

A Practical Guide to Supervising Civil Grand Juries

for Presiding and Supervising Judges
and Court Executive Officers

The California Grand Jurors' Association
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A Practical Guide to Supervising Civil Grand Juries

1. Overview of the court's relationship with the civil grand jury

The presiding judge of the superior court has important, albeit limited, responsibilities for supervising the civil grand jury.

The purpose of this document is to offer practical suggestions that may aid the court in supervising the civil grand jury as it carries out its “watchdog” duties. (This guide does not address the grand jury’s other functions: indictments and accusations.)

The civil grand jury is charged with investigating and reporting on the operations of local governmental entities. (Penal Code §888) The goal of this “watchdog” function is to improve the operations of local governments through investigations of their operations and the issuance of written findings and recommendations based on those investigations.

The grand jury has no inherent authority; it has only those powers that have been expressly conferred by statute. (*McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162)

The grand jury’s civil jurisdiction is limited to the investigation of local government entities. It may not investigate state officials or agencies (except an inquiry into the “public prisons” of the state that are located within the county). Nor may it investigate federal officials or agencies, private individuals, associations, or businesses. The grand jury may not investigate the courts or court employees. (76 Ops.Cal.Atty.Gen. 70, 1993)

While the grand jury operates under the “general supervision of the court and is deemed to be a judicial body or instrumentality of the court” (*City of Woodlake v. Tulare County Grand Jury* (2011) 197 Cal.App.4th 1293), it has wide latitude in determining the entities and topics it will investigate, how much work it will do, the methods it will employ in conducting investigations, and what information it will put in its reports. (*People v. Superior Court (1973 Grand Jury)* (1975) 13 Cal.3d 430)

The court’s relationship with the grand jury varies from county to county. Some judges help recruit jurors and provide ongoing guidance and supervision to the jury throughout its term, while others have essentially no involvement other than to impanel the jury and approve the release of its reports – except when problems arise.

The California Grand Jurors’ Association (CGJA) has been training grand juries throughout the state for two decades, offering two-day summer seminars attended by over 1000 grand jurors, one-day forepersons’ workshops and report writing workshops, and an MCLE program for the grand juries’ civil legal advisors (county counsel and district attorneys).

CGJA’s interactions with grand jurors and their advisors have led us to conclude that the court’s greatest challenges are:

- recruiting a panel of competent and unbiased grand jurors
- providing the orientation and training these laypeople need to conduct effective investigations and issue reports of merit
- dealing effectively with “problem” jurors

Our thoughts and suggestions for addressing these challenges follow.

2. Recruiting and screening grand jurors

A. Juror qualifications

The single greatest determinant of grand jury success is the quality of its individual members. Courts should strive to attract applicants who are intelligent, hardworking, unbiased, and capable of working effectively together. Courts should identify and screen out persons with an agenda or who might seek to manipulate or control the grand jury.

Penal Code section 893 lists several qualifications for grand jurors, including citizenship, age, residency, and a sufficient knowledge of English; and disqualifications, including conviction of a felony or of misconduct in office, current service as an elected official, or having been discharged as a grand juror within the past year.

Grand juror qualifications also include “sound judgment” and “fair character.” (PC §893) The court’s selection is to be made of persons who are “suitable and competent.” (PC §896)

The court is not limited to applying the statutory qualifications, but may also consider traits, skills, and experience that would assist the jury in its civil functions. (*People v. Garcia* (2011) 52 Cal.4th 706) Jurors must be selected from persons whose “capability is coequal to the scope” of the jury’s civil duties. (*People v. Holland* (1971) 22 Cal. App. 3rd 530)

Capable grand jurors should possess a reasonable level of computer competence: the ability to create a document, open and print attachments to an email, and edit documents electronically. Valuable time is lost trying to teach computer skills to those who lack them, or having to work around them.

See page 8 regarding diversity of the pool.

B. Volunteer v. summoned v. nominated jurors

CGJA estimates that about three quarters of the courts recruit volunteers to apply to serve as grand jurors. In a few counties, the grand jury pool consists only of persons who are summoned, while some have a blend of volunteers and summoned persons. In years past, many juries were comprised of persons nominated by the judges, but this is now less prevalent. However, even where a formal nomination process is not used, judges can encourage civic-minded citizens to apply for service.

Jurors who volunteer for service usually have an interest in civic affairs. These volunteers might be community leaders with special insight into the operations of local government. But most are not. They are just interested in government and community affairs. On the other hand, some might apply for service with an agenda in mind; therefore, volunteers should be carefully screened.

CGJA has heard that many of the jurors selected through summoning do not have enough time or interest for effective service. Another downside is that interviewing dozens or hundreds of summoned persons is difficult, while interviewing a smaller number of volunteers can be much more manageable. See section 2.D, below, regarding juror interviews.

C. Recruitment techniques

The court should make every effort to attract as many applications as possible. Some applicants will drop out; others will be screened out. The greater the number who apply, the better chance the court will have to find highly qualified candidates.

Techniques for attracting a qualified pool include using newspaper ads; TV, radio, and internet ads and interviews; social media, speeches to civic groups by current or past jurors; banners; brochures; mass mailings using the petit jury lists; showing a recruitment video in the jury assembly room; conducting open houses or public information meetings; directly recruiting persons known by bench officers, and recruiting former grand jurors.

In addition, broad dissemination of and publicity concerning grand jury reports helps generate interest in grand jury service. In most counties, the grand jury releases reports as soon as they are completed and approved by the court, thus generating more media and public interest for each report. The full reports or their summaries can be reprinted in local newspapers. Reports can be given prominence on the county and court websites. More and more grand juries are using social media (such as Twitter) to publicize the release of their reports.

CGJA chapters (which are groups of former jurors) often conduct recruitment services without charge or at cost (for newspaper advertising or other expenses).

See Attachment A, *Grand Juror Recruitment Activities*, page 27, which discusses a wide range of recruitment efforts that can be employed by either the court or a group of local volunteers.

D. Screening applications and interviewing prospective jurors

No standard application form exists for grand jurors. CGJA recommends that the application call for personal and contact information, length of residency, educational background and employment history, computer and internet skills, areas of interest in community affairs, and a list of references. Applicants can be required to describe any significant relationships or interactions they or their close relatives have had with local governments and officials. The

application should also reference the qualifications and disqualifications listed in PC §893 and note the dates for impaneling, any local orientation program, and training.

In some counties, the applicants are required to write a short essay as to why they want to serve on the grand jury. This can be quite helpful in determining if their writing skills are adequate and whether they may have biases for or against any local government entities.

Most courts post the application in a fillable format on their website. Many juries include a copy of the application in their end-of-term consolidated report.

The submitted applications may be screened by court staff, one or more of the judges, and/or a CGJA chapter. In some counties, the grand jury's legal advisors (the county counsel and district attorney) also review the applications and provide useful information to the court.

The local CGJA chapter (or other group of former jurors) can pre-interview applicants as part of the screening process and make recommendations to the court.

Court staff usually checks as to whether the applicants have any criminal record that would disqualify them. The applicants' references may be contacted by court staff or the local chapter or association.

The court is required to select the grand jurors for the pool by "personal interview." (PC §896).

Interviews are ordinarily conducted by one or more judges or by court staff. The interview panel can include the district attorney, county counsel, outgoing or former jurors, and/or members of a local CGJA chapter. A list of typical interview questions can be found on CGJA's website, www.cgja.org, under Chapters and Associations, Chapter Resource Documents, Juror Recruitment, Sample Interview Questions.

It is important that the applicants clearly understand the time and workload commitments of grand jury service. A "public information meeting" can be held for prospective jurors during the application period, either by the court or by a CGJA chapter or other former jurors, to discuss the nature and extent of this commitment. In counties where this meeting takes place, some applicants may decide against submitting an application or withdraw their name from the pool after becoming better informed about grand jury service, but that is preferable to them resigning from the grand jury after being chosen as jurors.

3. Selecting the grand jury pool

A. Number of jurors; additional grand juries

In Los Angeles County, the number of grand jurors is 23. In most other counties, it is 19. However, if the county population is under 20,000 and upon approval of board of supervisors, the number of jurors may be set at 11. (PC §888.2)

Traditionally, there was one grand jury in each county. However, there are now several penal code sections that allow the court to impanel additional grand juries, including §904.6 (allowing courts in all counties to impanel a criminal grand jury), §904.7 (allowing San Bernardino County to have a second civil grand jury), and §904.8 (allowing Los Angeles County to have an additional criminal grand jury).

Most courts impanel separate civil and criminal grand juries.

B. Holdovers

The presiding judge “may name up to 10 regular jurors not previously so named, who served on the previous grand jury and who so consent, to serve for a second year.” (PC §901) Most courts appoint three or four jurors (frequently called “holdovers”) from the outgoing jury to hold over for a second term.

Holdovers can be of great assistance in providing practical operational guidance to the jury. However, they can be disruptive if they attempt to control the succeeding jury or insist on rehashing “pet” issues, so they should be carefully screened.

CGJA recommends that the court seek the input of the outgoing foreperson and pro tem, as well as the grand jury’s legal advisor, when choosing holdovers. Many courts use an application and interview process for those jurors who volunteer to be held over.

C. Alternates

The grand jury pool to be summoned is 25 to 30 in all counties except Los Angeles, where it is 29 to 40. (PC §904)

The persons whose names are not drawn as jurors should be named as alternates. Almost all grand juries lose members throughout the year. If there are no alternates in the wings, filling a vacancy can take several weeks. CGJA recommends that after the names are drawn for the jury panel, the clerk or jury commissioner draw the remaining names as alternates and assign a number to each so that the alternates can have a better idea as to the likelihood of being called to serve.

The alternates should be trained with the seated grand jurors so that if called, they will have adequate knowledge of their duties and some familiarity with their colleagues. They should also take part in the non-confidential parts of the jury’s local orientation program.

At the end of the year, any names of persons who have not been drawn to serve may be placed on the list of grand jurors for the succeeding year. (PC §902)

D. Diversity of the panel

The court must choose the jury pool from different county supervisorial districts to the extent possible. (PC §899)

Most grand juries lack diversity in terms of race, sex, and age. The court may not systematically exclude or substantially underrepresent members of identifiable groups. (*People v. Newton* (1970) 8 Cal.App.3d 1064) The court is required by Rule 10.625 of the California Rules of Court to collect and maintain demographic data on the grand jury applicant pool.

The potential for a challenge to the panel's demographic makeup has led most district attorneys to ask the court to impanel separate criminal grand juries to hear indictments, as authorized by PC §904.6.

See Attachment A, *Grand Juror Recruitment Activities*, page 27, for ideas on achieving a more diverse pool of prospective grand jurors.

4. Impaneling, local orientation, training, rules of procedure, end of term

A. Judge's charge; administration of oath; recommended follow-up

Most courts have developed a "script" for the impaneling ceremony, which includes a charge and the oath. In its charge, the court must give the grand jurors such information as it deems proper or as is required by law. (PC §914) The judge must call the jurors' attention to various Government Code and Welfare and Institutions Code provisions. (PC §914.1) A generic charge can be obtained from CGJA.

Penal Code §911 contains the text of the juror's oath. In many counties, the charge and oath are reprinted in the grand jurors' procedures manual.

CGJA suggests that the judge use the giving of the charge as an opportunity to set the tone for the incoming grand jury, stressing the court's expectations about juror ethics and professionalism.

The court might emphasize that the grand jury's goal is to improve the operations and accountability of local government through a thorough and impartial fact-finding process; it is not to "dig up dirt" on public officials. Jurors could be cautioned not to assume that public employees and officials are incompetent or corrupt. The focus of investigations should be on the entity's operations and finances and not on the entity's policy or personnel decisions. (78 Ops.Cal.Atty.Gen. 290, 1995)

CGJA also suggests that the court's charge be reinforced by the judge during one or more later meetings with the jury. Being clear about the court's expectations can help keep the jury on track.

B. Local orientation

Most grand juries receive a local orientation program of one or more days' duration. Such programs can be conducted by the outgoing grand jurors, the local CGJA chapter or a former

jurors' association, grand jury staff, and/or the jury's primary civil legal advisor. Orientation usually takes place immediately after the impaneling and prior to the general training program (which in most counties is provided by CGJA).

Local orientation programs typically include: a review of local rules and practices (including passed forward rules of procedure); a description of the grand jury's interface with the county, court, and local officials; and presentations by legal advisors and local officials. Some orientation programs also cover investigations, interviewing, and report writing, but including these topics are not necessary if the jurors attend CGJA training.

Examples of orientation program outlines and materials can be found on CGJA's website, under Chapters and Associations, Chapter Resource Documents.

C. Training

To assist the grand jury in the performance of its statutory duties regarding civil matters, the court – in consultation with the district attorney, the county counsel, and at least one former grand juror – must ensure that the grand jury receives training in report writing, interviews, and the scope of the grand jury's responsibility and statutory authority. (PC §914)

CGJA trains over 90% of the county civil grand jurors and most alternates. Its training program meets and exceeds the requirements of PC §914. In addition to the subjects required by PC §914, CGJA's training emphasizes juror ethics, recusals, professionalism, and collegiality. CGJA's training programs are described at pages 24-25.

While PC §914 provides that "any costs incurred by the court" for training "shall be absorbed by the court or county from existing resources," Rule 10.810 of the California Rules of Court does not recognize grand juror training as an appropriate court expenditure (it is not part of "court operations"), so the county, on its own, must pay for juror training.

In counties where not all of the jurors and alternates are trained, the court could urge the county executive officer to allocate additional funding for training.

D. Rules of procedure

Most grand juries receive a procedures manual from the court or preceding grand jury. However, they are not obligated to follow it. Each grand jury must adopt, and may later amend, its own rules of procedure (the procedures manual) by a supermajority vote (as defined in PC §940). (PC §916)

Procedures manuals may be periodically revised by the jury's legal advisor. The scope and quality of procedures manuals vary county to county. Examples of grand jury procedures manuals on CGJA's website under Jury Resources, Sample Documents.

The court should have a copy of the grand jury's procedures manual to refer to when giving administrative guidance to the foreperson or the entire jury.

E. End of the grand jury term

The grand jury's term is one year and until new jurors are selected and returned. (PC §901; 72 Ops.Cal.Atty.Gen. 128, 1989) On completion of its business or at the expiration of the term, the court shall discharge it or the affected grand jurors. (PC §915)

If the grand jury has not completed its work when the new jury is sworn in, the court might consider delaying the "effective date" of the oath until the outgoing jury submits its last report(s) and advise the new jury not to meet until then.

5. Advising the grand jury

A. Statutory advisors

The grand jury's advisors are the court or judge, the county counsel, the district attorney, and the attorney general. (PC §934) Under certain circumstances, the court may appoint special counsel. (PC §936.5; see section 5.E below)

B. The role of the presiding or supervising judge

The presiding judge selects and impanels the grand jury, gives the jurors a charge as to their powers and duties, provides general oversight of the jury, and approves the jury's final reports. (In many counties, the presiding judge delegates the duty of working with the grand jury to a supervising judge.)

The grand jury is entitled to ask and receive advice from the court. (*People v. Superior Court* (2000) 78 Cal.App.4th 403) Most judges provide only administrative advice and oversight to the grand jury, as opposed to giving legal advice. Some judges have an introductory meeting with the jury to express the court's expectations as to juror ethics and professionalism. Some also have routine meetings with the foreperson and pro tem throughout the term or meet occasionally with the entire panel.

The presiding or supervising judge may address the jurors in their meeting room upon the jury's request, but may not be present during deliberations. (PC §§ 914 and 934; *Michaels v. Superior Court (Riverside)* (1960) 184 Cal. App. 2d 820) No one except jurors may be present during the jurors' expressions of opinions or voting. (PC §939)

Judges are also called upon to provide guidance on "personnel" issues, should they arise. (See section 6.D, below, regarding "problem" jurors.)

C. County counsel

County counsel is the jury's primary civil advisor in most counties, providing both legal advice related to the grand jury's investigations and guidance about internal grand jury matters. County counsel also reviews the jury's reports.

If a conflict arises due to the grand jury's investigation of a county counsel client, the office will, in most instances, employ an ethical wall in order to provide legal services to the grand jury on that matter. (*Howitt v. Superior Court* (1992) 3 Cal.App.3d 1575 and *Morongo Band of Mission Indians v. California State Water Resources Control Board* (2009) 731 Cal.4th [both decided on due process grounds, not conflict])

When an ethical wall cannot be employed by the county counsel to deal with a conflict, the entire office must recuse. If that occurs, the grand jury can be directed to the district attorney for legal assistance related to its civil functions. If the district attorney is unavailable, the court can appoint special counsel, as discussed in section 5.E, below.

Some grand juries routinely consult with the district attorney regarding those investigations and reports that are related to the clients of the county counsel's office.

CGJA recommends routine communication between the judge and the jury's primary civil advisor about internal administrative matters. This often involves how to deal with "problem" jurors. (See 6.D, below.)

D. District attorney

In a few counties, the district attorney is the grand jury's primary civil advisor. This avoids the issue of the county counsel's potential conflict of interest. In other counties, the district attorney acts as conflict counsel when the county counsel must recuse or if the investigation concerns a county officer or employee. In most counties, the district attorney limits his or her involvement to providing assistance with indictments and accusations. A separate criminal grand jury may be impaneled for indictments. (PC §904.6)

Pursuant to PC §935, "the district attorney may appear before the grand jury to give information or advice relative to any matter cognizable by the grand jury or to interrogate witnesses whenever he or she thinks it necessary."

Some grand juries ask for the district attorney's assistance at interviews when they are concerned that the witness will be hostile or untruthful or if it appears that an accusation or indictment is possible. The county counsel is not authorized to assist the grand jury with interviewing witnesses.

Penal Code section 939.2 allows the district attorney or a district attorney's investigator to sign subpoenas on behalf of the grand jury. The court may also issue subpoenas. See section 7.A on page 18.

E. Special counsel

Pursuant to PC §936.5, the presiding judge may "employ special counsel and special investigators ... to investigate and present the evidence of the investigation to the grand jury." Under this provision, the court appoints counsel to provide legal services related to an investigation when local counsel have recused themselves.

Appointment of special counsel requires an evidentiary hearing and a finding that conflicts prevent the involvement of the district attorney, county counsel, and attorney general. In addition, the county auditor must certify that the grand jury has funds appropriated to it sufficient to compensate the investigator or attorney. If the board of supervisors or one of its members is under investigation, the county must appropriate the necessary funds.

Most grand jury budgets are not sufficient to pay these costs. On occasion, a court has located an attorney willing to work pro bono. The county counsel in a neighboring county might be willing to provide legal services to the grand jury when local advisors recuse themselves.

F. Attorney general

Occasionally, a grand jury will seek the services of the California Attorney General. However, the attorney general is not required to assist the county grand jury – and is unlikely to do so unless the county counsel and district attorney are disqualified and the issue is one of particular importance.

The attorney general may demand the impaneling of the regular grand jury, if one is not in existence (PC §913); direct a grand jury to consider criminal matters or petition the court to impanel a criminal grand jury (PC §923); and employ special counsel and investigators for the grand jury (PC §936).

6. Administrative functions

A. Selecting the foreperson

The foreperson is the only officer of the grand jury who is appointed by the court. (PC §912) Appointing the right person is crucial to the success of the grand jury and can save the court from having to deal with “rogue” conduct by the jury or individual jurors.

The court should appoint as foreperson someone who has good leadership skills and works well in a group. CGJA believes the foreperson should have a collegial style of interaction. The grand jury structure is one of peers; it is not a hierarchy. Grand juries are deliberative bodies in which no juror has more power than any other. The foreperson must promote juror collegiality and inclusiveness. A foreperson who is authoritarian (or “dictatorial”) is one of the most commonly mentioned causes of juror dissatisfaction that can lead to juror resignations.

The candidates’ employment experience should be a consideration. Several courts give preference to candidates who are attorneys, but CGJA believes that management style and a spirit of inclusiveness are more important than a legal background. Public employees are allowed to serve on grand juries, but current or recent employment with a local agency subject to grand jury scrutiny might require the foreperson’s recusal from that investigation and may give the impression that the jury is not impartial.

Prior grand jury service is often of benefit, but not if the foreperson insists on employing the structure or procedures used by the prior jury or rehashing past issues. CGJA recommends that the court avoid “professional” or repeat forepersons as they do not tend to promote collegiality.

When considering the appointment of one of the holdovers as foreperson, CGJA suggests the court obtain the recommendation of the outgoing foreperson, the jury’s legal advisor, and outgoing jurors. Many courts use a foreperson application form or have the applicants submit a letter of interest. If none of the holdovers is appropriate, the court should conduct separate interviews of those in the grand jury pool who seem to be the best qualified, based on their applications and interviews.

At the same time, the court is not legally required to appoint someone in the grand jury pool to be foreperson. The court may appoint any citizen as foreperson as long as that person meets the statutory requirements for service.

CGJA recommends appointing the foreperson at least two weeks before the grand jury’s impaneling to smooth the transition between the juries and allow the new foreperson to be adequately prepared to assume that role.

The statutory duties of the foreperson are limited. Each year, through adoption of its rules (its procedures manual), the grand jury determines what administrative duties it will delegate to the foreperson. The procedures manual should not delegate to the foreperson some powers that should be exercised by the full panel (such as determining which topics to investigate or acting as the gatekeeper for complaints).

Finally, CGJA recommends that all incoming forepersons, even those who have served in the past, attend one of CGJA’s Foreperson and Pro Tem Workshops, which are offered at several of our summer seminar venues. See a description of the workshop at page 25.

B. Promoting ethical conduct

The court should take affirmative steps to encourage grand juror ethical conduct. As noted in section 4.A, at page 9, CGJA recommends that presiding judges make clear in their charge that the court will hold the newly impaneled grand jurors to strict compliance with the law and require them to conduct themselves professionally and impartially.

Further, the grand jury’s procedures manual should also address confidentiality, impartiality, collegiality, and professionalism.

In some counties, jurors are asked to sign a “code of conduct” that the full panel has adopted and which is part of their procedures manual. A sample code of conduct is posted on CGJA’s website under Jury Resources, Sample Documents.

In other counties, jurors are also required to sign a reprint of PC § 924.1 (regarding confidentiality) and a copy of the juror’s oath. At the end of the term, they must sign an

acknowledgement of their oath or they are given a written confidentiality reminder from the presiding judge or the legal advisor.

Having grand jurors sign acknowledgements of their ethical duties can be helpful if it becomes necessary to discharge a juror. See section D, below.

C. Managing juror conflicts of interest

Grand jurors must recuse themselves from considering matters in which they have a conflict of interest.

According to the Fair Political Practices Commission, the Political Reform Act, which prohibits financial conflicts of interest, applies to grand jurors. The act ordinarily requires recusal from making or influencing a decision if a financial conflict of interest exists. Conflicts are considered on a separate transactional basis. The proper remedy is abstention, which means the juror discloses their interest, refrains from participating or attempting to influence other jurors, and leaves the jury room while that matter is under discussion.

Because grand jurors are subject to the Political Reform Act, they must file periodic economic disclosure statements (a “Form 700.”) (61 Ops.Cal.Atty.Gen. 88, 1978)

A juror who is an employee of an agency within the jury’s investigative jurisdiction or who was so employed within the past three years must report that employment or former employment to the court and foreperson and must recuse from any investigation or report related to that “agency” (defined as a department of a local entity, rather than the entire entity). This requirement is “in addition to any local policies or rules regarding conflict of interest for grand jurors.” (PC §916.2)

In addition, jurors with a state of mind that prohibits them from acting impartially and without prejudice to the substantive rights of a party shall retire, under penalty of contempt. (§939.5; *People v. Boehm* (1969) 270 Cal.App.2d 13)

These “states of mind” may be related to a family connection between a juror and a local official, business relationships with an entity or official, past or ongoing litigation with the entity or official, or any other relationship or activity that could cause a reasonable person to conclude that the juror is likely biased for or against the entity or official. CGJA analogizes to CCP §170.1, which requires judges to recuse themselves when “a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.”

Occasionally, a juror with a conflict or perceived conflict will refuse to recuse, usually on the ground that “I can be impartial.” The involvement of a person with a disqualifying interest in or relationship with the topic, entity, or official under investigation can seriously impair the credibility of the grand jury and the reports they produce.

CGJA recommends that the court urge recusal when this occurs and consider discharging the juror if the basis for the recusal is statutory and the juror refuses to recuse. This ultimate step

is seldom necessary. Most grand jurors understand that when they recuse themselves it is to protect the grand jury's impartiality and integrity.

D. Discharging jurors

The judge may be asked for help by the foreperson, other jurors, or the jury's legal advisor when one or more members of the grand jury engage in misconduct or if conflicts arise among individual jurors or cliques that disrupt the functioning of the jury.

The court may discharge an individual juror for good cause. (See PC §1089)

CGJA recommends that this be done if there is proof that a juror has significantly interfered with the operations of the jury; intentionally violated the jurors' oath, judge's charge, or confidentiality proscriptions (the willful disclosure of evidence or of jury discussions or votes is a misdemeanor per §924.1); harassed another juror or some other person (such as an interviewee); or abandoned his or her office.

The courts should consider using progressive discipline. When appropriate, a problem juror can be counseled by the foreperson or the judge and given a chance to reform.

When the misconduct is so serious that immediate discharge is needed, or where counseling measures have not remedied a pattern of misconduct, the juror should nonetheless be given the opportunity to be heard by the court. No action should be taken absent credible information indicating that the juror's conduct has impaired the operations of the jury or damaged its credibility in the community, or constitutes illegal conduct.

The Penal Code does not explicitly require a particular process for discharging a grand juror. While juror removal is handled informally by most courts, at least one superior court, Los Angeles, removes grand jurors through a formal court proceeding. (See Attachment B, *Discharge of a Grand Juror*, page 32, regarding the conducting of a closed session of the court prior to the issuance of an order for a juror's discharge.)

If the court decides not to conduct a formal discharge hearing, it might call into chambers a court reporter and dictate on the record the facts in support of the finding that the juror is no longer qualified to serve, including any findings about credibility. While this record would remain secret as part of a grand jury proceeding, it would be available in the event of a legal challenge. Often, the juror will decide to resign in lieu of discharge.

Only the court has the authority to remove a grand juror. Many grand jury procedures manuals provide that a juror can be removed after a certain number of unexcused absences. Those provisions are not controlling, although they may influence the court's decision.

The court may also discharge the entire panel. (*People v. Superior Court (1973 Grand Jury)* (1975) 13 Cal. 3d 430; 72 Ops.Cal.Atty.Gen. 128, 1989) Courts very rarely do this and apparently only when the panel has become completely dysfunctional due to serious internal discord or jury misconduct.

E. Filling vacancies

Nearly every grand jury loses some jurors every year. The court ordinarily selects the replacement jurors from the alternates in the order their names were drawn from the jury wheel.

If all of the alternates have been chosen or refuse to serve, PC §908.1 allows a special venire as provided in CCP §211. The court may direct the sheriff or marshal to summon, serve, and immediately attach a sufficient number of qualified citizens to complete the panel. CGJA does not know how frequently, or successfully, CCP §211 has been employed.

CGJA recommends that the court fill vacancies that occur before the end of March each year. Even though this is late in the term, there are still three months to go, and the new jurors can help with fact checking and editing the draft reports during this busy part of the term. A benefit of appointing replacements is that these new jurors frequently volunteer to be held over to the next term.

At least one court conducted a mid-term recruitment campaign when the list of alternates was exhausted several months before the end of the term.

Note that PC §908.1 prohibits a new juror from voting “on any matter” upon which the grand jury took evidence prior to the juror’s appointment. It is not clear if this prohibition is limited to criminal matters or also applies to civil investigations.

As long as the jury can still complete its work, the number of jurors may be allowed to fall below the number originally impaneled. However, there must be enough jurors to enable the jury to authorize investigations and approve reports by a supermajority vote (e.g., 12 votes in 19-member juries). The supermajority remains absolute, regardless of vacancies and absences.

F. Employing experts

Penal Code section 926 allows the grand jury to employ experts for most investigations (but not those of nonprofit corporations), at an agreed compensation, to be approved in advance by the court. Expert expenses for investigations of special districts or the local agency formation commission are limited to \$30,000, unless the additional expenditures are approved by the board of supervisors.

Most grand juries do not have the funds to hire experts. CGJA has heard that an expert has occasionally provided services to a grand jury on a pro bono basis.

G. Financial and budgetary matters

Government Code §77200 excludes “grand jury expenses and operations” from “court operations.” CRC 10.810 limits court expenditures to grand jury “selection.” Therefore, the

court's financial support of the jury is limited to recruiting and selecting the jury pool and impaneling the jurors. The county pays all other expenses.

All juror expenses must be paid by the treasurer out of the general fund. (PC §931) The per diem is \$15 per day and mileage is payable at the rate paid county employees, unless higher rates have been set by county ordinance. (PC §890)

The attorney general has opined that the county's payment of a per diem is required only for panel meetings (76 Ops.Cal.Atty.Gen. 187, 1993), but most counties, by ordinance, also pay the per diem for attendance at committee meetings, site inspections and visits, and interviews.

The grand jury may not spend money in excess of the amount budgeted for its investigative activities unless the expenditure is approved in advance by the presiding judge after the board of supervisors has been advised. (PC §914.5)

Some grand juries have insufficient funding to properly conduct their investigations. In those counties, the presiding judge may wish to encourage the county administrator to increase the grand jury's budget.

H. Facilities

The court is required to arrange for a suitable meeting room and other support as it determines is necessary for the grand jury. Any costs incurred by the court "shall be absorbed by the court or the county from existing resources." (PC §938.4) As noted above, such costs cannot be paid by the court.

Most grand juries have dedicated office and meeting space, at least one computer, and other necessary office equipment. Those that do not often find it challenging to produce the quality of work expected of grand juries and may also find it difficult to maintain confidentiality. The presiding judge might wish to discuss any such shortcomings with the county administrator.

7. Subpoenas

A. Subpoena of witnesses

Grand juries rarely subpoena witnesses for interviews connected with their civil watchdog function because most witnesses willingly take part in interviews. On occasion, a witness will request a subpoena to avoid being seen as initiating the contact with the grand jury.

A subpoena may be signed by the district attorney, a district attorney investigator, or, upon request of the grand jury, by any judge for a "witnesses in the state ... material in an investigation" (the subpoena is effective statewide). (PC §939.2)

B. Subpoena of documents

Pursuant to PC §921, the grand jury is entitled to examine all public records within the county (with the exceptions noted in the next section). It is also entitled to examine peace officer personnel records. (PC §832.7) This right to access is statutory; the grand jury need not proceed under the Public Records Act.

Most grand juries do not routinely subpoena documents, since most public entities produce them in response to an informal request or a directive citing PC §921.

On occasion, an entity will refuse to produce documents. While a grand jury may choose to use a subpoena duces tecum to obtain records, a subpoena duces tecum and affidavit are not required by law. A grand jury investigation is not a civil “proceeding” (the grand jury is not an adjudicatory body); thus, the provisions of CCP §1985 do not apply. (*City of Woodlake v. Tulare County Grand Jury* (2011) 197 Cal.App.4th 1293) (*MB v. Superior Court* (2002) 103 Cal.App.4th 1384)

CGJA offers a “grand jury subpoena” for witnesses and documents on its website (under Jury Resources, Sample Documents) that refers to PC §921 and does not contain an affidavit.

C. Limitations on access to confidential records

While PC §921 provides that the grand jury is entitled to examine all public records within the county, there are some limits on the jury’s access to confidential records maintained by local public entities.

For example, the court is not required to give the grand jury unfettered access to confidential juvenile records. (*People v. Superior Court* (2003) 107 Cal.App.4th 488) In order to review those records, the grand jury must bring a motion under W&I §827 and show that the records are necessary and relevant.

Attorney/client privileged materials, or those constituting work product, cannot be accessed. (70 Ops.Cal.Atty.Gen. 28, 1987) Like administrative agencies, the grand jury has no right to review medical records. (*Division of Medical Quality v. Gherardini* (1979) 93 Cal.App.3d 669 at 680 (dicta)) However, the grand jury has a statutory right to review peace officer personnel and disciplinary records. (PC §832.7, subd. (a))

8. Confidentiality

A. Secrecy of proceedings

Grand jury proceedings are confidential. The grand jury “shall retire to a private room and inquire into the offenses and matters of civil concern cognizable by it.” (PC §915)

Although the county counsel and district attorney can meet with the jury to give advice (and the district attorney can interrogate witnesses on behalf of the grand jury), no persons other than grand jurors are permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes, on any criminal or civil matter. (PC §939)

Under PC §939.1, public sessions are allowed upon a written request from the foreperson and the attorney general or the district attorney, if the court finds that the investigation affects the general public welfare or is regarding a matter involving alleged corruption, misfeasance or malfeasance in office, or dereliction of duty. Any related deliberations and voting must be conducted in private session. This code section might be limited to criminal matters.

B. Violation of the jurors' oath

The grand juror's oath is set forth in PC §911. Among other things, it obligates the juror to follow the charge given to the jury by the court.

The oath also requires the juror to keep secret any evidence brought before the grand jury and the discussions and votes of jurors. Violating the confidentiality provisions of the oath is a misdemeanor. (PC §924.1)

The breaching of confidentiality can be a ground for juror discharge.

C. Admonitions, oaths, and a witness's right to counsel

Most grand juries use an admonition when interviewing witnesses in civil investigations, instructing them not to disclose information learned during the interview. The California Attorney General has authorized the wording of an admonition. (86 Ops.Cal.Atty.Gen. 101, 2003) Violation of a grand jury admonition may constitute contempt of court under CCP 1209 (disobedience of a lawful order).

Very few juries administer an oath to a witness in a civil interview. The violation of an oath is punishable as perjury.

A witness has no right to have counsel present during an interview or other proceeding before the grand jury. (*Farnow v. Superior Court* (1990) 226 Cal.App.3d 481) However, there appears to be no prohibition against a witness leaving the room during an interview to consult with counsel.

D. Limitations on the release of confidential grand jury information

The evidence gathered in the course of a grand jury civil investigation remains confidential unless it is included in an authorized final report.

An exception to this rule of confidentiality is that the grand jury, or the presiding judge if the jury is no longer impaneled, may pass forward to the succeeding grand jury any records, information, or evidence acquired by the jury during the course of any of its investigations,

except any information or evidence that relates to a criminal investigation or could form part or all of the basis for issuance of an indictment. (PC §924.4) Civil investigation files are frequently passed forward by the outgoing jury; often the files consist of complaints or requests for investigation received late in the term.

CGJA recommends that in order to have the files available during the next term for the judge to pass forward, the grand jury seal those civil investigative files it has not passed forward on its own initiative. At the end of the second term, those documents should be shredded. Any confidential records not related to a specific investigation, such as the minutes of plenary sessions, should not be kept, but should be destroyed at the end of the current jury term.

Another exception to the rule of confidentiality is that the grand jury may reveal its report's findings to the subject of the investigation during an exit interview. (PC §933.05, subd. (d)) CGJA recommends that juries conduct exit interviews to verify report findings. Exit interviews help ensure the accuracy of the report and avoid claims of defamation.

A court may not, except under exceptional circumstances, reveal the nature, scope, strategy, or direction of a grand jury investigation. (*Los Angeles Times v. Superior Court* (2003) 114 Cal.App.4th 247) The court does not have broad authority to release materials to litigants. (*Goldstein v. Superior Court* (2008) 45 Cal.4th 218)

9. Report review, approval, and release

A. Submission of reports to the legal advisor and the judge

There are two kinds of reports: individual final reports (each of which is based on a single investigation) and a consolidated end-of-term report (which compiles all of the individual final reports into a single document).

Reports may be submitted to the court “at any time during the term of service of the grand jury.” (PC§933, subd. (a)). CGJA encourages grand juries to submit to the court and, when approved, release individual reports throughout their term rather than releasing them all at once at the end of the term. That way, each report will receive more public and media attention.

Individual reports must contain findings and recommendations (PC §933, subd. (a)) and the findings must be supported by “documented evidence.” (PC §916)

In most counties, the grand jury's legal advisor will review one or more drafts of each report for jurisdiction, check the citations, and determine if the report is defamatory.

Many legal advisors also comment on the report's facts, logic, organization, tone, and readability. Some edit for spelling and punctuation. Most confirm that the jury has “met with” the subject of the investigation as required by subdivision (e) of PC §933.05 and conducted an exit interview as allowed by subdivision (d) of that section.

Counsel's review takes place before the report, in its final form, is presented to the judge for approval.

B. The court's review of the report

The court's purpose in reviewing grand jury reports is to prevent the official filing of an illegal report, such as a report on matters that the grand jury itself has not investigated or a report concerning activities not within the grand jury's province. (*People v. Superior Court (1973 Grand Jury)* (1975) 13 Cal.3d 430)

The court has no authority to edit or seal a report simply because it disagrees with its conclusion or believes that its recommendations were hastily reached or not justified. The court may not refuse to release a report simply because it appears to be libelous. (*Ibid.*) It may, however, redact "raw evidence" as discussed below.

While the court's power to refuse to release a report is limited, CGJA understands that many judges do comment on the content of the reports they review and suggest revisions where appropriate. Grand jurors usually take such input seriously. The judge may also discuss the report with the jury's legal advisor.

C. Raw evidence

The court may redact from a report raw (unverified) evidence, such as a district attorney's legal opinion letter to the grand jury, transcripts or summaries of interviews, or documentary evidence. (*McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162) CGJA believes that a quotation from a witness's interview would be raw evidence and should be redacted. Most judges and legal advisors tell the grand jury, "No names, no quotes."

On the other hand, the court may authorize a grand jury to include raw evidence in its report, but that evidence must not contain any information leading to the identity of a person who provided information to the grand jury. The court may require the jury to redact any portions of the raw evidence that are defamatory or libelous. (PC §929)

D. Defamation

Individual grand jurors can be sued for defamation. (*Gillett-Harris-Duranceau & Associates Inc. v. Kemple* (1978) 83 Cal.App.3d 214) The county must defend and indemnify the grand jurors, as they are considered to be "uncompensated servants" of the county under the Tort Claims Act. (81 Ops.Cal.Atty.Gen. 199, 1998)

As noted above, the court may not refuse to release a report simply because it appears to be libelous. (*People v. Superior Court (1973 Grand Jury)* (1975) 13 Cal.3d 430) However, we recommend that courts bring potentially libelous language to the attention of the grand jury and its legal advisor.

The best means for avoiding defamation claims is for the jury's legal advisor to review drafts of the jury's reports and the jury to conduct exit interviews pursuant to PC §933.95(d), which allows the jury to review the findings with the subject of the investigation, before the report is released, to verify the accuracy of the findings.

E. Preliminary and minority reports

Because the code refers to "final reports" (PC §933, subd. (a)), it appears that the jury may issue only one report on each investigation. Minority reports are not authorized. (*Unnamed Minority Members etc. Grand Jury v. Superior Court* (1989) 208 Cal.App.3d 1344)

F. Release of reports

As noted earlier, the grand jury's final reports of its findings and recommendations may be submitted to the judge "at any time during the term of service of the grand jury." (PC §933) CGJA encourages grand juries to submit and, if approved, release individual reports throughout their term rather than releasing all of them at once at the end of their term.

The individual reports get much greater public attention when this is done. The periodic release of reports also helps avoid a logjam of reports for the legal advisor to review and the judge to approve.

After the court's approval of a report, the relevant portions of the report must be provided to the affected agency two working days prior to its public release, during which time the entity might notify the jury of any errors they see. The jury can then withhold the report to determine if any corrections are warranted. (PC §933.05, subd. (f))

Most juries release their reports to the public by posting them on their websites and emailing them to the local media.

A copy of each report must be placed on file with the clerk of the court and the clerk must immediately send a true copy of the report and the responses to the report to the state archivist. (PC §933, subd. (b))

10. Entity responses to reports

A. Statutory requirements

The court has no specified duties with regard to the responses entities make to the findings and recommendations in grand jury reports, other than to accept the responses and have the clerk of the court maintain the originals and provide a copy of them and the reports to the state archivist. (PC §933, subd. (b)) However, the court should ensure that the current grand jury receives a copy of all of the responses and that the responses are posted on the grand jury's website.

Subdivision (c) of PC §933 requires that governing bodies respond to the report’s findings and recommendations that pertain to that entity within 90 days and that elected county officers or agency heads respond within 60 days.

Penal Code section 933.05 sets forth the mandatory content for the responses to both findings and recommendations. The responses must include explanatory information and time frames for any further analysis, future implementation, or rejection of a recommendation.

B. Noncompliant responses

With some frequency, mandated respondents fail to submit their responses on time or fail to include in their responses the information required by PC §933.05.

Some courts contact governing boards or elected county officials who do not comply with these statutory obligations, reminding or directing them to provide responses as required by law. Other courts authorize the grand jury to make these contacts.

Many juries “invite” responses from appointed officials or elected city officials, who are not obligated by law to respond to grand jury reports. CGJA does not see any problem with this. However, there is no legal authority for the court to direct a response from an invited respondent.

11. The California Grand Jurors’ Association (CGJA)

A. About CGJA and its chapters

The California Grand Juror’s Association is an all-volunteer 501(c)(3) corporation, whose members (former grand jurors and others with an interest in California’s grand jury system) strive to preserve, promote, and support the grand jury system through training, education, and outreach.

CGJA currently has chapters in these counties: Alameda, Butte, Contra Costa, Fresno, Glenn, Humboldt, Kern, Madera, Marin, Napa, Placer, Sacramento, San Bernardino, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Shasta, Siskiyou, Solano, Sonoma, and Tulare. The Mother Lode Chapter covers Amador, Calaveras, and Tuolumne. In addition, El Dorado, Orange, and San Diego counties have independent past grand jurors’ associations. Current contact information for these chapters and associations is available at www.cgja.org (click on “Chapter & Association Information”).

Chapters and associations can be of notable assistance to both the superior court and the sitting grand jury. They can assist the court in its recruitment efforts by publicizing the functions and value of California’s grand jury system through outreach to local media and to civic organizations. In some counties, they help screen applications, contact references, and take part in interviewing the applicants, along with the jury’s legal advisors and court representatives. See Attachment A, *Grand Jury Recruitment Activities*, at page 27.

In many counties, these groups help the sitting grand jury by conducting or taking part in the local orientation program for incoming jurors. They can also be excellent resources for the grand jury on organizational matters, local government contacts, and a variety of “best practices.”

B. CGJA training programs for jurors, alternates, and legal advisors

CGJA provides a comprehensive training program to over 1000 grand jurors and alternates from nearly all of California’s counties each summer. Taught by experienced trainers (all former grand jurors or former legal advisors), these programs are conducted in over 40 venues, in all areas of the state. The seminars include two full days of presentations and over 300 pages of training materials. The core topic sessions are:

Grand Jury Overview: Orients jurors to the grand jury’s mission and the historical context of the grand jury system in California, emphasizing what takes place during the grand jury’s term. Covers the grand jury’s organization, the jurors’ responsibilities, and the concepts of ethics, collegiality, independence, and confidentiality.

Grand Jury Law: Citing specific provisions of state law, discusses what the jury must, may, and may not do. Attorneys present this session.

Local Governments: Describes the various governmental agencies the grand jury is authorized to investigate and introduces the laws that govern these entities, including state codes and regulations and local ordinances and charters.

Legal Topics: Covers the jurors’ liability for defamation, the roles of the grand jury’s statutory advisors, and government transparency and ethics laws. Attorneys present this session.

Investigations: Discusses, step by step, how the jury conducts its investigations, from choosing topics and planning and organizing the investigation, to gathering and verifying evidence.

Interviews: Explains how jurors plan the interview, develop questions, conduct the interview, and analyze the information they obtain. A video demonstrates effective interview techniques.

Grand Jury Reports: Covers the organization and content of reports and report review, approval, and release processes – and the importance of conducting exit interviews to confirm findings and their supporting facts.

Collegiality: Focuses on the grand jury’s structure, emphasizing that all jurors have equal power and responsibilities, encouraging jurors to respect the rights of their colleagues, and describing how to work collaboratively in their investigations and writing the reports.

CGJA offers short video presentations on **detention facility inspections** and **grand jury continuity** through its website, under the Training tab.

One-day **Foreperson and Pro Tem Workshops** are offered in four locations each summer. Topics include organizing, coordinating, and facilitating the grand jury's work; California law as it applies to the foreperson's responsibilities; and the administrative and leadership roles of the foreperson and pro tem.

In the fall, CGJA offers one-day **Report Writing Workshops**, which are attended by over 450 grand jurors each year. This interactive program helps jurors learn how to write high quality, compelling reports aimed at making positive changes in the operations of local governments. Trainers emphasize accuracy, thoroughness, and impartiality. A video is shown to demonstrate how to conduct an exit interview to confirm the report's findings.

OCGJA's newest program is the **Legal Advisors' Workshop**. Attorneys from county counsel and district attorney offices who provide civil legal support to grand juries discuss legal issues and best practices with peers from around the state. This workshop is held in two locations each July.

C. Contact information

Visit CGJA's website at www.cgja.org. Most of the documents referred to in this paper can be accessed by clicking on Jury Resources, then Sample Documents or under Chapters & Associations, then Chapter Resource Documents.

Judges and court personnel are also welcome to contact CGJA by phone or email:

Karen Jahr
Shasta County Counsel, ret.
Lead Legal Trainer and Curriculum Development Chair
California Grand Jurors' Association
(530) 246-7333
karen.jahr@sbcglobal.net

Attachment A

Grand Juror Recruitment Activities

The court's best interest is served by having an adequate pool of qualified grand juror candidates.

The methods for filling the candidate pool vary from court to court. Many recruit for volunteers. Others summon prospective jurors. Some do both.

In several counties where the pool is established through recruitment rather than summoning, chapters of the California Grand Jurors' Association or independent past grand jurors' associations help the court recruit grand jurors. These groups of volunteers can undertake many activities, described below, that encourage citizens to apply for grand jury service. We encourage the court (or its grand jury liaison) to meet with chapter representatives a few times each year to plan and monitor the chapter's recruitment activities.

A sample personal services agreement between a court and a CGJA chapter for the funding of recruitment activities is available on our website at www.cgja.org. Go to Chapters & Associations, then Chapter Resource Documents.

In counties without a CGJA chapter or an independent association, the court might conduct some of these recruitment activities using its own staff.

CGJA's website contains a variety of documents related to juror recruitment and orientation. The location of each document is described below.

Outreach Activities

Many citizens are unaware of the civil grand jury and the opportunity to serve as a grand juror. Public outreach about the value of grand jury service, and the personal satisfaction jurors derive from serving, encourages citizens to apply. Many of these efforts can be handled by the local CGJA chapter or independent grand jurors' association. Or court staff might be able to do this work.

Chapter/Association Outreach Activities:

- Formation of a speakers' bureau. Its members can develop a presentation (perhaps using slides) to describe the grand jury, what grand jurors do, and the application process. A sample slide presentation, developed by the San Mateo County Chapter, can be modified for use in other counties. (Go to Jury Resources/Sample Documents, then San Mateo County Civil Grand Jury Informational Session.)

The speakers can go into the community to "sell" grand jury service to local civic groups and clubs, service organizations, faith-based groups, leadership councils, ethnic or cultural associations, neighborhood associations, or the local chapter of the NAACP, the

League of Women Voters, or the American Association of University Women, etc. Presentations should be made in all areas of the county to encourage demographic and geographic diversity.

- Speakers can give a brief presentation encouraging grand juror applications during the “open comment period” at board of supervisors and city council meetings.
- They can ask the board of supervisors to proclaim February or March as the county’s Grand Jury Awareness Month (we have sample proclamations on our website).
- Chapters/association members or court personnel can be interviewed by local radio or TV stations. A sample set of prompting questions and suggested answers is on our website under Chapters & Associations, Chapter Resource Documents, San Mateo County Civil Grand Jury Recruitment Effort.
- They can prepare op/ed pieces and letters to the editor, describing the work of the grand jury and encouraging citizens to apply.
- They can write articles for insertion in the newsletters of local groups, such as the League of Women Voters, Soroptimists, the local bar association, etc.
- The chapter or association can print a brochure about grand jury service, have the court approve it, and then distribute copies at various places within the county, such as the jury assembly room, various government offices, public and college libraries, senior apartment complexes, coffee shops and other gathering places, local businesses, etc.
- They can prepare a recruitment flyer to be included in utility or tax bills.
- They can staff an information booth at local fairs, farmers’ markets, or other public gatherings to discuss grand jury service, show off recent grand jury reports, and tout the accomplishments of the grand jury.
- They can ask businesses that have reader boards to run a message stating that applications are being accepted and giving the website address where the application can be found.
- They can develop relationships with the local media, encouraging them to write stories about grand juror recruitment.
- They can use social media (Facebook, Twitter, etc.) to announce that volunteers are being sought to apply to serve on the grand jury, and provide a link to the application on the grand jury website.
- They can use social media platforms such as Nextdoor and community internet-based discussion forums to publicize grand jury service.

- They can also take steps to publicize any significant grand jury reports that are released during the application period, and to point out grand jury successes.

Activities that Ordinarily Require Court Approval or Funding

Some recruitment activities require court involvement or approval or need to be subsidized by the court because of limited chapter/association resources.

- The court or chapter/association can conduct one or more “grand jury public information meetings” to take place a few weeks or so before the application deadline, inviting the local media to attend. The program might include a brief slide presentation and a Q&A session. A representative from the court can describe the application and screening process. The brochure and the application can be distributed (unless the court accepts only electronic applications).
- The public information meeting can be advertised in traditional media, through social media, or by other means. Media representatives should be invited to attend.
- A notice can be placed on the court’s website referring to the public information meeting, encouraging applications, and linking to the application.
- A series of display advertisements can be produced and placed in local newspapers and on news websites. It could include three ads announcing: the opening of the application period, the public information meeting(s), and finally, the closing of the application period. The chapter or association could help write the ads and the court could pay to run them.
- Chapter or association members can produce and hang posters about applying for grand jury service.
- Banners can be produced that refer people to the grand jury’s website for applications and the court can hang them on the courthouse and chapters/associations can hang them in various places throughout the county.
- The chapter/association or the court can send letters to local governing boards (of the county, cities, special district and school districts) and the county’s members of the state senate and assembly, asking them to invite applications from people they know.
- The court can ask all judicial officers to nominate at least one person for grand jury service; the presiding judge would send a letter and application to each nominee.
- The court can send (or authorize the chapter/association to send) a personal letter to each former grand juror who served during the past three or four years to consider re-applying or to encourage their family and friends to apply.

- A letter can be sent to any prior alternates who did not serve, asking them to have their names included in the pool, without needing to re-apply.
- The court can issue press releases.
- Public service announcements (PSAs) can be produced and run on TV and radio stations and the court can provide a link to the TV PSA on its website. See our website, at Chapters & Associations, Chapter Resource Documents, for sample PSAs.
- A brief video (either CGJA’s *Agents of Change* video, posted on our website, or a locally produced video) can be played in the jury assembly room for persons summoned for regular jury duty.
- The court can provide a fillable online application, making it easier for people to apply.

Screening and Selecting the Pool; Providing Grand Juror Orientation

Some of CGJA’s chapters assist the court in selecting the applicants whose names will be placed in the pool. These activities include:

- annually updating the grand juror application
- reviewing and ranking the submitted applications,
- contacting the applicants’ references and reporting about them to the court,
- conducting an initial round of interviews and provide rankings or other input to the court,
- helping the court develop questions for the formal interviews,
- having a chapter member take part in the interviews, and
- conducting one or more “pre-orientation sessions”

Chapter members, who are all former grand jurors and understand firsthand how the jury works, can do much to assist the court in screening and interviewing applicants to help ensure that the chosen pool members have the skills, interests, and temperaments needed to be effective grand jurors.

Chapters and associations can also help after the pool is established. A “pre-orientation session” can be developed for those persons chosen for the pool, describing what jurors do during their year of service and answering any questions. This can help ensure that the candidates want to their names to remain in the pool, and that they will stay on the jury for the entire term. (CGJA can provide an example of a pre-orientation session that can be tailored to your county.)

Chapters can also conduct or help conduct an **orientation program**, immediately after the grand jury is impaneled, to inform the new jury about their duties, and to describe how they can begin getting organized, before the jurors attend CGJA training.

The orientation program provides an overview of how the grand jury operates in that particular county. It covers “housekeeping” matters related to the jury’s facilities and juror expenses. The grand jury’s legal advisor usually gives a presentation to explain their role. Most orientation programs include presentations by local officials about local government. CGJA’s website contains several sample curricula that can be modified to meet local needs.

Juror alternates should attend any part of the program that will not involve matters that can only be discussed in a formal grand jury meeting (such as voting on rules, committees, or officers).

Establishing a Relationship Between the Chapter and the Court

CGJA chapters and independent past grand jurors’ associations believe that helping the court with its recruitment of grand jurors is the most important task they can perform.

Those chapters that want to take part in recruitment, selection, or orientation activities, and want financial assistance to do so, need to take steps to develop a good working relationship with the court.

We recommend to them that they make a list of what recruitment tasks they would be able to carry out. They could ask for a 20-minute meeting with the judge or court executive officer to explain the specific tasks they are offering to perform.

As to court funding of chapter recruitment efforts, at least one superior court (Shasta) has a contract with the chapter to fund those activities. (A copy of the agreement is on our website at Chapters & Associations, Chapter Resource Documents).

But it might be wise to start off by having the chapter do those tasks that have no cost. If things work out, the court could then fund such tasks as running ads in the newspaper, purchasing banners, or working with a public relations firm to produce and place public service announcements.

Attachment B

Discharge of a Grand Juror

(Note: Most courts discharge grand jurors for misconduct or excessive absences informally, by asking for the juror's resignation. Others prefer a more formal process, to avoid a potential claim of a procedural irregularity.)

TO: HONORABLE _____
Supervising Judge
Criminal Division
Los Angeles Superior Court

FROM: JONATHAN McCAVERTY
Legal Advisor, Civil Grand Jury
Principal Deputy County Counsel
Law Enforcement Services Division

RE: **Discharge of Civil Grand Jurors**

On September 30, 2015, at approximately 9:00 a.m., in the jury room of the Civil Grand Jury, two Grand Jury members, _____ and _____, were reported to have engaged in a verbal confrontation that escalated and likely would have resulted in a physical confrontation but for the intervention of other Grand Jury members.

There were three witnesses to this incident, _____, _____ and _____. They have all provided written statements about what they observed and are attached for your reference.

My position on this matter is as follows: 1) this court should hold a hearing on this matter, providing notice and an opportunity to be heard for both Mr. _____ and Mr. _____; and 2) following this hearing, the court should find good cause and discharge both Mr. _____ and Mr. _____ from the 2015-2016 Civil Grand Jury.

Analysis

1. Oath and Charge to the Civil Grand Jury

Pursuant to Penal Code section 911, each member of the Civil Grand Jury swore an oath. Penal Code section 911 states, in relevant part:

The following oath shall be taken by each member of the grand jury:
"I do solemnly swear (affirm) that I will support the
Constitution of the United States and of the State of California, and
all laws made pursuant to and in conformity therewith, will
diligently inquire into, and true presentment make, of all public

offenses against the people of this state, committed or triable within this county, of which the grand jury shall have or can obtain legal evidence. . . . I will keep the charge that will be given to me by the court." (emphasis added.)

Pursuant to Penal Code section 914, this court, following the swearing in of the 2015-2016 Civil Grand Jury, charged the members of the Civil Grand Jury, as required by Penal Code section 914(a), which states:

(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 as it deems proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.

The charge by this court read, in relevant part, as follows:

"You have been sworn as Civil Grand Jurors for the County of Los Angeles, pursuant to Penal Code section 911. . . . I remind you that any violation of the letter or spirit of the Grand Juror's oath or this charge would endanger the integrity and effectiveness of the entire Grand Jury process."

As discussed below, this court, after notice and an opportunity to be heard, can find good cause to discharge one or both members referenced above from the 2015-2016 Civil Grand Jury for violating the charge of this court pursuant to Penal Code section 914(a).

A proposed court order could read as follows:

"Pursuant to Penal Code section 914(a), this court charged the 2015-2016 Civil Grand Jury with their duties and responsibilities, which included that no member of the Civil Grand Jury act in a manner that would endanger the integrity and effectiveness of the entire Grand Jury process. Jurors have a duty to deliberate without resorting to verbal threats or physical violence. Here, during the course of grand jury deliberations on September 30, 2015, this court finds that 2015-2016 Civil Grand Jury members ____ and ____ did engage in verbal and physical threats between one another. Therefore, good cause appearing, this court finds that these jurors have violated their oath and charge under Penal Code sections 911 and 914(a), and shall be discharged from the 2015-2016 Civil Grand Jury."

2. Court's Authority to Remove a Grand Juror

A trial court may discharge a sworn juror under some circumstances. Penal Code section 1089 states, in relevant part:

“If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, . . . the court may order the juror to be discharged and draw the name of an alternate, who shall then take a place in the jury box, and be subject to the same rules and regulations as though the alternate juror had been selected as one of the original jurors.” (emphasis added.)

While a trial court has broad discretion to remove a juror for cause, it should exercise that discretion with great care. *People v. Barnwell* (2007) 41 Cal.4th 1038, 1052. When a court is informed of allegations which, if proven true, would constitute good cause for a juror's removal, a hearing is required. *Id.* at p. 1051. (emphasis added.) A trial court facilitates review when it expressly sets out its analysis of the evidence, why it reposed greater weight on some part of it and less on another, and the basis of its ultimate conclusion that a juror was failing to follow the oath. *Id.* at p. 1053. (emphasis added.)

3. Notice and Opportunity to be Heard

Mr. ____ and Mr. ____ should be provided written notice and afforded an opportunity to be heard. In California, it has long been held that a notice and hearing are required prior to the removal of an officer who is appointed for a fixed period and who may only be removed for cause. *Welch v. Ware*, 161 Cal. 641, 119 P. 1080 (1911); *Bannerman v. Boyle*, 160 Cal. 197, 116 P. 732 (1911).

Grand jurors have been deemed to be officers of the court for certain purposes. "The individual members of the [grand] jury must be deemed to be officers of the court in which they were regularly appointed, and qualified to exercise judicial functions in the investigation of offenses cognizable by the grand jury; and as officers of the court, they continue to act until the jury of which they are members shall be dissolved by operation of law or order of the court." *In re Gannon*, 69 Cal. 541, 543 (1886).

Grand jurors are appointed for a fixed period of one year. Penal Code section 901. As such, it is recommended that due to Mr. ____ and Mr. ____'s positions as "officers" who hold those positions for a fixed period of time, this court should provide notice and hold a hearing concerning the allegations referenced above, and render a decision accordingly.

Enclosures (*not included*)