

## Alabama Rules of Criminal Procedure

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

#### *Rule 12.4. Grounds for disqualification of a grand juror.*

A grand juror shall be disqualified from participating with the grand jury in any particular action where:

- (a) That juror is charged with the same offense;
- (b) That juror is a prosecutor in the same offense;
- (c) The offense charged was committed against the juror's person or property;
- (d) That juror is related by blood or marriage within the fifth degree calculated civilly to any person charged, or any complaining witness, or any victim of the offense charged; or
- (e) That juror has any material interest, direct or indirect, in the matter under investigation or is a witness to any material part of the matter under investigation.

### Committee Comments

Rule 12.4 conforms in part to existing Alabama statutory law. Ala.Code 1975, § 12-16-207. It is intended to set forth specifically those situations in which a grand juror's disqualification is mandatory.

It appears from the case law that the grounds found in Ala.Code 1975, § 12-16-207, were the only basis for challenging the grand jury venire or attacking the indictment on the basis of a juror's disqualification. The Alabama Supreme Court held in *Sledge v. State*, 208 Ala. 154, 93 So. 875 (1922), that in the absence of statutory prohibition, the relationship of a grand juror to the party injured is not a valid ground for objection to the indictment. Thus, the fact that a member of the grand jury which returned an indictment for murder was related to the deceased victim within the prohibited degree did not vitiate the indictment, since the statute does not make relationship to the injured party a cause for withdrawal of a juror, *Sisk v. State*, 22 Ala.App. 368, 115 So. 766 (1928). For the same result, see *Morris v. State*, 268 Ala. 60, 104 So.2d 810, 815 (1958). Also, bias or prejudice on the part of a grand juror furnishes no ground of attack on the indictment absent statutory provision. *Sheppard v. State*, 243 Ala. 498, 10 So.2d 822, 823 (1942). Cases have held that the provision in the statute requiring that a grand juror be disqualified when related by blood or marriage to the person charged is intended for the protection of the state, and that no injury is done to

the accused if his relatives sit on the grand jury that returns an indictment against the accused. *Wilson v. State*, 171 Ala. 25, 54 So. 572 (1911); *Sheppard v. State*, supra.

However, allowing biased or prejudiced persons, or those related to a party or a victim, to participate with the grand jury raises serious due process questions, since the policy is to insure impartial grand juries. Thus, Rule 12.4 excludes from participation on the grand jury not only persons related by blood or marriage to the person charged, but those related to any party to the particular grand jury action or to any victim of the alleged offense as well. Section (e) further excludes anyone who has an interest, either direct or indirect, in the matter under investigation or who is a witness to any material part of the matter under investigation.