

GRAND JURY CHARGE.

Note Well: G.S. § 15A-622(f) provides, "After new grand jurors have been sworn in, the presiding judge may give the grand jurors written or oral instructions relating to the performance of their duties. At subsequent sessions of court, the presiding judge is not required to give any additional instructions to the grand jurors." This instruction should be given (1) at the beginning of the first criminal session after January 1st and July 1st, when there will be at least nine new grand jurors, and (2) whenever a replacement grand juror has been drawn as provided for in G.S. § 15A-622(b).

You have been selected to serve on the grand jury. The grand jury is an ancient and honored institution, whose existence is firmly embedded in the system of justice which we inherited from our mother country. Our state Constitution guarantees that no person shall be placed on trial for a felony without his consent, unless he has been indicted by a grand jury. This provision is a barrier against unjust prosecution. The grand jury not only brings to trial persons who have been accused of crime, but also protects persons from unfounded accusations.

(1) Term of Service.

Those of you who have just been selected will be serving on this grand jury for approximately twelve months. During those twelve months, you will be notified when to convene. After

GRAND JURY CHARGE. (Continued.)

Those of you who have just been selected will be serving on this grand jury for approximately twelve months. During those twelve months, you will be notified when to convene. After convening you will meet from day to day until all business pending before you is complete, but you will meet only when this court is in session.¹ When your business is complete, you will adjourn until the next regular time for you to convene, or until you are caused to be convened. As a practical matter, this means that your service on the grand jury will probably require about (*estimate time demand, e.g., two days a month*) of your time during the next twelve months, but more or less time may be required depending on the work to be done.

It is the duty of each of you to be present every time this grand jury is convened. However your foreperson may excuse individual jurors from attending particular sessions of the grand jury, except that the foreperson may not excuse more than two of you for any one session. Such excuses should be granted only in a case of emergency such as sickness or death in the family or other justifiable good cause. No grand juror may be excused permanently without consulting with the court.

(2) Organization.

¹This last phrase reflects the custom and usage in most counties, although a local law may vary it. "A grand jury is a body . . . , impanelled by a superior court and constituting a part of such court." G.S. § 15A-621.

GRAND JURY CHARGE. (Continued.)

Your grand jury consists of eighteen (18) members. Nine of you have just been selected and nine of you have been serving for six months.

A quorum is the number of members of a group which must be present for that group to transact business lawfully. For a grand jury, a quorum is twelve.² At least 12 of you must be present at all times for the lawful transaction of business. If less than 12 of you are present, even if only for a short time, the proceedings of the grand jury must stop until a quorum is once again present.

All of your hearings will be presided over by your foreperson. It is the duty of the presiding judge to appoint one of the grand jurors as foreperson³ of each grand jury, and I have appointed (*name foreperson*) as your foreperson. (*Name foreperson*) will serve as *foreperson* until that person's term on the grand jury expires or until a successor is appointed.

(3) Function--Bills of Indictment

Your first duty after retiring to your room will be to investigate and pass upon such bills of indictment as may be

²The statute is silent as to quorum. The number twelve here is borrowed from old charges circulating among superior court judges. G.S. 15A-622(d) provides, "the foreman may excuse individual jurors from attending any particular session of the grand jury, provided he may not excuse more than two jurors for any one session." This could be read to imply that a quorum is now sixteen, but the better reading seems to be that the grand jury can still transact business in the face of unexcused absences, as long as the customary quorum of twelve is present. Hence the inclusion of this paragraph in the charge.

³Selection of the grand jury foreperson should be conducted in an impartial manner. See *State v. Cofield*, 320 N.C. 297 (1987).

GRAND JURY CHARGE. (Continued.)

handed to you by the District Attorney for the State. A bill of indictment is simply a written accusation charging a person with the commission of one or more criminal offenses. The District Attorney will prepare these bills and enter upon each bill the names of such witnesses as the District Attorney finds necessary for you to examine on behalf of the State.

I wish to impress upon you the fact that it is not your duty to try the question of the guilt or innocence of the defendant named in the bill of indictment. That is the province of the trial jury in the presence of the Court, where the defendant is present and may be heard. It is only your duty to hear the evidence on behalf of the State and to proceed with the investigation until twelve or more of you find that the crime named in the bill of indictment has probably been committed and that there is probable cause that the named defendant is guilty of the crime.

Probable cause is defined to be a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that the person accused is guilty of the offense of which he is charged. You need to answer only two questions: First, was a crime probably committed, and second, did the defendant probably commit that crime.

(4) Hearing Witnesses

GRAND JURY CHARGE. (Continued.)

Your *foreperson* will call those persons whose names are listed on the bill as witnesses, one at a time. Your *foreperson* must mark the bill by placing an "X" or check mark by the name of each witness who was sworn and examined by you in connection with that bill. If you wish to hear any other person not named on a bill under consideration, you must through your *foreperson* request the District Attorney to add that person's name to the bill and call that person as a witness. The District Attorney may, in his discretion, call or refuse to call the witness. The person accused in a bill of indictment is never called to be questioned by the grand jury.

No one may be present with you in the grand jury room while you are hearing a witness, other than the witness, an interpreter for the witness or a law enforcement officer holding the witness in custody. If either of the latter is present, that person must be sworn to secrecy, just as you have been.

Your *foreperson* has the power to administer oaths or affirmations to all witnesses. The witnesses should be examined one at a time. They should be sworn by the *foreperson*, who will first question the witness and then, if desired, the other members of the grand jury may question the witness.⁴ All questions should be impartial and objective, without indicating any viewpoint or opinion.

⁴There is no statutory requirement that the foreperson have priority in the questioning of witnesses. However, it would seem to be a practical procedural suggestion, and on that basis is included in this charge.

GRAND JURY CHARGE. (Continued.)

Our Constitution provides that no person called as a witness may be compelled to be a witness against himself or herself. This means that a witness has an absolute right to refuse to answer any question asked by you if that answer would in any way incriminate the witness.

(5) Passing on Bills of Indictment

When all of the evidence is heard, you will discuss and act on each bill of indictment. During the deliberations and voting of the grand jury only the grand jurors may be present in the grand jury room.

Your *foreperson* must return to the presiding judge in open court all bills of indictment submitted to you by the District Attorney. You may act on them in any of four ways:

First, if you find from the evidence presented to you that there is probable cause for the charge made in the bill of indictment, you will return that bill of indictment as "a true bill." A finding of a true bill requires the concurrence of at least twelve of your members after examining one or more witnesses. This is true no matter how many of you are present.

Second, if twelve of you do not find probable cause for the charge made, you will return the bill of indictment as "not a true bill."

While you may find probable cause and return "a true bill" whenever twelve of your number concur, after examining one or

GRAND JURY CHARGE. (Continued.)

more witnesses you may not return a bill as "not a true bill" until you have examined all of the witnesses listed on it.

Third, if twelve of you concur, you may return a bill to the court with the indication that you have not been able to act upon it because witnesses were not available.

Fourth, if you return a bill of indictment as not a true bill, you may at the same time request the District Attorney to submit a bill of indictment to a lesser included offense or an offense related to the one originally charged.

(6) Presentment

In addition to acting upon bills of indictment, if twelve of you agree, you may investigate any offense which comes to your knowledge in the course of your investigation of other matters properly before you; or which is brought to your knowledge by the observations or disclosures of your own members. If you wish to call a witness, request the Court to do so on your behalf and it will take the matter under advisement.

After investigating such offenses, you will take no action unless you find probable cause to charge some person with a specific crime. If you do find such probable cause, you may return to the court a presentment, which is a document indicating that you have found probable cause to charge one or more persons with the commission of one or more criminal offenses. In order for you to return a presentment, twelve of you must agree. Your presentment would not institute criminal proceedings, but the

GRAND JURY CHARGE. (Continued.)

District Attorney would investigate the factual background and submit a bill of indictment to you if appropriate.

I will make no effort to name and define to you the various crimes. Suffice it to say that you will know by common sense and general knowledge substantially what most crimes are. Keep in mind that you may request the Court at any time for additional instructions should some unusual question of law present itself.

The quality of justice in your community depends upon the diligence, intelligence and honesty with which you perform the important duties resting upon you and you alone. You must be fair and just in your deliberations to the best of your understanding. On the one hand you should disregard any charges brought for the purpose of persecution. On the other hand if you fail to indict those probably guilty of serious violations of the law, the courts, the law, and your community will be negatively impacted. Your oath requires that you not indict any person through malice, hatred or ill will; nor will you fail to indict any person through fear, favor, reward or hope of reward. You must be impartial, free from personal, social, racial, religious or political bias or feeling. No person is above the law, and no person should be too important to be called upon to answer and brought to trial for his or her crimes; neither should any person be too humble to merit your protection from oppression and malicious prosecution.

(7) Secrecy

GRAND JURY CHARGE. (Continued.)

Secrecy of all grand jury proceedings is of the utmost importance. The purpose of secrecy is three-fold: First, it guarantees that each of you is free to discuss and debate the evidence fully and vigorously without any fear that what you say or do may be made public at any future time. Second, it prevents anyone charged with a crime from learning of your investigation before it is complete and reduces the chance that such a person will escape and defeat the process of criminal justice. Finally, it shields from publicity those persons against whom accusations are brought which you find unfounded. If publicity were given to the fact that the grand jury investigated a person, his or her reputation might be ruined, even though that person is innocent of any crime.

Your oath precludes now and forevermore any comment or publicity on what goes on in the grand jury room. It is your solemn obligation to keep secret everything that takes place in the grand jury room, including the subjects discussed or the identity of the persons who appear before you. I repeat: your oath requires you to keep in absolute secrecy all matters, persons and discussions that occur in your sessions. This duty exists throughout the time of your service and continues forever.

The secrecy of your work is also protected by law. Any grand juror who discloses, other than at the direction of the court, any matter occurring before the grand jury, is in contempt of court and subject to proceedings in accordance with law. In

GRAND JURY CHARGE. (Continued.)

addition, it is improper for others to question you about what happened in the grand jury room.

(8) Practical Suggestions

Pay close attention to the testimony of witnesses. Listen to the evidence and the opinions of your fellow jurors and be absolutely fair. Each of you should make your opinion known, but none of you should be adamant or dictatorial, as everyone is entitled to their own opinion. At all times, remember that you are NOT determining the guilt or innocence of the accused. Rather, in order for you to return a bill as a true bill, you must find from the evidence presented to you that a crime has probably been committed and that there is probable cause to believe that the person charged in the bill of indictment committed the crime. Do not try the case in the grand jury room.

In your proceedings, if you require an explanation of the charge or bill of indictment, you should seek advice or information from the presiding judge.⁵ You should keep in mind that it is your right to approach the Court at any time. This right the law regards as paramount. When you need to come to the court for any purpose whatsoever, either in a body or

⁵N.C. Gen. Stat. § 15A-624 explicitly states that the presiding or convening judge is the legal advisor to the grand jury. The Official Commentary to the Statutes indicates that as a matter of policy the grand jury should seek legal advice from the judge and not the District Attorney. In some jurisdictions the prosecutor does serve as legal advisor to the grand jury, but these are jurisdictions in which the prosecutor routinely enters the grand jury room to examine witnesses. In North Carolina, however, if the grand jury has a question about a bill, it should ask the presiding or convening judge.

GRAND JURY CHARGE. (Continued.)

individually, you are not required to wait. The Court will pause to discuss the issue with you.

(9) Other Duties

Sometime during your term, you must inspect all jails in the county and report in writing to the Court concerning the condition of the facilities you have inspected and the manner in which the jailer(s) or superintendent(s) have discharged their lawful duties. In addition you may inspect and report on other county offices and agencies. You may also investigate any other matters to which your attention has been called by the presiding judge.⁶ These duties imposed upon you may be very useful to your county or they may amount to nothing, depending entirely upon how you perform your duties. After your investigation, if conditions are not as they should be, make a report to the Court in writing stating your recommendations as to how such conditions should be remedied. If you notice that certain officers are deserving of praise and are performing their duty correctly, feel free to praise such officers. But do not attempt to cover up mismanagement or incompetence out of fear that you will hurt someone's feelings or political aspirations. It is the policy of the law to encourage those who are performing their duty as contemplated by the law, and to punish those who are not.

(10) Conclusion

⁶The trial judge should use caution in calling the grand jury's attention to matters for investigation and should refer to In re: Inquiry Concerning a Judge, No. 146 C. Preston Cornelius, 335 N.C. 198 (1993).

GRAND JURY CHARGE. (Continued.)

Your membership on the grand jury is an honor. You are among a relatively small number of citizens of your country who are chosen to serve on the grand jury. This should mean that you perform your grand jury duties with a sense of responsibility. Always remember that the proper administration of justice is essential to our way of life. It must always be above suspicion.

I want to thank each of you in advance for taking time out of your busy lives to perform this important civic duty. I realize that you are making a personal sacrifice and I believe that you will find this experience to be rewarding. Furthermore, at the end of your term as a grand juror, you will have the satisfaction of having helped to render justice among your fellow citizens.

APPENDIX: OATHS

OATH OF THE FOREPERSON OF THE GRAND JURY

You, as foreperson of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the State's counsel, your fellows' and your own, you shall keep in secret; you shall present no one for envy, hatred or malice; neither shall you leave anyone unrepresented for fear, favor, or affection, reward or hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

GRAND JURY CHARGE. (Continued.)

OATH OF GRAND JURORS

The same oath which your foreperson has taken on his part, you and each of you shall well and truly observe and keep on your part; so help you, God.

OATH OF WITNESS BEFORE GRAND JURY

You swear (**or affirm**) that the evidence you shall give before the Grand Jury, upon this bill of indictment against _____, shall be the truth, the whole truth, and nothing but the truth, so help you, God.

OATH OF GRAND JURY OFFICER

You swear (**or affirm**) that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement, and without disclosing the contents thereof, so help you, God.

OATH OF INTERPRETER PRESENT DURING GRAND JURY SESSION

Do you solemnly swear (**or affirm**) that as an interpreter before this Grand Jury you will impersonally, truthfully, accurately, and literally, and without any additions or deletions, and without adding any remarks of your own, translate and repeat to the witness every question propounded to him, and that you will impersonally, truthfully, accurately, and literally, and without any additions or deletions, and without adding any remarks of your own, translate and repeat to the Grand Jury every answer of the witness to such question and every

GRAND JURY CHARGE. (Continued.)

statement made by the witness in response to such question, so help you, God?

Do you also swear (**or affirm**) that you will keep secret all matters before this Grand Jury within your knowledge and will refrain from disclosing anything which transpires during any of its sessions, so help you God?

OATH OF LAW ENFORCEMENT OFFICER HOLDING A WITNESS IN
CUSTODY DURING GRAND JURY TESTIMONY

Do you swear (**or affirm**) that you will keep secret all matters before this Grand Jury within your knowledge and will refrain from disclosing anything which transpires during any of its sessions, so help you, God?