



STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
TEL: (212) 428-2160
FAX: (212) 428-2155

A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. MCCONNELL
Counsel

MEMORANDUM

September 26, 2013

TO: Hon. Fern A. Fisher
Hon. Michael V. Cocco

FROM: John W. McConnell
Paul McDonnell

SUBJECT: Common Law Grand Juries

In the past week, several county and court clerks have received documents for filing that purport to establish a "common law" grand jury in their county. Media outlets have reported that these attempts at filing are part of an organized effort supported by a group calling itself the "National Liberty Alliance," which hopes to create local grand juries, with subpoena power, to "investigate alleged criminals and politicians on the suspicion a law has been violated, with no authorization from the judicial system." You have asked for our views on this practice.

We are aware of no constitutional or statutory authorization for a citizen-initiated "common law" grand jury in New York. Although a New York State grand jury derives its authority, in part, from the State Constitution, the common law was only continued in New York "subject to such alterations as the legislature shall make . . ." (NY Const. art I § 14). With the advent of the Code of Criminal Procedure and subsequent Criminal Procedure Law, the Legislature manifested a clear intent to supplant whatever common law powers the grand jury may have possessed (*see Wood v Hughes*, 9 NY2d 14 (1961)). Further, state law provides that a grand jury is impaneled by a superior court, constitutes a part of such court and is to be drawn and impaneled for such terms as established by the Chief Administrative Judge in consultation and agreement with the Presiding Justice of the appropriate Appellate Division (see CPL 190.05,

190.10; *see also* 28 NYCRR 128.17 and 200.13). Accordingly, there is no authority for a state grand jury to be formed outside the auspices of the court.¹

We also find no law authorizing the filing of a document that purports to establish a grand jury in violation of Article 190 of the criminal procedure law. Such documents are not filed in connection with any judicial proceeding, do not come within the filing requirements of New York's criminal or civil practice rules and wrongly usurp the Judiciary's authority to draw and impanel a grand jury.

Having been informed of these attempted filings, Chief Administrative Judge A. Gail Prudenti has authorized us to notify you of her instruction to all court clerks and to county clerks acting in their capacity as clerks of the court, to reject requests to file documents that attempt to establish such common law grand juries. She has further directed that clerks notify the local district attorney and the Attorney General's Office of the filing attempt.

Please distribute this memorandum and Judge Prudenti's directive to all court officers, including the county clerks acting as clerks of the court, to whom it may apply.

Any questions regarding this matter should be referred to Paul McDonnell in Counsel's Office at (212) 428-2150.

Thank you for your assistance.

cc: Hon. A. Gail Prudenti
Ronald Younkins
Administrative Judges
Maria Logus, Esq.
Maria Barrington
County Clerks
District Executives
NYC Chief Clerks

¹ The documents these groups have submitted for filing claim that the U.S. Supreme Court recognized the right to establish a common law grand jury when it stated that a federal grand jury is "an institution separate from the courts" over which the District Court has limited supervisory control (*see United States v Williams* 504 U.S. 36, at 47-49 (1992)). The *Williams* case, however, did not decide any state constitutional law question. Moreover, *Williams* did not undermine the supervisory role that the District Court maintains over the impaneling process of a federal grand jury or create a right of citizens to impanel their own federal grand jury (*see* FRCP Rule 6(a) ["When the public interest requires, the court must order that one or more grand juries be summoned"]; *see also* 28 USC 1863(a) ["Each United States district court shall devise and place into operation a written plan for random selection of grand and petit jurors . . ."].