



MINNESOTA JUDICIAL TRAINING UPDATE



GRAND JURY PROCEEDINGS: EVERYTHING A JUDGE NEEDS TO KNOW - ALMOST

Unless You Came From The Criminal Division Of A County Attorneys Office, Most Judges Have Little Or No Prior Grand Jury Experience. At Some Point During Your Judicial Career You Will Be Asked To Orientate And Supervise A Grand Jury Proceeding. This Update Will Tell You Everything You Need To Know – Almost.

TEN BASIC QUESTIONS EVERY JUDGE SHOULD KNOW:

1. **WHAT IS THE GRAND JURY?** A group of randomly selected people from the county that are summoned, sworn in, instructed by the court and advised by the county attorney. Among its most important functions is to hear evidence concerning the most serious felonies (usually homicides). They do not determine guilt or innocence but rather determine whether there is probable cause to believe that the accused has committed a crime. The Grand Jury can also investigate crimes and has substantial powers for procuring evidence.
2. **WHICH CASES GO TO THE GRAND JURY?** The GJ may hear and return an indictment on any criminal case. Certain criminal matters can ONLY be decided by the GJ, (those punishable by life imprisonment) such as 1st Degree Murder, Treason, and certain sex offenses. The prosecutor may submit other cases to the GJ for public policy or strategic reasons such as cases where police officers acting in the line of duty cause someone's death. Or cases where witnesses are uncooperative and the prosecutor has reason to believe they may lie and change their stories by the time of trial.
3. **FIVE BASIC GRAND JURY RULES:**
 - a. The GJ must consist of at least 16, but no more than 23 members. A quorum is at least 16 grand jurors. The GJ may not conduct any business without a quorum present;
 - b. A verbatim record must be made of all testimony taken, evidence received, and of all events occurring before the GJ; However, GJ deliberations are NOT recorded.
 - c. Grand Jurors have the right to question all witnesses that appear before them;
 - d. Only those members who have heard all the evidence presented in a given case may vote during deliberations.
 - e. To return an indictment at least 12 Jurors must find "Probable Cause" to indict.

4. **THE PROSECUTORS ROLE:** The GJ is an independent body and controls its own proceedings, but the prosecutor, as legal advisor, should guide it without undermining its independence. The county attorney appears before the grand jury, questions witnesses and draws up indictments which reflect the Grand Jury's decisions.
5. **THE COURTS ROLE:** In every GJ proceeding there are 7 judicial duties that the supervising judge may be asked to perform. See page 3 for an explanation of those duties.
6. **WHAT IS THE 14 DAY RULE?** All crimes punishable by life imprisonment or any homicide case wherein the prosecutor announces his intent to present to the grand jury must be commenced within 14 days of defendant's first appearance. *Minn. R. Crim. P. 8.01.*
7. **GRAND JURY PROCEEDINGS ARE SECRET:** Whoever without authorization of law discloses matters occurring before the GJ commits a misdemeanor. Two exceptions:
 - a. when directed by the court preliminarily to or in connection with a court proceeding;
 - b. the prosecutor may, in the performance of his duties, make disclosures of what was said in the grand jury room (e.g. to enable investigators to continue their work, etc).
8. **WHO IS AUTHORIZED TO BE PRESENT?** The law is very specific and restrictive. Attorneys for the state, witness under examination, qualified interpreters and the court reporter/recorder are generally the only people who may be present. The presence of an unauthorized person usually results in dismissal of the indictment. There are 3 exceptions:
 - a. A supportive person may be present during the testimony of a child witness, but only by court order.
 - b. A peace officer may, for security reasons, be present during certain testimony, but only by court order.
 - c. Upon request of a witness who has waived immunity from self-incrimination or been granted immunity, an attorney for that witness may be present. The attorney, however, may NOT participate in the proceedings other than to advise and consult with the client while he is testifying.
9. **DEFENDANT'S PARTICIPATION:** The suspect does NOT have the right to be present when witnesses testify. However, the suspect may choose to waive his Fifth Amendment rights and testify before the GJ. The suspect's attorney may be present but may not participate in the proceedings and can only advise and consult with the suspect.
10. **ADMISSIBILITY OF EVIDENCE:** There is greater flexibility in terms of the Rules of Evidence than exists petit jury trials. *See Minn. R. Crim. P. 18.06.* For example:
 - a. Hearsay is admissible to lay foundation for exhibits (e.g. chain of custody, etc);
 - b. Unauthenticated copies of official records are admissible;
 - c. Certain certified expert reports are admissible (e.g. forensics, ballistics, medical, etc);
 - d. Sworn statements of witnesses unavailable due to ill health or "other valid reason";
 - e. The police officer in charge of the investigation may summarize the investigation.

DURING A GJ PROCEEDING WHAT 7 JUDICIAL DUTIES MUST EVERY SUPERVISING JUDGE BE PREPARED TO PERFORM?

1) **INSTRUCTING THE GRAND JURY:**

At the beginning of a Grand Jury term, The Court (not the prosecutor) MUST instruct the Grand Jury concerning its powers, duties, regulations concerning it, as well as the kind and character of evidence available in these proceedings. *See Minn. Stat. 628.56 and Minn. R. Crim. P. 18.03, subd. 1.*

- a) The court appoints the foreperson but the GJ selects its own clerk. *M.S. 628.56 & 57;*
- b) Sample Instructions can be found at:

http://courtnet.courts.state.mn.us/documents/104/docs/policies_and_procedures/policy_manual/grand_jury_instructions.doc

- ### 2) **EXCUSING GRAND JUROR'S FOR CAUSE:**
- If the prosecutor learns that a juror has outside knowledge of the case or has such a relationship with a witness or party to the case that could make it difficult for the juror to be fair and unbiased, the prosecutor should bring the juror to the judge. A grand juror can only be removed "for cause". *Minn. R. Crim. P. 18.09; M.S. 628.54.* Among other things, *M.S. 628.54* delineates as cause "a state of mind in reference to the case" or to either the state or the suspect that the juror cannot act impartially. The judge should then question the grand juror on the record and determine whether the grand juror will be allowed to sit on that particular case. The inquiry is whether the juror is willing to set aside any preconceived notions, and can demonstrate to the satisfaction of the judge that they are able to do so. Only the judge can make the decision to remove a grand juror. *State v. Whittaker, 568 N.W.2d 440 (Minn. 1997).*

- ### 3) **GRANTING OF IMMUNITY:**
- A grant of immunity is a device whereby the prosecutor may, as a practical matter, give up the right to prosecute an individual in exchange for the right to compel that individual to testify against others. The prosecution offers immunity to a witness but only the court can grant immunity. *M.S. 609.09;*
- a) A witness may be held in contempt for failing to answer in accordance with an order granting immunity. The court may then commit the person to jail, impose a fine or both. This order is made within the discretion of the court. *M.S. 588.04 & 609.09, Subd. 1.*

4) EXTENDING THE 14 DAY RULE FOR GOOD CAUSE:

All crimes punishable by life imprisonment or any homicide case wherein the prosecutor announces his intent to present to the grand jury must be commenced within 14 days of defendant's first appearance. The time within which to commence the grand jury proceeding can only be extended by the court for good cause. *Minn. R. Crim. P.8.01 & 34.02*

5) APPROVING UNAUTHORIZED PERSONS TO BE PRESENT:

Absent a court order the only people allowed to be present before the GJ are the Attorneys for the state, the witness under examination, qualified interpreters and the court reporter. The Court may, however, on oral motion of the prosecutor issue an order that allows:

- a) **SUPPORTIVE PERSON:** A supportive person to be present during the testimony of a child witness. The order must be based on a particularized showing of need for the presence of a supportive person. The court must determine whether the person "is appropriate, including whether he or she may become a witness to the matter or may exert undue influence over the child witness." The court must also instruct the supportive person of their proper role in the grand jury proceeding. *Rule 18.04;*
- b) **PEACE OFFICER:** A peace officer, upon a finding of necessity for security reasons, to be present during a witness's testimony (e.g. if witness is in custody, etc). It is advisable that the court sign a written order so permitting.

6) AUTHORIZE THE WITHHOLDING OF WITNESS IDENTIFICATION:

Minn. R. Crim. P. 9 mandates that the prosecutor disclose the names and addresses of witnesses who testified before the grand jury. However, *Minn. R. Crim. P. 9.01, subd. 3(2)* permits non-disclosure of this information under certain circumstances. If the prosecutor can substantiate to the court that disclosing the identity of certain witnesses may endanger the integrity of a continuing investigation or subject the witnesses or others to physical harm or coercion, the court may rule that this information be withheld up until the witnesses are sworn in at trial time. The document to be filed with the court alleging the need for nondisclosure is known as the "Prosecutor's Certificate of Non-Disclosure"

Note: *M.S 630.18(2)* also requires that the names of witnesses who testified before the Grand Jury appear on the indictment. Failure to do so is grounds for dismissal. However, upon motion of the prosecutor the court can order, based on the same findings as above, the sealing of the indictment containing the names of witness's and accept for filing a 2nd identical indictment that identifies witnesses only by number.

7) RETURN OF INDICTMENT IN OPEN COURT:

The Grand Jury MUST report any indictment to a judge in open court. *Minn. R. Crim. P. 18.07*. The court receives the indictment but the finding of an indictment may not be disclosed unless and until the defendant is in custody or has appeared before the court or when necessary for the issuance and execution of a summons or warrant for the defendant's arrest. In the court's presence, the foreperson should be asked the following four questions (these are usually asked by the prosecutor, otherwise, the court should ask):

- a) Whether a quorum of at least 16 members of the grand jury were present to hear all of the evidence presented in the matter and the same quorum was present during deliberations;
- b) Whether, of that quorum of at least 16 members who heard all the evidence presented, at least 12 grand jurors concurred on each count of the indictment;
- c) Whether while still in the grand jury room the prosecutor read the language of the indictment, and whether that language accurately reflects the intent of the grand jury in this case; and
- d) Whether the foreperson in fact signed the indictment and the bill of indictment.

NOTE: NO-BILL: If the Grand Jury fails to indict (no-bill), the foreperson must report this to the court in writing. Any charges filed against the defendant for the offenses considered and no-billed by the grand jury must be dismissed. *Minn. R. Crim. P. 18.07*.

NOTE: RECEIPT OF INADMISSIBLE EVIDENCE: Reception of inadmissible evidence shall not be grounds for dismissal of an indictment if there is sufficient admissible evidence to support the indictment. *Minn. R. Crim. P. 18.06*.

REFERENCE: Manual For Grand Jury Presentation: By Lee W. Barry, Assistant Hennepin County Attorney, November 2006; SOURCES: Minn. R. Crim. P. 8.01; 9.01,03; 17; 18; 34.02; M.S. 8; M.S. 388,051; M.S. 588.04; M.S. 609.09; M.S. 628; M.S. 630.18.