

THE  
FRESNO COUNTY



**GRAND  
JURY**

Procedures Manual

2018-2019

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## **I. Forward**

### **A. History**

1. The grand jury is one of the oldest and most powerful civil institutions in our country. The grand jury can be traced back to the reign of the English King, Henry II (1154-1189). Historically, the grand jury has had two functions: the evaluation of the prosecution's evidence to determine if the state is justified in bringing the accused to trial, and independent investigations of offenses committed by public officeholders.
2. Although 42 states have some form of grand jury, only California and Nevada mandate that grand juries be empaneled every year to conduct civil investigations/inquiries of county government.

### **B. The Grand Jury as One Body**

1. Each individual grand juror has the right and the duty to speak and vote according to the dictates of his or her own judgment and conscience. It is also important that each juror fully and fairly states to fellow grand jurors what information he or she possesses about actual or possible subjects of inquiry, so that subjects may be discussed, appraised, and further investigated according to their relative importance, or, if of little or no consequence, discarded. One of the strengths of the grand jury is that people from different backgrounds and with a variety of skills can bring their knowledge forward to contribute to the group's work.
2. The grand jury functions lawfully only as a body. Decisions are made by taking a vote, or achieving consensus. An individual grand juror acting alone has no power or authority.
3. The grand jury represents the public. Therefore, it is each juror's duty to think at all times, not in terms of their own or any particular group interest, or in terms of any personalities, but always in terms of the general public interest. Violation of the letter or the spirit of the grand juror's oath by any individual juror will endanger the integrity and the effectiveness of the grand jury as a whole.



**C. Discharge of the Grand Jury**

1. The grand jury has a one-year term, beginning when the jurors are sworn in and ending when they are discharged by the presiding judge. The ceremony for the empanelment of the new grand jury and discharge of the old ordinarily takes place in June or the first week in July.

**D. Duties and Powers**

1. As constituted today, the grand jury is a part of the judicial branch of government; it is an “arm of the court.” It is an inquisitorial and an investigative body. The grand jury is part of the machinery of government whose primary function is the examination of all aspects of county government and special districts, seeing that the county’s monies are handled judiciously and that all accounts are properly audited. In general, ensuring honest and efficient government in the best interests of the people by working independently and protecting confidentiality of sources. The grand jury may also examine the fiscal administration of municipalities, and hear public complaints.
2. The grand jury has three avenues to exercise its powers:
  - a) **REPORTS**: written communications of local government operations with recommendations for improvement, where no crime is charged.
  - b) **INDICTMENTS**: formal written complaints charging a person with a crime.
  - c) **ACCUSATIONS**: similar to indictments except the conviction would result in removal from office rather than criminal penalties.
3. A large portion of the public believes that an individual, particularly a public official, appearing before the grand jury implies malfeasance. On the contrary, it is the constitutional responsibility of the grand jury to review the conduct of government each year. This entails public officials appearing before the jury for the purpose of providing information concerning their departments or offices.
4. The grand jury is charged with a grave responsibility. Grand jury service calls for diligence, impartiality, open-mindedness and a willingness to assume great responsibility. Selection for service is an honor that provides an opportunity to serve the community.

**E. Qualifications and Selection of Grand Jurors**

1. A grand juror must be a citizen of the United States, at least 18 years of age and a resident of the state and the county for one year. (See § 893<sup>1</sup> for further qualifications.)
2. Grand jury selection procedures in California range from personal selection by individual Superior Court judges to random selection.
3. The Fresno County Grand Jury is selected through an application process followed by an interview with a Superior Court Judge or the Jury Commissioner (see § 896). The interview determines which individuals are legally qualified to serve on the grand jury and are willing to give the time required for grand jury service. The Superior Court Judges nominate at least 25 to 30 prospective grand jurors, from which, the clerk of the court draws 19 names, minus any second-year holdovers.
4. Upon selection to the Fresno County Grand Jury, jurors are given an opportunity to present any reason to be excused from service. If any grand jurors are excused, additional names are drawn until 19 persons have been selected who can serve. Those not chosen by lot are alternates who can be selected to fill any vacancy on the grand jury that occurs during its term. Alternates called to grand jury service are chosen in the order their names were drawn.

**F. Compensation for Grand Jury Service**

The following is a breakdown of cost reimbursement:

1. Mileage: County of Fresno mileage reimbursement rates are pursuant to current Internal Revenue Service guidelines and are administered by the Fresno County Auditor-Controller/Treasurer-Tax Collector's office. The Fresno County Administrative Office Grand Jury coordinator will provide the grand jury foreperson the current mileage reimbursement rate.
2. Mileage Reimbursement: Reimbursement for mileage may be received for each meeting and is calculated as round-trip mileage. Should two meetings occur in one day, mileage reimbursement can be received for actual miles driven. (Example: A plenary meeting and a committee meeting held at a different location will be reimbursed only for the miles to and from each meeting place.)
3. Meetings: Meetings are reimbursed at the rate of \$15 per day. Should two meetings occur on one day, meeting reimbursement can be received for one

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<sup>1</sup> All code sections refer to the Penal Code unless otherwise indicated.

day only. (Example: grand jury meeting and a committee meeting allow for only \$15 meeting reimbursement.)

4. Reimbursement Claims: Specific and completed Fresno County Claims for Payment must be submitted to the Fresno County Grand Jury foreperson at the end of each quarter (September 30, December 31, March 31 and June 30) for review and approval.

## **G. Period of Service**

The period of service for a grand juror is one (1) year (§ 901.) In addition, up to ten (10) members of the grand jury may be selected at the conclusion of the year to continue their service for one (1) additional year (see § 901(b)).

1. The grand jury foreperson and/or identified designee(s) are required to be available for forty-five (45) days following the expiration of the term to clarify recommendations contained in the grand jury's report (§ 933(a)). This is the only situation in which any juror may in any way elaborate on what is stated in a report, and it is limited to clarifying only the recommendations, not any other part of the report, such as a fact or finding.



## **II. Grand Jury Law**

### **A. General**

1. Grand jurors are required to receive training about “grand jury law.” This body of law addresses what grand juries must do, may do, and must not do. In addition, grand jurors should have a general familiarity with transparency and ethics laws. Research and analysis of the law should be performed by the grand jury’s legal advisors (e.g., county counsel, district attorney), but knowing where to find the sections of the law covering principles of “must/may/must not” will help avoid making mistakes, wasting time, or inviting criticism. These three principles are summarized here for convenient reference.

### **B. What the Grand Jury MUST Do**

1. Internal matters and confidentiality
  - a) Determine its rules and choose its officers, except for the foreperson (§ 916)
  - b) Use a supermajority (12 jurors) vote to adopt rules and for all public actions (§ 916)
  - c) Keep secret all grand jury evidence, discussions and votes (§§ 924.1, 924.2)
2. Mandated investigations and reports, and mandated inquiries
  - a) Investigate and report on at least one county officer, department or function (§§ 925, 933(a))
  - b) When requested by the board of supervisors, investigate and report on the need for an increase or decrease in the salaries of elected county officials (§ 927)
  - c) Inquire into the condition and management of public prisons within the county (§ 919(b))
  - d) Inquire into the willful or corrupt misconduct of public officials (§ 919(c))
3. Mandated Investigation and Reporting Procedures
  - a) Obtaining evidence used in report, interviewing or picking up evidence from a source must be done with at least two jurors in attendance (§ 916)
  - b) Juror must advise court and foreperson if employed by a local agency

within the past three years and be recused if that agency comes under review (§ 916.2)

- c) Meet with the subject of the investigation unless the court determines it would be detrimental (§ 933.05(e))
- d) Provide relevant parts of a report to the subject person or agency two working days before its public release (§ 933.05(f))
- e) Support the report's findings with documented evidence (verified facts) (§ 916)
- f) If findings are so noted, then recommendations for resolving them must be included in the report (§ 916)
- g) Take agency finances into account when writing recommendations (§ 916)

C. What the Grand Jury **MAY** Do

1. Investigate:

- a) Cities and joint powers agencies (§§ 925, 933.1)
- b) Redevelopment agencies\* and housing authorities (§ 933.1). \* In 2011, ABX1 26 barred redevelopment agencies from engaging in new business and provided for their windup and dissolution. (California Redevelopment Assn. v. Matosantos (2011) 53 Cal.4th 231, 241.) Assets of the former redevelopment agencies were transferred to "successor agencies" (Cal. Health & Saf. Code, § 34173), the work of which are supervised by "oversight boards" (Cal. Health & Saf. Code, §§ 34180-34181.) The authority of the Grand Jury to investigate successor agencies and oversight boards is unclear. The Grand Jury should consult with its legal advisor prior to initiating an investigation into one of these entities."
- c) Special districts (including school districts) and LAFCO (Local Agency Formation Commission) (§ 933.5)
- d) Nonprofit corporations established by or operated on behalf of a local public entity (§ 933.6)
- e) Need for an increase or decrease in county elected officials' salaries even if not requested to do so by the board of supervisors (§ 927)
- f) Needs and performance of all county officers and offices (§ 928)

2. Inquire into:

- a) The case of any non-indicted person in the county jail (§ 919(a))
- b) Ownership of land that should escheat to the state (§ 920)

3. Internal matters:
  - a) Seek input from authorized advisors (§ 934)
  - b) Hire and compensate experts upon court approval (§ 926)
  - c) Request court or attorney general to allow special counsel or investigator (§§ 936, 936.5)
  - d) Pass its investigative records and files to successor grand juries (§ 924.4)
4. Other discretionary powers:
  - a) Request the court or district attorney to subpoena witnesses (§ 939.2)
  - b) Foreperson may administer an oath (to tell the truth); during the interview in a civil investigation (§§ 939.4, 939.22)
  - c) Any juror may administer an admonition (to remain silent) to a witness in a civil investigation (86 Ops. Cal. Atty. Gen.101)
  - d) Invite the subject of a report to come before the grand jury to read and discuss relevant findings in the report (§ 933.05(d))
  - e) Order the district attorney to sue to recover money owed the county (§ 932)
  - f) Bring an accusation (formal charges) against a public officer for corrupt or willful misconduct in office (Gov. Code, § 3060)

**D. What the Grand Jury MUST NOT Do**

1. Use another grand jury's files as the basis of its own findings or recommendations (i.e., each grand jury must conduct its own investigation) (§ 939.9)
2. Investigate/report on district policy decisions or access district personnel records unless investigating misconduct (Board of Trustees v. Leach (1968) 258 Cal.App2d 281; 64 Ops.Cal.Atty.Gen 900 (1981).)
3. Investigate federal or state agencies or officials, or private businesses or individuals

**E. Confidentiality:**

1. Disclose evidence, discussions, or votes of grand jurors (§ 924.1) or identity of witnesses (§ 929)
2. Disclose raw (unverified) evidence in a report unless approved by the court (§ 929)
3. Unless advice is requested, allow judge or county counsel in grand jury meeting room (§ 934)
4. Allow any non-juror in grand jury room during deliberations or vote (§ 939)

**F. The Grand Jury's Budget:**

Exceed its budget unless the jury obtains the court's prior approval following notice to the board of supervisors (§ 914.5)

### **III. Transparency and Ethics Laws**

#### **A. Government Transparency Laws**

1. The grand jury will often be called upon to investigate compliance with these three laws:
  - a) The Ralph M. Brown Act (Gov. Code, §§ 54950-54963) requires the governing board of any local government to hold open and noticed meetings so that the public may observe the body's deliberations and actions. It also requires the governing body to allow public participation in meetings.
  - b) The California Public Records Act (Gov. Code, §§ 6250-56276.48) requires all local governments to make their records (with many exemptions) promptly available for inspection or copying on request.
  - c) The Political Reform Act of 1976 (Gov. Code, §§ 87100-87500) requires certain officials to report their economic interests. In addition it prohibits public officials from having financial conflicts of interest with regard to the government decisions they make and requires an official to disqualify him/herself from participation if a conflict exists.

#### **B. Ethics Laws**

1. The Political Reform Act (above) has an ethics component regarding financial conflict of interest. Another conflict of interest law is Government Code section 1090 which prohibits public boards and officials from participating in creating a contract, in which, an official of that entity has a financial interest.
2. Other ethics laws prohibit the use of public resources to promote or oppose a candidate for office or a ballot measure; prohibit bribery, cronyism, and gifts of public funds or other misuses of public resources; or impose gift and travel restrictions. There are also laws related to procedural fairness including due process and competitive bidding. The law also prohibits common law bias, holding incompatible offices and engaging in incompatible activities.

**C. Juror's Oath**

1. Penal Code section 911 sets forth the juror's oath of office:
2. I do solemnly swear (affirm) that I will support the Constitution of the United States and the State of California, and all laws made pursuant thereto and in conformity therewith, will diligently inquire into, and true presentment make, of all public offenses against the people of this state, committed or triable within this county, of which the grand jury shall have or can obtain legal evidence. Further, I will not disclose any evidence brought before the grand jury, nor anything which I or any other grand juror may say, or the manner in which I or any other grand juror may have voted on any matter before the grand jury. I will keep the charge that will be given to me by the court.

**IV. Advisors to the Grand Jury**

**A. General**

1. While it is part of the judicial system, a grand jury is an entirely independent body. The presiding judge of the Superior Court, the district attorney, the county counsel and the state attorney general act as its advisors, but cannot prevent the actions of the jury unless the jury's action violates the law. Unless such advice is asked of the presiding judge or county counsel as to civil matters, they shall not be present during the sessions of the grand jury (§ 934).
2. Superior Court Judge: The grand jury advisor is a judge appointed by the presiding judge of the superior court. The duties of the grand jury advisor are to:
  - a) Interview, empanel, and charge the grand jury with its duties
  - b) Consult with and advise the grand jury upon request of the foreperson
  - c) Review final reports and governmental responses for compliance with the law
  - d) Issue court orders and/or subpoenas on all appropriate matters
3. The District Attorney/Attorney General
  - a) The district attorney may at any time appear before the grand jury for the purpose of giving information or advice relative to any matter pertinent to the grand jury, and may interrogate witnesses before the grand jury whenever deemed necessary. At any time the grand jury concludes that money is due to the County and not collected, it may order the district attorney to institute legal action for its collection. If during a civil

investigation the grand jury uncovers evidence of criminal activity, the foreperson should promptly consult with the district attorney.

- b) The Attorney General of California is also available for advice and assistance, but should only be solicited if the district attorney has a conflict of interest or is otherwise unavailable to assist the grand jury with regard to a criminal matter (including an accusation for the removal from office of a public official). A request for the attorney general's aid may be made by the grand jury in writing (§ 936).

4. County Counsel

- a) Members of the county counsel's legal staff are familiar with the operations of local governing bodies and the types of transactions which may be the subject of inquiry by the grand jury. In addition to giving the grand jury general legal advice on county matters, county counsel may be able to assist the grand jury by providing an analysis of the law regarding any of the agencies the jury is investigating. The Penal Code expressly authorizes the grand jury to request the advice of county counsel with regard to any aspect of its civil investigatory powers, even as those investigations relate to governmental agencies for which the county counsel is legal advisor. Inasmuch as county counsel acts as legal advisor to the grand jury, that office is bound by the secrecy restrictions on grand jury matters and the confidentiality of the attorney-client relationship.
- b) Issues may arise about which both the Board of Supervisors or a county department head, as well as the grand jury, are seeking or have obtained legal advice. This would create a conflict of interest for the particular attorney in the county counsel's office who provided advice to the board or official. Should that occur, the county counsel will arrange to have a disinterested attorney in the office advise the grand jury. An "ethical wall" will prohibit the sharing of any files or other information. If all of the attorneys in the office have been involved in providing those legal services, the entire office will recuse, and the jury will go to the district attorney for legal assistance.

## **V. Conduct and Procedures**

### **A. Adoption and Amendment of Rules**

1. Penal Code section 916 requires each grand jury to "determine its rules of procedure." That section also requires that the jury's adoption of the rules, and any subsequent amendment to them, must be accomplished by a supermajority vote (12 affirmative votes).
2. This Procedural Manual constitutes Fresno County Grand Jury Rules of Procedure. Once adopted it can amended. It can be amended any time 12 or more

of the jurors decide to do so. These rules cannot be amended to allow jurors to exceed their jurisdiction or relieve them of duties imposed on them by law. County Counsel can ensure that the proposed amendment will not violate the law.

3. Provisions in this manual that are mandated or prohibited by law, and, cannot be amended, will ordinarily contain a citation of the Penal Code or another legal authority. The primary mandates and prohibitions contained in the Penal Code are:
  - a) The grand jury's "rules of procedure" (this manual) can only be amended by a supermajority vote (§ 916).
  - b) All "public actions" of the jury (such as the determination to conduct a particular investigation, or the release of a report) require a supermajority vote (§ 916).
  - c) The grand jury must choose its own officers, except the foreperson (§ 916).
  - d) The jury must investigate and report on at least one county officer or department function each year (§ 916).
  - e) It must inquire into the condition and management of "public prisons" within the county, and any credible evidence of willful or corrupt misconduct of any public officer, but need not write a report on either type of inquiry (§ 919).



## **VI. Conflicts of Interest, Bias, and Financial Disclosure**

### **A. General:**

1. It is essential that grand jurors preserve the credibility of the grand jury by scrupulously avoiding any real or perceived conflict of interest or bias.
2. No member of the grand jury should use their office for any kind of personal gain, to influence or obtain favor. Grand jurors should take precaution when identifying themselves as grand jurors in matters other than grand jury business. When conducting inspections, members of the grand jury must not accept gifts.
3. Penal Code section 916.2 requires a juror to advise the court and foreperson if he or she has been employed by a local agency within the past three years and to recuse if that agency comes under review. For the purposes of section 916.2, “agency” includes a department or operational unit of a county or city. This means that a juror who worked in a city’s Public Works Department need not recuse from an investigation of the Electric Utility Department, unless there is some other conflict. In addition to the statutory basis for recusal, the state’s “common law” (case law) also requires recusal when an official, such as a grand juror, has a real or perceived conflict of interest or is biased for or against the entity or official. Furthermore, conflicts of interest could be caused by a grand juror’s earlier employment with the public agency that is under investigation or the current employment by the public agency of a relative or close friend. Once a grand juror has been recused from a committee or a particular investigation because of a perceived or actual conflict of interest, that grand juror is permanently recused and their recusal cannot be revoked. The juror must leave the grand jury room whenever that matter is under consideration, including during the review of draft reports. The juror may not see the resulting report until after the end of the term.
4. Another cause of a conflict could be a contractual relationship with the agency or a recent or anticipated financial connection. A grand juror may be perceived as having a conflict if he or she has been engaged in litigation for or against the entity or official under investigation or has actively campaigned for or against the elected official in question. A juror who is known as a staunch advocate of a particular position or who has repeatedly and publically criticized an official or entity might be seen as biased. The test for determining common law bias is to ask, “Would a reasonable person knowing of the juror’s relationship or activity related to the entity, function, or official conclude that the juror might have a bias

for or against the entity, function, or official?” If the answer is yes, there is a perceived conflict of interest and the juror should be recused.

5. Having an educated opinion on an issue should not be considered the same as having a bias. The same procedures that apply to potential or actual conflicts of interest apply to pre-existing bias.
6. The California Fair Political Practices Commission (FPPC) considers that grand jury members are public officials and thus are subject to financial disclosure requirements contained in the Government Code and the regulations promulgated thereunder. Therefore, each grand jury member must file a Statement of Economic Interest (Form 700). A statement is to be filed at the beginning of the term, one at the end of the calendar year, and another upon discharge.

## **B. Grand Jury Communications**

1. The grand jury is committed to providing timely and confidential communications both among grand jurors and with the citizens it serves. The grand jury prefers to conduct business through written communication to facilitate accountability and to preserve a record for reference during the grand jury’s term.
2. The grand jury is transitioning to mail delivery through its email and mailbox addresses.
3. Electronic communication and transmittal of documents is directed through the grand jury’s email suite at [info@fresnocograndjury.com](mailto:info@fresnocograndjury.com).
4. Grand jurors’ official email accounts are used for all grand jury business. Grand jurors’ email accounts and access are deleted at the end of each juror’s term. Grand jurors should avoid using personal email to preserve confidentiality for the grand jury and to protect their own privacy.
5. Recognizing that not all Fresno County citizens have the equipment or training to communicate electronically, the grand jury also has a post office box for conventional mail delivery. The current grand jury address is:

Fresno County Civil Grand Jury  
P.O. Box 2072  
Fresno, CA 93718-2072

6. Mail can be collected weekdays between 6:30 a.m. and 5 p.m.
7. The Fresno County Administrative Office rents the box for the grand jury and

pays the rental fee from the grand jury budget.

8. Misrouted grand jury mail is forwarded to the CAO liaison. Although most mail is received unopened, there are occasions when previously opened mail was routed through the CAO liaison to the grand jury.
9. Keys to P.O. Box 2072 are issued to the following:
  - a) Grand jury foreperson
  - b) Grand jury foreperson pro tempore
  - c) CAO liaison
10. Keys in the possession of the grand jury must be returned to the grand jury foreperson at the end of the jury's term to be passed along to the incoming foreperson for distribution. The CAO liaison will be provided an accounting for the keys annually.
11. It may be necessary for keyholders to present identification or sign forms at the U.S. Post Office at Tulare and M streets when taking possession or returning mailbox keys.
12. Mail received by the grand jury should be logged in by the first grand juror to process it. A shareable log can be created in Google Sheet.
13. A register will record the sender, date received, juror doing intake, contents and info on where that piece of mail was routed. When previously opened mail is received, that fact should be noted in the register and, if possible, action taken to help correct future misrouting.
14. Mailed complaints and other communications are transmitted immediately to the foreperson or pro tem. A copy of each complaint should be read by the foreperson as quickly as possible; and then submitted to the entire grand jury for discussion.
15. All mailed communications will be maintained during the grand jury's term in locked file cabinets after copies have been made to conduct the grand jury's business with those communications.
16. Communications sent from the grand jury should be mailed on appropriate stationery, including the P.O. Box address and email. Electronic responses should be encouraged.

## **VII. Secrecy, Confidentiality, and Security**

### **A. General:**

1. There are both legal and practical reasons for secrecy of grand jury activities. Only fellow grand jurors, the presiding or supervising judge and the jury's authorized legal counsel are entitled to information about grand jury investigations, correspondence and deliberations. These matters must never be discussed with friends, relatives, business acquaintances or the news media, either during the grand jury's term or at any time thereafter. A grand juror, who willfully discloses any evidence presented to the grand jury, anything any grand juror has said, or how any grand juror has voted is guilty of a misdemeanor. (§ 924.1)
2. Grand jurors who happen to see each other outside the grand jury room, should take care that they do not discuss grand jury business where they might be overheard.
3. Efforts should be made to limit the number of people who learn of the jury's investigation. For example, when conducting an on-site interview, the jurors should not wear their badges until they are in the room where the interview will take place, and they should remove the badges before walking out. While conducting interviews or making field trips, jurors must never discuss or reveal any details regarding grand jury business, plans or investigations except to the extent necessary to conduct the investigation.
4. Grand jury statements of approval or disapproval of departments or agencies must come only from the entire grand jury and appear only in official reports that legal counsel has reviewed before release.
5. Similarly, any press release cannot reveal any confidential information that does not appear in the report. Confidential information includes why the jury chose the topic, any evidence obtained by the grand jury, information about any sources of information relied on by the jury, or the jury's deliberations and votes. The press release can summarize the report (but not include any additional information) or it can simply consist of the report's summary. In addition, the press release may provide general information about the grand jury system. Any press release should be reviewed by county counsel before it is distributed to ensure that grand jury secrecy is maintained. An individual grand juror should not retain any copies of any confidential material after the conclusion of their

term of service.

6. Each committee chairperson must ensure that an investigative file is compiled and maintained on each investigation conducted by that committee. This file should contain one copy of all interview notes and documents related to the investigation.
7. Many matters requiring grand jury action can be successfully completed only if absolute secrecy is maintained throughout the inquiry. With regard to watchdog investigations, whistle-blowers will not come forward unless they can be confident that their identities will be safeguarded.

## **VIII. Collegiality**

### **A. General:**

1. In all deliberations, jurors have equal rights and responsibilities. No juror may discourage other jurors from satisfying themselves fully with the evidence before casting their vote.
2. Jurors should not exert undue pressure on others to change their minds. A juror may express their opinions and views calmly, emphatically, and reasonably, but no grand juror should be dictatorial.
3. Only one speaker at a time will be allowed at general meetings. While speakers have the floor, jurors will not engage in side discussions.
4. Grand Jury meetings must allow sufficient time for all members to express their opinions. All members may request votes on any topic being discussed. Each juror should consider carefully the views and opinions of fellow grand jurors.
5. Holdover grand jurors have no more authority or responsibility than newly appointed grand jurors. Holdover jurors do have current experience of the latest grand jury and are very important to the continuity of the Fresno County Grand Jury. Holdover jurors can assist in the quick orientation of committees.

## **IX. Plenary Meetings**

### **A. Meeting Format**

1. The foreperson should consider the following meeting format:
  - a) Convene promptly at the appointed time and place.
  - b) Have roll call taken (or attendance noted using a sign-in sheet) by the recording secretary.
  - c) Read and vote to correct or approve the minutes of the previous meeting.
  - d) Hear reports of committees and discuss each committee's progress.
  - e) Describe any incoming complaints, and if the complaint is within the jurisdiction of the grand jury, assign it to the appropriate committee for initial research and report to the full jury.
  - f) Read correspondence sent to the jury and take necessary action.
  - g) Review draft reports as needed and provide input to the committee.
  - h) Attend to any unfinished business.
  - i) Attend to new business.
  - j) During at least one meeting each month, discuss the following: the annual timeline of grand jury activities, the auditor-controller's monthly report on grand jury expenditures, and a training update by the pro tem.
  - k) Announce, if possible, the agenda for and the date of the next meeting.
  - l) Adjourn.
2. As a courtesy to guest speakers, matters to be presented by them should be considered and concluded before proceeding to regular business, whenever this is possible. No witnesses or guest speakers should be present during any of the discussion or handling of grand jury business (§ 939).
3. It is recommended that the foreperson hold a brief pre-meeting with the committee chairs prior to the regular meeting. This can be an informal gathering or a meeting of the executive committee, if one is formed.

### **B. Meeting Procedures**

1. The foreperson or pro tempore should prepare an agenda for each plenary (full jury) meeting. Any juror may add an item to the agenda by contacting the

foreperson at least 48 hours before the meeting. The agenda will be distributed to the jurors by the foreperson by email at least 24 hours before the meeting. During the meeting, an item can be added to the agenda on a majority vote.

2. All plenary and committee meetings must be scheduled on the grand jury calendar.
3. A quorum for conducting business consists of 12 grand jurors (§ 940). Twelve affirmative votes (a “supermajority”) are required for the adoption or amendment of this procedures manual and for all public actions of the grand jury. Section 916 defines public actions to include authorizing an investigation or approving a report for public release. Decisions or actions that are not public actions do not need 12 votes. For example, a motion to reschedule a meeting can be passed on a majority vote (10 votes).
4. Other less-formal business (like setting the next meeting) may be conducted by obtaining consensus unless the foreperson or an individual juror requests a vote on a motion, which will require a majority vote to pass.
5. No proxy votes are allowed. Only members present at a meeting may vote. However, when necessary because of illness or other good cause, a juror may attend the meeting by conference call or Skype, as long as all jurors can hear each other throughout the entire meeting.
6. The foreperson must preserve harmony in meetings. He or she may speak on points of order and will decide all questions of procedure, subject to appeal. Voting is the choice of the foreperson; he or she may choose to vote on all motions or only when a tie occurs, or can choose not to vote.
7. A juror who doubts the decision of a vote may call for a roll call or show of hands.
8. When any juror is about to speak they should raise their hand and be recognized by the foreperson limiting their comments strictly to the question under discussion.

9. No grand juror may speak on the same subject more than once, except by consent of the foreperson or consensus of the jury. When a juror is allowed to speak a second time, this privilege is then extended to all members.
10. After every juror who wishes to speak on a motion has had the chance to speak at least once, and the discussion is becoming unnecessarily prolonged, any juror may “call for the question,” that is, ask that the motion be voted on.
11. A motion may be amended by the juror who made the motion; but they may decline to amend it and may instead call for a vote on it.
12. Cell phones and other noise-generating devices must be turned off or silenced during plenary sessions and committee meetings. Jurors shall refrain from texting during sessions and meetings.
13. It is not the intention of these rules that meetings be conducted in such a rigid form that matters cannot be informally discussed. There is no reason why meetings cannot be without ceremony, as long as business is transacted with efficiency and reasonable decorum. If, however, things repeatedly get out of hand, the grand jury should consider adopting and following specific ground rules aimed at maintaining efficiency and limiting personal conflicts or disputes.

#### C. Attendance Requirements

1. It is of great importance that attendance be regular and prompt, both for panel meetings and for committee meetings. The importance of the work requires that each juror be present at, and on time for, all sessions, except for the most significant reasons, such as illness, unavailability because of the infringement of serious personal demands, or vacations.
2. Grand jurors are allowed to attend all committee meetings, even if not a member of the committee. In this way, the committee can have the benefit of more jurors’ input. Without advance permission of the foreperson, compensation for such meetings is reserved for committee members.
3. To ensure the presence of a quorum, committee chairs should email or telephone all grand jurors of the date, time and location of each committee meeting. If a juror is unable to attend a session or desires to be excused, they must give the foreperson and committee chair as much advance notice as possible.



4. The foreperson will discuss absences with any juror whose attendance does not appear adequate for a fair contribution to the work of the jury. Three unexcused absences from a plenary meeting may be considered cause to recommend that the presiding judge remove the member from the grand jury.

#### D. Resignations and Removals

1. Resignation: Any grand juror wishing to resign must do so in writing, addressed to the presiding judge, with a copy to the foreperson.
2. Removal: The presiding judge may remove any juror for misconduct or failure to diligently undertake the duties of a grand juror. What constitutes sufficient grounds for removal is within the sole discretion of the court. A statutory disqualification of a juror would include being a felony conviction or moving out of the county. A violation of Penal Code section 924.1 applicable to jurors, which makes it a misdemeanor to disclose any grand jury evidence or vote, a juror's abandonment of his or her office, and/or any conduct by a juror which significantly disrupts the efficient operation of the grand jury.
3. Replacements: Although not mandated by state or county law, it is the practice in this county to replace a juror who leaves, resigns or dies, with one of the alternate jurors as soon as possible. However, if the vacancy occurs near the end of the term, the vacancy is usually not filled. The presiding judge ordinarily appoints replacement jurors from the alternates in the order their names were drawn at the time of empanelment, or if there are no remaining alternates, in the manner prescribed by the Penal Code.

#### E. Officers

1. This chapter describes the grand jury's officers and their typical duties. A supermajority of the grand jury can change these duties (except those required by law) by amending this manual.
2. Foreperson (by statute appointed by the Presiding Judge)
  - a) Calls general meetings of the grand jury; presides at meetings.
  - b) Prepares and distributes the agenda for general meetings.
  - c) Nominates officers for jury's consideration and vote; the full grand jury may, however, propose and elect any juror for any officer position, except foreperson.
  - d) Proposes committee assignments for consideration and vote.
  - e) Is a member of all committees; however, the foreperson shall not usurp the duties

of the committee chairperson.

- f) Ensures committee coordination through on-going consultations with committee chairs. This can be done by establishment of an Executive Committee.
- g) Brings all correspondence to the grand jury's attention at general meetings; and signs all approved communications, including committee correspondence requesting information. However, the corresponding secretary may sign routine transmittal letters.
- h) Consults with the presiding judge, county counsel and the district attorney when desirable or at the direction of the grand jury. Individual grand jurors shall not communicate with the aforementioned, unless accompanied by the foreperson; except that upon a majority vote (10 votes), a standing or ad hoc committee may meet with county counsel, with or without the foreperson.
- i) Invites county counsel or the district attorney to appear before the grand jury or a standing or ad hoc committee, as requested by the grand jury.
- j) Contacts the CAO in late June about the first Joint Audit Committee meeting and arranges an initial meeting between the county counsel and the foreperson and pro tem.
- k) Contacts the court for copies of responses to reports.
- l) Seeks input from county counsel as to each draft report and when the grand jury has questions regarding legal matters, using the grand jury's shared drive.
- m) Submits all reports to the presiding judge for review and approval prior to release.
- n) Except as provided in section 933(a) (which requires the foreperson and his or her designee to be available for 45 days after the end of the term to clarify recommendations in the jury's reports), acts as the only official spokesperson for the grand jury. However, the foreperson cannot reveal any confidential information, including any evidence adduced before the grand jury, how any juror votes or what any juror said during any grand jury proceeding.
- o) Administers oaths and admonitions. **Only the foreperson , or in their absence, the pro tempore, can administer an oath that the witness tell the truth** (§ 939.4). Any juror can administer admonitions to maintain the secrecy of the investigation.
- p) Requests subpoenas of the presiding judge or district attorney when needed.
- q) Signs all indictments and accusations and presents them to the court.
- r) Obtains all books, keys, software licenses and other materials related to the grand

jury from members who resign.

- s) Provides orientation for replacement jurors throughout the year.
- t) Oversees the scheduling and coordinating of meeting space as needed for all grand jury meetings, committee meetings, and interviews.
- u) Collects, reviews, and submits jurors' expense claims and financial disclosure forms on a timely basis. Signs claims for purchases of supplies and other items for the grand jury. Monitors the petty cash fund.
- v) Monitors expenditures to ensure that the jury remains within its budget; discusses this each month with the entire jury. After consulting with the Continuity Committee and county counsel, makes budget recommendations to the CAO.
- w) Makes recommendations to the presiding judge (with a copy to county counsel) as to which jurors should be carried over to a succeeding term, and who should be appointed as the next foreperson, and why.
- x) Some of the above responsibilities may be delegated to the foreperson pro tempore if deemed appropriate by the foreperson.
- y) The most important responsibility of the foreperson is to make sure that the grand jury as a whole and each of the committees function effectively and efficiently. To this end, the foreperson should be in frequent consultation with the various committee chairs and should require regular progress reports as to the work being handled by each committee. This can be accomplished by the use of an Executive Committee. In addition, the foreperson should attend as many committee meetings as possible throughout the year.
- z) To a large extent, the success of the jury will be dependent upon organizing and conducting meetings by the foreperson. It is the responsibility of the foreperson to try to prevent contentious factions from forming among jurors. If such should occur, the foreperson must devote every effort to maintain a friendly "unity of spirit." The foreperson should strive to preside with tact, restraint, consideration, common sense, firmness, and a sense of humor, always keeping open communication between himself or herself and other jurors.

### 3. Foreperson Pro Tempore

- a) The pro tempore, in the temporary absence or recusal of the foreperson, assumes the duties of the foreperson. In case of prolonged or permanent disability or ineligibility of the foreperson, the pro tem will undertake all of the duties listed in the section above, until a new foreperson has been named by the court.
- b) The pro tempore assists and counsels the foreperson on matters concerning meeting procedures, personnel problems, committee needs and the well-being of

the jury.

- c) The pro tempore is the jury's training officer, and is in charge of the continuing education needs of the grand jury, arranging for the periodic training sessions presented by jurors, CGJA, and/or county counsel.

#### 4. Recording Secretary

- a) Keeping of Minutes: It is the duty of the recording secretary to keep an accurate record of every grand jury meeting in the form of minutes. These minutes should show:
  - (1) The hour and minute of convening.
  - (2) Call and recording of the roll.
  - (3) Jurors absent from the meeting.
  - (4) Names of persons other than jurors who may be in the room at any time during meetings, such as speakers, witnesses, the county counsel, district attorney, or a court reporter.
  - (5) A record of all motions made and seconded and the jury's action thereon, omitting names of jurors making and seconding such motions. The minutes should not reflect the votes of individual members. No unanimous vote on any matter should be recorded in the minutes of any meeting, thereby permitting absolute secrecy as to the votes of each and every juror.

- (6) That only members of the jury remained in the room during deliberations on or voting of indictments.
- (7) That a quorum of at least 12 is present at all times.
- (8) A list of reports submitted by the various committees to the plenary meeting for its vote and the jury's action thereon.
- (9) The Recording Secretary should provide a copy (paper or electronic) of the minutes before the next regular meeting to each grand juror for review and approval. The minutes of a meeting, properly recorded, will be the best evidence that the procedure followed by the grand jury is a proper one.

**b) Other responsibilities of the recording secretary**

- (1) Keep a record of attendance at all grand jury meetings, as part of the regular minutes.
- (2) Inform the foreperson:
  - (a) Of the presence of anyone other than the grand jurors during deliberations or voting.
  - (b) If, at any time, the number of jurors present is fewer than twelve.
  - (c) It is recommended that several jurors act as the recording secretary.

## **X. Committees**

### **A. General:**

1. State law does not refer to grand jury committees. However, the grand jury cannot be effective if everything is handled by the jury as a whole, so the grand jury ordinarily establishes committees. The accomplishments of the grand jury as the watchdog of local government will depend to a great extent upon the work of its committees.
2. At the beginning of the term, the foreperson will distribute a committee assignment questionnaire. Using the questionnaires, the foreperson will propose committee members based on what he or she believes will be the best use of jurors' talents and experience. Consideration should be given to the potential for conflicts of interest when making committee assignments. All grand jury members must serve on at least one committee during the term of the jury, but they should ordinarily not serve on more than three standing committees at the same time. The foreperson is a member of each committee, but may not usurp the duties of the committee chairperson. Grand jury members should not serve on a committee on which there is likelihood of a potential conflict of interest or appearance of bias.
3. Each committee will select a chairperson from among its members. Chairpersons should be willing and able to serve and have the time to devote to this leadership position. No one person should chair more than one standing committee. The chairperson is responsible for presiding over the committee's meetings.

### **B. Organization and Operation of Committees**

1. Each committee should be structured with a chairperson and a note taker, who will keep attendance and written notes or minutes of each of its meetings, a copy of which should be provided to the foreperson. The chairperson should be responsible for informing absent committee members of the next meeting and should notify the foreperson of scheduled meetings and interviews. After each meeting, visit or interview, the chairperson or note taker should file a report.
2. Each committee should structure its meetings in the same general format as the meetings of the full grand jury. Action should be taken only after a motion has been made, seconded, discussed and voted upon. A quorum is more than fifty percent of the full committee membership. Action can only be taken if a quorum

is present and a favorable vote shall be considered anything approved by a majority of the quorum.

3. In the event that a vote of the quorum results in a tie, the matter under consideration by the committee may be reconsidered by the committee or brought to the full grand jury for consideration.
4. When matters concern more than one committee, members of the other committees, or the entire grand jury should be invited to attend such meetings. Any grand juror should be free to attend any grand jury committee meeting in which he or she is interested.

## C. Grand Jury Committees Other Than Investigative

### 1. Executive Committee

- a) The grand jury may establish an Executive Committee made up of the foreperson, pro tempore, the other officers, and the committee chairpersons. The purpose of the committee is to ensure that information is freely shared among all committees and groups within the jury, that tasks are being completed in a timely manner, and that any internal issues are being properly addressed.

### 2. Fiscal/Budget Committee

- a) Grand jurors with special training in or knowledge of budgeting/fiscal accounting would be encouraged to serve on the Fiscal/Budget Committee and would also serve as a resource for investigative committees.
- b) The Fiscal/Budget Committee will work with the liaison from the County Administrative Office to be certain the grand jury stays within its budget adopted by the Fresno County Board of Supervisors. The grand jury foreperson pro tempore may chair a Fiscal/Budget Committee of at least three members.
- c) The committee is further charged with the responsibility of developing an annual budget in collaboration with the Executive Committee and the County Administrative Office liaison. The grand jury foreperson and foreperson pro tempore will collaborate on any presentations necessary to the Board of Supervisors.

### 3. Informational and Outreach Committee

- a) The informational and outreach committee is responsible for maintaining information regarding grand jury service and updating any brochures on grand jury service. This committee reviews the complaint form and instructions, making changes when necessary and presenting to the entire grand jury for approval.

### 4. Editorial Committee

- a) The Editorial Committee supports the Investigative Committees and the grand jury as a whole. This committee maintains the Fresno County Grand Jury Procedures Manual with support from the Continuity Committee, ensuring that it is accurate and timely for each new grand jury.
- b) It also acts as editor for all drafts of the investigative committees' reports, making changes for ease of reading, uniformity of style and organization, grammar and punctuation, and coordination of the report as a whole, without changing the content of the reports. Once the investigative committee has completed its first full draft of a report, and as major revisions are made thereafter, the report will be sent to the Editorial Committee for editing. When warranted, the committee suggests further investigation or confirmation of facts if it has questions as to the accuracy of the facts or findings.
- c) The Editorial Committee should determine a format for the "consolidated final report," which will be recommended to the full grand jury for approval. The entire grand jury should suggest appropriate photographs and graphics for the consolidated final report.

#### 5. Continuity Committee

- a) Continuity means that you are not alone as a grand juror. You have much to draw on from your predecessors and will likely have much to pass on to your successors. Committee responsibilities are:
  - (1) Monitoring the filing of responses to the previous year's grand jury reports. Advising the grand jury if those responses are complete and legally sufficient or if additional follow-up appears to be required.
  - (2) Governing boards are required to respond to the findings and recommendations directed to them in a final grand jury report within 90 days. Elected officials' and agency heads responses are due within 60 days. (§ 933(c)). Once approved, responses must be forwarded to the presiding judge. (§ 933(c)) The court usually forwards them to the sitting grand jury. The jury will review the responses for compliance with the 60- and 90-day timelines contained in section 933(c).
  - (3) The Penal Code also governs response content. For each finding in the report, section 933.05(e) requires the responding governing board or official to give one of two responses:
    - (a) agrees with the finding; or



- (b) disagrees wholly or partially with the finding with an explanation of the disagreement.
- (4) To each recommendation, the board or official is required to select one of four responses: (§ 933.05(b))
- (a) it has been implemented, with a summary of the action taken;
  - (b) it will be implemented, with a timeframe for implementation;
  - (c) it requires further analysis, with an explanation and the scope of the analysis, and a timeframe for response of up to six months from the release of the report; or
  - (d) it will not be implemented because it is not warranted or is not reasonable, with an explanation.
- (5) The grand jury's monitoring of responses can be divided into three levels:
- (a) Compliance - This is a determination that the response met the legal requirements of sections 933 and 933.05 with respect to timeliness and format and content.
  - (b) If the response fails this test, the jury may request that the court insist on a legal response. Alternatively, the jury may conduct a new investigation and publish a follow up report to focus attention on the topic and the public agency that failed to comply. The committee will advise the foreperson of any inadequacies and shall work with the County Counsel's Office on any responses deemed not timely filed.

- (c) Responsiveness - A determination that the response reflected that the entity understood the issues in the report and responded accordingly. The response is judged to be clear and not evasive.
  - (d) If the jury requires the entity to readdress the issues, the only possible action is to initiate a full new investigation and issue a new report.
  - (e) Implementation - A determination as to whether the official or entity did as it stated it would do in its response. This is the most difficult area to address as significant time may elapse before verification is possible. A sitting grand jury may conduct a full investigation and write a report concerning an entity's implementation efforts.
- (6) The sitting jury, after receiving the responses to all the previous year's reports, may release a follow-up report assessing whether the responses comply with the timeliness, content, and format requirements of the Penal Code. This report can be issued early in the term as responses are all due no later than 90 days into the new term.
- b) Maintain Procedures Manual Continuity. The "rules of procedure" required by section 916 are maintained in this Fresno County Grand Jury Procedures Manual. The new jury should adopt it at their first official meeting by supermajority vote. This manual should be updated on a regular basis by the Editorial Committee as changes are proposed by jurors and these changes presented for adoption at grand jury official meetings.
  - c) Support Training Continuity. In conjunction with the Court, district attorney, at least one former grand juror, and county counsel ensure that each new grand jury receives the training to which it is entitled. (§ 914(b).) The California Grand Jurors' Association provides training workshops. Local orientation should provide an overview of local government agencies within the county, presentations by local officials, and review of administrative matters, presentations by the grand jury's legal advisors, and training in the use of Google Documents (see page 99).
  - d) The Continuity Committee should consist of a chairperson and at least two members. It is recommended that the grand jury foreperson, the pro tempore, and any jurors who intend to request "hold over" status to the succeeding grand jury be

members of the Continuity Committee.

**6. Ad Hoc Committees**

- a) Ad Hoc Committees may be established for specific investigations by decision of the grand jury meeting in plenary session.
- b) Grand jurors will notify the foreperson of their interest in serving on an Ad Hoc Committee and the foreperson will nominate members to serve in consultation with other officers and with the concurrence of the grand jury as a whole.
- c) Ad hoc committees shall each have a chair and a recorder.
- d) All ad hoc committees will function in the same manner as any other investigative committee and their reports will be edited and presented to the entire grand jury as any other committee's product.

## **XI. Civil Investigations**

### **A. Investigative Committee**

1. The primary duty of the grand jury is to inquire into the operations of local governments (cities, the county, special districts, school districts, etc.) and the conduct of the officials who run or oversee those local agencies or their divisions or departments. (See §§ 925, 925a, 933.1, 933.5, 933.6; in the “Statutory and Case Law” section of this manual, for the types of agencies the grand jury may investigate.) In addition, the grand jury is expressly authorized to investigate and report on the salaries of elected county officials (§ 927) and the need to abolish or create county offices (§ 928).
2. Many citizens do not understand that it is the statutory responsibility of the grand jury to examine the conduct of city and county governments and other local agencies, and that such civil investigations do not necessarily imply malfeasance by government officials. Similarly, the appearance of public officials before the grand jury does not in itself suggest wrongdoing. Because of this misunderstanding, it is important to conduct civil investigations confidentially and with extreme caution.
3. When a juror takes the oath of office, he or she becomes not only a responsible officer of the court, but also an accountable critic of local government. Consequently, grand jurors should examine governmental operations as seriously, efficiently and scrupulously as they expect their government to be administered by its officers and employees. The result of such investigations is a formal public report with recommendations and instructions to the public entity’s administrator or governing body to respond in a timely manner to the findings and recommendations in the report. In cases of actual misconduct, an accusation may be brought against the public official who is responsible.
4. Penal Code section 921 provides that the grand jury is entitled to examine, without charge, all public records in the possession of any local governmental entity within the county. If a public officer or employee claims that a document prepared by his or her agency is not a “public record,” the foreperson should seek the advice of county counsel regarding access to the document.
5. The grand jury alone decides which governmental entities and issues to investigate within the statutory limits (although it must investigate at least one aspect of county government each year). The grand jury library contains files of

previous investigative subjects and complaints, which can be a good source of background information. The previous grand jury may pass on suggestions for possible investigations. Grand jurors themselves might suggest possible issues for investigation.

6. An affirmative supermajority vote is required to begin an investigation. While some background research can be done before the grand jury approves an investigation, no interviews, site inspections or records requests can be undertaken until the investigation is formally approved.
7. An investigative committee assigned to an investigation should gather and study background information and organize how the investigation will be conducted before conducting site inspections or interviews.

## **B. Rules For the Investigative Committee**

1. At least two jurors must attend each interview (§ 916).
2. Only the foreperson (or in the absence of the foreperson, the pro tempore) can administer an oath to a witness (§ 939.2);
3. The jury must meet with the subject of the investigation, unless relieved by the court, and must give the official or the agency referred to in the report the relevant portions of the report two business days before its release to the public (§ 933.05).
4. Each finding (conclusion or value judgment) in a report must be supported with documented evidence (§ 916).
5. If a problem is identified in a report, the report must recommend the means to resolve it and the recommendation(s) must take into account the agency's finances (§ 916).
6. The grand jury cannot adopt the findings or recommendations of another grand jury (including the previous grand jury) or adopt any outsider's report as its own (§ 939.9).
7. A juror may not disclose evidence within the report, the discussions or votes of any juror, nor the identity of witnesses, particularly whistleblowers (§§ 924.1 and 929).
8. A report cannot contain raw (unverified) evidence, unless approved by the court (§ 929).
9. No one other than jurors may be present during deliberations or the taking of a

vote (§ 939).

10. The jury cannot exceed its budget, unless the proposed expenditure is approved in advance by the court, after giving notice to the board of supervisors (§ 914.5).
11. Prepare a summary report of its activities to be presented at each regular grand jury meeting and keep the full jury aware of all committee activities.
12. Protect the confidentiality of citizens who bring complaints to the grand jury and of witnesses who are called to provide information.
13. Gather and study background information about any agency being investigated or reviewed and arrange a tour if appropriate.

### C. Complaint Procedure

1. The foreperson, pro tempore, or designee logs the complaints as received, and coordinates review of each complaint by the individual jurors prior to consideration by the full grand jury.
2. A grand jury typically receives communications from citizens, civic groups, and government employees relating to grievances. The jury may, and frequently does, look into complaints as part of its duties, although the penal code does not assign the grand jury the role of ombudsman. Some complaints will concern matters over which the grand jury has no jurisdiction. All complaints are handled in strict confidence to protect the complainant's identity. Complaints will be posted on Google Drive as received, and will be shared prior to each plenary meeting after receipt.

### D. Investigations Resulting from Complaints

1. The grand jury may decide to conduct an investigation based on a citizen's complaint.
2. Each complaint must be reviewed by the entire grand jury, which will decide by a supermajority vote if it should be rejected or accepted for investigation. County counsel can be consulted if there is any question as to whether the topic is within the grand jury's jurisdiction.
3. The grand jury is not required by law to accept or act on the complaints it receives. The reasons for rejection of a complaint may include:
  - a) Complaint is outside the grand jury's jurisdiction.
  - b) Complainant should seek advice through other channels.

- c) Complaint has no merit.
  - d) Complaint appears to be politically motivated.
  - e) Complaint involves issues in a current election campaign.
  - f) Complaint involves matters subject to current litigation.
  - g) Complaint requires more resources than the grand jury has available.
4. This list is not exhaustive; the grand jury needs no particular reason to decide not to conduct an investigation based on a complaint.
  5. Following a preliminary review of a complaint, the grand jury will send correspondence to the complainant, acknowledging the complaint. This proposed letter must be presented to the full grand jury for approval and should be signed by the foreperson.

#### E. Investigatory and Legal Assistance

1. General: The grand jury is authorized to employ auditors and other experts, upon prior court approval, to aid in the jury's duties related to its investigations of the county, cities, joint powers agencies, districts and LAFCO. However, the grand jury may not spend money nor incur indebtedness in excess of the amount budgeted by the Fresno County Board of Supervisors, unless the proposed expenditure has been approved in advance by the presiding judge of the Superior Court, following notification to the Board of Supervisors. (The grand jury should make every effort to operate within its budget.
2. Accessing the Advice of the County Counsel or District Attorney: The grand jury, through its foreperson, should establish a working relationship with county counsel early in the term, and should feel free to contact the attorney at any time. The foreperson, or the grand jury, on a majority vote, may invite county counsel to be present during plenary sessions or committee meetings in order to give legal advice to the full panel or the committee. The grand jury should treat any opinions from either office as confidential unless authorized to release the contents by county counsel or the district attorney. The attorney's advice should not be alluded to in the jury's report without authorization.

## **XII. Inspections and Interviews**

### **A. Inspections**

1. State law requires that all fact-finding forays (tours, inspections or interviews) must be made in groups of at least two or more jurors (§ 916). Such contacts are ordinarily undertaken by either a full committee, or by the entire grand jury.
2. As a self-educational device, committees will want to arrange tours to various county, city, or district facilities to see their operations first hand. These should be scheduled early in the term, as such visits often indicate areas requiring greater depth of study or investigation. Before each tour, the grand jury should discuss the goals of the tour. Suggestions as to improvement of the department should be solicited from the department or agency head, supervisors and staff during the visit. All committee members should take notes.

### **B. Interviews**

1. After the grand jury gives its approval for an investigation, general background information about the department or agency and the particular complaint, if applicable, should be reviewed by the investigative committee before any interviews take place. Further, no interviews should be conducted until committee members have had adequate training in interviewing procedures.
2. The purpose of interviews is to obtain information, to verify information, and to acquire new leads and sources. The entire committee might conduct the interview or the committee may appoint a team to do it and report back.
3. With regard to each investigation, section 933.05 mandates that the jury “meet with” (and presumably interview) the “subject of that investigation” (the official or board in charge of the program or function being investigated), unless the court “determines that such a meeting would be detrimental.” Fairness requires that the grand jury interview that person who will be held responsible for any criticisms contained in a grand jury report. In fact, that person may be interviewed more than once, if and when the investigation uncovers new issues.



4. For confidentiality, the grand jury should not communicate in writing or by email with witnesses about the nature or contents of an investigation. Written communications may be used to schedule tours or interviews.
5. In order to ask meaningful questions, committees should obtain as much information about the issue as possible prior to any interviews. Review general reference materials (such as websites, or the agency's budgets or policies) as well as any complaints and any earlier grand jury reports.
6. The interview team should get input from each committee member at a meeting held prior to the interview to prepare questions. The committee may want to have the questions reviewed by the foreperson or county counsel before the interview. The team should establish where and when to meet and discuss how they will conduct themselves during the interview (who will have the responsibility to take notes, who will ask the questions, etc.) Each team member should have a copy of the interview questions, which should be printed with sufficient space between the questions to record notes.
7. When arranging interviews, the committee chairperson should call to make the appointment. Initial interviews should be scheduled with department heads or agency managers. Care must be taken not to discuss anything about the investigation with the person when setting up the interview, even though he or she may naturally ask questions and want to know what it is about.
8. A person who is interviewed under oath no longer has the right to have an attorney present. (Effective Jan.1, 2017.)
9. All interviews should start with the lead interviewer reading the admonition to the interviewee and asking him or her to sign it. A copy of the admonition is provided in Appendix A.
10. Committees may, if they wish, record their interviews, if the interviewee consents. However, recording must be done openly, as secret recording is illegal. The recording will then be downloaded to the jury room computer and shared with all committee members. All recordings must be turned in with the committee file at the end of the investigation. An interviewee may never record an interview.
11. Start with a few general questions designed to put the interviewee at ease. The interviewee should be allowed to answer the questions completely. Grand jurors should never make comments, offer opinions, nor express any agreement or disagreement with an interviewee's answer. Grand jurors should never reveal

information about other interviews or aspects of the investigation. Questions should be open-ended, allowing the interviewee to elaborate as appropriate.

12. The interviewing team should ask the interviewee if they have any suggestions about how to solve any problems discussed during the interview.
13. Always retain control of the interview; do not let the interviewee turn the tables and start questioning the jurors. Ask follow-up questions as needed to gain clarification or to explore new subjects as they come up.
14. All fact-based statements (other than published government reports or data) should be independently verified or substantiated by “triangulating” (obtaining confirmatory information from two other sources).
15. If the interviewee refers to any documents, such as agency policies, or statistical data, a copy of the documents should be requested.
16. Jurors should keep in mind the interviewee is observing them and keeping mental notes just as they are doing. Jurors should never offer any suggestions, answers or opinions as to the interviewee that would imply they have preconceived opinions.
17. At the conclusion of the interview, always ask if the interviewee has anything additional to say and whether they can suggest other persons who should be interviewed. All team members should have an opportunity to ask additional questions at the end of the interview to clarify answers. The interviewee should be reminded of the admonition at the end of the interview.
18. Promptly after each interview, the committee should meet to review the information obtained and determine what should be done next.
19. Refer to Appendix B for a sample of an interview procedures.

### C. Exit Interviews

1. Subdivision (d) of Penal Code section 933.05 allows the grand jury to request the subject person or board to review the report’s findings that relate to that person or board. This “exit interview” is more limited than the interview described above.
2. The exit interview gives the jury a last chance to verify its findings with the board or person who is responsible for the activity that the jury has investigated. The jury should hold an exit interview at the conclusion of every investigation, and while its report is nearing completion, unless good cause exists for not

reviewing the findings (and this rarely happens).

3. The committee may review the findings by reading or paraphrasing them, and asking if the person agrees that the information is true. This can be done in person, or by conference call, but always within the full hearing of at least two jurors. Other than the findings, no further information about the report, such as the grand jury's recommendations, should be revealed.
4. If the person interviewed provides any information during the exit interview that casts doubt on the accuracy or fairness of the report, the grand jury should reopen the investigation and/or modify the report.

#### D. Closing Investigation Files

1. The committee chair should collect all papers, documents, notes from interviews, drafts, etc. from all committee members and put together a file with one copy of everything to turn over to the librarian for filing. This file, including every individual's notes, must be kept until the end of the term, or longer if, after consultation with county counsel it is determined that litigation is threatened or pending.
2. A file should also be turned in for any investigation that did not result in a report. A committee file should also be turned in with one copy of agendas, minutes, or any other committee papers.
3. At the end of the term, all grand jurors should remove all confidential documents and emails from their personal computers and turn in any confidential grand jury papers in their possession for filing or shredding.
4. Pursuant to Penal Code section 924.4, the grand jury can pass forward to the next grand jury a civil investigative file if the current grand jury has not been able to write a report on the investigation, either because of a lack of time to do so, or a lack of resources. The succeeding grand jury is allowed to review the contents of that file (except any materials related to a criminal investigation or materials which could form part or all of the basis for an indictment). The succeeding grand jury is not obligated to conduct an investigation on that matter, and if it does, it must verify each piece of evidence that is contained in the file.
5. If there is concern that an investigation or report may result in a claim of defamation, the investigative file should be reviewed by county counsel; it may be maintained by the county counsel until the matter is resolved.



## E. Defamation

1. Defamation is a false statement about an identifiable person or corporation which damages the person's or corporation's reputation. Written defamation is referred to as "libel" and oral defamation is "slander."
2. Penal Code section 930 states, "If any grand jury shall, in the report above-mentioned, comment upon any person or official who has not been indicted by such grand jury, such comments shall not be deemed to be privileged."
3. In *Gillett-Harris-Duranceau & Associates, Inc. v. Kemple* (1978) 83 Cal.App.3d 214, the court held that section 930 meant that grand jury members were not immune from a suit in which the plaintiff claimed that he was defamed by statements in the grand jury report that he had been negligent, incompetent and wrong in performance of his duties for county and special districts. A more recent case, *McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162, held that a grand jury's comments regarding any person or official who had not been indicted were not deemed to be privileged and, therefore, an action for libel was possible against individual grand jurors for statements made in the grand jury report.
4. Because grand jurors can be held personally liable for damages for defamation of persons or corporations wrongly disparaged in grand jury reports, it is critical that the grand jury be certain of the accuracy of any statement which accuses a person of a crime (such as a violation of the Brown Act or the violation of a Penal Code provision) or a claim that a person investigated by the grand jury is corrupt or incompetent. While there are some legal safeguards (defenses and immunities) which protect grand jurors, it is best to avoid claims of defamation whenever possible.
5. Because the truth of the supposedly libelous statement is always a defense, the best way for the grand jury to avoid a defamation lawsuit is to make sure that every sentence in its report is true. Every fact must be verified (triangulated).

### **XIII. Reports and Publicity**

#### **A. Writing and Processing Reports**

1. Not every investigation will result in a report. In fact, only one report is required each year: a report about some aspect of County government.
2. The most important components of a report are facts and findings.
3. Fact: A “fact” is a piece of information that has been verified or confirmed as being true. While information in an official government report or publication does not ordinarily need to be confirmed, statements made during interviews or in correspondence should be triangulated (that is, confirmed by two other information sources, such as other interviews or documents). Newspaper accounts and information from the internet should always be triangulated; they are not reliable.
4. Finding: Every report (whether or not it contains any recommendations) must contain findings as well as facts. A “finding” is a judgment or conclusion (which can be neutral, commendatory or critical) based on one or more of the verified facts that are included elsewhere in the report. A finding bridges the analytical gap between facts and any recommendations.
  - a) Some investigations will result in findings that the agency or department is well run (or that the complaint is not meritorious); if a report is written, it will not contain any recommendations (but it still must have findings).
5. Recommendations: On the other hand, if one or more problems are identified in the findings, the report must contain at least one recommendation for solving each finding.
  - a) Penal Code section 916 requires that any problems identified in the report be “accompanied by suggested means for their resolution, including financial, where applicable.” Because of this requirement that the report include “financial means” for the resolution of the identified problems, the grand jury should attempt to estimate the cost of implementing each recommendation and suggest a legal and practical source of funding. The jury should avoid recommending an expenditure that cannot realistically be funded.

6. **County Counsel Review:** When the report is complete, the chairperson of the investigative committee will electronically forward the report to the Editorial Committee for review. The report will be reviewed by the Editorial Committee, which can either approve it by vote or refer it back to committee for additional work.
7. **Acceptance:** Upon the entire grand jury's acceptance, the report will be electronically forwarded to county counsel for review. The attorney might return the report with suggestions for changes, or ask to meet with the committee to review the report. The county counsel ordinarily reviews several drafts of a report not just the version that the jury considers to be the final one.
8. **Exit Interview:** After county counsel's review of the final version of the report, the investigative committee will conduct an "exit interview" with the "subject of the investigation." Penal Code section 933.05 allows, but does not require, the grand jury to request a person or governing board to meet with the grand jury to discuss the findings in the report that relate to that person or board, in order to verify the accuracy of the report's findings. To ensure fairness and accuracy, the grand jury should always have this "exit interview" to confirm the information contained in its proposed findings with the manager or official who is responsible for that aspect of the department's operations. Jurors may discover, when talking to the person in charge of operations, that their findings are a bit off-target, outdated, incomplete, or even incorrect; the interview will give them the information they need to follow up with additional research or interviews, and/or correct the report.
9. **Presiding Judge Review** After the exit interview, and when the grand jury is satisfied that the report is finished, the county counsel has reviewed it, and the grand jury has accepted it, the report must be submitted to the presiding judge for review. The grand jury should indicate in a cover letter whether the report is to be released immediately by the judge by forwarding it to the county clerk, or returned to the grand jury for release at the end of the term. Every report must be provided to the subject of the report at least two working days before its release to the general public.

## B. Report Format

1. Not every investigation will result in a report. In fact, only one report is required each year: a report about some aspect of County government. The report should follow the format below:
  - a) Summary: This section contains a brief overview of the most important issues, findings and recommendations. It might explain why the grand jury chose to investigate the particular topic. This is the one section that everyone who sees the report will read, so it should “tell the story” to encourage the reader to read the entire report.
  - b) Glossary: This section contains terminology and acronyms that are pertinent to each investigative report.
  - c) Background: This section describes the issues in more detail. It describes the circumstances and events that led to the investigation. It answers the unspoken question, “Why was the investigation done?”
  - d) Methodology: This outlines the steps taken by the grand jury to develop the facts, findings and recommendations contained in the report, by listing the documents relied upon, number of persons interviewed, and any site visits made. However, neither the names or titles of interviewees should be included, in order to protect the identity of the interviewees.
  - e) Discussion: This section contains the verified facts as determined by the investigative committee, clearly organized in a logical order by topic. Except for reliable government information (such as data from an adopted budget or a published report) all information must be triangulated. If the evidence from various sources is in conflict, credibility must be assessed (the jury can choose to believe one source’s information over that from another source).
  - f) Findings: Findings are the conclusions or judgments that flow from the verified facts. This is where the grand jury describes what the agency is doing wrong (or right), and the impact on the agency or on its customers or the general public. The findings confirm or refute the issues identified in the Introduction or Discussion. Every report must have findings (§ 916). Findings should be numbered F1, F2, etc.
  - g) Recommendations: Recommendations are required only when the findings identify a problem. Each recommendation must be based on and flow logically from one or more findings. It should state what should be done, by whom, and within what time frame in order to mitigate or fix the problems identified in the findings. The recommendations must be specific, practical and financially feasible. Recommendations should be numbered R1, R2, etc.



h) Responses: This section is needed whenever the report contains recommendations. Here, the report will identify who must respond to specific findings and recommendations, which are referred to by number. Only governing boards and elected officials can be required to respond; the report might indicate that so-and-so “shall respond to findings F1 and F2 and recommendation R1” (for example). However, the jury can “invite” appointed department heads and other top administrators to respond to specific findings and recommendations (i.e., “The Chief Probation Officer is invited to respond to findings F4 through F7 and to recommendations R5 and R6.”). “Invited” officials almost always submit responses.

i) Appendix: This section is optional. It can contain data, maps, excerpts from statutes, a glossary, or other information not essential to the text of the report. However, it may not contain “raw evidence” (unverified information, such as a transcript of an interviewee’s testimony). The Appendix could also contain a disclaimer, if one or more jurors recused from participating in the investigation due to a real or perceived conflict of interest.

2. The grand jury is also responsible for producing a final Year-End report. Suggested contents of the Final Report are:

- a) Introduction
- b) Letter by the supervising judge (optional)
- c) Letter by the foreperson
- d) Table of contents
- e) List of jurors
- f) Picture of jurors
- g) Body of report

### C. Responses to Grand Jury Reports

1. Penal Code section 933 allows the grand jury to require only elected officials and governing bodies to respond to the grand jury's reports. The elected officials to whom the grand jury directs its recommendations are required to respond to the reports' findings and recommendations within 60 days. The governing bodies have 90 days to respond. Responses are submitted to the presiding judge.
2. The grand jury may not require department heads or other officials who are appointed (rather than elected) to respond to reports. However, nothing prohibits the grand jury from inviting a response from an appointed department head or official, and most grand juries do this. The "invited" officials almost always respond.
3. Penal Code section 933.05 requires that responses contain specific information. The responder must state whether they agree or disagree with each finding. Disagreement with all or part of a finding must be explained. Further, the responder must state, with regard to each recommendation, the extent to which the recommendation has been implemented, or when it will be implemented, or why the department or public entity will not implement the recommendation. See Penal Code section 933.05 for a more thorough description of the information that must be contained in the response.
4. When both an elected county department head and the Board of Supervisors are directed to respond to the same report, the board may address only those budgetary or personnel matters over which it has some decision making authority; the elected department head must respond to all aspects of the findings and recommendations. (§ 933.05(c))
5. If a board or elected official fails to respond to one or more findings or recommendations, the jury should send a letter advising the board or official of the requirements of section 933.05.

### D. Public Statements and Press Releases

1. Two statutes allow for public statements by the grand jury. Penal Code section 939.91 allows a grand jury to issue a statement, at the request of a witness before the grand jury, which would state that an indictment was not found against such person, or that the person was called only as a witness in an investigation that did not involve a charge against such person.

2. There is no statutory authority for “press releases” or other types of public statements. Should the grand jury wish to publicize the release of a grand jury report, it should consult with the county counsel to prepare the press release and discuss how to handle media questions.
3. The final report of completed investigations is the avenue through which the public will know the grand jury is performing its civil "watchdog" duties. It is the grand jury’s means of educating the public. Except for the purpose of “clarifying recommendations,” neither the foreperson nor any other grand juror should comment.

## **XIV. Google Training**

### **A. General: Google Docs, eMail, etc.**

1. The County of Fresno has established a secure online site using Google products for the Fresno County Civil Grand Jury. The Google Mail, Docs, Sheets, Drive and Calendar products provide confidential and essential communications for the grand jury. Grand jurors are responsible for learning the rudiments of the system. Training will be made available to all grand jurors. To preserve confidentiality, it is important that grand jurors refrain from using personal email for grand jury communications after being made part of the grand jury communications site.
2. The Google system will alert grand jurors when documents such as agendas, minutes of plenary sessions and committee meetings, items of interest in the media, and draft reports are available for review/editing. Using email allows grand jurors to efficiently communicate through their term. However, care must be taken to safeguard email transmissions. Jurors should use their county email addresses. However, routine messages setting meetings, or containing other non-confidential information, can be sent to a juror's personal email address.
3. The grand jury's desktop computers contain confidential information and, for security reasons, should never be removed from the grand jury's room nor used for any purposes other than those of the grand jury. A wireless communications hub is in the grand jury room and all grand jurors will be provided password information for its use, which is reserved for grand jury communications exclusively.

## **XV. Oaths, Admonitions and Criminal Functions**

### **A. Oaths**

1. Grand Jurors: The oath to grand jurors is administered by the court to all grand jurors on the occasion of their empanelment.
  - a) All oaths in civil matters are administered by the foreperson (§ 939.2), or in his or her absence or recusal, the pro tem. The person taking the oath swears or affirms to tell the truth when questioned by the grand jury (or the district attorney, in the case of an accusation or indictment).

b) At the request of the person being sworn, an oath may be modified to change the word "swear" to "affirm."

2. Oath to a Court Reporter: When matters involve the question of an accusation, or an investigation is of a nature serious enough to require that the testimony be recorded, a court reporter should be retained through the district attorney. The reporter is required to take the following oath:

*Do you solemnly swear (affirm) that you will faithfully perform the duties of stenographic reporter for this grand jury, and that you will report the proceedings held before this grand jury, and when called upon to do so, will furnish a full, true and correct transcript of your notes within the time prescribed by law, and that you will not divulge any of the matters concerning which the grand jury is conducting an investigation, the names of any witnesses, or the testimony given by them, until you have been ordered to do so by this grand jury?*

3. Oath to Reporter's Transcriber

*Do you solemnly swear (affirm) that you will not divulge any of the matters concerning which the grand jury is conducting an investigation, the names of any witnesses, nor the testimony given by them?*

4. Oath to a Bailiff

*Do you solemnly swear (affirm) that you will support the Constitution of the United States and the Constitution of the State of California, and that you will faithfully perform the duties of Bailiff for this grand jury, and that you will not divulge any of the matters concerning which the grand jury is conducting an investigation, the names of any witnesses, or the testimony given by the same, until you have been ordered to do so by this grand jury?*

5. Oath to an Officer Charged with Custody of Prisoner Witness While Prisoner is Testifying

*Do you solemnly swear (affirm) that you will perform the duties required of you for this grand jury, and that you will not reveal to any person, except as directed by the court, what questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your attendance here unless and until such time as the transcript of this grand jury proceeding is made public?*

6. Oath to a Witness

*Do you solemnly swear (affirm) that the testimony that you are about to give upon the investigation now pending before this grand jury shall be the truth, the whole truth, and nothing but the truth?*

7. Oath to a Child Witness

*Do you promise that you will tell the truth and nothing but the truth?*

8. Oath to an Interpreter

*Do you solemnly swear (affirm) that you will well and truly interpret (foreign language) into English and English into (foreign language), in the cause now pending before this grand jury with your best skill and judgment?"*

**B. Admonitions**

1. General: While an admonition is ordinarily given by the foreperson, it can be given by any grand juror. The admonition instructs the witness (interviewee) not to reveal anything he or she learns during the interview.
2. Admonition Provided to all Witnesses and any Court Reporter for an Interview in a Civil Investigation

a) *You are hereby admonished not to reveal to any person, except as directed by the court, which questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your appearance before the grand jury, unless and until such time as a final report of this grand Jury proceeding is made public or until authorized by this grand jury or the court to disclose such matters. A violation of this admonition is punishable as contempt of court."*

An admonition form, which can be signed by the interviewee at the investigative committee's request, is included in at Appendix A.

3. Admonition to grand jurors before consideration of a charge presented by the District Attorney

Before considering a charge against any person, the foreperson shall state to those present:

*I am required by Section 939.5 of the Penal Code to make the following statement, and to inform you that any violation of this Section is punishable by the Court as contempt:*

*'The grand jury is about to consider the matter of a charge of \_\_\_\_\_ made against \_\_\_\_\_. I direct any member of the grand jury who has a state of mind in reference to the case or to either party which will prevent him or her from acting impartially and without prejudice to the substantial rights of the party, to retire. Failure to retire is punishable by the court as a contempt.'*

The foreperson then asks if there is anyone present with such a state of mind. A juror should disclose any prejudice that might prevent him or her from being fair and impartial to either the accused or the People of the State of California. If no juror has such a state of mind, the foreperson should recite this fact into the record. If a juror states he or she does have such a state of mind, the foreperson should ask such a juror to retire and should then recite into the record how many jurors have retired.

4. Admonition to Witness Accused or Charged With a Crime Before He or She Testifies

*You have a right, at your own request, but not otherwise, to be sworn and make any statement on your own behalf that you may desire. You are informed, however, that if you are sworn and make any statement, such statement, together with any questions that may be asked of you by the district attorney, will be taken down in shorthand and become a matter of record, and in the event an indictment is filed against you on this charge, that record may be used either for or against you at the time of your trial. You are not obliged, however, to make any statement whatever, unless you desire to do so. Any statement that you make must be completely voluntary on your part, and with this admonition in mind.*

5. Admonition to Witness Whose Testimony May Result in a Criminal Indictment Before He or She Testifies

*You are advised that you have a privilege against self-incrimination; that is to say, you do not have to answer any questions which may tend to incriminate you or subject you to punishment for any crime, and you can refuse to answer any such questions, stating that the answer may tend to incriminate you.*

*You also are advised that anything you say can and will be used against you in a court of law; that you have the right to talk to a lawyer; and that, if you cannot afford a lawyer, one will be appointed to represent you before any questioning, if you wish one.*

*Do you understand each of these rights? Having these rights in mind, are you willing to testify at this time?*

6. Admonition Before Excusing Witnesses "3" or "4" (Indictment or Accusation)

*You are admonished not to reveal to any person, except as directed by the court, what questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your appearance before the grand jury unless and until such time as the transcript (if any) or a final report of this grand jury proceeding is made public or until you are authorized by the court to disclose such matters. Violation of this confidentiality agreement is punishable as contempt of court. This admonition, of course, does not preclude you from discussing your legal rights with any legally-employed attorney, should you feel that your own personal rights are in any way in jeopardy.*

7. Confidentiality Agreement (Admonition) to Child Witness

*You should not discuss anything about this matter with anyone unless your (mother), (father), or (name of guardian), tells you it is all right.*

8. Confidentiality Agreement (Admonition) to other persons authorized to be in grand jury room during hearing

*You are directed not to discuss or disclose at any time, anything you may have seen or heard during this hearing. Do you understand?*



## C. Indictments

1. An indictment is a proceeding used by the district attorney in lieu of a preliminary hearing. Evidence of one or more alleged crimes is presented to the grand jury behind closed doors and the jury determines whether that evidence would warrant a conviction by a trial jury. If so, the defendant's case is set for trial.
2. The reasons cited by the district attorney for using the indictment proceeding rather than a preliminary hearing are:
  - a) It allows the prosecution to toll the statute of limitations in the case of an absent defendant. The statute of limitations is automatically tolled when it can be proven that the defendant has fled the local jurisdiction for purposes of avoiding prosecution.
  - b) It saves time in narcotics cases when a single agent has made many purchases; in complex fraud cases; in cases involving multiple defendants; and in murder and kidnap cases, because the grand jury hearing is not open to the defense counsel for cross-examination.
  - c) It permits the continuation of a complex indictment hearing over a long period of time.
  - d) The district attorney can use grand jury subpoenas, although no formal court proceedings have been started.
  - e) The secrecy and non-adversary nature of the grand jury hearing protects witnesses from embarrassing cross-examination, which would occur during a preliminary hearing, e.g., children, rape victims (however, witnesses will be subject to cross-examination during jury trial); protects an informant or undercover agent's identity; protects witnesses from harm and intimidation (however, this protection is granted only until delivery of the indictment transcript to the defendant, which includes a list of witnesses and their testimony); and protects an innocent defendant when no indictment is returned or accusation presented.
3. Should the district attorney decide to present a criminal case to the grand jury, jurors will be provided written and oral instructions on the procedures they must follow.

D. Accusations

1. The grand jury is required to investigate allegations of misconduct in office of local public officials and, where appropriate, may choose to initiate proceedings to remove officials from office.
2. According to Penal Code section 919(c), “the grand jury shall inquire into the willful or corrupt misconduct of public officers of every description within the County.” Penal Code section 922 states that the grand jury must follow Government Code section 3060 with regard to the removal from office of a district, county or city officer. Government Code section 3060 provides:
3. “An accusation in writing against any officer of a district, county or city, including any member of the governing board or personnel commission of a school district or any humane officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed. An accusation may not be presented without the concurrence of at least twelve grand jurors.”
4. The penalty for willful or corrupt misconduct in public office is removal from office. Just what constitutes willful or corrupt misconduct justifying removal from office may present a rather technical question upon which the grand jury should seek legal advice from the district attorney. Generally speaking, if an official commits a crime in connection with the operation of his or her office, or willfully or corruptly fails or refuses to carry out a duty prescribed by law under which the officer holds his or her position, or when the officer’s conduct in office is below the standard of decency rightfully expected of a public official such as a gross and repeated failure to carry out his or her official routine in a timely and appropriate manner, the official may be removed from office as a result of an accusation. (*People v. Hale* (1965) 232 Cal.App.2d, 212, 219.)
5. There is no clear cut statutory classification of an accusation as either criminal or civil in nature, but the courts have treated accusations as criminal in nature for many purposes. Further, the statutes dealing with accusations make it appear more appropriate to classify the grand jury’s responsibilities with regard to accusations against public officials as falling under its criminal, rather than its civil, functions. For example, interviews of witnesses must be taken down by a court reporter. (§§ 938, 938.1)
6. The accusation itself is a written statement presented by the grand jury and delivered to the district attorney, charging the public official with willful or

corrupt misconduct in office. It is distinguished from an indictment, which is a written accusatory statement charging either a private citizen or a governmental official with a public offense or crime. The penalties differ. Conviction under an indictment may result in either incarceration or a fine, or both. But a conviction under an accusation can result only in the defendant's removal from office.

7. If the grand jury uncovers evidence that a public official has committed a criminal offense or has engaged in willful misconduct in office, it should consult with the district attorney as soon as possible. The district attorney might recommend that the jury refer the matter to the appropriate law enforcement agency for a criminal investigation, or help the jury bring an accusation against the official. In the alternative, it may be decided that the jury will simply finish its investigation and issue a report. Finally, it could be decided that no action be taken at all by either the grand jury or law enforcement.

Appendix A

ADMONITION:

*You are admonished not to reveal to any person, as directed by the Court, what questions were asked or what responses were given or any other matters concerning the nature or subject of the Grand Jury's investigation which you learned during your appearance before the Grand Jury, unless and until such time as the transcript (if any) of this Grand Jury proceeding is made public or until authorized by this Grand Jury or a judge of the Superior Court to discuss or impart such matters. This admonition does not preclude you from confidentially discussing your legal rights with an attorney. This admonitory order will expire by its own terms at the expiration of the term of the 2016-17 Fresno County Grand Jury pursuant to Penal Code section 901(a).*

*A violation of this admonitory order by a Grand Jury witness is punishable as a contempt of court.*

CONFIDENTIALITY:

*This is to remind you that any and all matters discussed here are considered strictly confidential. Nothing reported on by the Grand Jury is attributed to any individual.*

*I have received a copy of the above admonishment and have read and understand said admonishment.*

SIGNATURE \_\_\_\_\_ DATED \_\_\_\_\_

PRINT FULL NAME \_\_\_\_\_

## Appendix B

### SAMPLE INTERVIEW PROCEDURES

Calling Witnesses – What Do You Say? Why is what you say on the phone so important?

Until a witness appears before you and signs an admonition, only the grand jurors are bound by confidentiality.

Sample Script or Voicemail message:

*My name is FIRST LAST and I am with the Fresno County Civil Grand Jury. The Civil Grand Jury is tasked with researching and analyzing government and public agencies and making recommendations for improvement, if applicable. The Grand Jury would like the opportunity to speak with you to fulfill that commitment to our community. Would you be available to come speak to a small panel of jurors on [insert date/time]...*

If the witness asks what the nature of the inquiry is, you may state:

*We will ask some prepared questions, the nature of which would be related to your professional experiences [or personal affiliations, if not employment related].*

If additional questions continue, you may say:

*That is all I am able to disclose by phone at this time.*

If they cannot attend the two dates you provided, advise you will call back again with more options after speaking to your fellow jurors.

Sometimes the idea of speaking to a grand jury is intimidating and a witness may not agree right away. Be kind even if they are reluctant. Advise the witness that the Grand Jury operates under the security of confidentiality, so you will not tell anyone else that they are coming to the Grand Jury to speak and whether or not they disclose the appointment is at their discretion.

Ask the witness to think about it for two days and advise you will call back to ask again.

If the witness declines:

- Advise that your current meeting request is voluntary.
- Advise that your goal is to obtain accurate information from reliable sources.
- Ask for more consideration for a few more days, and promise to follow up.

If still unsuccessful:

- Advise the witness of the grand jury's subpoena power.
- Tell the witness to contact you within 72 hours if he/she reconsiders.
- Do not tell a witness you plan to issue a subpoena, which can incite fear or panic and involve legal counsel from both sides. Subpoenas are the last resort.