

Rule 18. Grand Jury

Rule 18.01 Summoning Grand Juries

Subd. 1. When Summoned. The court must order that one or more grand juries be drawn at least annually. The grand jury must be summoned and convened whenever required by the public interest, or whenever requested by the county attorney.

On being drawn, each juror must be notified of selection. The court must prescribe by order or rule the time and manner of summoning grand jurors. Vacancies in the grand jury panel must be filled in the same manner as this rule provides.

Subd. 2. How Selected and Drawn. Except as provided for St. Louis County, the grand jury must be drawn from a list composed of the names of persons selected at random from a fair cross-section of the statutorily qualified residents of the county.

In St. Louis County, a grand jury list must be selected from residents of each of the three districts of St. Louis County. When the offense is committed nearer to Virginia or Hibbing than to the county seat, the case must be submitted to the grand jury in Virginia or Hibbing.

Rule 18.02 Organization of Grand Jury

Subd. 1. Members; Quorum. A grand jury consists of not more than 23 nor fewer than 16 persons, and must not proceed unless at least 16 members are present.

Subd. 2. Organization and Proceedings. The grand jury must be organized and its proceedings conducted as provided by statute, unless these rules direct otherwise.

Subd. 3. Charge. After swearing the grand jury, the court must instruct it on its duties.

Rule 18.03 Who May Be Present

Prosecutors, the witness under examination, qualified interpreters for witnesses disabled in communication, or for jurors with a sensory disability, and for the purpose of recording the evidence, a reporter or operator of a recording instrument may be present while the grand jury is in session. No person other than the jurors and any qualified interpreters for any jurors with a sensory disability may be present while the grand jury is deliberating or voting.

On the court's order and a showing of necessity, for security purposes, a designated peace officer may be present while a specified witness testifies.

If a witness at the grand jury requests, and has effectively waived the privilege against self-incrimination, or has been granted use immunity, the attorney for the witness may be present while the witness testifies, provided the attorney is present for that purpose, or the attorney's presence can be secured without unreasonably delaying the grand jury proceedings. The attorney cannot participate in the grand jury proceedings except to advise and consult with the witness while the witness testifies.

By order of the court based on a particularized showing of need, a witness under the age of 18 may be accompanied by a parent, guardian or other supportive person while that child witness testifies at the grand jury. The parent, guardian or other supportive person must not participate in the grand jury proceedings, and must not be permitted to influence the content of the witness's testimony.

In choosing the parent, guardian or other supportive person, the court must determine whether the person is appropriate, including whether the person may become a witness in the case, or may

exert undue influence over the child witness. The court must instruct the person on the proper role for that person in the grand jury proceedings.

Rule 18.04 Record of Proceedings

Subd. 1. Verbatim Record. A verbatim record must be made of all statements made, evidence taken, and events occurring before the grand jury except deliberations and voting.

The record must not include any grand juror's name. The record may be disclosed only to the court or prosecutor unless the court, on the defendant's motion for good cause, or on a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury, orders disclosure of the record or designated portions of it to the defendant or defense counsel.

Subd. 2. Transcript. On the defendant's motion, and with notice to the prosecutor, the court at any time before trial must, subject to a protective order as may be granted under Rule 9.03, subd. 5, order that defense counsel may obtain a transcript or copy of:

- (1) defendant's grand jury testimony;
- (2) the grand jury testimony of witnesses the prosecutor intends to call at the defendant's trial; or
- (3) the grand jury testimony of any witness, if defense counsel makes an offer of proof that a witness the defendant expects to call at trial will give relevant and favorable testimony for the defendant.

Rule 18.05 Kind and Character of Evidence

Subd. 1. Admissibility of Evidence. An indictment must be based on evidence that would be admissible at trial, with these exceptions:

- (1) Hearsay evidence offered only to lay the foundation for the admissibility of otherwise admissible evidence if admissible foundation evidence is available and will be offered at the trial.
- (2) A report by a physician, chemist, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison, or test performed by the person in connection with the investigation of the case against the defendant, when certified by the person as the person's report.
- (3) Unauthenticated copies of official records if authenticated copies will be available at trial.
- (4) Written statements under oath or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, of the persons who claim to have title or an interest in property to prove ownership or that the property was obtained without the owner's consent, and written statements under oath or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, of these persons or of experts to prove the value of the property, if admissible evidence to prove ownership, value, or nonconsent is available and will be presented at the trial.
- (5) Written statements under oath or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, of witnesses who for reasons of ill health, or for other valid reasons, are unable to testify in person if the witnesses, or otherwise admissible evidence, will be available at the trial to prove the facts contained in the statements.

(6) Oral or written summaries made by investigating officers or other persons, who are called as witnesses, of the contents of books, records, papers and other documents that they have examined but that are not produced at the hearing or were not previously submitted to defense counsel for examination, if the documents and summaries would otherwise be admissible. A police officer in charge of the investigation may give an oral summary.

Subd. 2. Evidence Warranting Finding of Indictment. The grand jury may find an indictment if the evidence establishes probable cause to believe an offense has been committed and the defendant committed it. Reception of inadmissible evidence does not provide grounds for dismissing the indictment if sufficient admissible evidence exists to support the indictment.

Subd. 3. Presentments Abolished. The grand jury may not find or return a presentment.

(Amended effective July 1, 2015.)

Rule 18.06 Finding and Return of Indictment

An indictment may only issue if at least 12 jurors concur. The indictment must be signed by the foreperson, whether the foreperson was one of the 12 who concurred or not, and delivered to a judge in open court. If 12 jurors do not concur in issuing an indictment, the foreperson must promptly inform the court in writing. Charges filed against the defendant for offenses on which no indictment was issued must be dismissed. The failure to issue an indictment or the dismissal of the charge does not prevent the case from again being submitted to a grand jury as often as the court directs.

Rule 18.07 Secrecy of Proceedings

Every grand juror and every qualified interpreter for a grand juror with a sensory disability present during deliberations or voting must keep secret whatever that juror or any other juror has said during deliberations and how that juror or any other juror voted.

Disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any juror, may be made to the prosecutor for use in the performance of the prosecutor's duties, and to the defendant or defense counsel under Rule 18.04 governing the record of the grand jury proceedings. Otherwise, no one may disclose matters occurring before the grand jury unless directed to do so by the court in connection with a judicial proceeding.

Unless the court otherwise directs, no person may disclose the finding of an indictment until the defendant is in custody or appears before the court, unless necessary for the issuance and execution of a summons or warrant. However, disclosure may be made by the prosecutor by notice to the defendant or defense counsel of the indictment and the time of defendant's appearance in the district court, if in the prosecutor's discretion the notice suffices to insure defendant's appearance.

Rule 18.08 Tenure and Excusal

Subd. 1. Tenure. A grand jury must be drawn for a specified period of service, not to exceed 12 months, as designated by court order. The grand jury must not be discharged, and its powers must continue until the latest of the following:

- (a) the period of service is completed;
- (b) its successor is drawn; or
- (c) it has completed an investigation, already begun, of a particular offense.

Subd. 2. Excusal. For cause shown, the court may excuse a juror temporarily or permanently. The court may impanel another person in place of the excused juror.

Rule 18.09 Objections to Grand Jury and Grand Jurors

Subd. 1. Motion to Dismiss Indictment. Objections to the grand jury panel and to individual grand jurors must be made by motion to dismiss the indictment as this rule provides.

Subd. 2. Grounds for Dismissal. A motion to dismiss an indictment may be based on any of the following:

- (a) the grand jury was not selected, drawn or summoned in accordance with law;
- (b) an individual juror was not legally qualified; or
- (c) the juror's state of mind prevented the juror from acting impartially.

An indictment must not be dismissed on the ground that one or more of the grand jurors was not statutorily qualified if it appears from the records that 12 or more qualified jurors concurred in finding the indictment.

Comment - Rule 18

Rule 18.01, subd. 2 complies with the constitutional requirement that the persons on the grand jury list must be selected at random from a fair cross section of the qualified residents of the county. The method by which this must be done is left to the determination of the jury commission or judges making the selection of persons for the list.

Rule 18.01, subd. 2 includes special provisions governing St. Louis County based on Minnesota Statutes, sections 484.46 and 484.48.

Rule 18.03 allows qualified interpreters for jurors with sensory disabilities to be present during grand jury proceedings including deliberations or voting. This is in accord with Minnesota Statutes, section 593.32, and Minn. Gen. R. Prac. 809, which prohibit exclusion from jury service for certain reasons including sensory disability. Further, this provision allows the court to make reasonable accommodation for such jurors under the Americans with Disabilities Act. 42 U.S.C. section 12101 et seq.

Under Rule 18.04, subd. 1, the record may be disclosed to the court or to the prosecutor, and to the defendant for good cause, which would include a "particularized need," Dennis v. United States, 384 U.S. 855, 869-70 (1966), or on a showing that grounds exist for a motion to dismiss the indictment because of occurrences before the grand jury. In addition, the defendant, under Rule 9.01, subd. 1, may obtain from the prosecutor any portions of the grand jury proceedings already transcribed and possessed by the prosecutor.

Rule 18.04, subd. 2, supplementing the discovery rules (Rule 9.01, subd. 1), permits the defendant to obtain a transcript of the testimony of grand jury witnesses, subject to protective orders under Rule 9.03, subd. 5. See ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(iii) (Approved Draft, 1970). This rule does not preclude the court from ordering that the defendant be supplied with the transcript during the trial, on a showing of good cause.

Canon 5 of the Code of Professional Responsibility for Interpreters in the Minnesota State Court System bolsters the confidentiality requirement of interpreters under Rule 18.07.

Rule 18.07 leaves it to the discretion of the prosecutor to determine whether to notify the defendant or defense counsel of the indictment without the issuance of a warrant or summons. But see Minnesota Statutes, section 628.68 (leaving it to the court's, not prosecutor's, discretion).

The effect of a dismissal of an indictment under Rule 18.09 is covered by Rule 17.06, subd. 4.