**GRAND JURY - EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am Tain Kell.*

We have completed another NJO session for new Superior Court judges and are excited to watch their “bench” careers take off

*[Say something funny about training your replacement]*

Today, we are going to discuss the topic of grand jury proceedings

*Several years ago, we had a NJO attendee raise his hand and tell us that he had to charge a grand jury shortly after the NJO class was completed. Luckily, we had a script for him to follow as part of the NJO materials.*

Luckily for us and all of you listening, an updated outline for grand jury proceedings was recently delivered to all Superior Court judges and gave us material to rely upon in discussing this topic. Shout out to Heather Lanier and the other judges who worked on those outlines.

*Shout out to everyone we have leeched off of over the years in the making of this podcast. We could not do it without you! (That covers all claims of plagiarism, right? The “Shout out rule?”*

Some of our listeners do not have much interaction with grand juries but we hope that in your quest to learn everything you can about the legal system, you will find this episode both entertaining and enlightening.

We never know exactly when these episodes are going to be released but at the time of this recording, the subject of grand jury proceedings in Georgia is a pretty hot topic – particularly special purpose grand juries. But we are not going to dive in to the deep end – we are going to start in the shallows and explain “regular” grand juries.

Most people understand the concept of a trial jury but very few understand the difference between a grand jury and a petit or trial jury

Most of Georgia law relating to grand juries is statutory and can be found in Title 15 of the Georgia Code, beginning with O.C.G.A. § 15-12-60.

Citizens receive a summons for grand jury just like citizens receive jury summons notices

When a jury summons for grand jury duty goes out, it is for a particular term of court

Every one of Georgia’s 159 counties is within one of 50 judicial circuits. Georgia law (§ 15-6-3) sets out how many terms of court exist in each of the 50 circuits. And they vary widely.

Every circuit must have at least 2 terms of court each year. Let us give you a couple of examples.

Columbia Circuit – 2 terms – 4th Monday in March and September

Cobb Circuit – 6 terms – 2nd Monday in January, March, May, July, September and November.

Multi county circuits may have different terms of court for each county that is a part of that circuit. For example

Augusta Circuit- In Burke County-2 terms – 4th Monday in April and October

In Richmond County – 6 terms – 3rd Monday in Jan, March, May, July, September and November,

You get the point that terms of court are extremely varied across Georgia

A grand jury meets and hears matters for the entire term of court for which they were selected.

A grand jury is made up of no less than 16 and no more than 23 members.[[1]](#endnote-1)

Frequently, up to 3 alternates are selected in case some grand jurors are sick or must miss a day

The grand jury process begins much like a trial jury process – the panel of potential grand jurors take an oath to truthfully answer qualification questions[[2]](#endnote-2) and the qualification questions are posed to the entire panel of potential grand jurors.

The qualification questions are similar to the ones you might ask to a trial jury but there are a couple of interesting exceptions –

For example, the grand jurors must live in the county and be at least 18 years of age. Those sorts of qualifications are equally applicable to both grand jurors and trial jurors

But among the qualifications of a grand jury is that no person can serve on a grand jury who is currently holding elective office or who has held elective office in the two years preceding the calling of the grand jury.[[3]](#endnote-3)

There is also a prohibition for potential grand jurors relating to currently serving a first offender sentence, participating in a pretrial diversion program or an accountability court program.

After completing the statutory qualification questioning, I allow the DA to ask any other qualification questions to the panel. Not sure that is necessarily required under the statute but it allows us to determine if any of the potential grand jurors have issues such as young children, older folks for whom they are primary caregivers, jobs that require extensive travel, etc.

Once the panel has been asked all of the relevant questions, we seat the first 26 qualified individuals – 23 plus 3 alternates

Georgia law allows the judge overseeing the GJ to appoint someone as foreman or allows the grand jurors to elect their own foreman.[[4]](#endnote-4)

Honestly, if I know someone on the GJ, I will appoint that person as foreman when I can because the other grand jurors do not know enough about each other to make an informed decision.

The grand jurors (and the foreman) then take a second “grand jury oath.”[[5]](#endnote-5)

Finally, the bailiffs working with the GJ take their oath[[6]](#endnote-6) (different from trial bailiff oath) and we move to the charge of the court to the newly minted GJ.

Questions for you, Tain. Did you have a court reporter take down the GJ selection and charge proceedings?

[I don’t]

And this brings up an interesting point I recently heard discussed on another podcast. Secrecy of GJ proceedings.

As part of the instructions given to grand jurors, we tell them that their proceedings are secret and that grand jurors are not allowed to discuss the happenings in the GJ unless ordered to do so by a court.

The topic discussed on that other podcast was exactly to what extent that proceedings are secret. It was suggested that the ***deliberations*** of the GJ are secret but that who was called to the GJ and related issues are not covered by that secrecy provision.

O.C.G.A. § 15-12-72 says: “Grand jurors shall disclose everything which occurs in their service whenever it becomes necessary in any court of record in this state.”

The O.C.G.A. § 15-12-73 provides, “Admissions and communications among grand jurors are excluded as evidence on grounds of public policy.”

There is very little case law on the issue of grand jury secrecy and most of the law that does exist is rather dated. The Georgia appellate courts have held that admissions and communications ***among*** grand jurors are excluded on public policy grounds.[[7]](#endnote-7) The courts noted that § 15-12-72 is an exception to the broad confidentiality provisions of § 15-12-73. §72 allows grand jurors to make disclosures “whenever it becomes necessary in any court of record in Georgia.”

The cases are pretty clear that grand jurors cannot be called to testify to impeach their finding of a true bill[[8]](#endnote-8) but that if the testimony is “necessary,” a grand juror can be called to testify.[[9]](#endnote-9)

We talked a few minutes ago about court reporters taking down GJ hearings. As a rule, they are not required or even advisable. But as with all good laws, there are exceptions to that general rule.

O.C.G.A. § 15-12-83 provides that upon request of the DA or when considering an indictment against a peace officer for a crime allegedly committed during his/her duties as a peace officer,[[10]](#endnote-10) a court reporter shall be authorized to be present and shall attend such proceedings. However, even the court reporter has to take an oath:

“I do solemnly swear that I will keep secret all things and matters coming to my knowledge while in attendance upon the grand jury, so help me God.”[[11]](#endnote-11)

The court reporter is directed to take down the testimony of witnesses and argument or legal advice given to the GJ by the DA but there is no provision for the deliberations of the grand jurors themselves to be taken down.

And the court reporter is declared by statute to be incompetent to testify.

The charge given to the grand jurors is lengthy and involves instructions on how they are to proceed. It discusses the “inspection duties” of the grand jury relating to various county offices, the jail, the DA, etc.

But for those who do are not regularly involved in the GJ process, we probably need to discuss some of the ways that grand juries are different from trial juries that people are likely more familiar with.

GJ only hear from witnesses called by the prosecutor. The defendant has no right to be present (except where a peace officer is potentially being indicted for crimes committed while acting as a peace officer).

The GJ must have at least 16 of its members present to conduct business.[[12]](#endnote-12)

Grand jurors who are related within the 3rd degree to the individuals involved in the case or who have an “interest” in the outcome of the case must be excluded from hearing that particular case.[[13]](#endnote-13) We have discussed the whole issue of 3rd degree relationships in a prior podcast episode.

There is an old saying that a DA could indict a ham sandwich – that is based upon the fact that the DA controls the information presented to the GJ

The GJ is not asked to decide whether the defendant is guilty beyond a reasonable doubt. Instead, their standard is for “probable cause” – whether a person of reasonable caution would believe that the accused committed the crime. “This requires merely a probability, less than a certainty, but more than a mere suspicion or possibility that the accused committed the crime charged.”[[14]](#endnote-14)

12 grand jurors must vote to return a true bill – so there can be a lack of unanimity among the grand jurors

If at least 12 grand jurors do not vote to issue a true bill, a “no bill” is entered on that case. The case is not indicted. Two returns of a “no bill” bars any future prosecution of that person for that crime.[[15]](#endnote-15)

**SPECIAL PURPOSE GRAND JURIES**

The law allows for special purpose grand juries and it is rather rare that these sorts of grand juries are impaneled.

They have a whole separate set of rules.[[16]](#endnote-16)

These special purpose grand juries are typically charged with investigating alleged public corruption or singular events. They are not limited to serving only during a single term of court.

Upon the chief superior court judge’s own motion, a motion of the DA or a motion by an elected official of county or city, may request that the judges of the superior court consider impaneling a special purpose grand jury.

A majority of the judges of superior court must agree to impanel a special purpose grand jury.[[17]](#endnote-17)

Once the decision is made by a majority of the superior court judges, the process for summoning potential grand jurors, naming a foreperson and the other procedural issues associated with the formation of a “regular” grand jury all apply.

A special grand jury is confined to the same sorts of issues that they can investigate as would limit a “regular” grand jury

The language of any court order authorizing the impaneling of a special grand jury will be vitally important. The law only allows a special grand jury to consider issues authorized by the Constitution, statutes “or by an order of any superior court judge.”[[18]](#endnote-18) Therefore, if the special grand jury is authorized to investigate crimes committed by elected officials, investigation of a private citizen is not authorized.[[19]](#endnote-19)

Special grand juries are authorized to subpoena records and demand additional documentation that is not necessarily within the authority of a “regular” grand jury. However, those requests must be related to the stated purpose of the special grand jury.

By the time this episode airs, some ground breaking decisions relating to special grand juries will likely have been made by FOP Robert McBurney. These issues will likely be headed to appellate litigation and we will all likely learn a great deal from the appellate decisions that follow.

So, that’s all for our episode dealing with grand juries.

16 to 23 members, 12 must vote to return a true bill. And elected officials or those who have been elected officials within the prior two years are ineligible to serve.

They only hear from witnesses for the prosecution and probable cause is their standard.

The outline is full of statutory and case citations and that outline can be found at **goodjudgepod.com**.

Reach out to us on goodjudgepod@gmail.com with all of your podcast topic ideas

**I’m Wade Padgett**

*And I’m Tain Kell…do you know the inspiration of the Queen song Bicycle Race? Freddie Mercury, the band’s lead singer, watched a portion of the Tour de France from a hotel window and he was inspired to write the song that was released in 1978.*

1. O.C.G.A. § 15-12-4 [↑](#endnote-ref-1)
2. O.C.G.A. § 15-12-66(b). [↑](#endnote-ref-2)
3. O.C.G.A. § 15-12-60. [↑](#endnote-ref-3)
4. O.C.G.A. § 15-12-67. [↑](#endnote-ref-4)
5. O.C.G.A. § 15-12-67. [↑](#endnote-ref-5)
6. O.C.G.A. § 15-12-69. [↑](#endnote-ref-6)
7. *Kennedy b. State*, 205 Ga.App. 152, 154 (1992). [↑](#endnote-ref-7)
8. *Turner v. State*, 57 Ga. 108 (1876). [↑](#endnote-ref-8)
9. *Kennedy*, at 154. [↑](#endnote-ref-9)
10. O.C.G.A. § 17-7-52. [↑](#endnote-ref-10)
11. O.C.G.A. § 15-12-83(a). [↑](#endnote-ref-11)
12. O.C.G.A. § 15-12-61. [↑](#endnote-ref-12)
13. O.C.G.A. §15-12-70(related within third degree of affinity (marriage) or consanguinity (blood)). [↑](#endnote-ref-13)
14. *Price v. State*, 270 Ga. 619 (1999); *Lewis v. State*, 255 Ga. 101, 104 (1985); *Stroud v. State*, 286 Ga. App. 124 (2007); *Beckham*, 176 Ga. App. at 520-21; *Brown v. State*, 151 Ga. App. 830, 831 (1979). [↑](#endnote-ref-14)
15. O.C.G.A. § 17-7-53. If there is newly discovered evidence or proof of some fraud by the person charged, the judge can allow a third presentment to the GJ. [↑](#endnote-ref-15)
16. O.C.G.A. § 15-12-100, *et. seq*. [↑](#endnote-ref-16)
17. O.C.G.A. § 15-12-100(b) [↑](#endnote-ref-17)
18. *State v. Lampl*, 296 Ga. 892, 895-896 (2015). [↑](#endnote-ref-18)
19. *Lampl*, supra. [↑](#endnote-ref-19)