

Comment on Proposed Amendment to Rule 3:6-6 (“Who May Be Present; Record and Transcript”) from the New Jersey Division of Criminal Justice

The Division of Criminal Justice offers the following comments on the proposed revisions.

Subsection (b)(2)

The recent proposal to amend Rule 3:6-6 includes in addition wherein the Rule would be amended to state:

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

During pre-pandemic times, this change would not have been material, as the State Grand Jury clerks do not typically stay in the room during deliberations. However, after the switch to virtual, we were forced to change our procedures. During virtual deliberations, the Clerk stays in the jury room with the jurors in order to display the Indictment on the screen for their consideration. As the Indictment is confidential prior to unsealing, we cannot provide it electronically to the jurors in any other form. Therefore, the only way that they can examine the Indictment during deliberations is to have a staff member present, showing it to them. We are not able to conceive of another way to perform this function with the current restrictions.

Additionally, during virtual deliberations, if the jurors have questions for the prosecutor or witness, or would like to call the Clerk into the room to take the vote, they have no way to do so. The Administrative Office of the Courts has disabled the Chat function on Zoom, and the jurors are repeatedly instructed that they can have no access to other communication devices during Grand Jury sessions. Accordingly, if the jurors are left alone in a Zoom room during deliberations, they would have no way to contact the staff.

Therefore, we would request that the amendment to Rule 3:6-6 include a caveat as follows:

(b)(2) The clerk shall not be present during deliberations but shall return to record the vote of the grand jury. This subsection shall not be applicable during remote or video proceedings.

Subsection (a)

Although there is no proposed amendment to subsection (a) of Rule 3:3-6 we would like to suggest that the attendance at the Grand Jury sessions be extended to include attorney aides or analysts who are assisting the prosecuting attorney with the presentation. Very often during large or complicated matters with multiple defendants with varying charges, layered frauds, or complex financial transactions, the prosecutors would find it extremely helpful to have an assistant present to organize documents, prepare exhibits, or operate presentation software. With

the rules as they currently stand, such individuals would not be permitted in the room during presentations. Accordingly, we would request that the following be added to Rule 3:6-6:

- (a) Attendance at Session. No person other than the jurors, the prosecuting attorney and any assistants or aides employed by the Prosecutor's Office who are present to assist 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.