

## Alabama Rules of Criminal Procedure

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

*Rule 12.9. Challenge to grand jury proceedings or to an indictment.*

(a) PROCEDURE. The grand jury proceedings may be challenged only by written motion to dismiss the indictment, filed in the circuit court and alleging grounds therefor.

(b) TIMELINESS. A motion under section (a) of this rule may be filed after an indictment is returned and before arraignment or by such later date as may be set by the court; provided, however, that if counsel is appointed for the first time at arraignment, the court shall give counsel a reasonable time within which to file the motion.

#### Committee Comments

Rule 12.9(a) governs the procedure for challenges both to the grand jury panel as a whole and to individual grand jurors. It does not deal with the effect of a successful challenge of an indictment, which is dealt with in Rule 13.5.

Ala.Code 1975, § 15-15-40, provides that the only objection is that the jurors were not drawn by the officer designated by law to so draw the names. The cases hold that this Code section refers to the information of the grand jury panel itself under Ala.Code 1975, § 12-16-74, *Doss v. State*, 220 Ala. 30, 123 So. 231 (1929); *Spivey v. State*, 172 Ala. 391, 56 So. 232 (1911); *Smith v. State*, 34 Ala.App. 45, 38 So.2d 341 (1948). Ala.Code 1975, § 15-15-40, provides that an objection to the formation of the grand jury can be taken on the ground that the jurors were not drawn in the presence of the officer designated by law. The case cited above holds that this Code section refers to the formation of the jury venire, from which the grand and petit jurors are drawn under Ala.Code 1975, § 12-16-70.

Any party may challenge an individual member of the grand jury. A member may be unqualified to serve on the panel from two perspectives: general disqualification to serve as a juror as provided in Ala.Code 1975, § 12-16-60, and disqualification in a particular matter as provided in Rule 12.4.

Section (a) provides the method by which a challenge to the grand jury or member of the panel shall be made. This rule does not permit the defendant to challenge the formation of the grand jury until after an indictment has been returned. In an early case, the Alabama Supreme Court stated the rule that

objections to a grand juror or a challenge for cause cannot be made until after the jury is elected and sworn. The reasoning was that each defendant might have an objection to a particular juror and it would be impossible to empanel any grand jury. The better practice is to empanel the jury first, and then allow objectionable jurors to be excluded in particular cases. *State v. Hughes*, 1 Ala. 655 (1840).

Objection to commencement of the proceedings including a grand jury proceeding must be made before trial under Rule 15.2(a), thus the motion must be filed before a plea is entered under Rule 15.3(a), unless a later filing is permitted by the court.

A motion under section (a) should be filed before arraignment, but, if the court agrees, it may be filed later. If counsel is not appointed until at arraignment, then the court must allow counsel a reasonable time within which to file the motion.