NOTICE TO THE BAR

GRAND JURY – SUPREME COURT AUTHORIZATION OF PILOT PROGRAM FOR VIRTUAL (VIDEO) GRAND JURY SESSIONS IN MERCER AND BERGEN COUNTIES

By Order dated May 14, 2020, the Supreme Court authorized empaneled grand juries to reconvene in a virtual (video) format, subject to modified protocols to maintain the secrecy and solemnity of the proceedings. The pilot program will begin promptly in Mercer and Bergen Counties. A copy of the Court's Order is attached.

The Court's action implements the recommendation of the Working Group on Remote Grand Jury Operations (Working Group), which includes representatives of the Attorney General's Office, the Office of the Public Defender, the County Prosecutors Association of New Jersey (CPANJ), the ACLU, the New Jersey State Bar Association (NJSBA), and the private defense bar. The Working Group recommended testing virtual grand jury operations as a first step in restarting those aspects of the criminal justice process that have been stalled due to the COVID-19 pandemic.

Virtual grand jury sessions will be conducted using secure Zoom technology. Court staff will provide training on how to participate in virtual proceedings and real-time technical assistance during sessions. Technological devices and supports also will be provided to jurors as needed to enable effective participation. Consistent with the Court's Order, a supplemental charge will be issued to the grand jury, and all jurors will be required to swear or affirm a supplement to the standard oath of secrecy regarding confidentiality requirements in a virtual setting.

The Supreme Court will assess the results of the pilot program in determining whether and how to expand virtual grand jury operations to additional counties and State Grand Jury.

Virtual grand jury sessions are another way that the New Jersey courts are ensuring uninterrupted access to justice during the COVID-19 crisis and as we seek to establish a new kind of normal. Questions should be directed to the Office of the Administrative Director at (609) 376-3000.

Glenn A Grant by SDB

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

Dated: May 14, 2020

SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 coronavirus, the Supreme Court has suspended in-person court proceedings and transitioned to remote operations for nearly all court proceedings. In the past two months, the New Jersey Courts have demonstrated the ability to support virtual (video) court events. To date, judges at all levels of the courts have conducted more than 23,000 virtual proceedings involving more than 189,000 participants.

In its April 24, 2020 Second Omnibus Order, the Court continued the statewide suspension of in-person grand jury selections and sessions through May 31, 2020. The Order also noted that the Judiciary and stakeholders would meet to explore options to conduct virtual grand jury selections and sessions.

1400 defendants are currently detained in county jails awaiting indictment. Additional defendants on pretrial release also await indictment.

Based on current guidance from the New Jersey Department of Health, the COVID-19 virus will continue to disrupt normal court operations for months. That may well prevent grand juries from reconvening in an in-person format for an extended period of time.

To address the situation, the Court established a Working Group on Remote Grand Jury Operations (Working Group) to examine whether, and if so, how, grand jury proceedings could resume in a virtual format while in-person gatherings

are suspended because of COVID-19. The Working Group includes representatives of the Attorney General's Office, and the Office of the Public Defender, and designees of the County Prosecutors Association of New Jersey (CPANJ), the ACLU, the New Jersey State Bar Association (NJSBA), and the private defense bar, in addition to judges and court staff.

The Working Group recommended that grand jury operations resume in certain counties in a virtual format in a manner that upholds the solemnity and secrecy of those proceedings and safeguards the rights of defendants, victims, jurors, and the public. The Working Group's recommendations include specific requirements for technology options to be used for remote grand jury proceedings and for the provision of technological support to participating grand jurors.

Accordingly, it is ORDERED that effective immediately, for the duration of the COVID-19 public health emergency and under further order:

1. The Administrative Director of the Courts ("Director") and Assignment Judges shall take steps to implement virtual grand jury proceedings consistent with this order.
2. Pursuant to N.J. Const., Art. VI, sec. 2, par. 3, until further order, Rule 3:6 ("The Grand Jury") of the Rules Governing the Courts of the State of New Jersey is relaxed and supplemented as follows:

a. Grand juries empaneled before March 16, 2020 and still within their term of service may reconvene in a virtual format, subject to existing requirements of (i) secrecy and (ii) recording by the court of all proceedings except for grand jury deliberations;

b. Hearings to determine potential bias shall be conducted in camera in a private location in the virtual presence of the judge, the prosecutor, the grand juror, and authorized court staff (Rule 3:6-3(a));

c. Before the start of the first virtual session, the standard grand jury charge shall be reissued to grand juries that reconvene in a virtual format (Rule 3:6-3(b)), along with a supplemental charge provided in a form promulgated by the Director. Grand jurors shall also swear or affirm a supplement to the oath of secrecy.

d. The supplemental charge and oath shall reinforce the requirement of secrecy in a virtual format, including the requirement that grand jurors (i) must not allow anyone to observe or hear grand jury proceedings; (ii) must not record, photograph, or broadcast grand jury proceedings in any way; (iii) must inform the prosecutor immediately if someone interrupts or accesses the proceeding; and (iv) must inform the prosecutor of any technical issues experienced during the proceeding so that they can be resolved;

e. In addition to the grand 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, designated Judiciary Information Technology (IT) staff may be present while the grand jury is in session (Rule 3:6-6(a));

f. Judiciary IT staff permitted to be present while the grand jury is in session shall be required to take an oath of secrecy before their admission to grand jury proceedings (Rule 3:6-7);

g. The requirement that an indictment be returned in open court shall be satisfied by a return by the foreperson or the deputy foreperson in the virtual presence of the judge (Rule 3:6-8(a));

h. The Assignment Judge may order the continuance of the term of any grand jury, including grand juries empaneled prior to March 16, 2020 (Rule 3:6-10). In doing so, the Assignment Judge may consider the period of time that a grand jury did not meet since March 16, 2020, and other relevant considerations;

i. Electronic signatures shall be permitted for all grand jury documents, including indictments and no bills;

3. Before reconvening in a virtual format, grand jurors may request to be excused, and the Assignment Judge or designee shall individually evaluate and decide each such request;
4. When a grand juror is otherwise able to participate in virtual proceedings but requires technological support, the Judiciary shall provide restricted-use devices (laptops or tablets) and related items, which shall be configured and administered solely by the Judiciary. The Attorney General has consented to seek emergency funding for such equipment;
5. Before reconvening in a virtual format, all grand jurors shall receive testing and training on the virtual courtroom process, which shall be provided by Judiciary staff;
6. Cases shall be presented to a grand jury operating remotely only with the consent of the defendant to proceed in a remote format. Consent shall be memorialized in a form promulgated by the Director;
7. Grand juries shall initially reconvene in a virtual format in Bergen and Mercer Counties as soon as practicable. The results of those proceedings will be considered to determine whether and how to expand remote grand jury operations;

8. The Court's Second Omnibus Order dated April 24, 2020 is modified only to the extent necessary to effectuate the terms of this order, and the excludable time provisions are not affected.

For the Court

Chief Justice

Dated: May 14, 2020