

## **Alabama Rules of Criminal Procedure**

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

#### *Rule 12.5. Foreman of the grand jury.*

(a) APPOINTMENT AND POWERS. The court shall appoint the foreman of the grand jury and an acting foreman to serve in the absence of the foreman. The foreman shall preside over the grand jury proceedings and act as the court's representative by maintaining order, administering oaths, excluding unauthorized persons and persons acting in an unauthorized manner, appointing such officers within the grand jury as are necessary for its orderly functioning, and performing such other duties as may be imposed on the foreman by law or by order of the court.

(b) DUTIES OF FOREMAN. It is the duty of the foreman to:

(1) Preside over the grand jury proceedings;

(2) Issue or cause to be issued subpoenas and subpoenas duces tecum for any witnesses whom the grand jury may require to give evidence, and if witnesses so summoned fail to appear, to endorse the returned subpoenas as defaulted;

(3) Perform the following functions with respect to witnesses appearing before the grand jury;

(i) Swear witnesses before the grand jury or cause them to be sworn by the district attorney or assistant district attorney; and

(ii) Maintain a list of all witnesses summoned and in attendance before the grand jury during each session;

(4) Endorse any indictment returned by the grand jury "A True Bill" and sign his name thereto; and

(5) Submit a written report of the proceedings of the grand jury to the court.

(c) REQUEST FOR CONTEMPT PROCEEDINGS. The foreman may request the court to initiate a contempt proceeding against any person who unlawfully refuses to testify or answer questions asked of that person, or whose conduct violates these rules or disrupts the grand jury proceedings.

### **Committee Comments**

Until the Code of 1923, the Alabama statute provided that the foreman of the grand jury was to be appointed by the court. However, the Code of 1923 dropped that provision, and it remained excluded from the Code of Alabama 1940 and the 1958 recompilation. The legislature has not enacted any provisions as to the selection of the grand jury foreman. Current Alabama practice is that the members of the grand jury select a foreman among themselves, or the district attorney requests the court to appoint a particular juror as foreman, or the court appoints a foreman on its own initiative. Rule 12.5(a) adopts the procedure whereby the court selects the foreman. Since the grand jury is a body independent from the court, *Parsons v. Age-Herald Pub. Co.*, 181 Ala. 439, 61 So. 345 (1913), *Finley v. State*, 61 Ala. 201 (1878), the foreman acts as liaison to the court. The court also appoints an acting foreman as needed. Ala.Code 1975, § 12-16-208.

Subsection (b)(1) is in keeping with Alabama practice, although there is no explicit authority establishing these duties. Subsection (b)(2) tracks Ala.Code 1975, § 12-16-197.

Section (c) authorizes the foreman to utilize the court's enforcement powers to secure compliance with these rules through a contempt proceeding under Rule 33.3.