

14-8001. Grand jury proceedings; explanation of proceedings.¹

LADIES AND GENTLEMEN OF THE GRAND JURY:

Function of Grand Jury.

You have been summoned to serve as members of the grand jury for _____ County to investigate _____². An order by the court filed on the _____ day of _____, _____, convened this grand jury. You have been qualified as members of such grand jury, and it is my duty as judge to instruct you as to your duties, authority and special responsibilities as members of the grand jury.

I will guide you to assure that your actions are within your legal authority. At any time, it is appropriate for any grand juror to seek advice and guidance from me as to the scope and propriety of the grand jury's acts and investigations. The grand jury, however, is subject to no other supervision or control from any person, office or body.

Your purpose as grand jurors is to investigate the matter for which this grand jury was called and to determine from the evidence if there is probable cause to believe an offense has been committed.

Evidence.

The grand jury has the power to order the attendance of witnesses and to cause the production of public and private records or other evidence relative and relevant to its investigations. It has the authority of this court to subpoena witnesses and to obtain execution of subpoenas by any public officers charged with such duties. If you have reason to believe that evidence not presented to you is available that may excuse or disprove a charge or accusation or that would make an indictment unjustified, then you may order that evidence produced and presented to you.

In the course of your investigation and the presentation of charges by the prosecutor, you shall consider the evidence presented to you. Evidence means the oral testimony of witnesses under oath and any documentary or other physical evidence.

You must decide the case solely upon the evidence received during these proceedings. It is for you to decide whether that evidence is true or false. You may give the evidence whatever weight you believe it deserves. You must not consider anything you may have read or heard about the case except as a part of your inquiry as members of the grand jury.

In the course of your investigation, it is your duty to protect citizens against unfounded accusations, whether they come from the government or others, and to prevent anyone from being indicted through malice, hatred or ill will.

Probable Cause.

For you to return an indictment, you must find probable cause. "Probable cause" means the evidence presented would cause a reasonable person to believe that an offense has been committed and that the accused committed the offense. Probable cause does not require proof beyond a reasonable doubt.

Indictments will often contain more than one charge. You must decide whether there is probable cause for each charge separately. In finding probable cause on each charge, you must find that there is probable cause for every element of that crime.

Limits of Investigation.

The indiscriminate summoning of witnesses, on the mere chance that some crime may be discovered, is forbidden. The grand jury has no right to conduct an investigation into the personal affairs of citizens, nor the function, operation and housekeeping of any branch of government, except as may be necessary in the course of investigating criminal offenses.

Witnesses brought before the grand jury shall not be harassed nor subjected to unreasonable repeated appearances before the grand jury or the prosecuting attorney. This does not mean, however, that witnesses may not be brought before you on more than one occasion if either you or the prosecuting attorney shall so require.

Assistance for Grand Jury.

The court shall assign a clerk to you, as all testimony must be recorded. The court may also assign to you a bailiff, interpreter or others necessary to carry out your duties, but no one except members of the grand jury and court appointed interpreters may be present during your deliberations or upon your taking of a vote.

The district attorney's office will assist you, examine witnesses, prepare indictments and reports at your request, and provide your foreperson with a form of oath to be administered by the foreperson to the witnesses who appear before you. The district attorney will advise you of the essential elements of any offense which is to be considered. The district attorney will answer, on the record, any questions you may have, if allowed by law.

The statutes of New Mexico will be available to you, and the district attorney can, at your request, explain our criminal laws to you. You will have a copy of this and other instructions for your guidance and information.

You may call upon this court for assistance and advice [and you may request this court to call upon the attorney general of the state to aid you]³. If necessary, you may ask this court for legal or other assistance in your inquiry.

Secrecy of Grand Jury Proceedings.

If any person attempts to contact you with respect to any of your duties as a grand juror, advise that person that you cannot discuss any matter pertaining to your duties as a grand juror, obtain the person's name and address, if possible, and report the matter to the court without delay.

The law requires that all that you hear, see, say or vote upon shall be kept secret and shall not be revealed to anyone outside of the grand jury room except in your official reports, indictments and no-bills.

No grand juror shall, except in the performance of [his] official duty, disclose the fact that an indictment has been found against any person for any offense. You will not allow any unauthorized person into the grand jury room during your deliberations. You will not consult with anyone other than members of the grand jury as to how you should vote on any matter.

No one should have any advance information as to the activities of the grand jury or as to any activities which are planned by the grand jury.

As a grand juror, you may not be questioned about anything you say or any vote you cast relative to a matter legally pending before the grand jury except in prosecutions for violations of laws governing grand juries. You must strictly obey this requirement of secrecy in all matters before you. You will be asked to take an oath

before serving as a grand juror. If you violate this oath, you may be prosecuted.

Although all proceedings in the grand jury room will be reported verbatim, your deliberations will not be reported.

If you learn of any violation of any rule governing these proceedings, you should report that violation to the court immediately. The court will address such violations appropriately.

Foreperson of Grand Jury.

The foreperson of the grand jury shall convene the grand jury during the regular hours of this court. The foreperson may appoint a clerk from among you to aid in keeping your records of votes during secret sessions when other persons are not able to be present. The foreperson shall sign all indictments and reports and shall swear all witnesses before you. The clerk must preserve the minutes of your deliberations, but no record shall be kept of the votes of the individual members of the grand jury on an indictment or on any other matter voted upon by the grand jury. You will be guided by the orders of your foreperson, who shall preside over the sessions of the grand jury. The foreperson may recess the sessions of the grand jury and reconvene them. The foreperson, for good cause, may request the court to excuse or discharge individual grand jurors and to replace them with alternate grand jurors as necessary to continue the work of the grand jury.

Instructions by the Court.

It is your duty to follow the law described in these instructions and any other instructions you receive. You must consider these instructions as a whole. You must not pick out one instruction or parts of an instruction and disregard others.

The clerk will now administer the oath and give you a copy of these opening instructions⁴.

District Judge

USE NOTES

1. This instruction may be used before the grand jury hears any testimony or is addressed by the prosecuting attorney. If it is used, the instruction may be sent into the grand jury room for its guidance. In *District Court v. McKenna*, 118 N.M. 402, 881 P.2d 1387 (1994), the Supreme Court set forth the procedures to be followed before convening a grand jury on a citizen's petition.

2. Insert the reason for which the grand jury has been convened; e.g., offenses presented for consideration and indictment, special inquiry or investigation of a public officer regarding removal on a ground specified in 10-4-2 NMSA 1978 (1909).

3. The bracketed phrase is not to be given if the attorney general has already been asked to assist the grand jury.

4. If used, UJI 14-8002 NMRA is to be given by the clerk of the court immediately after this instruction is given.

**STATE OF NEW MEXICO
COUNTY OF _____
IN THE DISTRICT COURT
IN THE MATTER OF THE CONVENING
OF A GRAND JURY**

ORDER

The court, being advised in the premises and deeming it necessary, finds that a grand jury should be convened for the purpose of considering [criminal cases which may be presented to it] [_____ (*state specific inquiry which petition charges the grand jury to investigate*)] [the removal of _____ (*name of public officer*) for _____ (*reason for removal of officer*)].

IT IS THEREFORE ORDERED that a grand jury in _____ County, New Mexico, be convened to meet at _____ o'clock a.m. on _____, the _____ day of _____, _____, to consider _____.

IT IS FURTHER ORDERED that the names of _____ (*state number*) potential jurors be selected and from the lists of said persons, twelve grand jurors and _____ alternates be chosen and qualified in open court prior to the convening of the grand jury on the _____ day of _____, _____.

District Judge

[As amended by Supreme Court Order No. 08-8300-008, effective March 21, 2008.]