

Alabama Rules of Criminal Procedure

Rule 12. Selection of venire; the grand jury and petit jury panels.

Rule 12.3. Oath, instructions, duties, and powers of the grand jury.

(a) OATH. The foreman of the grand jury shall take the following oath:

“You, as foreman of the grand jury of _____ County, do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, of all indictable offenses given you in charge, as well as those brought to your knowledge, committed or triable within the county; the state’s counsel, your fellows’ and your own you shall keep secret; you shall present no person from envy, hatred, or malice, not leave any one unrepresented from fear, affection, reward, or the hope thereof; but you shall present all things truly as they come to your knowledge, to the best of your understanding, so help you God?”

After the above oath (or affirmation) has been administered to the foreman, the following oath (or affirmation) shall be administered to the other grand jurors:

“The same oath (or affirmation) which your foreman has taken, on his part, you and each of you, on your respective parts, shall well and truly observe and keep, so help you God.”

(b) INSTRUCTIONS. The judge shall instruct the grand jury concerning its powers and duties and the grounds for disqualification of a grand juror as set out in Rule 12.4, and shall otherwise instruct the grand jury as the judge shall deem proper.

(c) DUTIES OF THE GRAND JURY. It shall be the duty of the grand jury to:

(1) Inquire into all indictable offenses committed or triable within the county. If any grand juror knows, or has reason to believe, that a public offense has been committed for which a defendant may be indicted and tried within that county, it shall be the duty of that grand juror to disclose the same to the other grand jurors, who may thereupon investigate it;

(2) Inquire into any alleged misconduct or incompetency of any public officer in the county. If upon such investigation and diligent inquiry, the grand jury finds that the officer investigated should be removed from office, it shall return a Bill of Impeachment as provided by law; provided, however, if the officer who the grand jury finds should be removed from office is a judge, the grand jury shall forward a confidential report, signed by the foreman, concerning the matter to the Alabama Judicial Inquiry Commission.

(3) Inquire into the condition of the county jail and juvenile detention facilities, if any, in regard to their sufficiency for the safekeeping of prisoners or juveniles, respectively, and their sufficiency for the accommodations and health of prisoners or juveniles, respectively; and

(4) Perform such other duties as may be required of it, which include the duties of each member of the grand jury to:

(i) Disqualify himself or herself in a particular matter for any of the reasons enumerated in Rule 12.4;

(ii) Attend each session of the grand jury unless excused by the foreman or the court; and

(iii) Keep confidential those matters revealed to the grand jury in secret, as required by law.

(d) POWERS OF THE GRAND JURY.

(1) The grand jury shall have inquisitorial powers over all indictable offenses found to have been committed or to be triable within the county, and shall have authority to return indictments for all such offenses.

(2) The grand jury shall be entitled to free access, at all proper hours, to all state, county, and municipal offices and buildings located within the county and shall be entitled to examine, without charge, all records and other papers of any state, county, or municipal offices within the county in any way connected with the grand jury's duties, unless those records and papers are otherwise privileged from disclosure by law.

Committee Comments

Rule 12.3(a) states the oaths presently required in Alabama. Ala.Code 1975, §§ 12-16-171, -172.

Rule 12.3(b) substantially changes past practice. Ala.Code 1975, § 12-16-202, requires the court specifically to charge such things as the laws regulating the operation of automobiles, carrying concealed weapons, dealing in county claims by county officers, failure of tax assessor to administer oath to taxpayer, forming pools to regulate quantity or price of products, combination to control corporation with such intent, violation of election laws, laws relating to convicts and prisoners, adulterating and selling candies, gaming, selling liquors in violation of law, betting on any election, violating the game and fish law, and violating the law prohibiting corporations from contributing to campaign funds.

The rule merely directs the judges of the courts in which grand juries relative to the criminal laws against certain offenses; to charge the grand jury as to all other matters which may be required by law; and to instruct the grand jury that it is their duty to indict for offenses if, in their opinion, the evidence justifies the indictment.

Rule 12.3(c) is intended to limit some of the duties of the grand jury imposed by statute unless for some good reason those duties are required of them. See generally Ala.Code 1975, § 12-16-191, on the duty of grand juries to examine county jails; § 12-16-195 on grand juries' examining books of county superintendents of education; § 36-11-3 on duty of grand juries to investigate public officers; Hess & Kulakowski, *Preliminary Proceedings and Trial Preparations*, 35 Alabama Lawyer 497, 506 (1974).

See Ala.Code 1975, § 12-16-192.

Rule 12.3(c)(2) is not an exclusive remedy and the grand jury can still indict.

Rule 12.3(d) restates in part present Alabama law and is not exclusive. The function of the grand jury is to make investigations into possible crimes committed within the grand jury's jurisdiction. "The grand jury is an integral part of our legal system, whose function it is to make investigations of all crimes committed within its jurisdiction." *King v. Second National Bank & Trust Co.*, 234 Ala. 106, 108, 173 So. 498, 499 (1937). As the Alabama Supreme Court said in *Fields, Alias v. State*, 121 Ala. 16, 17, 25 So. 726, 727 (1899):

"[The grand jury] is that branch of the court, when organized under the statute, in which all criminal prosecutions by indictment must originate. It puts in motion the organized machinery for the trial of persons charged with crime by presenting in open court in the name of the State a complaint, which must be endorsed a true bill. By this means the court acquires jurisdiction of the particular case. The functions and powers of the grand jury as to the indictment so returned are ended when the presentment is made and the indictment or true bill is received by the court."

Once the grand jury is empaneled and sworn as provided by statute, "it becomes the supreme inquisitorial body of the county, and no preliminary act of any court or judge can limit its powers." *State v. Knighton*, 21 Ala.App. 330, 331, 108 So. 85 (1926).

Partial authority for subsection (2) is found in Alabama Code 1975, § 12-16-196, which provides:

"The district attorney and the grand jury shall be entitled to free access, at all proper hours, to the county jail, to the office of the county

treasurer and to examination, without charge, of all records and other papers in any of the county offices, connected in any way with their duties.”