

**8 GCA CRIMINAL PROCEDURE
CH. 50 GRAND JURY**

**CHAPTER 50
GRAND JURY**

- § 50.10. Number and Summoning of Grand Jury.
- § 50.14. Challenging Array of Grand Jurors; When Motion to Dismiss Timely.
- § 50.18. Charging Grand Jury; Requesting Advice From Court.
- § 50.22. Foreman Appointed; Record Keeping.
- § 50.26. Who May be Present During Proceedings.
- § 50.30. Prosecuting Attorney to Request Recusal for Cause.
- § 50.34. Secrecy of Grand Jury; Exceptions.
- § 50.38. Recording Grand Jury Proceedings.
- § 50.42. Evidence Presented to the Grand Jury.
- § 50.46. Prosecuting Attorney Only Officer to Present Evidence; Duty to Disclose Exculpatory Evidence in His Possession.
- § 50.50. Immunity Provided For.
- § 50.54. Form of Indictment: Standards for Indicting.
- § 50.58. Return of Indictment.
- § 50.62. Term of Grand Jury; Exceptions.

NOTE: Chapter 50 (commencing with § 50.10) is based on former Rule 6 and former §§ 804-805e. However, a number of changes have been made to conform to recent revisions of Rule 6 of the Federal Rules of Criminal Procedure and to incorporate certain features of the California law relating to grand jury proceedings. These changes are indicated in the Notes to the respective sections.

§ 50.10. Number and summoning of Grand Jury.

(a) A grand jury is a body of the required number of persons summoned by the court and sworn to inquire into felonies and any related misdemeanors triable by the court.

(b) The chief judge of the superior court shall order one or more grand juries to be summoned at such times as the public interest requires. A grand jury shall consist of not less than sixteen nor more than twenty-three members and the court shall direct the clerk of the court to summon a sufficient number of legally qualified persons to meet this requirement.

NOTE: Section 50.10(a) is simply an introductory provision based on § 888 of the California Penal Code. Subsection (b) continues the substance of former Rule 6(a) and former § 804. See also Fed. R. Crim. P. 6(a). The qualifications for jury service and the method of selection of the master jury wheel and the jury panel are set forth in §§ 680.1-680.6 of the Guam Code of Civil Procedure.

§ 50.14. Challenging Array of Grand Jurors; When Motion to Dismiss

8 GCA CRIMINAL PROCEDURE
CH. 50 GRAND JURY

Timely.

(a) The attorney for the government or a defendant who has appeared pursuant to § 45.30 may challenge the array of jurors on the ground that the grand jury was not selected drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(b) A motion to dismiss the indictment may be based on objection to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. It shall be made in the manner prescribed in § 680.17 of the Code of Civil Procedure and shall be granted under the conditions prescribed in that section. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to § 50.22 that twelve or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

NOTE: Section 50.14 continues the substance of former Rule 6(b) and former § 805. However, Subsection (a) has been revised to make reference to the defendant's first appearance. Obviously, if an indictment is returned before the defendant's first appearance, he will not be able to make a challenge under Subsection (a) but he will be able to make the same challenge under Subsection (b)

Subsection (b) has been revised to make reference to the motion procedure provided by § 680.17 of the Code of Civil Procedure. Section 680.17 is the counterpart of § 1867 of the United States Code which is referred to in Rule 6(b)(2) of the Federal Rules of Criminal Procedure. Subsection (b) amended by P.L. 17-62:2 to update reference to CCP § 680.17 (formerly § 680.7) (Now in Title 7, GCA).

§ 50.18. Charging Grand Jury; Requesting Advice From Court.

(a) When the grand jury is impaneled and sworn, it shall be charged by the court. In doing so, the court shall give the grand jurors such information on what the court deems proper, in addition to instructing them to their duties under this Chapter.

(b) The grand jury may, at any time, request the advice of the Court, but unless such advice is requested, the judge of the court shall not be present during the sessions of the grand jury.

**8 GCA CRIMINAL PROCEDURE
CH. 50 GRAND JURY**

§ 50.22. Foreman Appointed; Record Keeping.

(a) The court shall appoint one of the jurors to be foreman and another to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall sign all indictments.

(b) The foreman, or another juror designated by him, shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court. Such record shall not be made public except on order of the court.

(c) During the absence of the foreman, the deputy foreman shall act as foreman.

NOTE: Section 50.22 is substantively the same as former Rule 6(c) and former § 805a. See also Fed. R. Crim. P. 6(c).

§ 50.26. Who May be Present During Proceedings.

The prosecuting attorney, the witness under examination (who may be accompanied by his attorney for the sole purpose of consultation), interpreters when needed and, for the purpose of taking evidence, a stenographer and operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

NOTE: Section 50.26 is substantively the same as former Rule 6(d) and former § 805b with one exception. The provision allowing the attorney for the witness to be present for consultation is new, and is designed to obviate the necessity for continual recesses so that the witness may consult with his attorney before answering questions. The attorney is restricted to advising the witness, and may not take part in the proceedings nor make any statement to the panel. Although this Section states that a reporter "may" be present, § 50.38 makes clear that a record of the session must be made (and furnished to the parties as required by § 50.38).

§ 50.30. Prosecuting Attorney To Request Recusal for Cause.

Before considering a charge against any person, the prosecuting attorney shall state to those present the matter to be considered and the person to be charged with an offense in connection therewith. He shall request any member of the grand jury who has a state of mind in reference to the case or to any party which will prevent him from acting impartially and without prejudice to the substantial rights of the party to retire. Any violation of this Section by the prosecuting attorney or any member of the grand jury is punishable by the court as a contempt.

8 GCA CRIMINAL PROCEDURE
CH. 50 GRAND JURY

COURT DECISIONS: SUPER.CT. 1982 The failure of the prosecuting attorney to request any member of the Grand Jury who may be prejudiced to withdraw does not, in this case, provide a ground for setting aside the indictment. *People v. Sgambelluri*, Cr. #14F-82.

NOTE: Section 50.30 is new. It is based, however, on § 939.5 of the California Penal Code, and present procedure.

§ 50.34. Secrecy of Grand Jury; Exceptions.

(a) Except as otherwise provided by § 50.22, no juror may disclose any statement made or action taken by any member of the grand jury during its deliberations or voting on any matter before it.

(b) Except as otherwise provided by § 50.38 and this Section, no juror, attorney, interpreter, stenographer, operator of a transcribing device, or any typist who transcribe recorded testimony may disclose any statement made or action taken before the grand jury during any portion of the proceeding not covered by Subsection (a).

(c) Notwithstanding Subsection (b), upon application and such notice as the court shall require, and upon a showing of good cause therefor, the court may, in its discretion, order disclosure of such matters by such persons as the public interest requires. Proceedings under this Subsection may be held in camera.

NOTE: Section 50.34 is new. Compare former Rule 6(e) and former § 805c. See also Fed. R. Crim. P. 6(e); Cal. Pen. Code §§ 924-924.3. Subsection (a) makes clear that the deliberations of the grand jury, as distinguished from evidence-taking by the grand jury, are to be done in absolute secrecy. Under Subsection (b), a similar rule of secrecy carries over to the evidence-taking stage with certain important exceptions. First, under § 50.38 when an indictment is returned, a transcript is made, copies are furnished to the prosecutor and the defendant and the original is filed generally as a public record. Second, the list of persons in Subsection (b) does not include a witness. A witness is, of course, only present during his testimony and no purpose would be served in imposing a rule of secrecy upon him. Note, however, that an attorney of a witness is subject to the rule. Only the witness may divulge what he said although he may, of course, make such disclosure through his attorney. Finally, a further exception is provided by Subsection (c). Even though no indictment is returned, a record of the proceedings will have been made. See § 50.38. Such record may be useful to the prosecutor or the defense in subsequent proceedings arising out of the same or related activities involved in the hearing in question, as well as to other law enforcement officials, investigators, and others concerned with related activities. The possible situations are too numerous to provide for in great detail. However, the statute makes clear that good cause must be shown and the proceedings may, and generally should, be held in camera to prevent premature or unnecessary disclosures. In ordering disclosure, the court may, of course, limit the material disclosed, the persons to whom disclosure may be made, and the use to which the materials disclosed may be put. The

8 GCA CRIMINAL PROCEDURE
CH. 50 GRAND JURY

court should take special care to avoid the risk of physical harm, intimidation, reprisals and unnecessary embarrassment arising from such disclosure. It should be noted, however, that Subsection (c) is not a limitation on disclosure pursuant to § 50.38.

§ 50.38. Recording Grand Jury Proceedings.

(a) In all grand jury proceedings, the testimony taken and questions asked before the grand jury has commenced its deliberation shall be recorded stenographically, or electronically, including digital and/or analog formats. The prosecuting attorney and defendant, or his attorney, may request a copy of the electronic, analog or digital recording of the proceedings at any time after it is taken and the court shall order such record to be prepared within a reasonable time after the request is made. After preparing the electronic, analog or digital recording, the reporter shall certify it, file the original with the clerk of the court and deliver one (1) copy each to the prosecuting attorney and defendant or his attorney.

(b) Grand jury transcripts and recordings are *not* public documents. Upon good cause shown, the court may restrict the distribution of the transcript or recording to persons who are shown to have need of them, or delay its release to a defendant if its release, or the release of any part of the transcript or recording may prevent a fair and impartial trial or could cause danger to any witness whose testimony appears within the transcript or recording or about whom a witness testifies (except a defendant). Any transcript or recording or part thereof not released by the court under this Subsection *shall* remain sealed until after the trial has been completed, or may be released upon earlier order of the court. No person, to whom a grand jury transcript or recording has been given, except for a witness as to his own testimony, *shall* release its contents to any other person except a client or, in the case of the prosecuting attorney, to any law enforcement agency.

(c) The Unified Judiciary *shall* create appropriate rules for digital or analog formatting, storage media, security, archiving and dissemination of audio transcripts.

SOURCE: Repealed/reenacted by P.L. 15-94:6, effective 01/17/80. Amended by P.L. 29-056 (Mar. 19, 2008).

COURT DECISIONS:

DISTRICT COURT APP. DIV. 1977. All Grand Jury proceedings are to be recorded, except the jury's deliberations, but recording during formal recess is not required if the recess is actually a hiatus in the proceeding in which jurors do not discuss the case with each other.

No conversation is to be allowed between jurors and witnesses during the recess.

8 GCA CRIMINAL PROCEDURE
CH. 50 GRAND JURY

No off-the-record conversation is to be allowed between jurors and prosecutor regarding the case or any legal aspect of it. All actions of the prosecutor and jurors should be susceptible to review to insure defendant and impartial, just and unbiased hearing. Adopted from *Wilkie v. Superior Court*, Ariz. 566 P.2d 327 (1977). *People v. Garret*, App. Div. D.C., Cr. #79-17A.

SUPER.CT. 1982 While copies of transcripts of the Grand Jury were requested in March 1982, but not delivered until June, this fact does not provide grounds for dismissal of the indictment. *People v. Sgambelluri*, Cr. #14F-82.

NOTE: (1978): Section 50.38 is new. The former section, prior to amendment by P.L. 15-94, § 6 was based on § 938.1 of the California Penal Code. Under former Guam law, as well as under Federal law, there was no requirement that testimony before the grand jury be recorded verbatim. However, recordation is said to be the better practice. See 8 Moore, Federal Practice ¶6.02[2]d at 6-17 2-6-18 [2d Ed. 1974], and under Federal law it was required in some circumstances. See *id.* at 6-9 citing 18 USCA § 3500. California law demands that a complete transcript be provided in every case where an indictment is returned. See generally B. Witkin, California Criminal Procedure **Proceedings Before Trial** § 178 [1963 Supp. 1973].

Former § 50.38 of this Title provided a similar procedure and took a long step towards placing the grand jury proceeding on an equal footing with the preliminary examination. However, practice in the Attorney General's Office and changing philosophies in that office showed that the Guam practice not only took too much time but provided more information than was necessary or desirable to criminal defendants. Therefore, the amended section provides that, while recordation must take place, the Attorney General may petition the court to withhold the transcript if it can be shown that some necessary good will be served by the withholding. Also, transcripts are specifically declared **not** to be public documents. This amendment moves the Guam law to a position approximately half-way between the Federal law and California law.

Note that no transcript is required where an indictment is not reached, but it may be provided if useful information would be made available thereby to the prosecutor. Such information is discoverable pursuant to Chapter 70 of this Title. See also § 50.34 [c] of this Chapter.

§ 50.42. Evidence Presented to the Grand Jury.

The grand jury shall receive only competent evidence but the fact that evidence which is incompetent was received by the grand jury does not render the indictment void where sufficient competent evidence to support the indictment was received by the grand jury.

SOURCE: Amended by P.L. 15-94:7, effective 01/17/80.

COURT DECISIONS: SUPERIOR COURT, 1978. Competent circumstantial evidence is sufficient to sustain a charge before the grand jury. *People v. De Jesus*, Sup. Ct. Cr. #6F-78 (Order, 02/27/78; Abbate, P.J.)

SUPERIOR COURT, 1978. Failure to establish a technical foundation for the admission of an exhibit before the grand jury does not render such exhibit inadmissible. *People v. Gerber, et al.*, Sup. Ct. Cr. #149F-78, (Order, 09/26/78;

8 GCA CRIMINAL PROCEDURE
CH. 50 GRAND JURY

Abbate, P.J.)

SUPERIOR COURT, 1978. With respect to Grand Jury proceedings, the Defense Attorney assumes a greater burden of proof in attempting to negate defendant's guilt than does the Prosecuting Attorney in attempting to show reasonable cause. *People v. Gerber, et al.*, Sup. Ct. Cr. #149F-78 (Order, 09/26/78; Abbate, P.J.)

D.C. GUAM APP. DIV. *People v. Quidachay*, D.C. Crim. 85-00067A (1986). A Grand Jury indictment will not be overturned because it was based on hearsay testimony. It was the intent of the amendment to this section (§ 50.42) that less than "admissible" evidence is required before the grand jury. **Compiler's Note** cited in case.

NOTE: Section 50.42, as amended by P.L. 15-94, § 7, lowers the standard of evidence required to be presented before the grand jury, requiring that evidence only be **competent**, rather than requiring that evidence be admissible over objection at a trial. The former section, which was substantively the same as § 939.6 of the California Penal Code, proved unworkable and led to many unnecessary reversals and dismissals of indictments for purely technical reasons. In most instances, the indictments were resubmitted and new indictments returned by the grand jury. No rights of the defendants were materially helped by the former section, but delays were frequent. There have been few, if any interpretations of this amended section since its adoption, but indictments have proceeded in a smoother fashion.

§ 50.46. Prosecuting Attorney Only Officer to Present Evidence; Duty to Disclose Exculpatory Evidence in His Possession.

The grand jury shall receive only evidence presented to it by the prosecuting attorney but the prosecuting attorney shall submit any evidence in his possession which would tend to negate guilt and the grand jury shall weigh all the evidence submitted.

COURT DECISIONS: SUPERIOR COURT, 1978. Failure to establish a technical foundation for the admission of an exhibit before the grand jury does not render such exhibit inadmissible. *People v. Gerber, et al.*, Sup. Ct. Cr. #149F-78 (Order, 09/26/78; Abbate, P.J.)

SUPERIOR COURT, 1978. With respect to grand jury proceedings, the Defense Attorney assumes a greater burden of proof in attempting to negate defendant's guilt than does the Prosecuting Attorney in attempting to show reasonable cause. *People v. Gerber, et al.*, Sup. Ct. Cr. #149F-78 (Order, 09/26/78; Abbate, P.J.)

D.C. GUAM APP. DIV., *People v. Sablan*, D.C. Cr. 85-0024A (1986). Evidence known to the prosecutor that would indicate defendant was elsewhere at the time the crime was alleged to have been committed is the sort which must be presented to the Grand Jury as mitigation pursuant to 8 GCA § 50.46.

D.C. GUAM APP. DIV: *People v. Grajo*, DCA 86-00002 (1987). Section 50.46 imposes no duty on the prosecutor to explain any evidence beneficial to the defense, nor to instruct the Grand Jury on the possibility of lesser included crimes.

NOTE: Section 50.46 is new but is based on proposed § 9299 of the California

8 GCA CRIMINAL PROCEDURE
CH. 50 GRAND JURY

Criminal Procedure Code. See California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project (Staff Draft 1975). Compare Cal. Pen. Code § 939.7. The basic principle is also expressed in ABA, Project on Standards for Criminal Justice the Prosecution Function and Defense Function § 3.6(b) (Approved draft 1971) ("The prosecutor should disclose to the grand jury any evidence which he knows will tend to negate guilt.")

§ 50.50. Immunity Provided For.

In any proceeding before a grand jury when a person refuses to answer a question or produce evidence of any kind on the ground that he may be incriminated thereby, proceedings may be had under § 1.21.

§ 50.54. Form of Indictment: Standards for Indicting.

(a) An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a felony *or* a felony and a related misdemeanor.

(b) The grand jury *shall* find an indictment when from the evidence presented there is reasonable cause to believe that an indictable offense has been committed and that the defendant committed it.

(c) *Special Fictitious Name Indictment* means an indictment of a person whose name is unknown but whose identity is established to the satisfaction of a grand jury by means of forensic Deoxyribonucleic Acid (DNA) testing of evidence. The caption of a special fictitious name indictment *shall* include a fictitious name, such as "John Doe" *or* "Jane Doe", in place of the name of the defendant whose true name is unknown.

COURT DECISIONS: SUPERIOR COURT 1979. "Using the 'reasonable cause' standard provided by § 50.54(b) of [this Title], the Court finds that the prosecution did establish sufficient evidence of the corpus delicti. *People v. Quitugua*, Sup. Ct. 1979, Cr. #102F-79.

D.C. GUAM APP. DIV. *People v. Grajo*, DCA 86-00002 (1987) Applying cited standards to facts, it is clear the Grand Jury could "clearly have had a strong suspicion that Grajo had murdered De Jesus."

NOTE: Subsection (a) of § 50.54 is based on § 889 of the California Penal Code. Subsection (b) is based on California Penal Code § 939.8. The term "indictable offense" means a felony or a felony and a related misdemeanor. See § 1.15. For additional requirements, see § 55.10 (former Rule 7(c)).

SOURCE: Amended by P.L. 29-042:1 (Jan. 2, 2008).

§ 50.58 Return of Indictment.

An indictment may be found only upon the concurrence of twelve (12) *or* more jurors. The indictment *shall* be returned by the grand jury to a judge in open court. *If* the defendant has been arrested and twelve (12)

8 GCA CRIMINAL PROCEDURE
CH. 50 GRAND JURY

jurors do not concur in finding an indictment, the foreman *shall* so report to the court in writing forthwith.

When the name of the indicted person is unknown but his *or* her identity is established to the satisfaction of the grand jury by means of forensic Deoxyribonucleic Acid (DNA) testing of evidence, then such indictment *shall* be filed by the grand jury with the Court as a Special Fictitious Name Indictment. The authority to file a special fictitious name indictment pursuant to this Section *shall* be in addition to any other authority in law for the filing of an indictment when the name of an indicted person is unknown.

NOTE: The first paragraph of this section is substantively the same as former Rule 6(f) and former § 805(d). See also Fed. R. Crim. P. 6(f); Cal. Pen. Code §§ 940, 944. The last sentence of the first paragraph has been revised to refer to those cases where the defendant "has been arrested;" former law referred to those cases where "the defendant is in custody or has been given bail." No change in substance is intended but the latter phrase would be too limited as a reference to the release procedures now provided. See Chapter 40 (commencing with § 40.10). The second paragraph was added by P.L. 29-042:2 (Jan. 2, 2008).

SOURCE: Amended by P.L. 29-042:2 (Jan. 2, 2008).

§ 50.62. Term of Grand Jury; Exceptions.

(a) A grand jury shall serve until discharged by the court but no grand jury may serve more than eighteen (18) months.

(b) At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

NOTE: Section 50.62 is substantively the same as former § 805(e). Former Rule 6(g) was substantively similar; however, it contained an unnecessary reference to "terms of court" which was not stated in former § 805(e) and is not retained here. See also Fed. R. Crim. P. 6(g).
