

GRAND JURY CHARGE
(Revised: June 10, 2002)¹

Members of the grand jury, welcome to the (*specify*) court of (*specify*) county. I want to thank each of you for the service you are about to perform.

At this time, I will instruct you on the function of the grand jury and the nature of the responsibilities you are about to undertake. In that connection, I will explain the law relating to the proper performance of your duties, and I will be giving each of you a printed copy of the provisions of New York's criminal procedure law that deal with the grand jury and its proceedings.²

A grand jury is a part of this court. Its primary function is to hear and examine evidence concerning criminal offenses, and then to determine whether a person should be charged with the commission of an offense and face trial for it. The grand jury may also examine evidence of misconduct in public office, whether criminal or otherwise.³

This grand jury will serve from today until (*specify*). The court may extend that period if both the grand jury and the prosecutor declare that the grand jury has not completed or will be unable to complete pending business before the date of its scheduled discharge.⁴

As a preliminary matter, the law requires that I appoint a foreperson, and someone to act in the foreperson's place should he or she become unavailable.⁵ The duty of the foreperson is to chair the sessions of the grand jury, to administer oaths to witnesses, and to sign documents that reflect grand jury action.

I have appointed (*specify*) as foreperson, and (*specify*) as acting foreperson.

Also, before you begin your duties, your first order of business must be to choose a secretary from among your

members to keep the grand jury's records, including those relating to the attendance of the grand jurors, and the results of all grand jury votes.⁶

Proceedings of a grand jury are not valid unless at least sixteen of its members are present.⁷ Every affirmative official action or decision taken by the grand jury requires the concurrence of at least twelve of its members who have heard the evidence.⁸

The evidence a grand jury hears and examines will consist principally of the sworn testimony of witnesses. The prosecutor may call as a witness in a grand jury proceeding any person he or she believes possesses relevant information or knowledge.⁹ Before testifying, the witness must take an oath which may be administered by the foreperson or any other grand juror.¹⁰

All witnesses in a grand jury proceeding must give any evidence legally requested of them regardless of any protest or belief on their part that the evidence they give may tend to incriminate them.¹¹ Witnesses who give evidence in a grand jury proceeding receive immunity from prosecution unless they waive immunity in writing in the presence of the grand jury.¹²

If the grand jury desires to hear witnesses not called by the prosecutor, it may direct the prosecutor to call them.¹³ The prosecutor, however, may require that any such witness waive immunity before testifying.¹⁴

When the grand jury is considering a criminal charge against a person, that person has a right to appear before the grand jury as a witness on his or her own behalf.¹⁵ He or she may also request that the grand jury call one or more other witnesses, and the grand jury may, as a matter of discretion, either grant or deny the request.¹⁶ However, the person under investigation has no duty to appear or request to have witnesses called, and if he or she does not do so, no unfavorable inference may be drawn.¹⁷

Before testifying, however, the person being investigated

must waive immunity from prosecution, and any witness called on his or her behalf must do so as well if the prosecutor demands it.¹⁸

All persons who waive immunity before the grand jury are entitled to have an attorney present in the grand jury room during their testimony. The attorney may advise the witness, but may not otherwise participate in the proceeding.¹⁹

Grand jurors are not expected to come to their duties with a knowledge of the law. Therefore, the court and the prosecutor will serve as the grand jury's legal advisors. The grand jury may not seek or receive legal advice from any other source. Where necessary or appropriate, the court or the prosecutor will instruct the grand jury on the law, and such instructions will be recorded in the minutes.²⁰ Grand jurors are free to ask legal questions of the prosecutor and, if necessary, may address legal questions to the court.

With respect to any matter before it, the grand jury is the exclusive judge of the facts.²¹ In order to find the facts, the grand jury must judge the credibility of witnesses, that is, whether, and to what extent, each witness has been truthful and accurate. In other words, you must decide whether witnesses are honest and accurate in telling you what they saw or heard; or, on the other hand, are lying or honestly mistaken. You must decide whether to accept or reject all or any portion of a witness's testimony, and you must decide what weight and importance, if any, to attach to the testimony you accept.

To that end, grand jurors may request that factual questions be asked of any witness appearing before them. The prosecutor will review any such proposed question, and will ask those questions that he or she finds relevant and legally proper.

After hearing and evaluating the evidence and being advised as to the law by the court or the prosecutor, a grand jury, upon the agreement of twelve of its members who have heard the evidence, may take any one of the following five actions²²:

1. It may indict a person for an offense;
2. It may direct the prosecutor to file a prosecutor's information with a local criminal court charging a person with an offense other than a felony;
3. It may direct the prosecutor to file a request for removal to the family court when the accused is thirteen, fourteen, or fifteen years of age, and the charge is appropriate for consideration by the family court; or
4. It may dismiss the charges.²³
5. It may submit a grand jury report.

A grand jury may indict a person for an offense, or direct the filing of a prosecutor's information charging a person with an offense other than a felony, when the evidence presented is legally sufficient to establish that the person committed the offense, and competent and admissible evidence provides reasonable cause to believe that the person in fact committed the offense.²⁴

“Legally sufficient evidence” means evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission of the offense.²⁵

“Reasonable cause to believe that a person has committed an offense” exists when evidence which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment, and experience that it is reasonably likely that the offense was committed and that the person committed it.²⁶

Upon voting to indict a person, a grand jury must, through its foreperson or acting foreperson, file an indictment with the court.²⁷ Similarly, upon directing the filing of a prosecutor's information, the grand jury must, through its foreperson or acting foreperson, file

such direction with the court.²⁸

If, upon a charge that a designated person committed a crime, either the evidence before the grand jury is not legally sufficient to establish that the person committed that crime or any other offense, or the grand jury is not satisfied that there is reasonable cause to believe that the person committed that crime or any other offense, the grand jury must dismiss the charge. In such case, the grand jury must, through its foreperson or acting foreperson, file its finding of dismissal with the court.²⁹

Let me now say a few words about grand jury proceedings in general:

Grand jury proceedings are secret. No grand juror may disclose the nature or substance of any grand jury testimony, evidence, or any decision, result, or other matter attending a grand jury proceeding.³⁰

During the course of proceedings other than deliberations, only people authorized by law may be present with you in the grand jury room. Among those who may be present are witnesses, the prosecutor, and a stenographer. If a witness does not speak English well enough to be readily understood, an interpreter may also be present, and, if no interpreter is present, the grand jury may request one.³¹

During the deliberations and voting of the grand jury, however, only the grand jurors, [and a sign language interpreter for a deaf or hearing-impaired grand juror] may be present in the grand jury room.³²

Note-taking by grand jurors is neither prohibited nor encouraged.

If you do take notes, do not allow the note-taking to distract you from the proceedings. Notes are only an aid to your memory and are not superior to your independent recollection. You have a

stenographer who records the testimony of each witness verbatim, and you may request a readback of any testimony you need to hear again. If there is a discrepancy between your recollection and your notes, you should request a readback, and the transcript of the testimony must govern. Those of you who do not take notes should rely on your independent recollection and should not be influenced by the notes of other jurors.³³

Notes taken by grand jurors may not be taken home. They will be collected each day when the grand jurors leave and, when the grand jury is discharged, the notes will be collected and destroyed.

Members of the grand jury, you are about to take on a very important responsibility. You must carry it out fairly and impartially, without fear or favor. You are an arm of the court, not an agent of the police or the prosecutor.

The filing of a criminal charge is serious business, and it must be treated seriously. Therefore, you must give individual consideration to each person under investigation, and to each charge you are considering. In every matter you consider, your decision must be based on the evidence and the law, and not on bias, hostility, or prejudice.

I have confidence in your ability and willingness to act fairly and impartially. I want to assure you that the public will be served by whatever decisions you make so long as those decisions are justified by the law and the evidence.

You may now retire to the grand jury room to begin your work.

1. This charge was revised to reflect the decisions of *People v. Medina*, 283 A.D.2d 250 (1st Dept. 2001) and *People v. Foster*, 279 A.D.2d 317 (1st Dept. 2001) holding that the “fact that there were neither 12 votes to indict nor 12 votes to dismiss was not the equivalent of a dismissal.” *Medina* at 250).

2. CPL §190.20(5) states that: “[a]fter a grand jury has been sworn, the court must deliver or cause to be delivered to each grand juror a printed copy of all the provisions of *** article [190]***.”

3. CPL 190.05.

4. CPL 190.15(1).

5. CPL 190.20(3).

6. CPL 190.20(3).

7. CPL 190.25(1).

8. CPL 190.25(1).

9. CPL 190.50(2).

10. CPL 190.25(2).

11. CPL 190.40(1).

12. CPL 190.40(2)(a) & CPL 190.45.

13. CPL 190.50(3).

14. CPL 190.50(4)

15. CPL 190.50(5).

16. CPL 190.50(6).

17. *Cf.* CPL 300.10(2).

18. CPL 190.50 (4) & (5)(b).

19. CPL 190.52.

20. CPL 190.25(6).

21. CPL 190.25(5).
22. CPL 190.60.
23. See cases cited in note 1.
24. CPL 190.65(1) & 190.70 (1).
25. CPL 70.10(1).
26. CPL 70.10(2).
27. See CPL 190.65(3).
28. See CPL 190.70(1).
29. See CPL 190.75(1).
30. CPL 190.25(4).
31. CPL 190.25(3).
32. CPL 190.25(3).
33. See *People v. Hues*, 92 N.Y.2d 413 (1998).