

# Table of Contents

Forward

Grand Jury Law

Charge to the Grand Jury

Conduct and Procedures

Plenary Meetings

Officers

Committees

Continuity

Civil Investigations and Interviews

Reports and Publicity

Grand Jury Budget

Advisors to the Grand Jury

Oaths, Admonitions and Criminal Functions

## Forward

### History

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.

England, which originated the grand jury, abolished it in 1933. Although 42 states have some form of grand jury, only California and Nevada mandate that grand juries be impaneled every year to conduct civil investigations of county government and to hear evidence to decide whether to return indictments.

### Duties and Powers

As constituted today, the grand jury is a part of the judicial branch of government; an "arm of the court." It does not have the functions of either the legislative or administrative branches and it is not a police agency. It is an inquisitorial and an investigative body and is part of the machinery of government whose object is the detection and correction of flaws in government and the detection of crime among its citizens.

The primary function of the grand jury, and the most important reason for its existence, 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, efficient government in the best interests of the people. The grand jury may also examine the fiscal administration of municipalities.

The grand jury has three ways to exercise its powers:

1. **REPORTS:** written communications of local government operations with recommendations for improvement, where no crime is charged.
2. **INDICTMENTS:** formal written complaints charging a person with a crime.
3. **ACCUSATIONS:** similar to indictments except the conviction would result in removal from office rather than criminal penalties.

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 having public officials appear before the jury for the purpose of providing information concerning their departments or offices.

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.

Because of the confidential nature of a grand jury's work, much of it must be conducted in closed session. Members of a grand jury are sworn to secrecy to assure that all complaints will be handled in an entirely confidential manner. No one may be present during the sessions of a grand jury except those specified by law (PC §939), and the minutes of its meetings may not be inspected by anyone, nor can its records be subpoenaed.

The conduct of criminal investigations and the return of indictments is the smaller part of a grand jury's function in California. The vast majority of criminal cases are presented to the court at a preliminary hearing by a complaint issued by the district attorney. Cases commonly presented to the grand jury by the district attorney include, but are not limited to: (a) cases having multiple defendants; (b) cases with special witnesses such as children, out-of-state residents, informers or undercover agents; (c) cases involving public officials or employees; (d) cases in which adverse publicity could harm the suspect, such as rape, murder or kidnapping; and (e) cases in which the statute of limitations is about to expire.

The grand jury serves as an ombudsman for citizens of the county. The jury receives and investigates complaints by individuals regarding the actions and performance of public officials.

The grand jury is charged with a grave responsibility. Grand jury service calls for diligence, impartiality, open-mindedness and a great responsibility. Selection for service is an honor that provides an opportunity to do a great service to the community.

## **Qualifications and Selection of Grand Jurors**

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 PC §893 for further qualifications.)

Grand jury selection procedures in California range from personal selection by individual Superior Court judges to random selection.

The Fresno County Grand Jury is selected by the judges of the Superior Court (see PC §896). All prospective jurors must be interviewed by the judges or Jury Commissioner to determine that they are legally qualified to serve on the grand jury and are willing to give the time required for grand jury duty. Not less than 25 nor more than 30 prospective grand jurors are nominated by Superior Court judges for the drawing of the Grand Jury. The clerk of the court draws 19 names, minus any second-year holdovers.

Grand jurors who are chosen are given an opportunity to present any reasons for being excused from grand jury 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.

Prior to the lottery, the presiding judge should notify potential appointees to the office of foreperson that they may be selected by him. The potential candidates can then evaluate their ability and desire to serve as foreperson and be prepared and informed in the event that they are appointed. By statute, the foreperson is selected by the presiding judge. (See PC §912.)

## Compensation for Grand Jury Service

The following is a breakdown of cost reimbursement:

### 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 County Administrative Office Grand Jury coordinator will provide the Grand Jury foreperson the current mileage reimbursement rate.

Mileage is received for each meeting date and is figured as round-trip mileage. Should two meetings occur in one day, reimbursement can be received for one day only. (Example: General grand jury meeting and a committee meeting.)

### Meetings

Meetings are reimbursed at the rate of \$15 per day. Should two meetings occur in one day, reimbursement can be received for one day only. (Example:

grand jury meeting and a committee meeting.)

### **Claims for Reimbursement**

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.

### **Period of Service**

The period of service for a grand juror is one (1) year (see PC §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 PC §901(b)).

The grand jury foreperson and his or her designees 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 (PC §933(a)).

## Grand Jury Law

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.

### What the grand jury must do

#### Internal matters and confidentiality

- Determine its rules and choose its officers (PC §916)
- Use a supermajority vote to adopt rules and for all public actions (PC §916)
- Keep secret all grand jury evidence, discussions and votes (PC §924.1, §924.2)

#### Mandated investigations and reports, and mandated inquiries

- Investigate and report on at least one county officer, department or function (PC §925, PC §933(a))
- 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 (PC §927)
- Inquire into the condition and management of public prisons within the county (PC §919(b))
- Inquire into the willful or corrupt misconduct of public officers (PC §919(c))

#### Mandated Investigation and reporting procedures

- Conduct interviews with at least two jurors in attendance (PC §916)
- Juror must advise court and foreperson if employed by a local agency within the past three years and recuse if that agency comes under review (PC §916.2)
- Meet with the subject of the investigation unless the court determines it would be detrimental (PC §933.05(e))
- Provide relevant parts of a report to the subject person or agency two working days before its public release (PC §933.05(f))
- Support the report’s findings with documented evidence (verified facts) (PC §916)
- If problems are found, include recommendations for resolving them (PC §916)
- Take agency finances into account when writing recommendations (PC §916)

## What the grand jury may do

### Investigate:

- Cities and joint powers agencies (PC §925, §933.1)
- Redevelopment agencies (now disbanded) and housing authorities (PC §933.1)
- Special districts (including school districts) and LAFCO (PC §933.5)
- Nonprofit corporations established by or operated on behalf of a local public entity (PC §933.6)
- Need for an increase or decrease in county elected officials' salaries even if not requested to do so by the board of supervisors (PC §927)
- Needs and performance of all county officers and offices (PC §928)

### Inquire into:

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

### Internal matters:

- Seek input from authorized advisors (PC §934)
- Hire and compensate experts upon court approval (PC §926)
- Request court or attorney general to allow special counsel or investigator (PC §936, PC §936.5)
- Pass its investigative records and files to the next grand jury (PC §924.4)

### Other discretionary powers:

- Ask the court or district attorney to subpoena witnesses (PC §939.2)
- Foreperson may administer an oath (to tell the truth); witness is then entitled to have an attorney present during the interview in a civil investigation (PC §939.4, §939.22)
- Any juror may administer an admonition (to remain silent) to a witness in a civil investigation (86 Ops. Cal. Atty. Gen.101)
- Invite the subject of a report to come before the grand jury to read and discuss relevant findings in the report (PC §933.05(d))
- Order the district attorney to sue to recover money owed the county (PC §932)
- Bring an accusation (formal charges) against a public officer for corrupt or willful misconduct in office (Gov Code §3060)

## What the grand jury must not do

### Investigations and reports:

- 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) (PC §939.9)
- 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))
- Investigate federal or state agencies or officials, or private businesses or individuals

### Confidentiality:

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

### The grand jury's budget:

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



## Transparency and Ethics Laws

### Government transparency laws

The grand jury will often be called upon to investigate compliance with these three laws:

- **The Ralph M. Brown Act** (Government 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.
- **The California Public Records Act** (Government Code §6250-§6276.48) requires all local governments to make their records (with many exemptions) promptly available for inspection or copying on request.
- **The Political Reform Act of 1976** (Government 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.

### Ethics Laws

The Political Reform Act (above) has an ethics component--the prohibition against financial conflict of interest. Another conflict of interest law is Government Code section 1090 which prohibits public boards and officials from participating in the making of a contract in which an official of that entity has a financial interest.

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.

## CHARGE OF GRAND JURY

“YOU HAVE BEEN DULY EMPANELED AND SWORN AND CONSTITUTE THE 2015-2016 GRAND JURY FOR FRESNO COUNTY. AS MEMBERS OF THIS BODY, YOU ARE ABOUT TO UNDERTAKE AN HISTORIC AND SIGNIFICANT DUTY OF CITIZENSHIP. BY YOUR SELECTION YOU HAVE BEEN GIVEN A REMARKABLE OPPORTUNITY FOR PUBLIC SERVICE AND ALSO A HEAVY RESPONSIBILITY. YOU HAVE BEEN NOMINATED BY THOSE WHO HAVE CONFIDENCE IN YOUR ABILITY. I SHARE IN THIS CONFIDENCE AND ANTICIPATE AND EXPECT THAT YOU WILL DISCHARGE YOUR DUTIES RESPONSIBLY AND WITH DISTINCTION.

IT IS MY DUTY, AS PRESIDING JUDGE OF THE SUPERIOR COURT, TO INSTRUCT YOU CONCERNING YOUR WORK AND THE LAW THAT APPLIES TO THE FUNCTIONS OF THE 2015-2016 FRESNO COUNTY GRAND JURY.

1. CHARGE:

FIRST, YOU SHOULD BE ADVISED OF SOME ORGANIZATIONAL AND ADMINISTRATIVE MATTERS APPLICABLE TO GRAND JURY BUSINESS.

A. GRAND JURY PLACE IN CALIFORNIA COUNTY ORGANIZATION:

RELATIONSHIP IN GENERAL TO OTHER GOVERNMENTAL AGENCIES:

YOU MUST CONSIDER YOURSELVES AN INDEPENDENT BODY. YOU DO PERFORM A GREAT SERVICE FOR THE COURT IN YOUR CIVIL INVESTIGATIONS, AND YOUR ATTENTION WILL TURN TOWARD INDIVIDUAL PUBLIC DEPARTMENTS OF GOVERNMENT, BUT THE COURT DOES NOT CONTROL OR DIRECT THE CONTENT OR DIRECTION OF YOUR INVESTIGATIONS OR REPORTS. YOUR FINAL REPORTS AND RECOMMENDATIONS WILL BE DIRECTED PRIMARILY TO THE FRESNO COUNTY BOARD OF SUPERVISORS.

B. RELATIONSHIP OF THE GRAND JURY TO THE SUPERIOR COURT:

THE COURT NOMINATES THE GRAND JURY MEMBERS, OFFICIATES OVER THEIR EMPANELMENT, INSTRUCTS THE GRAND JURY, APPOINTS THE GRAND JURY FOREMAN, ADVISES MEMBERS AT THEIR REQUEST, SUGGESTS PROCEDURES AND APPROVES THE FINAL REPORTS, AND RETAINS THE POWER TO DISCHARGE A GRAND JURY IF IT HAS BEEN FOUND TO VIOLATE THE LAW OR ITS CHARGE.

2. STRUCTURE OF THE GRAND JURY:

A. OFFICERS:

YOUR OFFICERS WILL CONSIST OF THE GRAND JURY FOREMAN, DEPUTY GRAND JURY FOREMAN, SECRETARY, AND WHATEVER OTHER OFFICERS YOU CHOOSE TO ELECT.

YOUR GRAND JURY FOREMAN IS APPOINTED BY THE COURT FOR THE FULL YEAR OF YOUR TENURE. I APPOINT <NAME> AS YOUR GRAND JURY FOREMAN.

AT YOUR ORGANIZATIONAL MEETING YOU SHALL ELECT YOUR OTHER OFFICERS, INCLUDING A DEPUTY GRAND JURY FOREMAN TO ACT UPON THE TEMPORARY ABSENCE OR DISQUALIFICATION OF YOUR GRAND JURY FOREMAN, AND A PERMANENT SECRETARY.

B COMMITTEES:

I SUGGEST THAT YOU FORM COMMITTEES FOR THE PRELIMINARY CONSIDERATION OF MATTERS IN THE VARIOUS FIELDS OF ACTIVITY IN WHICH YOU WILL FUNCTION. PREVIOUS GRAND JURY REPORTS WILL IDENTIFY COMMITTEES WHICH HAVE FUNCTIONED IN THE PAST. YOU MAY FIND THAT IN THE COURSE OF YOUR TERM, OTHER MATTERS WILL BE BROUGHT TO YOUR ATTENTION WHICH MAY SUGGEST THE FORMATION OF AD HOC COMMITTEES.

EXPERIENCE HAS SHOWN THAT MATTERS GENERALLY SHOULD NOT BE BROUGHT BEFORE A BUSINESS SESSION OF THE GRAND JURY WITHOUT SUCH PRELIMINARY CONSIDERATION IN COMMITTEE.

C. ADVISERS:

MEMBERS OF THE GRAND JURY MAY ASK THE ADVICE OF THE COURT, THE DISTRICT ATTORNEY, OR THE COUNTY COUNSEL. I SUGGEST THAT GENERALLY YOU SEEK ADVICE FROM THE DISTRICT ATTORNEY OR FROM THE COUNTY COUNSEL REGARDING ADMINISTRATIVE AND ORGANIZATIONAL MATTERS, INVESTIGATIONS WHICH DO NOT RESULT IN AN INDICTMENT OR ACCUSATION, YOUR REPORTING OBLIGATIONS AND OTHER FUNCTIONS.

PLEASE DO NOT HESITATE TO CALL UPON ME FOR ANY ADVICE YOU MAY DESIRE FROM THE COURT, INCLUDING ADVICE AS TO WHETHER THE GRAND JURY SHOULD SEEK LEGAL ADVICE FROM SOMEONE OTHER THAN THE DISTRICT ATTORNEY, ATTORNEY GENERAL OR COUNTY COUNSEL.e

A DEPUTY DISTRICT ATTORNEY WHO WILL SERVE FOR THE DISTRICT ATTORNEY WILL BE ASSIGNED TO AID YOU IN YOUR INVESTIGATIONS. EXCEPT FOR AN AUDITOR YOU ARE NOT PERMITTED TO EMPLOY SPECIAL COUNSEL OR SPECIAL INVESTIGATORS. IN THE EVENT THAT SUCH EMPLOYMENT APPEARS NECESSARY TO YOU, A REQUEST SHOULD BE MADE TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA.

3. ADMINISTRATIVE MATTERS:

A. PLACE:

YOU WILL HAVE THE USE OF A PRIVATE ROOM FOR THE PURPOSE OF CONDUCTING YOUR PROCEEDINGS. IN THE COURSE OF YOUR CIVIL DUTIES, YOU WILL INSPECT OTHER FACILITIES IN THE COUNTY. THESE FIELD TRIPS WILL PROBABLY BE AMONG THE MOST VALUABLE LEARNING EXPERIENCES IN YOUR YEAR OF SERVICE.

B. ESTABLISHING TIMES OF SESSIONS:

I SUGGEST THAT YOU FIX REGULAR DAYS AND HOURS FOR YOUR SESSIONS. WHEN AND HOW OFTEN YOU MEET IS FOR YOU TO DECIDE AMONG YOURSELVES.

C. FUNCTIONS:

YOU HAVE POWERS AND DUTIES WITH RESPECT TO PUBLIC OFFICES, OFFICERS AND TRANSACTIONS, ESPECIALLY IN CONNECTION WITH EXAMINATIONS AND REPORTS.

YOUR FUNCTION IS ESSENTIALLY AS A CIVIL INVESTIGATORY BODY AND YOU SHALL INQUIRE INTO THE WILLFUL OR CORRUPT MISCONDUCT IN OFFICE OF PUBLIC OFFICERS OF EVERY DESCRIPTION WITHIN THE COUNTY. IF YOU SHOULD DETERMINE THAT ANY DISTRICT, COUNTY OR CITY OFFICER IS GUILTY OF WILLFUL OR CORRUPT MISCONDUCT IN OFFICE, YOU MAY PRESENT AN ACCUSATION IN WRITING, STATING THE OFFENSE AGAINST HIM OR HER. THAT WILL INITIATE LEGAL ACTION AGAINST HIM OR HER FOR HIS OR HER REMOVAL FROM OFFICE, AND YOU MAY DO SO EVEN THOUGH THE EVIDENCE BEFORE YOU IS NOT SUFFICIENT TO WARRANT A CRIMINAL INDICTMENT. SUCH ACCUSATION SHALL BE DELIVERED TO THE DISTRICT ATTORNEY, UNLESS HE OR SHE IS THE OFFICER ACCUSED, IN WHICH CASE IT SHALL BE DELIVERED TO THE CLERK OF THIS COURT, WHO WILL DELIVER IT TO ME.

AFTER STUDY AND DISCUSSION, YOU WILL PROBABLY MAKE RECOMMENDATIONS TO THE FRESNO COUNTY BOARD OF SUPERVISORS BASED UPON YOUR YEAR'S ACTIVITIES. I WOULD LIKE TO CAUTION YOU TO MAKE REPORTS FACTUAL AND TO HAVE ALL PERTINENT INFORMATION PRESENTED TO YOU BEFORE YOU COMMIT THE PRESTIGE OF THE GRAND JURY TO ANY PUBLIC POSITION.

D. JURISDICTION AND LIMITATIONS:

1. JURISDICTION:

YOUR CIVIL FUNCTION IS LIMITED TO PERSONS AND ORGANIZATIONS WITHIN THE LIMITS OF FRESNO COUNTY WITH CERTAIN EXCEPTIONS.

2. LIMITS ON GRAND JURY POWER:

YOU ARE NOW AWARE THAT THERE ARE DISTINCT LIMITATIONS AS TO WHAT YOU MAY DO IN THE COURSE OF YOUR INVESTIGATIONS, PRESENTMENTS AND REPORTING. YOU FUNCTION LAWFULLY ONLY AS A BODY/ NO INDIVIDUAL GRAND JUROR ACTING ALONE HAS ANY POWER OR AUTHORITY. FURTHER, THE GRAND JURY BODY ITSELF IS NOT INTENDED TO BE A SUPER-GOVERNMENT FOR THIS COUNTY, NOR IS IT INTENDED THAT YOU SHOULD INTERFERE WITH THE DISCRETIONARY POLICY-MAKING OR OPERATIONAL POWERS OF PUBLIC OFFICIALS. ONLY WHEN PUBLIC OFFICIALS, OR OTHERS, ARE JUSTIFIABLY SUSPECTED BY YOU OF VIOLATING APPLICABLE STANDARDS OF CONDUCT OR LAWS, DO THEY BECOME PROPER SUBJECTS FOR YOUR ACTION.

AN INDIVIDUAL GRAND JURY IS NOT CIVILLY LIABLE FOR DAMAGE RESULTING TO A PERSON ACCUSED BY THE GRAND JURY. ANY COMMENT IN YOUR REPORTS UPON A PERSON OR PUBLIC OFFICIAL IS NOT PRIVILEGED AND COULD, IF LIBELOUS, BE THE BASIS FOR A CHARGE OF CIVIL OR CRIMINAL LIBEL AGAINST YOU.

E. SECRECY:

1. SESSIONS PRIVATE:

THE DELIBERATIONS AND VOTING OF THE GRAND JURY UPON ITS INVESTIGATIONS ARE REQUIRED BY LAW TO BE IN PRIVATE SESSION. IT IS SIGNIFICANT THAT SECRECY IS PROHIBITED IN ALMOST EVERY OTHER ARM OF GOVERNMENT. SECRECY EXISTS AS TO THE GRAND JURY BECAUSE IT IS AN AGENCY DESIGNED NOT ONLY TO SEARCH OUT OFFENSES AND ACCUSATIONS WHICH WOULD NOT OTHERWISE BE ACTED UPON BECAUSE OF FEAR OR INABILITY OF INDIVIDUALS TO BRING THE COMPLAINT, BUT ALSO TO PROTECT INNOCENT PERSONS FROM PUBLICITY THAT MIGHT OTHERWISE OCCUR WHEN CHARGES ARE EVENTUALLY PROVED TO BE UNFOUNDED. MATTERS BEFORE THE GRAND JURY, THEREFORE, SHOULD NEVER BE DISCUSSED OUT OF SESSION, EVEN WITH YOUR CLOSEST RELATIVES, ASSOCIATES OR SUPERIORS.

2. SECRECY REQUIRED OF MEMBERS:

THE LAW PROVIDES THAT EVERY GRAND JUROR MUST KEEP SECRET ALL EVIDENCE ADDUCED BEFORE THE GRAND JURY, AND THE WAY HE OR SHE, OR ANY OTHER GRAND JUROR, MAY HAVE VOTED ON A MATTER BEFORE THEM. BY LAW IT IS A MISDEMEANOR CRIME TO VIOLATE SUCH SECRECY OF THE GRAND JURY. IN SOME INSTANCES A MATTER BEING HEARD BY THE GRAND JURY ALREADY HAS BEEN EXTENSIVELY INVESTIGATED BY SOME LAW ENFORCEMENT AGENCY, AND THE NEWS MEDIA MAY HAVE OBTAINED KNOWLEDGE OF THE CASE. YOU MUST REALIZE ALSO THAT A WITNESS WHO TESTIFIED UNDER OATH OR AT ONE OF YOUR SESSIONS MAY MAKE A STATEMENT OUTSIDE THE GRAND JURY ROOM. THEREFORE, IF YOU SHOULD FIND IN THE NEWS MEDIA A STORY CONTAINING SUBSTANTIALLY THE SAME FACTS OBTAINED BY THE GRAND JURY IN SECRET SESSION, YOU MUST NOT ASSUME THAT ONE OF YOUR FELLOW JURORS HAS VIOLATED THE LAW OF SECRECY. IN ORDER TO OBTAIN LEGAL ADVICE, IT MAY BE NECESSARY FOR YOU TO DISCLOSE TO THE DISTRICT ATTORNEY, OR TO THE ATTORNEY GENERAL, IF HE IS OFFICIATING IN THE CASE, OR TO ME, SOME MATTER OF EVIDENCE WHICH YOU HAVE TAKEN DURING AN INVESTIGATION. SUCH DISCLOSURE IS NOT A VIOLATION OF YOUR OATH.

F. BRINGING OF COMPLAINTS:

1. BY NON-LAW ENFORCEMENT PERSONNEL (CIVIL):

YOU WILL RECEIVE LETTERS FROM PUBLIC AND PRIVATE PERSONS THROUGHOUT THE YEAR. YOU WILL BE ASKED TO EXAMINE SOME COMPLAINTS, WHICH ARE GROUNDLESS OR MOTIVATED BY PRIVATE ENTITY OR POLITICAL REASONS. SOME, HOWEVER, MAY RESULT IN DISCLOSURES OF OFFENSES THAT WOULD NOT OTHERWISE HAVE BEEN BROUGHT TO LIGHT. WHEN YOU OBTAIN RELIABLE INFORMATION INDICATING MISCONDUCT WITHIN YOUR JURISDICTION, IT IS YOUR DUTY TO FEARLESSLY AND FAIRLY INVESTIGATE AND TAKE APPROPRIATE ACTION.

WHEN A COMPLAINT IS PRESENTED TO YOU BY PERSONS OTHER THAN LAW ENFORCEMENT OFFICIALS, I SUGGEST THAT YOU ASCERTAIN WHETHER OR NOT THE SAME COMPLAINT HAS THERETOFORE BEEN PRESENTED TO THE DISTRICT ATTORNEY. IN SOME INSTANCES, YOU WILL FIND THAT THE SAME MATTER HAS BEEN SUBMITTED PREVIOUSLY TO THE DISTRICT ATTORNEY AND EITHER ACTED UPON BY HIM OR HER, OR PROSECUTION THEREON REFUSED FOR VALID LEGAL REASONS. WHEN YOU RECEIVE INFORMATION CONCERNING POSSIBLE CRIMES AND/OR OFFICIAL MISCONDUCT, YOU SHOULD IMMEDIATELY CONTACT THE DISTRICT ATTORNEY'S OFFICE FOR ASSISTANCE (OR, IN APPROPRIATE CASES, THE ATTORNEY GENERAL'S OFFICE). SUCH INVESTIGATIONS SHOULD ALWAYS BE CONDUCTED WITH THE PROSECUTOR'S LEGAL ADVICE AND ASSISTANCE. (ORDINARILY, ALL LEGAL MATTERS IN WHICH YOU BECOME INVOLVED WILL BE PROCESSED BY THE FRESNO COUNTY DISTRICT ATTORNEY OR COUNTY COUNSEL FOR THE COUNTY OF FRESNO.

G.     REPORTS



IN ACCORDANCE WITH THE POLICY ESTABLISHED BY THIS COURT, AND PENAL CODE SECTION 933, I INSTRUCT YOU TO DELIVER TO ME, AS PRESIDING JUDGE OF THE SUPERIOR COURT, ALL GRAND JURY REPORTS BEFORE FILING THEM OR OTHERWISE RELEASING THEM. THE LAW REQUIRES THE PRESIDING JUDGE TO DETERMINE WHETHER ANY REPORT IS NOT IN COMPLIANCE WITH THE LAW RELATING TO GRAND JURY FUNCTIONS OR IS NOT WITHIN THE GRAND JURY'S LAWFUL INQUIRY AND REPORTING POWERS. YOUR REPORTS MAY FOLLOW COMPLEX INVESTIGATIONS. THE REPORTS THEMSELVES MAY AT TIMES BE COMPLEX. I WILL NEED A REASONABLE TIME TO REVIEW YOUR REPORTS BEFORE THEY MAY BE FILED OR RELEASED. NO REPORT SHALL BE FILED OR RELEASED UNTIL APPROVED. I WILL WORK WITH YOUR GRAND JURY FOREMAN TO ESTABLISH REASONABLE AND WORKABLE POLICIES TO PERMIT TIMELY FILING AND RELEASE OF YOUR REPORTS. I INSTRUCT THE CLERK OF THE SUPERIOR COURT NOT TO ACCEPT FOR FILING ANY GRAND JURY REPORT UNTIL IT HAS BEEN APPROVED FOR FILING.

YOU MAY REVIEW REPORTS OF EARLIER GRAND JURIES, PARTICULARLY THOSE RECOMMENDATIONS THAT HAVE NOT BEEN ACTED UPON, THE REASONS THEREFORE, AND THE POSSIBLE NEED FOR AGAIN RECOMMENDING ACTION WHERE ACTION HAS NOT BEEN TAKEN. YOU SHALL NOT ADOPT AS YOUR OWN THE RECOMMENDATION OF ANOTHER GRAND JURY UNLESS YOU DO SO AFTER YOUR OWN INVESTIGATION OF THE MATTER ABOUT WHICH THE RECOMMENDATION IS MADE. YOU MAY NOT MAKE ANY REPORT, DECLARATION OR RECOMMENDATION ON ANY MATTER EXCEPT ON THE BASIS OF YOUR OWN INVESTIGATION.

YOUR WRITTEN REPORTS SHOULD BE FACTUAL. OCCASIONALLY A GRAND JURY HAS RETURNED REPORTS TO THE COURTS CONTAINING UNFOUNDED CRITICISMS, CASTIGATIONS, OR INNUENDOS OF IMPROPER CONDUCT ON THE PART OF PRIVATE CITIZENS, OR THOSE ENGAGED IN PUBLIC SERVICE. THE PUBLICITY ATTENDANT TO THE FILING OF SUCH REPORTS CAN OCCASION TRAGIC CONSEQUENCES TO ACCUSED PERSONS WHO HAVE NO FORUM TO ESTABLISH THEIR INNOCENCE. IN THE INTEREST OF JUSTICE, YOUR PUBLIC REPORTS OR RECOMMENDATIONS SHOULD BE DELAYED WHEN AN INDIVIDUAL NAMED IN THOSE RELEASES OF INFORMATION FACES CRIMINAL CHARGES. WHERE EVEN THE POSSIBILITY OF PREJUDICE EXISTS, THE VEIL OF SECRECY SHOULD NOT BE LIFTED UNTIL CRIMINAL PROCEEDINGS AND THE DANGER OF PREJUDICING THE CASE HAVE PASSED.

I CALL YOUR ATTENTION TO THE PROVISIONS OF GOVERNMENT CODE SECTIONS 23000-23025, 24054 AND 26525. THEY DEFINE COUNTY GOVERNMENT AND REGULATE SOME OF ITS OPERATIONS. YOU ARE INSTRUCTED TO ASCERTAIN BY CAREFUL AND DILIGENT INVESTIGATION WHETHER SUCH PROVISIONS HAVE BEEN COMPLIED WITH AND TO NOTE THE RESULT OF SUCH INVESTIGATION IN YOUR REPORT.

H. CIVIL INVESTIGATIONS OF COUNTY, CITY AND DISTRICT AFFAIRS:

1. ACCOUNTS, RECORDS, FISCAL MATTERS:

AS TO YOUR CIVIL, OR SO-CALLED 'HOUSEKEEPING' FUNCTIONS, YOU ARE TO MAKE A CAREFUL AND COMPLETE EXAMINATION OF THE ACCOUNTS AND RECORDS, ESPECIALLY THOSE PERTAINING TO REVENUE OF ALL COUNTY OFFICERS, AND REPORT THE FACTS YOU FIND, WITH SUCH RECOMMENDATIONS AS YOU DEEM PROPER.

IN THIS REGARD PENAL CODE SECTION 925(a) STATES:

‘THE GRAND JURY MAY AT ANY TIME EXAMINE THE BOOKS AND RECORDS OF ANY INCORPORATED CITY OR JOINT POWERS AGENCY LOCATED IN THE COUNTY. IN ADDITION TO ANY OTHER INVESTIGATORY POWERS GRANTED BY THIS CHAPTER, THE GRAND JURY MAY INVESTIGATE AND REPORT UPON THE OPERATIONS, ACCOUNTS, AND RECORDS OF THE OFFICERS, DEPARTMENTS, FUNCTIONS, AND THE METHOD OR SYSTEM OF PERFORMING THE DUTIES OF ANY SUCH CITY OR JOINT POWERS AGENCY AND MAKE SUCH RECOMMENDATIONS AS IT MAY DEEM PROPER AND FIT.’

‘THE GRAND JURY MAY INVESTIGATE AND REPORT UPON THE NEEDS OF ALL JOINT POWERS AGENCIES IN THE COUNTY, INCLUDING THE ABOLITION OR CREATION OF AGENCIES AND THE EQUIPMENT FOR, OR THE METHOD OR SYSTEM OF PERFORMING THE DUTIES OF, THE SEVERAL AGENCIES. IT SHALL CAUSE A COPY OF ANY SUCH REPORT TO BE TRANSMITTED TO THE GOVERNING BODY OF ANY AFFECTED AGENCY.’

‘AS USED IN THIS SECTION “JOINT POWERS AGENCY” MEANS AN AGENCY DESCRIBED IN SECTION 6506 OF THE GOVERNMENT CODE WHOSE JURISDICTION ENCOMPASSES ALL OR PART OF A COUNTY.’

2. REPORTS TO PRESIDING JUDGE AND TO SUPERVISORS:

NO LATER THAN JUNE 30, 2016, YOU SHALL SUBMIT TO THE PRESIDING JUDGE OF THE FRESNO SUPERIOR COURT A FINAL REPORT ON YOUR FINDINGS AND RECOMMENDATIONS PERTAINING TO COUNTY GOVERNMENT MATTERS, OTHER THAN FISCAL MATTERS DURING THE FISCAL YEAR.

NO LATER THAN THE 90<sup>TH</sup> DAY AFTER RECEIVING YOUR FINAL REPORTS, THE BOARD OF SUPERVISORS WILL COMMENT ON YOUR FINDINGS AND RECOMMENDATIONS PERTAINING TO COUNTY GOVERNMENT MATTERS UNDER BOARD CONTROL, AND EVERY ELECTIVE OFFICER SHALL REPORT TO THE BOARD OF SUPERVISORS ON THE FINDINGS AND RECOMMENDATIONS PERTAINING TO SUCH COUNTY OFFICER. ALL SUCH COMMENTS AND REPORTS SHALL BE PRESENTED TO THE PRESIDING JUDGE AND A COPY THEREOF SHALL BE PLACED ON FILE WITH THE CLERK OF THE SUPERIOR COURT AND SHALL REMAIN ON FILE IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT.

3. OTHER INQUIRIES:

YOU MAY INQUIRE INTO THE CASE OF EVERY PERSON IMPRISONED IN THE COUNTY JAIL ON A CRIMINAL CHARGE AND NOT INDICTED, BUT YOU ARE NOT REQUIRED TO INVESTIGATE INFRACTIONS OF JAIL REGULATIONS UNLESS REQUESTED TO DO SO BY PROPER AUTHORITIES.

YOU ARE ENTITLED TO THE EXAMINATION, WITHOUT CHARGE, OF ALL PUBLIC RECORDS WITHIN THE COUNTY.

I. CONCLUSION:

VIOLATION OF THE LETTER OR SPIRIT OF THE GRAND JUROR'S OATH YOU HAVE TAKEN, OR OF MY CHARGE TO YOU, WOULD ENDANGER THE INTEGRITY AND EFFECTIVENESS OF THE ENTIRE GRAND JURY.

YOU MUST NOT BE INFLUENCED BY MERE SENTIMENT, CONJECTURE, SYMPATHY, PUBLIC FEELING, PASSION OR PREJUDICE, AND YOU MUST APPLY THE SAME OBJECTIVE STANDARDS OF CONDUCT AND RESPONSIBILITY TO ALL PERSONS, REGARDLESS OF SEX, COLOR, RACE, RELIGION, ANCESTRY, NATIONAL ORIGIN, BLINDNESS OR OTHER PHYSICAL DISABILITY, OR ECONOMIC STATUS.

SOME OF YOU MAY BE APPREHENSIVE AS YOU CONTEMPLATE YOUR GRAND JURY SERVICE IN THE YEAR AHEAD AND THE DECISIONS YOU MAY BE CALLED UPON TO MAKE, BUT YOU NEED NOT BE UNEASY. MAY I SUGGEST THAT NO ONE IS BORN TO BE A GRAND JUROR OR IS TRAINED SPECIFICALLY FOR THE PERFORMANCE OF THE DUTIES OF A GRAND JUROR. WE LIVE UNDER A GOVERNMENT OF, BY AND FOR THE PEOPLE, AND IT IS APPROPRIATE THAT REGULARLY, YEAR AFTER YEAR, CITIZENS ARE, BY LAW, GIVEN THE OPPORTUNITY AS LAYPERSONS TO SCRUTINIZE THE WORKINGS OF THE PUBLIC AGENCIES AND THE CONDUCT OF PUBLIC OFFICERS MAINTAINED AND SUPPORTED BY THE TAXES OF THE CITIZENRY.

ALL THE PUBLIC CAN EXPECT – AND IT IS ENTITLED TO NO LESS – IS THAT GRAND JURORS SHALL DILIGENTLY AND IMPARTIALLY PERFORM THEIR DUTIES, TO THE BEST OF THEIR ABILITY, DEDICATING THEMSELVES TO THE FURTHERANCE OF THE GENERAL GOOD. YOU OFFER NO GUARANTEE THAT YOU WILL ALWAYS BE RIGHT, BUT YOU DO HAVE A SOLEMN DUTY TO DO YOUR BEST TO BE RIGHT.

MY SINCERE CONGRATULATIONS TO EACH OF YOU.

PLEASE ACCEPT MY THANKS ON BEHALF OF THE FRESNO COMMUNITY FOR YOUR UNSELFISH COMMITMENT TO SERVE THE COUNTY FOR THE NEXT YEAR.

MY BEST WISHES FOR A MOST REWARDING YEAR.

WE ARE IN RECESS.”

## Juror's Oath

Penal Code §911 sets forth the juror's oath of office:

"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."

## Conduct and Procedures

### Adoption and Amendment of these Rules

Penal Code §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).

This Procedures Manual constitutes the Fresno County Grand Jury’s rules of procedure. Once the manual has been adopted, it can be amended any time 12 or more of the jurors decide to do so. Should a supermajority determine that one or more provisions of the manual need to be amended, the jury should discuss the proposed amendment(s) with County Counsel to confirm that the change would be legally proper.

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

In this manual, those provisions that are, by law, mandatory or prohibitory, and which, therefore, 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:

- The grand jury’s “rules of procedure” (this manual) can only be amended by a supermajority vote (PC §916: all citations in this section 3.A are to the Penal Code).
- 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).
- The grand jury must choose its own officers, except the Foreperson (§916).
- The jury must investigate and report on at least one county officer, department or function each year (§916).
- 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).

- At least two jurors must attend each interview (§916).
- Only the foreperson (or in the foreperson's absence, the pro tem) can administer an oath to a witness (§939.2); a witness who is placed under oath has the right to have counsel present (§939.22).
- 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).
- Each finding (conclusion or value judgment) in a report must be supported with documented evidence (sec. 916).
- 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).
- 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).
- A juror may not disclose evidence, the discussions or votes of any juror, nor the identity of witnesses, particularly whistleblowers (§§924.1 and 929).
- A report cannot contain raw (unverified) evidence, unless approved by the court (§929).
- No one other than jurors may be present during deliberations or the taking of a vote (§939).
- 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).

The grand jury cannot amend this manual in a way that would be inconsistent with any of the foregoing provisions.

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

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.



In addition, no member of the grand jury should use his or her office for any kind of personal gain or advantage. Grand jurors must not identify themselves as grand jurors in matters other than those directly connected with grand jury business.

They must not use their status as grand jurors to influence or obtain favors during grand jury service. When conducting inspections, members of the grand jury should not accept gifts except for token gifts and other such mementos given to all visitors as a matter of standard procedure.

It is the responsibility of each grand juror to advise the foreperson and/or the entire grand jury of any bias, and of present or potential conflicts of interest that exist at the beginning of the term of service or that may develop during the year of service in connection with issues that come before the grand jury.

Bias is defined as (1) prejudgment of essential facts that prevents the grand juror from considering the issue on its merits or (2) publicly expressed support or opposition to specific aspects of a matter before the grand jury. The grand jury should take care to avoid any appearance of bias. Any member who could reasonably be perceived as having a grudge against or a special sympathy for a public official or agency should refrain from any investigation involving that official or agency. The grand juror should refrain also from participating in any grand jury discussions regarding that investigation and from voting to accept or reject the report.

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.

Penal Code § 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 PC § 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.

Potential or perceived 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.

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 recuse.

The recused juror must abstain from both discussion and voting on any aspect of the matter during committee meetings or in meetings of the entire grand jury. The juror must leave the grand jury room whenever that matter is under consideration, including during the review of draft reports. He or she may not see the resulting report until after the end of the term. If any grand juror expresses concern that any other grand juror may have a perceived conflict, it should be brought to the attention of the foreperson, who will bring it to the full grand jury.

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 his or her recusal cannot be revoked.

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. A statement is to be filed at the beginning of the term, one at the end of the calendar year, and another upon discharge.

## GRAND JURY COMMUNICATIONS

The Grand Jury is committed to providing fast and confidential communications both among grand jurors and with the citizens it serves.

The Grand Jury also prefers to conduct business through written communication to facilitate accountability and to preserve a record for reference during the Grand Jury's term.

To facilitate this commitment, electronic communication and transmittal of documents is directed through the Grand Jury's email suite at [fresnocograndjury.com](mailto:info@fresnocograndjury.com).

Recognizing that not all the Fresno County citizens have the equipment or training to communicate electronically, the Grand Jury also has a post office box for conventional mail delivery.

### Email

Grand jurors' official email accounts should be used for all Grand Jury business, internal and external. 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.

General citizens' electronic access to the Grand Jury is through [info@fresnocograndjury.com](mailto:info@fresnocograndjury.com). It is the contact address on the Grand Jury's home page and where electronically transmitted complaints are directed. That account is accessible to the foreperson and foreperson pro tempore and such access is deleted at the end of the Grand Jury's term.

That email address should be used for all communications with complainants (except those for which no email address is listed) and when requesting electronic document transmittal.

Telephonic communication of Grand Jury business is discouraged. However, should telephonic communication become necessary, the phone in the Grand Jury Office (Fresno County Plaza Suite 1106) should be used.

Using personal communications devices must be avoided if at all possible as such communications are not secure, could jeopardize confidentiality and could pose a privacy threat to grand jurors.

## Conventional mail

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

The Grand Jury is transitioning to mail delivery through its email and mailbox addresses, but it may take another year or so to complete the transition.

Because the Grand Jury's address has been given previously as the Superior Court, the Fresno County Administrative Office and the Grand Jury Office (Fresno County Plaza), mail sometimes is sent to one of those entities. Some also is occasionally misrouted to other Fresno County departments.

Misrouted Grand Jury mail is forwarded to the CAO liaison.

For several years, the CAO liaison to the Grand Jury Office has notified the foreperson and/or foreperson pro tempore for instruction about any mail received from whatever source to whichever address.

While the goal is to route all conventional mail deliveries through the postal box, it will not happen until there is more publicity about the P.O. Box. There also will still be interoffice mail within the county that cannot be delivered directly to the Grand Jury Office, which is not accessible without Grand Jury permission and/or security presence to preserve confidentiality.

Although most mail is received unopened, there are occasions when previously opened mail is routed through the CAO liaison to the Grand Jury.

## Post Office Box

To provide for more secure communications and help ensure confidentiality of those in the public who send the complaints, the Grand Jury rents Box 2072 at the Post Office located at Tulare and M streets, diagonally across from the Fresno County Plaza.

Mail can be collected between 6:30 a.m. and 5 p.m. weekdays.

The Fresno County Administrative Office rents the box for the Grand Jury and pays the rental fee from the Grand Jury budget.

Keys to P.O. Box 2072 are issued to the following:

1. Grand Jury foreperson
2. Grand Jury foreperson pro tempore
3. CAO liaison

To help preserve confidentiality, the foreperson and foreperson pro tempore are the only ones authorized to collect mail from the Grand Jury mailbox with the following exceptions:

- The foreperson may designate another grand juror, such as the chair of the Complaint Committee, to pick up mail from the box and will provide the key for that purpose.
- The CAO liaison will gather Grand Jury mail from the post office box only in emergencies, during the transition period between the outgoing and incoming Grand Jury and only at the specific direction of the Grand Jury. Said mail will be immediately delivered unopened to the Grand Jury Office. The CAO liaison will cease post office box mail collection immediately when asked by the Grand Jury to do so.

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.

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.

### Keeping track

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 Sheets.

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.

Mailed complaints are transmitted immediately to the Complaint Committee chair and other communications are directed or disposed of at

the foreperson's direction. A copy of each complaint should be read by the foreperson and Complaint Committee chair as early as possible after delivery.

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.

Communications sent from the Grand Jury should be mailed on appropriate stationery and electronic response should be encouraged. Stationery will carry the email and P.O. Box addresses and no others.

If mail is going to the court or county departments, it can be processed through the Fresno County mail system.

## Secrecy, Confidentiality, and Security

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, at any time, any evidence presented to the grand jury, or anything any grand juror has said, or how any grand juror has voted is guilty of a misdemeanor. (PC §924.1)

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.

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.

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.

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.

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. There should be no reference made as to whether an investigation will result in a report, as this will be determined later by the full jury.

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.

Names or identifying information of complainants and informants may not be revealed in reports.

Only the entire grand jury can reveal evidence, findings or similar information and only in its official reports. Unauthorized disclosure of the evidence presented to the grand jury or the vote of any grand juror is a misdemeanor (PC §924.1) and is likely to result in the offending juror's discharge from the grand jury.

Penal Code §933 requires that the foreperson and his or her designee be available for 45 days after the end of the term to "clarify the recommendations of the report." 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.

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.

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.

An individual grand juror should not retain any copies of any confidential material after the conclusion of his or her term of service.

## **Collegiality**

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.

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.

Only one speaker at a time will be allowed at general meetings. While speakers have the floor, jurors will not engage in side discussions.

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.

Holdover grand jurors have no more authority or responsibility than newly appointed grand jurors. The second-term grand juror has, however, the added responsibility of not dominating or influencing fellow 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.



## Plenary Meetings

### Meeting Format

For those meetings at which the grand jury is not considering an accusation or criminal indictment, the foreperson should consider the following meeting format:

1. Convene promptly at the appointed time and place.
2. Have roll call taken (or attendance noted) by the recording secretary.
3. Read and vote to correct or approve the minutes of the previous meeting.
4. Hear reports of committees and discuss each committee's progress.
5. 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.
6. Read correspondence sent to the jury and take necessary action.
7. Review draft reports as needed and provide input to the committee.
8. Attend to any unfinished business.
9. Attend to new business.
10. 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.
11. Announce, if possible, the agenda for and the date of the next meeting.
12. Adjourn.

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 (PC §939).

It is recommended that the foreperson hold a brief pre-meeting with the committee chairs before the regular meeting begins. This can be an informal gathering or a meeting of the executive committee, if one is formed.

## **Meeting Procedures**

1. The foreperson or pro tem 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. A quorum for conducting business consists of 12 grand jurors (PC §940).
3. 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. (PC § 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 foreperson’s choice; 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, he or she must address the foreperson, and confine his or her 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, and then only when all other jurors who wish to speak have done so. 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 he or she 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.

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 specific ground rules aimed at maintaining efficiency and limiting personal conflicts or disputes.

## **Attendance Requirements**

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.

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. However, compensation for such meetings is reserved for committee members without advance permission of the foreperson.

If a juror is unable to attend a session or desires to be excused, he or she must give the foreperson and committee chair as much advance notice as possible.

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. The foreperson can independently remove a member from a committee after three unexcused absences from committee meetings. The unexpected lack of a quorum causes a great loss of time and money to individual grand jurors as well as to witnesses and other invitees.

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.

## **Resignations and Removals**

Any grand juror who wishes to resign from the grand jury must do so in writing, addressed to the presiding judge, with a copy to the foreperson.

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, but could include a statutory disqualification of a juror (for example, if a juror is convicted of a felony or moves out of the county), a violation of a provision of the Penal Code applicable to jurors (such as §924.1, which makes it a misdemeanor for a juror to disclose any grand jury evidence or vote), a juror's abandonment of his or her office, or any conduct by a juror which significantly disrupts the efficient operation of the grand jury.

The grand jury cannot remove or replace jurors. However, after consultation with the county counsel, the foreperson can encourage a juror to resign, when necessary. If that proves unsuccessful, the foreperson can speak to the presiding judge. Alternatively, on a majority vote, the jury can direct the foreperson, pro tem or some other juror to

bring a juror's misconduct or chronic absence to the attention of the presiding judge through the county counsel.

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 impanelment, or if there are no remaining alternates, in the manner prescribed by the Penal Code.

## The Grand Jury as One Body

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.

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.*** Further, all interviews, contacts with agencies or individuals, or attendance at board meetings must be conducted by at least two grand jurors. (PC §916)

The grand jury represents the public. Therefore, it is each juror's duty to think at all times, not in terms of his or her 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.

## Discharge of the Grand Jury

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 impanelment of the new grand jury and discharge of the old ordinarily takes place in June or the first week in July.

## OFFICERS

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.

### **Foreperson (by statute appointed by the Presiding Judge)**

1. Calls general meetings of the grand jury; presides at meetings.
2. Prepares and distributes the agenda for general meetings.
3. 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.
4. Proposes committee assignments for consideration and vote.
5. Is a member of all committees; however, the foreperson shall not usurp the duties of the committee chairperson.
6. Ensures committee coordination through on-going consultations with committee chairs. This can be done by establishment of an Executive Committee.
7. Brings all correspondence to the grand jury's attention at general meetings; and signs all communications approved by the grand jury, including committee correspondence requesting information. However, the corresponding secretary may sign routine transmittal letters.
8. 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 presiding judge, county counsel or the district attorney, unless accompanied by the foreperson; except that upon a majority vote (10 votes), a standing or ad hoc committee may meet with the county counsel, with or without the foreperson.
9. Invites the county counsel or district attorney to appear before the grand jury or a standing or ad hoc committee, as requested by the grand jury.

10. 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.
11. Contacts the court for copies of responses to reports.
12. 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.
13. Submits all reports to the presiding judge for review and approval prior to release.
14. Except as provided in PC § 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.
15. Administers oaths and admonitions. Only the foreperson , or in his/her absence, the Pro Tem, can administer an oath that the witness tell the truth (PC §939.4). Any juror can administer admonitions to maintain the secrecy of the investigation.
16. Requests subpoenas of the presiding judge or district attorney when needed.
17. Signs all indictments and accusations and presents them to the court.
18. Obtains all books, keys, software licenses and other materials related to the grand jury from members who resign.
19. Provides orientation for replacement jurors throughout the year.
20. Oversees the scheduling and coordinating of meeting space as needed for all grand jury meetings, committee meetings, and interviews.
21. 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.

22. 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.
23. 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.

Some of the above responsibilities may be delegated to the foreperson pro tem if deemed appropriate by the foreperson.

The foreperson's most important responsibility 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.

To a large extent, the success of the jury will be dependent upon the foreperson's skill in organizing and conducting meetings. The jury must function as a body rather than as individuals. Since jurors have diversified experience, interests, and philosophies, this is not an easy task.

It is the foreperson's responsibility to try to prevent contentious factions from forming among jurors. If such should occur, he or she 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 the other jurors.

## **Foreperson Pro Tem**

1. The pro tem, 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 section 5.A, above, until a new foreperson has been named by the court.



2. The pro tem assists and counsels the foreperson on matters concerning meeting procedures, personnel problems, committee needs and the well-being of the jury.
3. The pro tem 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 (see Section 3.E).
4. The pro tem assists the foreperson in any other way, at the foreperson's request.

## **Recording Secretary**

### **1. 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:

- (a) The hour and minute of convening.
- (b) Call and recording of the roll.
- (c) Jurors absent from the meeting.
- (d) 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.
- (e) 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.
- (f) That only members of the jury remained in the room during deliberations on or voting of indictments.
- (g) That a quorum of at least 12 is present at all times.

- (h) A list of reports submitted by the various committees to the Plenary meeting for its vote and the jury's action thereon.

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.

## 2. Other responsibilities of the recording secretary

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

## **Committees**

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.

Because the chairperson of a committee is responsible for that committee, no one person should chair more than one standing committee. Chairpersons should be willing and able to serve and have the time to devote to this leadership position.

All grand jury members should serve on more than 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. The chairperson is responsible for presiding over the committee's meetings.

Grand jury members should not serve on a committee on which there is likelihood of a potential conflict of interest or appearance of bias.

## **Selection and Membership**

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. Final appointments shall be made by majority vote of the full jury. Consideration should be given to the potential for conflicts of interest when making committee assignments. To the extent possible, assignments will conform to the wishes of the member.

A juror desiring a change in assignment should discuss the matter with the committee chairperson who will discuss the matter with the foreperson. A change in membership status can be granted by the foreperson, with the agreement of the committee chair(s), when a juror has a substantial interest or can make a material contribution to the committee's work.

Each committee will select a chairperson from among its members. The committee might want to have two or three meetings before selecting a chairperson, to be better able to pick the best juror for that position.

At times, it may be beneficial to change the chairperson for a committee. The replacement will be made by the Foreperson and is final unless a juror calls for a vote of the full jury.

## **Duties of Committees**

The functions of the investigative committees are to:

1. Review any complaints or potential investigation topics assigned to the committee by the grand jury, conduct any necessary general research (but do not conduct any interviews or inspections) and recommend to the full jury which complaints and topics, if any, should be accepted for investigation (acceptance requires a supermajority vote). See the Committee Review of Possible Investigations form in the Appendix. The jury is not required by law to investigate complaints, but it has been customary to do so. Not only do citizens benefit, but committees often receive useful information from complaints.

2. Conduct the investigations assigned to the committee by the full grand jury. Which ones are selected by the grand jury for investigation will depend upon juror interest, past grand jury reports and recommendations, or current developments. The jury should prioritize investigations according to the importance of the topics and the likelihood that the jury will be able to offer recommendations that can improve the local government it investigates.
3. Draft reports of the committee's completed investigations for grand jury approval. Report writing should commence before the investigation is complete, to help focus the committee members on what additional evidence may be needed.
4. Begin investigations as early in the year as possible in order to allow sufficient time for a thorough investigation and the careful and deliberate writing, editing and rewriting of each of the individual reports. A completed report can be released at any time during the term, after county counsel review and upon approval of the presiding judge. However, all reports, even those released mid-term, are compiled into a consolidated Final Report, which is released to the public on the day the jury is discharged.
5. 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.

When committees have overlapping concerns, each chairperson should serve as a member of the other committee(s) or should designate a committee member as liaison.

All investigative committees should:

1. Protect the confidentiality of citizens who bring complaints to the grand jury and of witnesses who are called to provide information.
2. Gather and study background information about any agency being investigated or reviewed and arrange a tour if appropriate.
3. In groups of no fewer than two grand jurors, interview managers, personnel and users of the public entity under study. It is essential to solicit information from the department head or chief of the department or agency under investigation with regard to each finding and recommendation. No investigation can be considered complete or unbiased unless the grand jury elicits information from all of the "major

players.” State law requires the jury to meet with the “subject of the investigation” (the board or official in charge of the activity under investigation) unless relieved by the court. (PC §933.05.)

4. Attend board meetings, obtain and review minutes, and review state laws and the ordinances and resolutions of the entities under study. During their investigations and review of governing bodies, grand jurors should be alert to possible violations of the Ralph M. Brown Act, the state’s “open meeting” law. (The Act is summarized at §11.C, and a copy of the Act is kept in the grand jury library.)

5. Study the Final Reports of recent previous grand juries relevant to topics of interest, which can be found on the grand jury’s website and in its library. These can be of great aid in determining what aspects of each department bear investigation or review. Responses to previous grand jury reports should also be studied in detail.

6. Conduct their business as efficiently as possible to enable the grand jury to release at least some of its reports before the end of the term, should it choose to make an early release.

## **Organization and Operation of Committees**

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.

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.

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.

All investigations by committees must be approved in advance by the full grand jury and all action taken by committees shall be reported to the full grand jury.

Committees should establish regular meeting times and should ordinarily meet with greater frequency than the grand jury as a whole. Although committee meetings usually are more informal than those of the entire grand jury, they should be conducted by the chairperson in such a way as to assure order.

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.

Any committee may create subcommittees of at least two people from among its own members to facilitate the carrying out of assigned tasks.

Each committee should create and maintain a file on every project, complaint, and matter assigned to it. Written records should be kept of inspections, tours and interviews and all matters pertaining to a complaint. Each member is to take notes; those sets of notes should promptly be reviewed for accuracy and compared with the notes of the other jurors in order to determine further action.

## **Other Committees**

### **Executive Committee**

The grand jury should establish an Executive Committee made up of the foreperson, pro tem, 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.

### **Fiscal/Budget Committee**

The Grand Jury foreperson pro tempore will chair a Fiscal/Budget Committee of at least three members. The committee will report to the Executive Committee after monthly review of the Grand Jury budget adopted by the Fresno County Board of Supervisors.

At least quarterly, the Fiscal/Budget committee shall report to the full Grand Jury about how expenditures match expectations.

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 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.

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.

### **Edit and Review Committee**

The Edit and Review 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.

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. The Editorial Committee will monitor the progress of each report. The Editorial Committee should encourage the grand jury to get at least some of the individual reports released before the end of the term.

The Editorial Committee should determine a format for the "consolidated final report," which will be recommended to the full grand jury for approval. The Editorial Committee should suggest appropriate photographs and graphics for the consolidated final report.

### **Complaint Committee**

This committee receives complaints directed for action to the Fresno County Grand Jury. The committee logs the complaints as received, and coordinates review of each complaint by the Review Committee (Complaint Committee Chair

plus Chairpersons of the established Investigative Committees) for consideration by the Grand Jury Plenary session for action. Complaints will be posted on Google Docs as received, and will be read at each Plenary meeting after receipt.

A grand jury typically receives communications from citizens, civic groups, and government employees relating to grievances. Although the penal code does not assign the grand jury the role of ombudsman, the jury may, and frequently does, look into complaints as part of its duties. 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.

If the Review Committee determines it to be appropriate, the complaint is brought to the full Plenary session, which can assign the complaint to a committee for deeper review. The assigned committee completes its evaluation of the complaint and reports its findings and recommendations to the entire grand jury. The determination to conduct a formal investigation of the complaint is then rejected or accepted by quorum vote of the jury.

### Continuity Committee

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, and advising the grand jury if those responses are complete and legally sufficient or if additional follow-up appears to be required.

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. (PC§933(c)) A governing board that receives a report usually refers it to staff to prepare a draft response to the findings and recommendations. The draft response is then placed on the board's meeting agenda for its consideration. Both current and former jurors may attend that meeting. Under the Brown Act, the public must be allowed the opportunity to comment on any item on the agenda before it is voted on by the board. It is recommended that sitting jurors **not** speak in the public forum. If former jurors address the board they should exercise caution to avoid the possibility of revealing information not reflected in the report itself.

Once approved, responses must be forwarded to the presiding judge. (PC§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 PC§933(c).



The Penal Code also governs response content. For each **finding** in the report, PC §933.05(e) requires the responding governing board or official to give one of two responses:

- 1) agrees with the finding; or
- 2) disagrees wholly or partially with the finding with an explanation of the disagreement.

To each **recommendation**, the board or official is required to select one of four responses: (PC§933.05(b))

- 1) it has been implemented, with a summary of the action taken;
- 2) it will be implemented, with a timeframe for implementation;
- 3) 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
- 4) it will not be implemented because it is not warranted or is not reasonable, with an explanation.

The grand jury's monitoring of responses can be divided into three levels:

**Compliance** - This is a determination that the response met the legal requirements of PC§933 and PC§933.05 with respect to timeliness and format and content.

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 he/she shall work with the County Counsel's Office on any responses deemed not timely filed.

**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.

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.

**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.

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.

2) Maintaining Procedures Manual continuity. The "rules of procedure" required by PC§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.

3. Supporting training continuity in conjunction with the Court, district attorney, at least one former grand juror, and county counsel to ensure that each new grand jury receives the training to which it is entitled. (PC§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, and presentations by the grand jury's legal advisors.

The Continuity Committee should consist of a chairperson and at least two members. It is recommended that the grand jury Foreperson chair this committee and include the Pro Tem and any jurors who intend to request "hold over" status to the succeeding grand jury.

### **Ad Hoc Committees**

Ad Hoc Committees may be established for specific investigations by decision of the Grand Jury meeting in plenary session.

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.

Ad hoc committees shall each have a chair and a recorder.

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.

## Civil Investigations and Interviews

### Investigations of Public Agencies

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 PC §§925, 925a, 933.1, 933.5 and 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 (PC §927) and the need to abolish or create county offices (PC §928).

All grand jury investigations, inspections and reviews must be based on valid and truthful observations, reflecting no personal bias. A committee member must be excused from participation in any investigation in which he or she has any real or perceived conflict of interest or bias. A juror's recusal is mandatory from an investigation of an agency which employed him or her within the past three years (PC §916.2; see Section 3.B regarding juror conflicts).

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.

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 ordinarily 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. (See section 10.D, Accusations.)

Penal Code §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.

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, but if the juror’s personal experience or perception has led to the suggestion, the juror should remove himself or herself from participating in any part of the actions of the grand jury with respect to the issue.

Approval of at least twelve members of the grand jury (a supermajority) is required to begin an investigation. While some background research can be done by a committee before the grand jury approves an investigation, no interviews, site inspections or records requests can be undertaken until the investigation is formally approved.

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.

## **Investigations Resulting from Complaints**

The grand jury may decide to conduct an investigation based on a citizen’s complaint.

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.

A complaint may be referred by the jury to an investigative committee for preliminary research before the jury considers whether to conduct an investigation (however, there must be no contact with anyone outside the grand jury unless and until the jury votes to conduct an investigation). The committee should report back to the grand jury with a recommendation as to whether or not to investigate the complaint.

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:

- Complaint is outside the grand jury's jurisdiction.
- Complainant should seek legal advice or advice through other channels.
- Complaint has no merit.
- Complaint appears to be politically motivated.
- Complaint involves issues in a current election campaign.
- Complaint involves matters subject to current litigation.
- Complaint requires more resources than the grand jury has available.

This list is not exhaustive; the grand jury needs no particular reason to decide not to conduct an investigation based on a complaint.

Following a preliminary review of a complaint, the grand jury may decide to send correspondence to the complainant, acknowledging the complaint or rejecting it and explaining that it is outside the jury's jurisdiction. This proposed letter must be presented to the full grand jury for approval and should be signed by the Foreperson.

## **Investigatory and Legal Assistance**

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 live within its budget.)

In addition, the grand jury will need legal advice during its term. The county counsel advises the jury about legal matters related to its internal operations and investigations and the district attorney provides assistance concerning the indictment and accusation processes. In the event that the employment of special (outside) counsel or special investigators appears necessary, a written request should be made to the Attorney General of California. If the Attorney General refused to help, the grand jury can ask the court to allow the jury to hire private counsel. It should be understood that jurors cannot reveal any information about an investigation to an expert or private counsel until after the court has

authorized that person's retention; for that reason, all contacts with a prospective expert or counsel must wait until after the court approval has been obtained.

In investigations of alleged misconduct of a public official, it can be difficult to determine if the jury should use the county counsel or district attorney as its advisor. Before the foreperson asks either office for assistance in investigating complaints about public officials, the grand jury should answer the following questions:

- Is the complaint a civil matter, a criminal matter or one involving an official's willful or corrupt misconduct? If it is a civil matter the grand jury should consult the county counsel. The district attorney provides advice on criminal matters and those involving official misconduct (accusations).
- Has there been an identical complaint made to the county counsel or district attorney about the official? If so, the grand jury should determine if the matter has been resolved or if the county counsel or district attorney can provide input to the grand jury.
- Is the matter currently in litigation? If so, the grand jury should consider deferring its investigation until the conclusion of the litigation. Even then, the litigation itself (what happens in court or pre-trial activities) cannot be investigated; the grand jury may only concern itself with the operations of local governments, and may not become embroiled in litigation.

## Inspections

State law requires that all fact-finding forays (tours, inspections or interviews) must be made in groups of at least two or more jurors (PC §916). Such contacts are ordinarily undertaken by either a full committee, or by the entire grand jury.

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.

Whenever possible, committee chairpersons should coordinate inspections so that the same department or physical plant will not be visited more frequently than necessary.

## Interviews

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.

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. At least two grand jurors must be present at each interview (PC §916), but more than two jurors are almost always needed to adequately ask questions and take notes. All members of the committee should try to attend all of the interviews.

With regard to each investigation, PC §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.

Information should ordinarily not be solicited by telephone because the grand jurors cannot assess the witness’s body language or demeanor. However, on occasion, a witness cannot be interviewed in person. The committee members should arrange for use of a speaker phone to interview the witness. At least two members must take part in the telephone call, and all participants must be able to hear the witness’s answers first hand.

For reasons of confidentiality, the grand jury should not communicate in writing or by email with witnesses about the nature or contents of an investigation. However, written communications may be used to schedule tours or interviews.

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.

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.

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.

A person who is interviewed under oath has the right to be accompanied to the interview by an attorney. If the grand jury intends to put the interviewee under oath the interviewee should be advised of that in advance, so that he or she can make arrangements with counsel. This may take several days.

Remember, no grand juror should ever act alone or enter into discussions about grand jury business on his or her own.

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.

Then 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. Some of the questions should be open-ended, allowing the interviewee to elaborate as appropriate.

The interviewing team should be sure to ask the interviewee if he or she has any suggestions about how to solve any problems discussed during the interview.

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. If you have discussed a particular problem, ask the interviewee if he or she has any suggestions for solving the problem.

Finally, at the conclusion of the interview, always ask if the interviewee has anything additional he or she would like to say and whether he or she is aware of other persons who should be interviewed about the issue under investigation. 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. The same person may be interviewed more than once, if repeated interviews are needed to get all of the facts or to provide an opportunity to hear the interviewee's position on the issue.

Interviews are the grand jury's major means of gathering information. In conducting them, jurors should be careful not to abuse the power of the grand jury and to treat all those interviewed with respect and consideration. All committees should maintain an attitude of open-mindedness toward statements made during interviews. 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).

New grand jurors may be reluctant to ask questions for fear that they may be interpreted as inconsequential or irrelevant; however, no such hesitation should be felt if the question is based on a grand juror's genuine desire to ascertain the answer.

If the interviewee refers to any documents, such as agency policies, or statistical data, a copy of the documents should be requested.

Committee members may, if they wish, tape record their interviews, if the interviewee consents. However, recording must be done openly, as secret recording is illegal. Any tapes made should be kept confidential and turned in with the committee file at the end of the investigation. An interviewee may never record an interview.

During interviews, committee members should assess the interviewee's credibility and dig deeply into those matters that the interviewee is apparently trying to color or evade. The jurors should pay particular attention to "body language" in this regard.

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. They should never commit themselves or the grand jury to do, or not to do, anything as a result of the interview. Promptly after each interview, the committee should meet to review the information obtained and determine what should be done next.

## **Exit Interviews**

A second Penal Code section also refers to contacting the subject of the investigation. Subdivision (d) of Penal Code §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.

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).

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.

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 re-open the investigation and/or modify the report.

## **Closing Investigation Files**

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.

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.

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.

Pursuant to Penal Code §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.

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.

## Reports and Publicity

### Writing and Processing Reports

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 most important components of a report are facts and findings.

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.

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.

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).

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 problem.

Penal Code §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.

When editing is complete, the chairperson of the investigative committee will electronically forward the report to the full panel of the grand jury for review at the next plenary session. This should be done a minimum of five days prior to the session, to allow time for all of the members to become familiar with the report and to send their recommendations to the committee chair two days before the

plenary session. The report will be discussed by the full grand jury, which can and either approve it by a supermajority vote or refer it back to committee (and then the Editorial Committee) for additional work.

Upon the jury's acceptance of the report by a supermajority vote, the report will be electronically forwarded to county counsel for review. The attorney might send back suggestions for changes, or ask to meet with the committee to review the report. The county counsel ordinarily reviews several drafts of a report and not only the version that the jury considers to be the final one.

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 §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.

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 by a vote of at least twelve grand jurors, 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.

At the end of the term, all of the approved reports (including any that were released mid-term) are compiled into a "consolidated Final Report." The consolidated Final Report also ordinarily contains additional information, such as a cover letter to the presiding judge, a list and a group photo of the jurors, a description of grand jury activities, and information on how readers can apply for grand jury service or submit a complaint. The consolidated Final Report usually has art work on its cover, plus charts, graphs and photos for some or all of the individual reports. The grand jury ordinarily asks county counsel to review the consolidated Final Report before it is copied.

## **Report Format**

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. If it appears that a report would be appropriate, the committee that conducted the investigation will prepare its first draft of its report. The draft should be started as soon as the investigative committee has a fairly clear picture of the facts and issues.

The report should follow the format below:

***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.

***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?”

***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.

***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).

***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 that has 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 (PC §916). Findings should be numbered F1, F2, etc.

***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.

*Responses:* This section is needed whenever the report contains recommendations. Here, the report will identify who must respond to specified 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.

*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.

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

- Introduction
- Letter by the supervising judge (optional)
- Letter by the foreperson
- Table of contents
- List of jurors
- Picture of jurors
- Body of report

## **Defamation**

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 as “slander.”

Penal Code §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.”

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.

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.

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), and every finding must be based on verified facts. In addition, litigation is more likely if the plaintiff feels insulted. Reports should not be sarcastic in tone.

## **Responses to Grand Jury Reports**

Penal Code §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. 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.

Penal Code §933.05 requires that responses contain specific information. The responder must state whether he or she agrees or disagrees 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 §933.05 for a more thorough description of the information that must be contained in the response.

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. (PC §933.05(c))

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 §933.05.

## **Public Statements and Press Releases**

Two statutes allow for public statements by the grand jury. Penal Code §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.

Penal Code §933(a) provides that the foreperson, and his or her designee, must be available for 45 days after the end of the term to “clarify the recommendations of the report.” Section 933 does not indicate to whom these clarifications may be made, so presumably the foreperson and designee can discuss the recommendations (but not the findings or the investigation generally) with any person who requests clarification. Section 933 does not authorize the release of background information, votes or information about deliberations, or evidence adduced by the grand jury. The foreperson and designee may not “clarify” the facts or findings in the report.

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.

It is important to remember that a grand juror who willfully discloses any evidence presented to the grand jury, or anything any grand juror has said or how any grand juror has voted, is guilty of a misdemeanor. (PC §924.1)

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 in the news media (or to anyone else) as to anything that is not explicitly contained in the consolidated Final Report, nor as to any aspect of the grand jury's investigations.

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.

## Advisors to the Grand Jury

In the performance of its duties, the grand jury may, through the foreperson, ask the advice of the presiding judge, the county counsel, or the district attorney. 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. (PC §934)

### 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:

- Interview, impanel, and charge the grand jury with its duties
- Consult with and advise the grand jury upon request of the foreperson
- Review final reports and governmental responses for compliance with the law
- Issue court orders and/or subpoenas on all appropriate matters

### The District Attorney/Attorney General

The district attorney may at all times 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 he or she thinks it 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.

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 (PC §936).

### County Counsel

The county counsel, and his or her deputies, are the civil legal advisor to the grand jury, the Board of Supervisors, and all county departments, officers, and commissions, and will occasionally provide limited legal services to a special district or school district. Ordinarily, the county counsel assigns a deputy to provide legal services to the grand jury. The term county counsel refers to any attorney in the office who provides services to the grand jury.

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.

County counsel will answer questions about the jury's jurisdiction (what the jury is required or allowed to investigate) or procedures. County counsel will conduct legal research, at the jury's request, about the local governments and officials the jury is investigating. County counsel can file a motion to obtain confidential public records, such as Juvenile Court records, or obtain a subpoena from the court to require the production of other records. Finally, county counsel will review the jury's draft reports for legal sufficiency.

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.

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.

Inasmuch as county counsel acts as legal advisor to the grand jury, the office is bound by the secrecy restrictions on grand jury matters and the confidentiality of the attorney-client relationship.

## **Accessing the Advice of the County Counsel or District Attorney**

If at any time the grand jury has questions regarding a civil or criminal investigation, the foreperson should solicit county counsel's or the district attorney's opinion. All written opinions must be shared by the foreperson with the entire grand jury unless the attorney requests the foreperson to restrict the distribution of the opinion (for example, in the case of an opinion that concerns a juror "personnel issue.") 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.

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. However, county counsel may not be present during jury deliberations or votes.

## Oaths, Admonitions and Criminal Functions

### Oaths

The Oath to Grand Jurors is administered by the court to all grand jurors on the occasion of their impanelment.

All oaths in civil matters are administered by the foreperson (PC §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).

Penal Code §939.22 allows a witness (or interviewee) who is placed under oath in a civil investigation to have an attorney present during the questioning. Because this can complicate and delay an interview, most grand juries do not administer an oath, or reserve its use for interviewees providing information about a highly controversial matter, or if the interviewee is believed to have engaged in willful misconduct in office or criminal activity. The foreperson should consult with county counsel before administering an oath.

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

#### 1. 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 well and truly report the proceedings had 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?"

#### 2. 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?"

3. 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?"

4. 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?"

5. 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?"

6. Oath to a Child Witness

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

7. 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?"

## **Admonitions**

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.

1. Admonition Provided to all Witnesses and any Court Reporter for an Interview in a Civil Investigation

"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.

2. 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.

3. 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."

4. 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?"

5. 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."

6. 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."

## 7. 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?"

## Indictments

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.

The reasons cited by the district attorney for using the indictment proceeding rather than a preliminary hearing are:

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.

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.

It permits the continuation of a complex indictment hearing over a long period of time.

The district attorney can use grand jury subpoenas, although no formal court proceedings have been started.

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.

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.

## **Accusations**

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.

According to Penal Code §919(c), “the grand jury shall inquire into the willful or corrupt misconduct of public officers of every description within the County.” Penal Code §922 states that the grand jury must follow Government Code §3060 with regard to the removal from office of a district, county or city officer. Government Code §3060 provides:

“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.”

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.

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. (PC §§938, 938.1)

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.

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

### 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 2015-16 Fresno County Grand Jury pursuant to Penal Code 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 \_\_\_\_\_