager of Jury Programs
Jury Managers

# Attachment 1 – Updated COVID-19 Supplement to the Charge for Grand Juries Convening in a Virtual Format

Note: The standard grand jury charge (as promulgated by Directive #23-06) would be issued with the following additional content:

In a few minutes, we will begin the grand jury proceeding. I am going to speak with you now about your duty to uphold an oath of secrecy, including as applied for remote (or video) proceedings. I am now going to give you some important instructions. It is critical that you follow these instructions so please listen carefully.

I direct that you must not allow other persons to see, hear, or otherwise observe the grand jury proceeding. This means that you must be in a private location and must take steps to maintain your privacy, including shielding your computer or tablet monitor so that others cannot see it and using headphones or earbuds so that others cannot hear the grand jury proceeding. If despite your best efforts someone comes into the room or becomes able to observe the proceeding, you must tell the prosecutor immediately. You also must tell the prosecutor if you have a technical problem and are unable to see or hear the grand jury proceeding.

We will take breaks during this process, including to move from one matter to another, which is different in a virtual setting than in person. I direct that you must not discuss these cases among yourselves or with anyone else during those or any other recesses. You must not communicate or share information about these cases. Recess means breaks, as well as when you finish and log out of the Zoom meeting. You are not permitted to discuss anything about these cases with your fellow jurors, or with anyone else. Once you are instructed to begin your deliberations in the privacy of the grand jury room, that will be the first time you can discuss that case. You may not have any discussions with anyone before then about that case or about anything related to the any of the cases.

So it is clear, when I say you cannot discuss the cases with anyone, I mean any of the facts alleged, the charges, where the crimes allegedly occurred, the names of any witnesses, and even the grand jury selection process. And discuss means communicate. The word communicate means something far different today than it did a few years ago. I am sure you understand what I am referring to. Communication includes any way in which you can share information with someone else. It includes, of course, all forms of electronic communication. So, not only am I instructing you that you cannot discuss these cases with anyone such as your fellow jurors as well as your friends, family members and co-workers, but you can also not call them, text them, email them, or communicate with them in any way about anything connected to this proceeding, including through any form of social media. I realize that there are numerous forms of social media, including Facebook, Twitter, Instagram, Periscope, TikTok, Tinder, Tumbler, Snapchat, Pinterest and the like, and that many of you utilize social media on a regular basis. You may not communicate with anyone via social media about the grand jury process.

The only exception to this strict rule is that you may tell family members or a supervisor or co-worker about the length and schedule of the grand jury sessions, but not about anything else related to the matters presented, including the charges.

You must not make a record of the grand jury proceeding, which means you must not take a photograph or make a video, audio, or any other type of recording, and you must not permit anyone else to do so. You must not share or broadcast the grand jury proceeding in any way.

The reasons for all of these critical instructions is to protect the integrity of the grand jury and to assure that both sides receive a fair grand jury hearing from fair and impartial grand jurors. Some of you may be wondering why I feel so strongly about everyone following these rules. So, let me explain to you why these instructions are so important, and must be followed, and what happens when jurors break the rules.

There are serious consequences for violating the rules I outlined. If a grand juror violates these rules, he or she can be held in contempt of court and is subject to fines and jail time, or both. I hope all of you can understand why these rules are so important and why they must be followed. A violation of these rules could undermine the Constitutional right to indictment by grand jury.

Note: The charge and supplement to the charge should be issued in full by the judge before the grand jury convenes in a virtual (video) format for the first time. Before each subsequent session, the prosecutor should remind the grand jury of the ongoing requirement to maintain secrecy, including by participating from a private location, preventing access by others, and never photographing, recording, broadcasting, or otherwise sharing records of the grand jury proceeding. The reminder should note that there are criminal consequences for violating the oath of secrecy.

# Attachment 2 -- COVID-19 Supplement to the Oath of Secrecy for Grand Juries Convening in a Virtual Format

Note: The following must be administered to all grand jurors in the presence of the Judge, Grand Jury Clerk, and Prosecutor, and recorded on CourtSmart. The information herein may be communicated to grand jurors in the way deemed most efficient by the person delivering the instruction (e.g., by reading the full text to all grand jurors and then asking each grand juror individually to confirm that they will comply with the terms, or by reading individually to each grand juror).

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I am going to speak with you about your oath of secrecy and your duty to keep secret the proceedings of the grand jury, in accordance with N.J.S.A. 2B:21-10, Court Rule 3:6-7, and any other statutes, court rules, or requirements of the State of New Jersey.

The Supreme Court of New Jersey has issued orders authorizing grand juries to meet remotely, meaning by video or other technology options. Court staff have communicated with you before today and confirmed your ability to participate in a remote grand jury proceeding.

The (oath that you previously swore or affirmed still is in effect, and the) application of that oath is broader because we are meeting today using video technology rather than coming together in a courthouse. In addition to your promise not to tell anyone anything about the grand jury proceeding, you must make sure that no one can see or hear the proceeding. This means that you should be in a place that is as private as possible, where other people cannot see your monitor or hear the statements and testimony during the proceeding. Unless you are alone, you should wear earbuds or headphones.

You must maintain your secrecy oath by following these additional requirements, including by telling the prosecutor immediately if you believe someone can see or hear the proceeding.

It is important that you can see and hear the proceedings. If you have a technical problem, such as loss of audio or video, you must tell the prosecutor as soon as possible.

If you need to tell the prosecutor about either type of problem (someone accessing the proceeding or a problem with technology), you can tell the prosecutor orally, raise your hand, or request assistance through Zoom.

You must not record any aspect of the grand jury proceeding, which means that you must not take any photograph or digital image, including of the Zoom display, or make any audio or video recording, and you must not broadcast or otherwise share the grand jury proceeding in real-time or later.

You must not allow any other person, or any electronic device, to record any aspect of the grand jury proceeding by taking a photograph or digital image or making an audio or video recording or broadcasting the session.

If you violate the oath of secrecy, whether by allowing someone else to observe the proceeding or by creating a photograph, digital image, audio, video, or other record, you may be subject to punishment under New Jersey law.

Do you understand and agree to comply with these requirements?