

1 **14-8001. Grand jury proceedings; explanation of proceedings.[1]**<sup>1</sup>

2 ~~[LADIES AND GENTLEMEN]~~ **MEMBERS OF THE GRAND JURY:**

3 **Function of Grand Jury.**

4 You have been summoned to serve as members of the grand jury for \_\_\_\_\_ County  
5 to investigate \_\_\_\_\_.[2]<sup>2</sup> An order by the court filed on the \_\_\_\_\_ day of  
6 \_\_\_\_\_, \_\_\_\_\_, convened this grand jury. You have been qualified as members of  
7 ~~[such]~~ this grand jury, and it is my duty as judge to instruct you ~~[as to]~~ on your duties, authority,  
8 and special responsibilities as members of the grand jury.

9 I will guide you to assure that your actions are within your legal authority. At any time, it  
10 is appropriate for any grand juror to seek advice and guidance from me ~~[as to]~~ about the scope and  
11 propriety of the grand ~~[jury's]~~ jury's acts and investigations. The grand jury, however, is subject  
12 to no other supervision or control from any person, office, or body.

13 Your purpose as grand jurors is to investigate the matter for which this grand jury was  
14 called and to determine from the evidence if there is probable cause to believe an offense has been  
15 committed.

16 **Evidence.**

17 The grand jury has the power to order the attendance of witnesses and to cause the  
18 production of public and private records or other evidence relative and relevant to its  
19 investigations. It has the authority of this court to subpoena witnesses and to obtain execution of  
20 subpoenas by any public officers charged with ~~[such]~~ these duties. If you have reason to believe  
21 that evidence not presented to you is available that may excuse or disprove a charge or accusation  
22 or that would make an indictment unjustified, then you may order that evidence produced and  
23 presented to you.

1           In the course of your investigation and the presentation of charges by the prosecutor, you  
2 shall consider the evidence presented to you. Evidence means the oral testimony of witnesses under  
3 oath and any documentary or other physical evidence.

4           You must decide the case solely ~~upon~~ on the evidence received during these proceedings.  
5 It is for you to decide whether that evidence is true or false. You may give the evidence whatever  
6 weight you believe it deserves. You must not consider anything you may have read or heard about  
7 the case except as a part of your inquiry as members of the grand jury.

8           In the course of your investigation, it is your duty to protect citizens against unfounded  
9 accusations, whether they come from the government or others, and to prevent anyone from being  
10 indicted through malice, hatred, or ill will.

11 **Probable Cause.**

12           For you to return an indictment, you must find probable cause. [~~"Probable cause"~~]  
13 "Probable cause" means the evidence presented would cause a reasonable person to believe that  
14 an offense has been committed and that the accused committed the offense. Probable cause does  
15 not require proof beyond a reasonable doubt.

16           Indictments will often contain more than one charge. You must decide whether there is  
17 probable cause for each charge separately. In finding probable cause on each charge, you must  
18 find that there is probable cause for every element of that crime.

19 **Limits of Investigation.**

20           The indiscriminate summoning of witnesses, on the mere chance that some crime may be  
21 discovered, is forbidden. The grand jury has no right to conduct an investigation into the personal  
22 affairs of citizens, nor the function, operation, and housekeeping of any branch of government,  
23 except as may be necessary in the course of investigating criminal offenses.

1           Witnesses brought before the grand jury shall not be harassed nor subjected to unreasonable  
2 repeated appearances before the grand jury or the prosecuting attorney. This does not mean,  
3 however, that witnesses may not be brought before you on more than one occasion if either you or  
4 the prosecuting attorney shall so require.

5           **Assistance for Grand Jury.**

6           The court shall assign a clerk to you, as all testimony must be recorded. The court may also  
7 assign to you a bailiff, interpreter, or others necessary to carry out your duties, but no one except  
8 members of the grand jury and court appointed interpreters may be present during your  
9 deliberations or upon your taking of a vote.

10           The district attorney's office will assist you, examine witnesses, prepare indictments, and  
11 reports at your request, and provide your foreperson with a form of oath to be administered by the  
12 foreperson to the witnesses who appear before you. The district attorney will advise you of the  
13 essential elements of any offense which is to be considered. The district attorney will answer, on  
14 the record, any questions you may have, if allowed by law.

15           The statutes of New Mexico will be available to you, and the district attorney can, at your  
16 request, explain our criminal laws to you. You will have a copy of this and other instructions for  
17 your guidance and information.

18           You may call [~~upon~~] on this court for assistance and advice [and you may request this court  
19 to call [~~upon~~] on the attorney general of the state to aid you]<sup>3</sup>. If necessary, you may ask this court  
20 for legal or other assistance in your inquiry.

21           **Secrecy of Grand Jury Proceedings.**

1           If any person attempts to contact you with respect to any of your duties as a grand juror,  
2 advise that person that you cannot discuss any matter pertaining to your duties as a grand juror,  
3 obtain the person's name and address, if possible, and report the matter to the court without delay.

4           The law requires that all that you hear, see, say, or vote ~~upon~~ on shall be kept secret and  
5 shall not be revealed to anyone outside of the grand jury room except in your official reports,  
6 indictments, and no-bills.

7           No grand juror shall, except in the performance of ~~[[his]]~~ their official duty, disclose the  
8 fact that an indictment has been found against any person for any offense. You will not allow any  
9 unauthorized person into the grand jury room during your deliberations. You will not consult with  
10 anyone other than members of the grand jury ~~[as to]~~ about how you should vote on any matter.

11           No one should have any advance information ~~[as to]~~ about the activities of the grand jury  
12 or ~~[as to]~~ about any activities which are planned by the grand jury.

13           As a grand juror, you may not be questioned about anything you say or any vote you cast  
14 relative to a matter legally pending before the grand jury except in prosecutions for violations of  
15 laws governing grand juries. You must strictly obey this requirement of secrecy in all matters  
16 before you. You will be asked to take an oath before serving as a grand juror. If you violate this  
17 oath, you may be prosecuted.

18           Although all proceedings in the grand jury room will be reported verbatim, your  
19 deliberations will not be reported.

20           If you learn of any violation of any rule governing these proceedings, you should report  
21 that violation to the court immediately. The court will address such violations appropriately.

22   **Foreperson of Grand Jury.**



1           2.       Insert the reason for which the grand jury has been convened; e.g., offenses  
2 presented for consideration and indictment, special inquiry, or investigation of a public officer  
3 regarding removal on a ground specified in NMSA 1978, Section 10-4-2~~[NMSA 1978 (1909)]~~.

4           3.       The bracketed phrase is not to be given if the attorney general has already been  
5 asked to assist the grand jury.

6           4.       If used, UJI 14-8002 NMRA is to be given by the clerk of the court immediately  
7 after this instruction is given.

8 **STATE OF NEW MEXICO**

9 **COUNTY OF \_\_\_\_\_**

10 **IN THE DISTRICT COURT**

11 **IN THE MATTER OF THE CONVENING**

12 **OF A GRAND JURY**

13 **ORDER**

14           The court, being advised in the premises and deeming it necessary, finds that a grand jury  
15 should be convened for the purpose of considering [criminal cases which may be presented to it]  
16 [\_\_\_\_\_ (*state specific inquiry which petition charges the grand*  
17 *jury to investigate*)] [the removal of \_\_\_\_\_ (*name of public officer*) for  
18 \_\_\_\_\_ (*reason for removal of officer*)].

19           IT IS THEREFORE ORDERED that a grand jury in \_\_\_\_\_ County, New  
20 Mexico, be convened to meet at \_\_\_\_\_ [~~o'clock~~] o'clock a.m. on \_\_\_\_\_, the  
21 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, to consider \_\_\_\_\_.

22           IT IS FURTHER ORDERED that the names of \_\_\_\_\_ (*state number*)  
23 potential jurors be selected and from the lists of said persons, twelve grand jurors and

1 \_\_\_\_\_ alternates be chosen and qualified in open court prior to the convening of  
2 the grand jury on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
District Judge

3  
4 [As amended by Supreme Court Order No. 08-8300-008, effective March 21, 2008; as amended  
5 by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after  
6 \_\_\_\_\_.]

7 [~~Committee Commentary.~~]

8 **Committee commentary. —**

9 *Convening the grand jury.*

10 Article 2, Section 14 of the New Mexico Constitution provides that:

11 [~~A grand jury shall be convened upon order of a judge of a court empowered to try and~~  
12 ~~determine cases of capital, felonious or infamous crimes at such times as to him shall be~~  
13 ~~deemed necessary, or a grand jury shall be ordered to convene by such judge upon the~~  
14 ~~filing of a petition therefor signed by not less than the greater of two hundred registered~~  
15 ~~voters or two percent of the registered voters of the county, or a grand jury may be~~  
16 ~~convened in any additional manner as may be prescribed by law.~~]

17 A grand jury shall be convened upon order of a judge of a court empowered to try  
18 and determine cases of capital, felonious or infamous crimes at such times as to [the  
19 judge] shall be deemed necessary, or a grand jury shall be ordered to convene by  
20 such judge upon the filing of a petition therefor signed by not less than the greater  
21 of two hundred registered voters or two percent of the registered voters of the  
22 county, or a grand jury may be convened in any additional manner as may be  
23 prescribed by law.

1 Article 2, § 14 of the New Mexico Constitution prohibits holding a person to answer for a felony,  
2 capital or infamous crime, unless on a presentment or indictment of a grand jury or information  
3 filed by a district attorney or attorney general.

4 The grand jury may present an accusation, in writing, for removal of any county, precinct,  
5 district, city, town or village officer elected by the people, and of any officer appointed to fill out  
6 the unexpired term of any such officer, to the district court of the county in or for which the officer  
7 accused is elected for any of the following causes:

- 8 ~~[a. conviction of any felony or of any misdemeanor involving moral turpitude;~~  
9 ~~b. failure, neglect or refusal to discharge the duties of the office, or failure, neglect or~~  
10 ~~refusal to discharge any duty devolving upon the officer by virtue of his office;~~  
11 ~~c. knowingly demanding or receiving illegal fees as such officer;~~  
12 ~~d. failure to account for money coming into his or her hands as such officer;~~  
13 ~~e. gross incompetency or gross negligence in discharging the duties of the office; or~~  
14 ~~f. any other act or acts, which in the opinion of the court or jury amount to corruption~~  
15 ~~in office or gross immorality rendering the incumbent unfit to fill the office.]~~

16 A. conviction of any felony or of any misdemeanor involving moral turpitude;

17

18 B. failure, neglect or refusal to discharge the duties of the office, or failure,  
19 neglect or refusal to discharge any duty devolving upon the officer by virtue of  
20 [their] office;

21

22 C. knowingly demanding or receiving illegal fees as such officer;

23

24 D. failure to account for money coming into [their] hands as such officer;

25

26 E. gross incompetency or gross negligence in discharging the duties of the  
27 office; or

28

29 F. any other act or acts, which in the opinion of the court or jury amount to  
30 corruption in office or gross immorality rendering the incumbent unfit to fill the  
31 office.

1 NMSA 1978, §§ 10-4-1 to 10-4-4 (1909, as amended through 2018).

2 The grand jury may make a presentment for the removal of a local, elected officer, but if it  
3 does not do so, it shall not denigrate that [~~person's~~] person's moral fitness to hold public office.

4 NMSA 1978, § 31-6-10 (1979).

5 *Territorial jurisdiction.*

6 *Selection of the grand jury.*

7 NMSA 1978, § 38-5-3 (2005) describes the procedure used to compile the random jury list  
8 for the selection of grand jurors. The names of jurors summoned for grand jury duty are drawn  
9 from the random jury list. NMSA 1978, § 31-6-1 (1983). The district judge then qualifies a grand  
10 jury panel comprised of twelve regular jurors and a sufficient number of alternates to ensure the  
11 continuity of the inquiry and the taking of testimony. [~~NMSA 1978, §~~] Section 31-6-1 [~~(1983)~~].

12 *Term of grand jury.*

13 The grand jury is convened as provided for in [~~N.M. Const., art. 2, § 14~~] Article 2, Section  
14 14 of the New Mexico Constitution and discharged at [~~such~~] the time [~~as~~] the court determines the  
15 business of the grand jury is completed, but not later than three months after it was convened.  
16 [~~NMSA 1978, §~~] Section 31-6-1 [~~(1983)~~]; *State v. Raulie*, 1930-NMSC-074, 35 N.M. 135, 290 P.  
17 789[~~(1930)~~].

18 *Function of the court.*

19 “The district judge convening the grand jury shall charge it with its duties and direct it as  
20 to any special inquiry into violations of law that he wishes it to make.” NMSA 1978, § 31-6-9  
21 (1993).

1 In *District Court v. McKenna*, 1994-NMSC-102, ¶¶ 13-15, 118 N.M. 402, ~~[407-408]~~, 881  
2 P.2d 1387, ~~[1393-94 (1994)]~~, the Supreme Court set forth the duties of the district court ~~[prior to]~~  
3 before convening a grand jury upon a citizen’s petition.

4 When appropriate, the district judge shall “call to the attention of grand jurors,” the  
5 provisions of NMSA 1978, §§ 23-1-5, 23-1-6 and 23-1-7 regarding the indebtedness of a state  
6 institution exceeding the appropriations for ~~[such]~~ that institution. NMSA 1978, § 23-1-8 (1953).  
7 *Assistance for grand jury.*

8 The court is required to assign court reporters, security officers, interpreters, clerks, or other  
9 persons as needed to aid the grand jury in carrying out their duties. Security personnel may be  
10 present only by special leave of the court and only if they are not potential witnesses or interested  
11 parties. NMSA 1978, §§ 31-6-4(C) and 31-6-7(A) (2003).

12 A prosecuting attorney attending a grand jury shall act fairly and impartially at all times  
13 during grand jury proceedings. ~~[NMSA 1978, §]~~ Section 31-6-7(A) ~~[(2003)]~~. The duty of the  
14 prosecuting attorney is to attend the grand jury, examine witnesses, and prepare indictments,  
15 reports, and other undertakings of the grand jury. ~~[NMSA 1978, §]~~ Section 31-6-7(A) ~~[(2003)]~~.  
16 The prosecuting attorney shall also advise the grand jury, on the record, of the essential elements  
17 of any offense which is considered by the grand jury. *State v. Ulibarri*, 2000-NMSC-007, 128  
18 N.M. 686, 997 P.2d 818 (adopting reasoning of Court of Appeals in *State v. Ulibarri*, 1999-  
19 NMCA-142, 128 N.M. 546, 994 P.2d 1164). This shall be done by using Uniform Jury  
20 Instructions-Criminal, where available, and the criminal statutes if no uniform instructions are  
21 available. The district attorney will answer, on the record, any questions which the grand jury may  
22 have. The prosecuting attorney will not, however, guide or otherwise influence the grand jury. If

1 requested by the grand jury, the prosecuting attorney should also explain a statute to the grand  
2 jury.

3 *Evidence.*

4 Evidence before the grand jury is the oral testimony of witnesses and documentary or  
5 physical evidence, and the grand jury has the duty to order evidence produced if it believes that  
6 there is lawful, competent, and relevant evidence available that may explain away or disprove a  
7 charge or accusation or that would make an indictment unjustified. NMSA 1978, § 31-6-11(A),  
8 (B) (2003). The grand jury may subpoena witnesses and records or other evidence relevant to its  
9 inquiry. NMSA 1978, § 31-6-12(A) (1979).

10 The sufficiency or competency of the evidence ~~[upon]~~ on which an indictment is returned  
11 will not be subject to review absent a showing of bad faith on the part of the prosecutor assisting  
12 the grand jury. ~~[NMSA 1978, §]~~ Section 31-6-11 [(2003)]; *Buzbee v. Donnelly*, 1981-NMSC-097,  
13 96 N.M. 692, 634 P.2d 1244[~~supra~~]; *State v. Chance*, 1923-NMSC-042, 29 N.M. 34, 221 P. 183[  
14 (1923)].

15 In *Buzbee*, the New Mexico Supreme Court overruled the holding in several ~~[court of~~  
16 ~~appeals]~~ Court of Appeals decisions regarding due process and exculpatory evidence. The ~~[court]~~  
17 Court specifically overruled *State v. Payne*, 1981-NMCA-067, 96 N.M. 347, 630 P.2d 299[~~(Ct.~~  
18 ~~App. 1981)~~]; *State v. Gonzales*, 1981-NMCA-023, 95 N.M. 636, 624 P.2d 1033[~~(Ct. App. 1981)~~];  
19 *State v. Sanchez*, 1980-NMCA-137, 95 N.M. 27, 618 P.2d 371[~~(Ct. App. 1980)~~]; *State v.*  
20 *Lampman*, 1980-NMCA-166, 95 N.M. 279, 620 P.2d 1304[~~(Ct. App. 1980)~~]; *State v. Harge*,  
21 1979-NMCA-120, 94 N.M. 11, 606 P.2d 1105[~~(Ct. App. 1979)~~]; and *State v. Herrera*, 1979-  
22 NMCA-103, 93 N.M. 442, 601 P.2d 75[~~(Ct. App. 1979)~~].

1 Relying on *Costello v. United States*, 350 U.S. 359 (1956), the New Mexico Supreme Court  
2 did not perceive a federal due process violation when the only misconduct asserted was a  
3 withholding of exculpatory evidence from the grand jury. In so doing, the [eourt] Court implicitly  
4 rejected the dictum in *State v. McGill*, 1976-NMCA-100, 89 N.M. 631, 556 P.2d 39[~~(Ct. App.~~  
5 ~~1976)~~], which assumed the prosecutor could violate due process in withholding some evidence  
6 from the grand jury.

7 Because the function of the grand jury is merely to find probable cause for bringing a  
8 defendant to trial, the [eourt] Court reasoned that a stricter test of materiality should be placed on  
9 evidence withheld from the grand jury. Before remedial action by a reviewing court is justified,  
10 the quantum and materiality should be great. The [eourt] Court held that [~~NMSA 1978, §~~ Section  
11 31-6-11 requires a prosecutor to present direct exculpatory evidence, but does not require the  
12 prosecutor to present circumstantial exculpatory evidence. The [eourt] Court also reaffirmed its  
13 1923 holding in [~~*State v. Chance, supra,*~~ *Chance* that absent clear statutory authority, the court  
14 will not review the legality or competency of evidence unless there is a violation of due process.  
15 The [eourt] Court did emphasize, however, that the prosecutor has a statutory duty, under Section  
16 31-6-7 [~~NMSA 1978, § 31-6-7 (2003)~~], to conduct [~~himself~~] themselves in a fair and impartial  
17 manner.

18 Finally, the [eourt] Court reaffirmed its holding in *Maldonado v. State*, 1979-NMSC-102,  
19 93 N.M. 670, 604 P.2d 363[~~(1979)~~]: Prosecutors must not use inadmissible evidence when they  
20 seek an indictment. They should avoid perjury, deceit, or malicious overreaching. A [~~prosecutor's~~]  
21 prosecutor's conduct should not significantly impinge on the ability of the grand jury to exercise  
22 its independent judgment.

1 In 2003, the [~~legislature~~] Legislature amended [~~NMSA 1978, §~~] Section 31-6-11(B)  
2 [~~(2003)~~]. The amended statute no longer [~~requires~~] requires the grand jury to consider “evidence  
3 that directly negates the guilt” of the target. It now states:

4 [~~It is the duty of the grand jury to weigh all the evidence submitted to it, and when~~  
5 ~~it has reason to believe that other lawful, competent and relevant evidence is~~  
6 ~~available that would disprove or reduce a charge or accusation or that would make~~  
7 ~~an indictment unjustified, then it shall order the evidence produced. At least twenty-~~  
8 ~~four hours before grand jury proceedings begin, the target or his counsel may alert~~  
9 ~~the grand jury to the existence of evidence that would disprove or reduce an~~  
10 ~~accusation or that would make an indictment unjustified, by notifying the~~  
11 ~~prosecuting attorney who is assisting the grand jury in writing regarding the~~  
12 ~~existence of that evidence.]~~

13 It is the duty of the grand jury to weigh all the evidence submitted to it, and when  
14 it has reason to believe that other lawful, competent and relevant evidence is  
15 available that would disprove or reduce a charge or accusation or that would make  
16 an indictment unjustified, then it shall order the evidence produced. At least twenty-  
17 four hours before grand jury proceedings begin, the target or [the target’s] counsel  
18 may alert the grand jury to the existence of evidence that would disprove or reduce  
19 an accusation or that would make an indictment unjustified, by notifying the  
20 prosecuting attorney who is assisting the grand jury in writing regarding the  
21 existence of that evidence.

22 Interpreting the amended statute, the Court of Appeals held that [~~§~~] Section 31-6-11 does  
23 not authorize “judicial review of the evidence presented to a grand jury except for its sufficiency  
24 and then only upon a showing of prosecutorial bad faith.” *State v. Romero*, 2006-NMCA-105, 140  
25 N.M. 281, 142 P.3d 362, *cert. granted*, 2006-NMCERT-008, 140 N.M. 423, *cert. quashed*, 2007-  
26 NMCERT-002, 141 N.M. 339. In *Romero*, the Court rejected challenges to indictments on the

1 grounds that the prosecutor (1) failed to present evidence that disproved or reduced a charge or  
2 that made indictments unjustified and (2) presented inadmissible hearsay to the grand jury.

3 The grand jury may subpoena witnesses and records or other evidence relevant to its  
4 inquiry. [~~NMSA 1978, §~~] Section 31-6-12 [~~(1979)~~].

5 *Targets.*

6 In 2003, the [~~legislature~~] Legislature amended [~~NMSA 1978, §~~] Section 31-6-11 [~~(2003)~~],  
7 which now states:

8 [~~A district attorney shall use reasonable diligence to notify a person in writing that~~  
9 ~~the person is the target of a grand jury investigation. Unless the district judge~~  
10 ~~presiding over the grand jury determines by clear and convincing evidence that~~  
11 ~~providing notification may result in flight by the target, result in obstruction of~~  
12 ~~justice or pose a danger to another person, the target of a grand jury investigation~~  
13 ~~shall be notified in writing of the following information:~~

14 (1) ~~that he is the target of an investigation;~~

15 (2) ~~the nature of the alleged crime being investigated and the date of the alleged crime~~  
16 ~~and any applicable statutory citations;~~

17 (3) ~~the target's right to testify no earlier than four days after receiving the target notice~~  
18 ~~if he is in custody, unless for good cause the presiding judge orders a different time period~~  
19 ~~or the target agrees to testify sooner;~~

20 (4) ~~the target's right to testify no earlier than ten days after receiving the target notice~~  
21 ~~if he is not in custody, unless for good cause the presiding judge orders a different time~~  
22 ~~period or the target agrees to testify sooner;~~

23 (5) ~~the target's right to choose to remain silent; and~~

1           ~~(6) — the target's right to assistance of counsel during the grand jury investigation.]~~

2           A district attorney shall use reasonable diligence to notify a person in writing that  
3           the person is the target of a grand jury investigation. Unless the district judge  
4           presiding over the grand jury determines by clear and convincing evidence that  
5           providing notification may result in flight by the target, result in obstruction of  
6           justice or pose a danger to another person, the target of a grand jury investigation  
7           shall be notified in writing of the following information:

8  
9           (1) that [the person] is the target of an investigation;

10          (2) the nature of the alleged crime being investigated and the date of the alleged  
11          crime and any applicable statutory citations;

12  
13          (3) the target's right to testify no earlier than four days after receiving the target  
14          notice if [the target] is in custody, unless for good cause the presiding judge orders  
15          a different time period or the target agrees to testify sooner;

16  
17          (4) the target's right to testify no earlier than ten days after receiving the target  
18          notice if [the target] is not in custody, unless for good cause the presiding judge  
19          orders a different time period or the target agrees to testify sooner;

20  
21          (5) the target's right to choose to remain silent; and

22  
23          (6) the target's right to assistance of counsel during the grand jury investigation.

24          [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]