

## **Rule 6. The Grand Jury**

### **(a) SUMMONING A GRAND JURY.**

(1) *In General.* When the public interest so requires, the Chief Judge or an associate judge designated by the Chief Judge must order one or more grand juries to be summoned. A grand jury must have 16 to 23 members, and the Chief Judge or an associate judge designated by the Chief Judge must order that enough legally qualified persons be summoned to meet this requirement.

(2) *Alternate Jurors.* When a grand jury is selected, the court may also select alternate jurors. Alternate jurors must have the same qualifications and be selected in the same manner as any other juror. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror is subject to the same challenges, takes the same oath, and has the same authority as the other jurors.

### **(b) OBJECTION TO THE GRAND JURY OR TO A GRAND JUROR.**

(1) *Challenges.* Either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.

(2) *Motion to Dismiss an Indictment.* A party may move to dismiss the indictment based on an objection to the grand jury or on an individual juror's lack of legal qualification, unless the court has previously ruled on the same objection under Rule 6(b)(1). The motion to dismiss is governed by D.C. Code § 11-1910 (2012 Repl.). The court must not dismiss the indictment on the ground that a grand juror was not legally qualified if the record shows that at least 12 qualified jurors concurred in the indictment.

(c) **FOREPERSON AND DEPUTY FOREPERSON.** The summoning judge or, in the summoning judge's absence or disability, the Chief Judge or a judge designated by the Chief Judge will appoint one juror as the foreperson and another as the deputy foreperson. In the foreperson's absence, the deputy foreperson will act as the foreperson. The foreperson may administer oaths and affirmations and will sign all indictments. The foreperson—or another juror designated by the foreperson—will record the number of jurors concurring in every indictment and will file the record with the clerk, but the record may not be made public unless the court so orders.

### **(d) WHO MAY BE PRESENT.**

(1) *While the Grand Jury Is in Session.* The following persons may be present while the grand jury is in session: attorneys for the government, the witness being questioned, interpreters when needed, and a court reporter or an operator of a recording device.

(2) *During Deliberations and Voting.* No person other than the jurors, and any interpreter needed to assist a hearing-impaired or speech-impaired juror, may be present while the grand jury is deliberating or voting.

### **(e) RECORDING AND DISCLOSING THE PROCEEDINGS.**

(1) *Recording the Proceedings.* Except while the grand jury is deliberating or voting, all proceedings must be recorded by a court reporter or by a suitable recording device. But the validity of a prosecution is not affected by the unintentional failure to make a recording. Unless the court orders otherwise, an attorney for the government will retain control of the recording, the reporter's notes, and any transcript prepared from those notes.

(2) *Secrecy.*

(A) No obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B).

(B) Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury:

- (i) a grand juror;
- (ii) an interpreter;
- (iii) a court reporter;
- (iv) an operator of a recording device;
- (v) a person who transcribes recorded testimony;
- (vi) an attorney for the government; or
- (vii) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).

(3) *Exceptions.*

(A) Disclosure of a grand-jury matter—other than the grand jury's deliberations or any grand juror's vote—may be made to:

- (i) an attorney for the government for use in performing that attorney's duty;
- (ii) any government personnel—including those of a state, state subdivision, Indian tribe, or foreign government—that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal and District of Columbia criminal law; or
- (iii) a person authorized by *18 U.S.C. § 3322*.

(B) A person to whom information is disclosed under Rule 6(e)(3)(A)(ii) may use that information only to assist an attorney for the government in performing that attorney's duty to enforce federal and District of Columbia criminal law. An attorney for the government must promptly provide the Superior Court with the names of all persons to whom a disclosure has been made, and must certify that the attorney has advised those persons of their obligation of secrecy under this rule.

(C) An attorney for the government may disclose any grand-jury matter to another grand jury in the District of Columbia.

(D) An attorney for the government may disclose any grand-jury matter involving foreign intelligence, counterintelligence (as defined in *50 U.S.C. § 3003*), or foreign intelligence information (as defined in Rule 6(e)(3)(D)(iii)) to any federal law enforcement, intelligence, protective, immigration, national defense, or national security official to assist the official receiving the information in the performance of that official's duties. An attorney for the government may also disclose any grand jury matter involving, within the United States or elsewhere, a threat of attack or other grave hostile acts of a foreign power or its agent, a threat of domestic or international sabotage or terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by its agent, to any appropriate federal, state, state subdivision, Indian tribal, or foreign government official, for the purpose of preventing or responding to such threat or activities.

(i) Any official who receives information under Rule 6(e)(3)(D) may use the information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. Any state, state subdivision, Indian tribal, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only in a manner consistent with any guidelines issued by the Attorney General and the Director of National Intelligence.

(ii) Within a reasonable time after disclosure is made under Rule 6(e)(3)(D), an attorney for the government must file, under seal, a notice with the court stating that such information was disclosed and the departments, agencies, or entities to which the disclosure was made.

(iii) As used in Rule 6(e)(3)(D), the term "foreign intelligence information" means:

(a) information, whether or not it concerns a United States person, that relates to the ability of the United States to protect against—

- actual or potential attack or other grave hostile acts of a foreign power or its agent;

- sabotage or international terrorism by a foreign power or its agent; or
- clandestine intelligence activities by an intelligence service or network of a foreign power or by its agent; or

(b) information, whether or not it concerns a United States person, with respect to a foreign power or foreign territory that relates to—

- the national defense or the security of the United States; or
- the conduct of the foreign affairs of the United States.

(E) The court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand-jury matter:

(i) preliminarily to or in connection with a judicial proceeding;

(ii) at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury;

(iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation;

(iv) at the request of the government if it shows that the matter may disclose a violation of state, Indian tribal, or foreign criminal law, as long as the disclosure is to an appropriate state, state-subdivision, or Indian tribal, or foreign government official for the purpose of enforcing that law; or

(v) at the request of the government if it shows that the matter may disclose a violation of military criminal law under the Uniform Code of Military Justice, as long as the disclosure is to an appropriate military official for the purpose of enforcing that law.

(F) A petition to disclose a grand-jury matter under Rule 6(e)(3)(E)(i) must be filed with the clerk of the court. Unless the hearing is *ex parte*—as it may be when the government is the petitioner—the petitioner must serve the petition on, and the court must afford a reasonable opportunity to appear and be heard to:

(i) an attorney for the government;

(ii) the parties to the judicial proceeding; and

(iii) any other person whom the court may designate.

(4) *Sealed Indictment*. The judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. The clerk must then seal the indictment, and no person may disclose the indictment's existence except as necessary to issue or execute a warrant or summons.

(5) *Closed Hearing*. Subject to any right to an open hearing in a contempt proceeding, the court must close any hearing to the extent necessary to prevent disclosure of a matter occurring before a grand jury.

(6) *Sealed Records*. Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.

(7) *Contempt*. A knowing violation of Rule 6, or of guidelines jointly issued by the Attorney General and the Director of National Intelligence under Rule 6, may be punished as a contempt of court.

(f) INDICTMENT AND RETURN. A grand jury may indict only if at least 12 jurors concur. The grand jury—or its foreperson or deputy foreperson—must return the indictment to a judge in open court. To avoid unnecessary cost or delay, the judge may take the return by video teleconference. If a complaint or information is pending against the defendant and 12 jurors do not concur in the indictment, the foreperson must promptly and in writing report the lack of concurrence to the judge.

(g) DISCHARGING THE GRAND JURY. A grand jury must serve until discharged by the Chief Judge or other judge designated by the Chief Judge; but no grand jury may serve more than 18 months unless the Chief Judge or designee extends the service of the grand jury for a period of 6 months or less upon determination that such extension is in the public interest.

(h) EXCUSING A JUROR. At any time, for good cause, the Chief Judge or other judge designated by the Chief Judge may excuse a juror either temporarily or permanently, and if permanently, the Chief Judge or designee may impanel an alternate juror in place of the excused juror.

(i) "INDIAN" TRIBE DEFINED. "Indian tribe" means an Indian tribe recognized by the Secretary of the Interior on a list published in the Federal Register under 25 U.S.C. § 5131.

## COMMENT TO 2017 AMENDMENTS

Section (f) has been amended to conform to the 2011 amendments to the federal rule. It permits the court to take an indictment return by video teleconference to avoid unnecessary cost or delay.

## COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002, and to the minor stylistic changes made in 2006. It differs from the federal rule in several respects.

Paragraphs (a), (c) (g), and (h) provide that the Chief Judge (or his or her designee), rather than the court in general, controls the summoning, discharging, and excusing of jurors and the appointing of the foreperson and deputy foreperson.

Subparagraph (b)(2), concerning motions to dismiss the indictment, refers to D.C. Code § 11-1910 (2012 Repl.), rather than to the federal statute, 28 U.S.C. § 1867(e).

The contempt provision, formerly the last sentence of subparagraph (e)(2), is now subparagraph (e)(7).

Subparagraph (e)(3) contains several new provisions. First, subparagraph (e)(3)(A)(ii) recognizes the sovereignty of Indian tribes and the possibility that it would

be necessary to disclose grand-jury information to appropriate tribal officials in order to enforce the law. Similar language has been added to Rule 6(e)(3)(E)(iv).

Second, subparagraph (e)(3)(A)(iii) recognizes that disclosure may be made to a person under 18 U.S.C. § 3322 (authorizing disclosures to an attorney for the government and banking regulators for enforcing civil forfeiture and civil banking laws).

Third, subparagraph (e)(3)(E)(v) addresses disclosure of grand-jury information to armed forces personnel where the disclosure is for the purpose of enforcing military criminal law under the Uniform Code of Military Justice, 10 U.S.C. §§ 801-946.

Fourth, subparagraph (e)(3)(D) reflects changes made to Rule 6 by Section 203 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Pub. L. No. 107-56; 115 Stat. 272) and by Section 6501 of the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 (Pub. L. No. 108-458; 118 Stat. 3638). The USA PATRIOT Act provision permits an attorney for the government to disclose grand-jury matters involving foreign intelligence or counterintelligence to other federal officials, in order to assist those officials in performing their duties. The term "foreign intelligence information" is defined in Rule 6(e)(3)(D)(iii). The IRTPA provision permits an attorney for the government to disclose grand jury matters involving, within the United States or elsewhere, threats of attack, sabotage, terrorism and clandestine intelligence gathering activities to appropriate federal, state, Indian tribal, or foreign government officials, in order to assist those officials in preventing or responding to such threats or activities. Under Rule 6(e)(3)(D)(i), the federal official receiving the information may only use the information as necessary and may be otherwise limited in making further disclosures. Any disclosures made under this provision must be reported under seal, within a reasonable time, to the court.

Finally, subparagraph (e)(3)(E)(iii) is a new provision added by the IRTPA. It permits the court, on motion of the government, to authorize disclosures sought by a foreign court or prosecutor for use in an official criminal investigation.

Subparagraph (e)(3)(B) differs from the federal rule in two ways. First, it retains a reference to the government attorney's duty to enforce both local and federal criminal law. Second, it retains a requirement that the attorney for the government provide disclosure notice to "the Superior Court" rather than to "the court that impaneled the grand jury."

Subparagraph (e)(3)(C) consists of language formerly found in subparagraph (e)(3)(C)(iii). It retains language permitting the attorney for the government to disclose a "grand-jury matter to another grand jury in the District of Columbia", rather than to a federal grand jury. Similarly, subparagraph (e)(3)(F) retains language, formerly in subparagraph (e)(3)(D), requiring that a disclosure petition be filed "with the clerk of the court" rather than "in the district where the grand jury convened."

Subparagraph (e)(3)(G) of the federal rule, concerning a disclosure petition "aris[ing] out of a judicial proceeding in another district," has been omitted as not applicable to Superior Court practice.

Subparagraph (e)(4) is the same as the federal rule except that this rule refers to the "judge" rather than to the "magistrate judge to whom an indictment is returned." Similarly, paragraph (f) refers twice to "judge" rather than to "magistrate judge."

Paragraphs (g) and (h) (“Discharging the Grand Jury” and “Excusing a Juror,” respectively) consist of language that was previously found in paragraph (g) (“Discharge and Excuse”).

Paragraph (g) differs from the federal rule by omitting the phrase “except as otherwise provided by statute,” which refers to the locally inapplicable *18 U.S.C. § 3331*.